

November 19, 2018

**Virginia:**

AT A RESCHEDULED 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: Thomas D. Harvey, North District Supervisor  
Jesse N. Rutherford, East District Supervisor  
Ernie Q. Reed, Central District Supervisor  
Thomas H. Bruguiera, Jr. West District Supervisor – Chair  
Larry D. Saunders, South District Supervisor – Vice Chair  
Stephen A. Carter, County Administrator  
Candice W. McGarry, Administrative Assistant/Deputy Clerk  
Debra K. McCann, Director of Finance and Human Resources  
Phillip D. Payne, IV County Attorney  
Deborah Harvey, Nelson County Historical Society President  
Don Austin, VDOT Residency Administrator  
David Blount, TJPDC Legislative Liaison

Absent: None

**I. Call to Order**

Mr. Bruguiera called the meeting to order at 2:00 pm, with all Supervisors present to establish a quorum.  
A. Moment of Silence  
B. Pledge of Allegiance – Mr. Reed led the Pledge of Allegiance

**II. Consent Agenda**

Supervisors asked for an explanation of item C and Mr. Carter noted it was a consideration for Frederick County and the proposed legislation would repeal all tax exemptions approved by the General Assembly and the tax exemption decision would be a local one. He noted that was the case going forward after a certain date and it related to all tax exempt statuses. In response to questions, Mr. Carter noted that not all of Synchronicity was tax exempt; however it was the same premise. Mr. Blount in attendance, noted that the proposed bill was a look back provision to capture those entities previously granted tax exemption by the General Assembly.

Mr. Carter noted he thought the tax exemption process had had changed within the last ten years, and since then, entities seeking tax exemption had to come to the local Governing body; whereas previously, the General Assembly decided.

Mr. Saunders advised the consideration was either supporting the proposed bill or not and Mr. Rutherford added that the bill would give localities control of local taxes. Mr. Carter noted that there were possibly a couple of Nelson County exemptions listed in the State Code.

Mr. Saunders then moved to approve the consent agenda and Mr. Harvey seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion and the following resolutions were adopted:

November 19, 2018

A. Resolution – **R2018-56** Minutes for Approval

**RESOLUTION R2018-56  
NELSON COUNTY BOARD OF SUPERVISORS  
APPROVAL OF MINUTES  
(October 9, 2018)**

**RESOLVED**, by the Nelson County Board of Supervisors that the minutes of said Board meeting conducted on **October 9, 2018** be and hereby are approved and authorized for entry into the official record of the Board of Supervisors meetings.

B. Resolution – **R2018-57** FY19 Budget Amendment

**RESOLUTION R2018-57  
NELSON COUNTY BOARD OF SUPERVISORS  
AMENDMENT OF FISCAL YEAR 2018-2019 BUDGET  
NELSON COUNTY, VA  
November 19, 2018**

**BE IT RESOLVED** by the Board of Supervisors of Nelson County that the Fiscal Year 2018-2019 Budget be hereby amended as follows:

**I. Appropriation of Funds (General Fund)**

<u>Amount</u>	<u>Revenue Account</u>	<u>Expenditure Account</u>
\$121.75	3-100-009999-0001	4-100-022010-5418
\$90,518.91	3-100-009999-0001	4-100-031020-5419
\$365.25	3-100-009999-0001	4-100-031020-5418
\$10,383.56	3-100-002404-0001	4-100-031020-5419
\$750.00	3-100-002404-0004	4-100-031020-7060
\$51.00	3-100-002404-0070	4-100-031020-5505
\$10,000.00	3-100-001899-0031	4-100-081020-5203
\$68,882.00	3-100-004104-0006	4-100-094100-3002
\$179,975.00	3-100-004104-0006	4-100-094100-3140
<u>\$128,233.00</u>	3-100-004104-0006	4-100-094100-3160
\$489,280.47		

**II. Appropriation of Funds (Debt Service Fund)**

<u>Amount</u>	<u>Revenue Account</u>	<u>Expenditure Account</u>
\$47,587.00	3-108-009999-0001	4-108-095100-9126

**III. Transfer of Funds (General Fund Contingency)**

<u>Amount</u>	<u>Credit Account (-)</u>	<u>Debit Account (+)</u>
\$688.00	4-100-999000-9905	4-100-021020-7001
\$166.00	4-100-999000-9901	4-100-032040-5605
<u>\$1,295.00</u>	4-100-999000-9905	4-100-031020-3003
\$2,149.00		

November 19, 2018

C. Resolution – **R2018-58** Support of Legislation Repealing State Codified Local Tax Exemptions.

**RESOLUTION R2018-58**  
**NELSON COUNTY BOARD OF SUPERVISORS**  
**RESOLUTION SUPPORTING DELEGATE LAROCK’S**  
**LEGISLATIVE PROPOSAL REGARDING TAX EXEMPTIONS**

**WHEREAS**, §§58.1-3650.1 through 58.1-3650.1001 of the Code of Virginia, 1950, as amended, exempt various individually designated properties from taxation; and

**WHEREAS**, these tax-exempt designations were authorized by actions of the Virginia General Assembly; and

**WHEREAS**, in November 2002 a referendum was approved that permitted the General Assembly to adopt legislation enabling localities to exempt property from taxation; and

**WHEREAS**, during the 2003 General Assembly session HB 1750 was adopted, which detailed the procedure for how the granting of exemptions was to be done and also how a previously granted exemption could be revoked; and

**WHEREAS**, §58.1-3605 of the Code of Virginia, 1950, as amended, provides for a process by which a locality may seek revocation of a tax-exempt designation under §58.1-3650.1 et seq. which a local governing body wants to remove from its exempt property list. This process requires legislation and action by the General Assembly; and

**WHEREAS**, Delegate David LaRock has proposed a bill which would repeal §§58.1-3650.1 through 58.1-3650.1001 of the Code of Virginia, 1950, as amended, relating to tax exemptions; and

**WHEREAS**, this bill would terminate existing exemptions previously granted by the General Assembly pursuant to §§58.1-3650.1 through 58.1-3650.1001 of the Code of Virginia, 1950, as amended, as of July 1, 2024 and would enable localities to exempt by ordinance the real and/or personal property of any entity whose property tax exemption has been repealed.

**NOW, THEREFORE, BE IT RESOLVED**, that the Nelson County Board of Supervisors express its support for Delegate LaRock’s proposed legislation as it completes the process started in 2003 to enable localities to decide the appropriateness of tax exempt requests.

**BE IT FURTHER RESOLVED**, that the Nelson County Board of Supervisors requests that the Virginia Association of Counties support this proposal as part of its 2019 legislative agenda.

**III. Public Comments and Presentations**

**A. Public Comments**

1. Gary Wood, Lovington and CEO of Central Virginia Electric Cooperative

November 19, 2018

Mr. Wood noted he was there to update the Board on the CVEC fiber buildout. He noted that electric construction had begun at the Martin's Store substation and they would be starting fiber next week. He then noted they were on schedule to get the first people connected in January or February with all being connected by mid-year. Mr. Wood advised they had sent out notices to those on the Nellysford circuit, west of Martin's Store and up Route 151 to Beech Grove asking for pre-signups and over a couple of hundred had signed up.

Mr. Wood noted that they were asking the Board to look at grant opportunities in December to work off of the Gladstone area substation. He added that it was a Department of Housing and Community Development grant and the County had to apply with a private partner. He elaborated that the grant would provide funds to extend fiber from their substation out of Gladstone to Wingina and Midway Mills. He noted that there was funding of \$4 Million for the whole state and this was a small project. Mr. Wood noted that the work had to be completed within a year and CVEC would carry all of the costs for it. He added that applications were due by December 14<sup>th</sup> and there was a requirement to put out a public notice in the paper in order to give people a chance to comment on the project. He noted the State would make funding decisions by next March and if they got the funds, they would build the project late next year.

Mr. Wood then noted the grant program was for underserved areas that contained no more than 10% with service over 10 MBPS. He noted they would do a survey and would carve out pockets that had it and would run service to everyone out of that substation with the grant only covering those that were eligible. Mr. Wood advised that they would look at public safety installations and would serve those in Gladstone and Wingina as well as the James River State Park. He noted that the grant was competitive and considered speed and cost of service for grading purposes. Mr. Wood added that CVEC would do most of the grant related work; however, County staff would have to upload the material into the system.

Mr. Harvey noted that he had been getting questions from people that already had the County fiber about how they would switch over to CVEC. Mr. Wood advised that he could send over information that his staff was using to answer questions. He noted the short answer was that nothing changed and they may be 1-2 years away from having service available on the Nelson fiber; however they would update that as it changed. Mr. Harvey related that there were a couple of roads that wanted to apply with them now and Mr. Wood noted he was amenable to speaking with them on that separately.

## 2. Dr. Martha Eagle, School Superintendent

Dr. Eagle noted that as she was late to the meeting; she was inquiring if their appropriation request was part of the approved FY19 Budget Amendment and Mr. Carter advised their request would be presented at the December meeting.

### B. VDOT Report

#### 1. Route 151/Route 250 Roundabout Smart Scale Project

Mr. Joel De Nunzio and Hal Jones of the VDOT Culpeper District Office presented a PowerPoint of the project that contained the following information:

Mr. De Nunzio noted the following overview of presentation:

The Route 151/US 250 Intersection Improvements:

- Intersection Background
- Current Intersection Configuration
- Intersection Study
  - Operational Analysis
  - Safety Analysis
  - Cost Analysis
- Albemarle County Request for SMART SCALE Funding
- Project Development and Schedule

Mr. DeNunzio showed a slide depicting pre-signal conditions at the intersection. He then noted the following:

- The Route 151/US250 intersection was included in the 2013 Route 151 Corridor Study which recommended short to mid-term intersection improvements including consideration of a roundabout or signal
- Highway Safety Improvement Program (HSIP) Funding was secured for intersection improvements
- An intersection study was completed to determine the ultimate configuration of the intersection
- The study concluded that the preferred option is a roundabout

Mr. DeNunzio added that the 2013 Corridor Study included participation from both Nelson and Albemarle Counties and both VDOT Lynchburg and Culpeper District staff. He advised that there were numerous public involvement meetings held to gauge community interest and support for project recommendations and that the Nelson County BOS passed a resolution in support of the Route 151 Corridor Study recommendations. He added that the temporary traffic signal was done in April 2017.

Mr. DeNunzio then showed a slide depicting the intersection with the temporary signal in place. He noted that for the intersection study, the data used was volume data, 5 years crash data, and signal warrants were met. He noted that for the ADT, they looked at all turning movements and 5% was truck traffic on Route 250 and 151 with 2-3 axle trucks being about 1%.

He then noted the following data was compiled:

Average Daily Traffic:

- Route 250 – 7000 VPD
- Route 151 - 9700 VPD

Crashes from April 2010 to March 2015:

- 33 Crashes
- 15 Injury Crashes
- 45% Angle Crashes

Signal Warrants met for:

- 8 Hour Volume
- 4 Hour Volume
- Crashes

Mr. DeNunzio noted that then the following operational analysis was done:

Operational analysis

- Option 1 signal how it is now (1 Signal Only): failures due to lack of turn lane capacity
- Options 2,3, and 4 (Install Signal with Additional Capacity)- the main improvements needed are right turn lane from 151 and an increase in the left turn lanes
- Option 5 – Roundabout

Mr. DeNunzio advised that options 2, 4,and 5 were moved on for additional analysis.

Mr. DeNunzio then noted that study results showed:

- 48% decrease in all crashes
- 78% decrease in fatal/injury crashes
- 60% decrease in fatal/injury crashes in urban areas

Mr. DeNunzio then showed a graphic that compared the number and type of conflict points for a roundabout and a 4-way intersestion as follows:

Roundabout: Crossing – 0	4-Way Intersection: Crossing - 16
Diverging – 4	Diverging - 8
Converging – 4	Converging - 8
<b>Total – 8</b>	<b>Total- 32</b>

He then showed a graphic that noted the types of crashes for each with there being angle and left turn crashes at a typical 4-leg intersection and then sideswipe crashes at roundabouts. He added that crashes on roundabouts were sideswipe, were less severe, and were property damage only. He noted that at intersections crashes were at higher speeds.

Mr. DeNunzio then summarized that at roundabouts, there was relatively low traffic circulation speeds, there were reduced conflicting points and angles, reduced collision potential and severity and they expected a 70% reduction in crashes based upon HSM.

Mr DeNunzio noted the following:

- Data comes from Intersection Safety Issue Brief #8 (September 2007) and originally reported in NCHRP Report 572: Roundabouts in the United States. *National Cooperative Highway Research Program*
- In July 2008, FHWA issued a document called “Guidance Memorandum on Consideration and Implementation of Proven Safety Countermeasures” that includes the recommendation to construct roundabouts.
- The roundabout has ZERO vehicle crossing conflict points as opposed to the 16 vehicle crossing conflict points at the 4-leg intersection. This is where most of the safety benefits arise from.

Mr. DeNunzio then noted the Saftety Analysis for Options 2, 4, and 5 were as follows:

Table 5 Predicted Annual Crashes

Year	Existing			Build Option 2/4			Build Option 5		
	Fatal/Injury	PDO	Total	Fatal/Injury	PDO	Total	Fatal/Injury	PDO	Total
2015	1.68	2.34	4.02	0.94	1.31	2.25	0.22	0.95	1.17
2030	2.12	2.85	4.97	1.19	1.60	2.79	0.28	1.17	1.45

Table 6 Percent Change in Predicted Annual Crashes, Compared to Existing

Year	Build Option 2/4			Build Option 5		
	Fatal/Injury	PDO	Total	Fatal/Injury	PDO	Total
2015	44.0%	44.0%	44.0%	86.9%	59.4%	70.9%
2030	43.9%	43.9%	43.9%	86.8%	58.9%	70.8%

Mr. DeNunzio noted that the Highway Safety Manual predicts highway crash frequency and severity and uses crash modification factors based on proposed improvements. He noted that Options 2 and 4 have similar safety options so 2 was thrown out since it cost more.

Mr. DeNunzio noted the following costs associated with a Roundabout and a Traffic Signal:

Roundabout:

P.E. - \$950,000  
 ROW-\$850,000  
 CN - \$4,000,000  
**Total- \$5,800,000**

Traffic Signal:

P.E. - \$900,000  
 ROW-\$900,000  
 CN - \$3,800,000  
**Total - \$5,600,000**

He noted that the footprint of a roundabout was larger but the length of turn lanes was greater than the roundabout. He added that existing lanes, especially the left turn lane was narrow and required widening for turn lane installation. Additionally, the ROW estimate included utilities and the ROW for the traffic signal had more impact based on the linear nature of the project and length.

Mr. DeNunzio then noted the following costs associated with each option and then over a 15 year life cycle as follows:

	<u>Roundabout</u>	<u>Signal</u>
Annual Cost of Predicted Crashes	\$93,125	\$373,270
Annual Delay Costs	\$28,517	\$35,913
Annual Operating Costs	\$2,750	\$11,833
Project Costs	\$5,800,000	\$5,600,000

Over 15 Year Life Cycle:

Total Cost of Predicted Crashes	\$1,111,723	\$4,456,069
Total Delay Cost	\$456,275	\$565,003
Total Operating Cost	\$32,829	\$141,266
Total Capital Cost	\$5,800,000	\$5,600,000
Net Present Cost	\$7,400,828	\$10,762,338

Mr. DeNunzio noted the following related to the Route 151/US 250 Intersection Improvements

- Albemarle County SMART SCALE Request

November 19, 2018

- Previous HSIP Funds Applied
  - Included in Comprehensive Plan
  - Funding Approved by the Commonwealth Transportation Board
- 
- Public Hearings 10/09/2018, 10/10/2018, & 10/11/2018
  - Anticipated RFP Release Date 10/30/2018
  - Technical Proposals Due 04/02/2019 (4:00 PM)
  - Price Proposals Due 05/16/2019 (4:00 PM)
  - Anticipated Award Date 06/19/2019
  - Final Completion 03/30/2023

Mr. DeNunzio then noted public comments received include that people are concerned about truck traffic, the existing signal is working, and they don't like roundabouts. He noted that according to surveys they had done before and after construction of roundabouts, before construction the public attitude was negative and improved to very positive following construction. He added that there have been 4 crashes and 2 incidents of damage to signal equipment at the intersection with the temporary signal.

Mr. DeNunzio noted that in addressing truck traffic concerns, they could reduce the grade approaching the roundabout, convert flashing signals to more appropriate signals for roundabouts which could detect if a truck was going too fast for the approach of the roundabout.

Mr. Harvey then commented that the current flashing signs were no distance from the intersection and Mr. DeNunzio noted they would make sure they were a proper distance from the roundabout to give adequate warning. Mr. Saunders noted that blinking lights would work for a signal too like at Food Lion and Mr. DeNunzio noted that trucks had to come to full stop at a light vs a roundabout most of the time. He added that they have had 4 crashes since the temporary signal was put in.

Mr. Harvey noted that they had been trying to get truck traffic reduced on 151, noting that if going northbound on Route 29 and Westbound on Route 64, one could not get across Route 29 at the interstate. He added there was no reason why ones going eastbound went south, when they could stay on the interstate and stay off of Route 151. Mr. DeNunzio noted they were aware of that concern and it had a lot to do with GPS. He noted that the Fontaine issue was another Smart Scale application that would take care of left turn truck movement as they had northbound trucks stacking up there. He added that on Fontaine, they would criss cross traffic so trucks would make a u turn there and they expected to get funding. He noted that the existing projects would take southbound traffic to a signal that allowed two lanes to make a left and that project was funded. He noted there would also be two lanes of exit off of Route 64 onto Fontaine Avenue.

Mr. DeNunzio then noted that in the roundabout, the truck apron was 4 inches higher than the road surface to allow for a trucks' turning radius.

Mr. DeNunzio then addressed the statement that the existing signal was fine; noting that it would not be in 10-15 years. He noted that for those that did not like roundabouts, he reiterated the public resistance data he had shown that noted the public attitude going from very negative to very positive once they were built.

November 19, 2018

Mr. Harvey suggested that everyone needed to see the video put out by VDOT as it convinced him that roundabouts were the preferred option. He noted that his largest concern was to get some traffic off of Route 151. Mr. DeNunzio noted they could not help with that but could try to address the other issues.

Mr. Bruguere stated he did not like roundabouts and has been through plenty of them. He added that he saw problems with realigning the highway and he thought it would slow all traffic to 45mph to get to it. Mr. Harvey noted he thought it be 45mph now and Mr. Bruguere noted that trucks had problems with breaking issues.

Mr. Saunders stated he thought doing the roundabout was the only way to get Smart Scale money and Mr. DeNunzio noted that Albemarle went forward based on the safest best operation. He added that they had not scored a traffic signal so he was not sure how it would have compared in that way.

Mr. Austin noted that they had recently built a roundabout in Concord and had negative comments before and now they were positive.

Mr. DeNunzio then noted that intersection improvements identified in the corridor study was a roundabout or signal, the intersection study recommended a roundabout was the most cost effective solution because it operated the best and was safest, and HSIP and SMART SCALE funds used to construct the project.

#### C. Presentation – NC Historical Society 50<sup>th</sup> Anniversary of Hurricane Camille Plans

Ms. Debbie Harvey of the Nelson County Historical Society presented the following:

“Thank you for this opportunity to come before you again. Last month I had the honor of presenting the first Nelson County Historic Preservation Award to the Board. Today, I come before you on a more solemn note. With 2019 upon us, we are entering into the 50th year since the horrific and tragic events of Hurricane Camille on August 19, 1969. The Historical Society has been actively engaged in planning to commemorate this event for over a year with a committee composed of seven community members who were resident in the county in 1969, impacted personally by the storm, and/or involved in the rescue and recovery efforts.

The committee has developed a series of programs beginning April 7, 2019 with the Society's annual meeting and continuing through August. Plans include:

- An aerial photo animation showing 1967 and post-Camille impact with discussions of communities impacted
- An oral narrative with interviews and photographs on local citizens who held, or were assigned, key positions of responsibility in the wake of the flood.
- A presentation on the weather phenomenon that caused Camille and its impact on the Nelson County by Dr. Jeff Halverson of University of Maryland (Baltimore County).
- A presentation with interviews focused on the critical assistance received from outside the county by military helicopter pilots, outside rescue squads, state police, Mennonites, volunteers from out of the county. Highway and train line restoration efforts will also be addressed.
- The play "The Bluest Water" about Camille will be performed by End Station Theater Company.
- Still in the planning stage is a benefit concert with music about Camille, including a new song yet to be completed, by local musicians who lived through the event. The song development is in its final stages.

November 19, 2018

- A memorial service commemorating the victims of Camille.

The Society recognizes that the destruction and loss of life brought about by Hurricane Camille remains a tremendously painful one for many individuals and families in Nelson County. The impact of this event will continue to be felt for generations to come in the families who endured through that terrible time. While there are many references in books and videos to Hurricane Camille, most focus on its strength and impact in the Gulf Coast and do not adequately or accurately reflect the destruction the storm brought to Virginia, specifically Nelson County. This event is arguably the singular most significant historic event in the County's 200+ years and deserves to be documented accurately and with respect for visitors to the County and for future generations of County citizens.

While this period in our County is marked by tragic loss, it also demonstrates a time when the County pulled together, perhaps as it never had before, to recover and rebuild to minimize the potential for another event of this catastrophic impact. Other communities have also learned from Nelson County's tragedy and implemented zoning and safety measures to hopefully avoid a similar event.

Sadly, we are rapidly losing many of those with first-hand knowledge of the events surrounding that time period and now is the time to record the history for posterity. To this end, the Society plans to significantly enhance and augment the current Camille exhibit at Oakland museum in the next year.

Ideas include:

- An audio-visual (AV) animation of a flyover showing pre-Camille areas juxtaposed with post-Camille areas with the ability to zoom down to ground-level photos using both large and small touch screens to support visitor interactivity. This may include the use of QR tags for use with smart phones,
- AV presentation of weather phenomenon based on Dr. Jeff Halverson's research and presentations,
- Area-by~area posters: Massies Mill -Tyro; Roseland - Piney River (including Hat Creek); Lovingsston; Muddy Creek- Eades Hollow; Davis Creek; Woods Mill; Rockfish River to Faber, Schuyler, Howardsville; Norwood-Wingina; Rockfish Valley.
- A rotating slide show of photos showing damage done,
- An AV presentation and poster showing the geological impact {landslides and flooding),
- An AV presentation and posters (Mennonites, helicopters, state police, rescue squads),
- A 'lives lost' poster with photos and biographical information on the victims,
- A poster on 'outcomes' as a result of the flood {Post-Camille land use ordinances, improvements to emergency services, communication, Memorial library, etc.),
- A timeline of how Camille unfolded through the rescue and recovery operation,
- A "Did you know?" display (facts about Camille and county).

These new features will be important for this year, but will become part of the permanent display and help tell the story of Camille and its impact on Nelson County for future generations. As another part of this plan, the Society is already working with the School System to incorporate the history of Hurricane Camille in Nelson County into the curriculum for school students. This partnership is intended to continue and the enhancements to the Camille exhibit will serve as a key resource in this partnership.

With adequate funding and the driving commitment of members of the Nelson County Historical Society, these plans can be achieved. Our estimates are that the cost for enhancing the Camille exhibit will be approximately \$50,000. The Society has already begun fundraising and has a private donor's pledge of \$15,000. Letters have been sent to Nelson County businesses requesting that they help to sponsor the exhibit by becoming a "In Memory of the Victims of Camille" sponsor. Those making gifts

November 19, 2018

of \$250 or more will be recognized on a plaque outside the exhibit. The Society will also be publishing a new book titled *Commemorating Camille* that will include photographs, many rarely seen before, from the Society's collection organized by community. Pre-publication sales are currently underway and the proceeds from the sale of the book will be used for exhibit enhancements.

With the anticipated cost of \$50,000, the Society is requesting that the Board of Supervisors in recognition of the importance of this anniversary and its historic significance, provide funding for one-half of the exhibit cost, \$25,000. Should the Board not be able to support the project at that level, we would hope that the Board would be able to at least match the \$15,000 pledged by an individual to date.

Thank you for your time and interest in the Nelson County Historical Society and our plans to remember this sad time in our County's history.

Supervisors thanked Ms. Harvey for her presentation and no action was taken at that time.

#### **IV. New Business/ Unfinished Business**

##### **A. 2019 TJPDC Legislative Program (R2018-59)**

Mr. Blount reviewed the following relative to the 2010 Legislative Program:

#### **TJPD Legislative Program Highlights of proposed changes (for 2019)**

##### **TOP PRIORITIES:**

State Budget—updated with timely topics to be addressed in budget Public Education Funding—  
updated numbers

Broadband—elevated to top priority status; added stronger language supporting increased state funding for broadband; added language supporting incentives for broadband expansion by utilities

##### **OTHER PRIORITY ITEMS:**

Local Revenue Authority (previous third top priority item)—added a position supporting continued collection of local option sales taxes from remote sellers when addressing the Supreme Court's Wayfair decision; removed CSUT tax funneling to broadband provisions

Children's Services Act—added language supporting locality efforts to provide facilities and services on a regional level

Land Use/Growth Management—added stronger language in support of impact fee authority

##### **LEGISLATIVE POSITIONS:**

--ECONOMIC and WORKFORCE DEVELOPMENT: Added a NEW POSITION on workforce development to support targeting job investment/small business grants to businesses paying higher wages.

November 19, 2018

--EDUCATION: Added a NEW POSITION on safety and security at schools to support capital/operating costs and specifically including incentive funding or reimbursement for school resource or security officers.

--ENVIRONMENTAL QUALITY: Added NEW POSITIONS 1) on solar to support stronger markets for distributed solar; and 2) on disposable plastic bags to support local authority to develop incentives to decrease them.

--GENERAL GOVERNMENT: Added NEW STATEMENT under Elections to support allowing localities to address discrepancies regarding voting district boundary lines; and 2) a NEW POSITION to support increased state funding for public libraries.

--HEALTH and HUMAN SERVICES: Added NEW STATEMENTS under Funding to support state funding for local costs related to Medicaid expansion, and for restoring current fiscal year funding for CSBs that was reduced in anticipation of recovery through expansion.

--PUBLIC SAFETY: Revised language under Funding to request jail per diem funding that is more realistic and more timely.

--WATER QUALITY: Revised language to reflect support for increased and ongoing investment in the Stormwater Local Assistance Fund.

Mr. Blount noted the top three priorities and stated that Broadband had been elevated with stronger language. He noted the other two had technical changes made to them with opposition for unfunded mandates and cost shifting being expressed.

Mr. Blount added that #4 contained new language to support a local option sales tax applying to remote sellers, essentially an internet sales tax. He added that if this was required, they wanted to be sure the General Assembly did not take the local option 1% and shift it to another use. He added support for enabling legislation on taxing authority.

Mr. Blount noted that #5 maintained language in favor of flexibility for CSA dollars provided in schools, with new language supporting the provision of services on a regional level.

Mr. Blount noted that #6 discussed impact fees and the expanded language there, with focused revisions to the 2016 proffer law.

Mr. Reed questioned what was meant by using the true value and not the discounted value in calculating the LCI formula and Mr. Blount noted that the formula did not recognize the land use value of real estate but rather it recognizes the full value; which was not a true reflection of the tax revenue generated. He added that if you had a lot of land in land use, it did not help in calculating the LCI. Mr. Carter added that there was an approximate \$4 Million discount for land use in the county.

Mr. Blount noted that at the VACO conference, the question was raised about changing the variables in the LCI formula and he was not hopeful the state would be inclined to review the formula anytime soon.

November 19, 2018

Mr. Bruguere asked if there was a procedure in place to replace Ben Kline and Mr. Rutherford noted that the current Republican nominee was Ronnie Campbell. Mr. Blount added there would be a special election in later December for his remaining term and his term would be up again normally in 2019.

MR. Rutherford then moved to approve resolution **R2018-59** and Mr. Saunders seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion and the following resolution was adopted:

**RESOLUTION R2018-59**  
**NELSON COUNTY BOARD OF SUPERVISORS**  
**APPROVAL OF THOMAS JEFFERSON PLANNING DISTRICT**  
**2019 LEGISLATIVE PROGRAM**

**RESOLVED**, by the Nelson County Board of Supervisors that the 2019 Thomas Jefferson Planning District Legislative Program be and hereby is approved by said governing body with the legislative program to serve as the basis of legislative positions and priorities of the member localities of the Thomas Jefferson Planning District Commission for the 2019 Session of the Virginia General Assembly, as presented by Mr. Blount via memo on November 19, 2018 as well as incorporation of the recommendations put forth by the Board as applicable.

A. Draft Nelson Friends of the Court Brief Challenging FERC Approval of ACP Certificate

Mr. Reed reported that he had received a message from the attorney working on the amicus brief that Staunton City had signed the engagement letter and the same would now be sent to Mr. Carter and Mr. Payne to engage the legal team that would work on the brief. He noted he would hopefully have something in hand as soon as possible for review prior to the next Board meeting.

Mr. Reed advised that the amicus brief was a joint effort with the City of Staunton and that there was no cost for the brief itself, just cost for Mr. Payne to review it. Mr. Bruguere then noted his objection to spending taxpayer dollars for Mr. Payne to review the brief. Mr. Reed noted that the County usually had Mr. Payne review anything necessary. Mr. Saunders then questioned if a group was requesting the brief and Mr. Reed noted that Friends of Nelson was not asking for it. Mr. Rutherford stated he thought there was consensus that Mr. Payne would review anything that was come up with. Mr. Saunders stated he thought they discussed there being no costs to the County associated with the brief and Mr. Bruguere agreed noting that if the Board requested that Mr. Payne review it, there would be a cost. Mr. Reed then noted that it would be in the Board's best interest to have Mr. Payne's input before going forward.

Mr. Bruguere suggested that the Board decide at their next meeting. Mr. Reed asked if the course of action was to receive the brief which would then be reviewed by the Board and Mr. Payne concurrently. Mr. Saunders stated he thought the Board should review it first and then decide if Mr. Payne should review it. He added that he was not in favor of the county paying to have it reviewed.

Mr. Reed noted that the brief would be approximately twenty (20) pages long including the impacts to both Staunton City and Nelson since it was a joint brief. He noted that Staunton City's main concern was that the pipeline would be going through the watershed of their main water supply. Mr. Reed then reiterated that the amicus brief was a statement of potential impacts, was not

November 19, 2018

a yes or no and it took information that was already on the record submitted on their behalf and made it available to the Judge to make his determination. He added that the brief was informational and not persuasive in nature.

Mr. Reed then moved that the attorney and team consult with Mr. Carter and Mr. Payne on the brief prior to bringing it to the Board to have the benefit of Mr. Payne's input before giving it a thumbs up or down.

Mr. Rutherford seconded the motion and asked if a cap could be put on Mr. Payne's time spent on it. Mr. Carter advised that could be done; however he was not sure what an adequate review would be without first seeing the document. Mr. Reed noted a copy of the engagement letter could be circulated with the assumption that Mr. Payne.....

There being no further discussion, Supervisors voted (3-2) by roll call vote to not pass the motion, with Mr. Harvey, Mr. Saunders, and Mr. Bruguire voting No and Mr. Reed and Mr. Rutherford voting Yes.

## **V. Reports, Appointments, Directives, and Correspondence**

### **A. Reports**

#### **1. County Administrator's Report**

**(a) BR Tunnel Project: The Phase 2 (Tunnel Rehabilitation)** Project is in process. Fielder's Choice Enterprises, Inc. is the project's general contractor, supported by Merco, a New Jersey based underground construction company. FCE is in process with initial project mobilization. The project's completion is projected for 2nd quarter 2019. County staff will be working with the project's consulting engineer, Woolpert, on submittal of the Phase 3 (Western Trail and Parking Lot) project requirements to VDOT to enable the last project component and, thereby the overall project, to be completed. Development of Phase 3 must be fast tracked to avoid any possible loss of project funding due to a federal legislation that provides for a nationwide rescission of \$7.569 billion of unobligated contract authority (see attachments). County staff will confer on 11-16 with VDOT staff on the means, as applicable, to move forward with Phase 3 to avoid the loss of TAP grant funding that would then prohibit Phase 3 from being approved and completed.

**(b) Broadband:** County staff, including the County Attorney, are nearing completion of the necessary submittals to federal NTIA (National Telecommunications and Information Administration) for transfer of the local broadband network to Central VA Electric Cooperative. This work also encompasses agreements and coordination with CVEC for the network transfer.

**(c) Library Project:** Architectural Partners is in process with completion of the project's schematic drawings. The County's representatives requested a more expedited design schedule at the most recent project meeting to enable construction of the project to be completed as soon as possible.

**(d) Lovingson Revitalization & Schuyler STP:** The County has received an initial planning grant assistance letter (dated 10-30 but received on 11-8) from the Department of Housing and Community Development (see the attachment). Staff has followed up with DHCD staff to request more specific guidance on the Department's intent for project outcomes, including what the scope of an ensuing Community Improvement Grant would encompass as a result of the planning grant project.

November 19, 2018

**(e) School Division Transportation Study:** Staff has conferred with one consultant group on the potential to conduct the transportation study. A second possible consultant has been identified but contact with the firm is pending. An initial cost estimate of \$15,000 was suggested as a starting point. Staff will expedite work on this subject to enable the study to be initiated.

**(f) Federal Rail Administration (Positive Train Control):** By letter and email message dated October, 30,2018 (copies attached), CSX Corporation has advised residents of the Norwood/Wingina area and the County of its decision to temporary halt the sounding of horns at the series of private rail crossings on CSX's southern rail line along the James River in Nelson County. County staff have subsequently provided CSX with information on the ownership of property on either side of the rail crossings and will work with the residents of Norwood and Wingina to assist with the collection of trip information across these crossings in an effort to provide for a permanent halt to the sounding of safety alarms at these crossings.

**(g) Piney River Water System (TTBM Corrective Action Project):** The project is in process. The County through its project consultant, Bowman Consultants, has requested an extension of the consent order time lines to the Department of Health to enable a comprehensive pilot program to be completed during the winter and spring of 2018-2019. The pilot program's outcomes will be the basis of the media to be utilized to address the TTHM regulatory requirements. VDH (Lexington) has initially indicated concurrence with the time extension request but final approval is required by VDH (Richmond) concurrence with the time extension request but final approval is required by VDH (Richmond).

**(h) H. Tye River Water System:** The County retained the Bedford based structural engineering firm Nolen- Frisa Associates to complete a structural analysis of the water system's elevated water tank. The preliminary assessment is promising but tank thickness testing, which will enable N-F to complete its evaluation is pending (another testing firm, Froehling & Roberts has not followed up yet on the County's request for completion of the additional testing). No formal notice on this subject has been received from VDH to date. The objective is, of course, to complete the assessment prior to receipt of such notice.

**(i) (Local) Health Department/Meeting with Blue Ridge Medical Center:** As reported, the meeting with representatives of BRMC was conducted on 11-7 at the Medical Center. The outcome of the meeting was agreement of BRMC's representatives to request a six month to one-year extension of the lease agreement for VDH offices at the Medical Center beyond the November 2019 termination date. BRMC's next Board of Directors meeting is in December after which the County will be notified of any decision that is made.

**(j) Albemarle-Charlottesville Regional Jail Authority:** The Regional Jail Authority is testing through December 2018 the use of the VINE Link (Victim Information and Notification Everyday) as an alternate means for federal immigration and Customs Enforcement to access release dates from ACRJA of individuals who have entered the United States illegally. If the testing of the VINE Link is successful the ACRJA Board of Directors may then consider rescinding its current policy/practice of notifying ICE prior to the release from ACRJA of persons who have entered the country illegally.

**(k) Region 2000 Service Authority:** The Campbell County Board of Supervisors has taken a position (see the attachment) to prevent further expansion of any kind at the R2KSA's landfill facility in Campbell County. While the current facility has a projected ten-year operational period (until 2030), should Campbell County's BOS (present or future) not reverse its current decision (on 11-8),

November 19, 2018

this decision may very likely result in the dissolution of the Authority and necessitate identifying a new landfill for disposal of Nelson County's solid waste.

**(l) Operational System(s):** Staff have begun review of expanded capabilities of the County's operational system, currently provided through Bright and Associates, to provide for enhanced ability of the public to access information, make online payments, applications registrations, etc. The initial step is working with BAI to provide these OS enhancements. Other vendors may also be evaluated.

**(m) FY 19-20 Budget:** Work towards development of the draft FY 19-20 Budget document has been initiated through the dissemination of budget request documents to external agencies. County offices and departments will receive similar work documents with a submittal date of end of 2018 or early 2019.

**(n) Joint Meeting with Nelson County School Board:** Scheduling of the joint meeting is proposed for discussion and for setting of a meeting date, time and location.

## 2. Board Reports

### Mr. Reed:

Mr. Reed reported that at Sturt Park the basic path route has been bush hogged and the tick population reduced there. He added that they were projecting a soft opening in spring, with the signage being done through volunteer work and it would be posted. He noted that the proposed logging time-frame did not reflect on when the opening would be. He advised there were some other construction to be done on the wet area on the path route that involved bringing in telephone poles to breach that area. Mr. McSwain in attendance noted that they had been concerned about vandalism and a camera had caught a black bear doing the damage.

### Mr. Saunders and Mr. Bruguere:

Mr. Saunders noted he had met with Ted Hughes, the restorer of the Piney River caboose who noted he had been approached by a train club in Lynchburg that wanted to set up a display in the depot building. He noted that Mr. Hughes would like to use the adjacent room for artifacts from Blue Ridge Trains. Mr. Saunders then inquired as to whether or not he could do that and asked who would pay the utilities. He noted that Mr. Hughes could do the wiring and he was asking for permission and to incur the costs related to it. Mr. Bruguere noted they could clean up the area and put up extra picnic tables. Mr. Saunders added that they also wanted to have tours of the caboose and after its completion, it would become property of the County; however they needed more money to finish it. Mr. Saunders then noted the agreement with Mr. Hughes was to pay him \$60 per day for work and he had never submitted that for payment and he also had a list of the funds spent and taken in. Mr. Bruguere noted he had a good idea and the building was sitting there doing nothing and he was in favor of the idea. He added they could install a donation box in the caboose much like the ones at the Crabtree Falls parking lot. Mr. Saunders noted he did not think it would cost the County anything to do.

Mr. Carter suggested that a simple agreement was needed denoting who was responsible for what and they could go forward from there. Mr. Bruguere advised he would bet back with him. Mr. Harvey stated that security to protect their property would be important and Mr. Carter noted that would be part of the

agreement. Mr. Bruguire advised that the Massies Mill Ruritan Club and Dominion were helping out. Mr. Carter reiterated that an agreement was needed between the County and whomever.

Mr. Rutherford:

Mr. Rutherford reported attending the coalition on affordable housing at TJPDC. He noted they were formulating something regional and a big concern he had was that he did not want to see it be a Charlottesville thing. He noted that after sitting through the meeting, it was noted they were currently creating data specific to counties such as supply needed, assets etc. related to all of the counties individually. He noted that the need was huge and they were also incorporating Buckingham in conversation because a large workforce comes from there. Mr. Rutherford then noted that the voting makeup was a concern as he thought there were too many members; however that had already been decided. Mr. Rutherford then noted that affordable housing in Charlottesville was \$950/month for a single bedroom place. He noted that changed for other counties and that was being identified. He noted that the Section 8 program went by the Charlottesville MPO which skewed it somewhat but that was because people were commuting to there. Mr. Carter noted that housing should not typically cost more than 30% of gross income. It was noted that the PDC would come up with a definition of affordable housing and they would look at data and outcomes specifically for Nelson County. Mr. Rutherford then noted that affordable housing would need to be included in the Comprehensive Plan.

Mr. Harvey noted the focus should be on those living here already and not those coming in. Mr. Rutherford advised that the housing supply that was renting for \$850 per month in Nelson existed in the 1970s and 1980s with nothing new since then. He added that there were safeguards with VDH on replacing a 1966 home with 2017 doublewide and improving septic systems for that.

Mr. Harvey had no report.

**B. Appointments**

<b><u>(1) New Vacancies/Expiring Seats &amp; New Applicants :</u></b>					
<b><u>Board/Commission</u></b>	<b><u>Term Expiring</u></b>	<b><u>Term &amp; Limit Y/N</u></b>	<b><u>Incumbent</u></b>	<b><u>Re-appointment</u></b>	<b><u>Applicant (Order of Pref.)</u></b>
<i>NC Social Services Board</i>	6/30/2018	4 Years/ 2 term limit	Joan Giles-West (served 2T)	N/A	None
<b>Board of Zoning Appeals</b>	11/9/2018	5 Years/ No Limit	Carole C. Saunders	Y-email	Charlie Wineberg
<b>TJPDC Regional Housing Committee</b>					
Nelson County Elected or Planning Commission Official (1)					

November 19, 2018

Ms. McGarry reviewed the above table of appointments noting that there were still no applicants for the West district seat on the Social Services Board. She noted that the incumbent, Carole Saunders did wish to be reappointed to the BZA and after advertising the seat, there had been one application received from Charlie Wineberg. Lastly, Ms. McGarry advised that either an elected official or Planning Commission Member was needed for appointment to the TJPDC Regional Housing Committee.

Mr. Bruguere advised that he had asked Peggy Whitehead to serve on the Social Services Board and she said she would get back with him. Mr. Reed noted that Ms. Giles was continuing to serve although she was anxious for a replacement.

Mr. Harvey moved to reappoint Ms. Carole Saunders to the BZA and Mr. Rutherford seconded the motion. There being no further discussion, Supervisors voted (4-1) by roll call vote to approve the motion with Mr. Reed voting No.

Mr. Rutherford then noted he would like to be involved with the TJPDC Regional Housing Committee given his work in the industry.

Mr. Reed then moved to nominate Mr. Rutherford to serve on the TJPDC Regional Housing Committee. There was no second and there being no further discussion, Supervisors voted unanimously by voice vote to approve the nomination.

#### C. Correspondence

There was no correspondence considered by the Board.

#### D. Directives

Mr. Rutherford, Mr. Bruguere, and Mr. Harvey had no directives.

#### Mr. Saunders:

Mr. Saunders directed that staff enable the Board to either look at buying a building or looking for a building site. Mr. Carter advised that he planned to get an addendum from Architectural Partners to do that where they would compare the Blue Moon Antique building with other options either new or existing. Mr. Carter then questioned how extensive they wanted to look. Mr. Harvey noted they needed to compare the infrastructure that was already there with no grading to the other options and Mr. Carter noted he thought that would be part of the assessment. Mr. Bruguere asked if the County would have to buy the lot from Vito's in front of the Blue Moon building and Mr. Harvey and Mr. Saunders noted they would not have to necessarily; however it may be cleaner. Mr. Harvey suggested looking at the old truck stop and other land available.

Mr. Bruguere then noted he thought that the \$8 Million renovation figure for the Blue Moon building that was estimated was unrealistic and the Board should not think of spending that and Mr. Saunders agreed. Mr. Harvey added that schools were built for \$6 Million. Supervisors questioned the estimate and Mr. Rutherford noted that the architects had taken the finished square footage to be used and multiplied it by \$250 per square foot to arrive at the number. Mr. Bruguere noted the benefit of the existing entrance off of Route 29 and stated that if that had to be developed it would cost a lot.

November 19, 2018

Mr. Saunders then asked if the Board wanted to donate anything to the Historical Society for the 50<sup>th</sup> anniversary of Camille.

Mr. Bruguere stated he did not think they needed to bring up memories for those that went through that horrific time. He noted that if he had lost family, he would not want it brought up and he thought there were other things they could be doing to promote Nelson County.

Mr. Harvey noted it was a very significant thing that happened and they wanted it permanently documented. He noted that he was 15 then and would now be 65 and as they pointed out, there were not too many more people left around to do it.

Mr. Saunders noted he would like to see them give something but also would like to see how the letter campaign did. Mr. Rutherford agreed he wanted to donate something but not the remaining \$35,000.

It was suggested that they decide in December and Mr. Harvey noted that with the anniversary being in August, they were down to about eight months to get their plans together and Mr. Reed stated he thought they would be remiss if they did not provide a donation.

Mr. Harvey then moved to donate \$15,000 now and Mr. Reed seconded the motion. There being no further discussion, Supervisors voted (4-1) by roll call vote to approve the motion with Mr. Bruguere voting No.

## **VI. Other Business**

### **A. Closed Session As Permitted by Virginia Code § 2.2-3711(A) (7): Consultation With Legal Counsel – Fence In Law**

Mr. Rutherford moved that the Nelson County Board of Supervisors convene in closed session to discuss the following as permitted by Virginia Code § 2.2-3711(A) (7): Consultation with legal counsel employed or retained by a public body regarding the proposed Fence In Law. Mr. Saunders seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

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

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

## **VII. Adjourn and Continue Until 7:00 PM**

At 4:40 PM, Mr. Harvey moved to adjourn and continue the meeting until 7:00 PM and Mr. Rutherford seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion and the meeting adjourned.

November 19, 2018

**EVENING SESSION  
7:00 P.M. – NELSON COUNTY COURTHOUSE**

**I. Call to Order**

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

**II. Public Comments**

1. Ray Uttaro, Lovington Fire Department Captain

Mr. Uttaro noted that he was speaking on behalf of the Christmas Parade in Lovington, which had 350 attendees last year and over 65 floats. He noted that this year, the Lovington Volunteer Fire Dept. was Co-Chairing the parade committee and they were asking for financial assistance. He noted that they had costs for insurance, fuel, lighting, banners, port-o-johns, and extra tree lighting and ornaments and they were asking the Board for a \$1,500 donation.

Mr. Rutherford stated he thought it was important to do and he moved to contribute \$1,500 to the Lovington Volunteer Fire Department for the Christmas Parade in Lovington. Mr. Reed seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

2. Mr. Saunders, South District Board Member

Mr. Saunders indicated that he wanted to withdraw his vote for Carole Saunders to be reappointed to the BZA that occurred in the afternoon session. He added that he should have abstained and he wanted the record to reflect that he withdrew his vote.

**III. Public Hearings**

**A. Special Use Permit #2018-09 – Single Family Home in B-1:**

Application #2018-09 is for a Special Use Permit requesting approval to build a single family home on property zoned B-1. The subject property is owned by Henry Fitzgerald, is located on Colleen Rd., Arrington and is Tax Map Parcel #66-A-64 (4.1 acres).

Mr. Rutherford noted he had a conflict of interest as he may have a potential contract with the applicants and therefore he was abstaining from participating in the discussion and vote.

Ms. Shackelford then presented the following staff report:

**BACKGROUND:** This is a request for a special use permit on property zoned B-1, Commercial to allow for the construction of a single-family dwelling (§8-1-10a). The property exists in two physically separated parcels. The applicant would like to construct the home on the 4.1-acre western portion of the property.

Public Hearings Scheduled: P/C – October 24, 2018; Board – November 19, 2018 (tentative)

November 19, 2018

Location / Election District: East of and adjacent to 394 Colleen Road / West Election District Tax Map Number(s) / Total acreage: 66-A-64 / 4.1 acre portion of 16.477 acre +/- parcel

Applicant Contact Information: Thomas Fitzgerald, 722 Harpers Creek Lane, Tyro, VA 22976; 434-238-3579.

Comments: The property is owned by the applicant's father. The applicant requested a waiver from the site plan requirement which has been granted since site plans are not typically required for single-family dwellings.

**DISCUSSION:**

Land Use / Floodplain: This area is industrial/commercial in nature. There are no 100-year flood plains on the property.

Access and Traffic: The property could be accessed from either Colleen Road (Route 62-655 – AADT 720 trips per day) or Tye Brook Highway (Route 56 – AADT 1400 trips per day). The estimated traffic generation for a single-family dwelling is 10 vehicle trips per day. The proposed use will have a minimal impact on daily traffic.

Utilities: The property will be served by private water and septic systems.

Conditions: The Planning Commission may recommend, and the Board of Supervisors may impose, reasonable conditions upon the approval of the special use permit. The Planning Commission recommended the condition that the approved use be limited to one single-family dwelling on the property and that the applicant be subject to the setback requirements as listed in the R-1, Residential district.

Comprehensive Plan: This property is located in an area designated as light industrial/mixed commercial based on the current Comprehensive Plan.

**RECOMMENDATION:** The approval of special use permits should be based on the following factors:

(a) The use shall not tend to change the character and established pattern of development of the area or community in which it proposed to locate. *While the property is zoned B-1, it is immediately adjacent to other properties that are zoned A-1, Agricultural and are used for residential purposes. The approval of this SUP would also not preclude the applicant from pursuing other commercial uses on the property in the future.*

(b) The use shall be in harmony with the uses permitted by right in the zoning district and shall not affect adversely the use of neighboring property. *There is an industrial park across Colleen Road from this property, and it is immediately adjacent to both commercial and agricultural properties. While the residential use is not consistent with commercial development, the special use permit would allow the applicant to utilize the property for his desired purpose without changing the underlying zoning, allowing for future commercial development to occur on this property in the future.*

(c) The proposed use shall be adequately served by essential public or private water and sewer

facilities. *The site will be served with private well and septic systems. While no soils work has been submitted at this time, the proposed residential use is less intensive than other commercial uses that could potentially be allowed by-right.*

(d) The proposed use shall not result in the destruction, loss or damage or any feature determined to be of significant ecological, scenic or historical importance. *This area is already designated for high-intensity uses. There are no significant ecological, scenic, or historical features that will be impacted by this use.*

The Planning Commission recommended approval of this request by vote of 5-0 with the conditions that the approved use be limited to one single-family dwelling on the property and that the applicant be subject to the setback requirements as listed in the R-1, Residential district.

Mr. Bruguere then invited the applicant, Thomas Fitzgerald to speak and he noted that his father owned the property and it was part of 16.4 acres; however it was separate from the other and it could not be accessed from the other acreage. He noted it was not good for much else so he wanted to put a house there.

Mr. Bruguere then opened the public hearing and there being no persons wishing to be recognized, the public hearing was closed.

Mr. Harvey questioned why he was restricted to one home on four acres and Ms. Shackelford advised it was to limit the Special Use Permit and the Board would not have to do that. She noted that without doing so it would be hard to know the intent if they wanted to expand it. Mr. Harvey questioned why they did seek rezoning and Ms. Shackelford advised that they wanted to preserve the commercial zoning for the property and it was the applicant's choice to pursue the SUP and not the rezoning.

Mr. Reed asked if she had spoken to the applicants about other options and Ms. Shackelford noted she had and that the first point of contact was the contractor and options were discussed.

Mr. Harvey then Moved to approve Special Use Permit #2018-09 to build a residence on a 4 acre tract with no restrictions and Mr. Saunders seconded the motion. There being no further discussion, Supervisors voted unanimously (4-0-1) by roll call vote to approve the motion with Mr. Rutherford abstaining.

**B. Conditional Rezoning #2018-02 with concurrent Special Use Permit #2018-08 – Multi-family dwelling: Justin Shimp Applicant:**

Application #2018-02 is for a Conditional Rezoning (from R-1 to B-1) to use an existing building as a retail store/restaurant and concurrent Special Use Permit application #2018-08 is requesting use of the subject property for a multi-family dwelling. The subject property is owned by Curtis Bruguere, is located at 1889 Avon Rd, Afton and is Tax Map Parcel #7-A-4 (0.94 acres).

Ms. Shackelford presented the following staff report:

November 19, 2018

**BACKGROUND:** This is a request to rezone property from Residential, R-1 to Business, B-1 to use the existing structure for food sales and a restaurant (§8-1-2) with a concurrent special use permit to construct a multi-family dwelling (§8-1-10a).

Public Hearings Scheduled: P/C – August 22, 2018 and September 26, 2018; Board – November 14, 2018

Location / Election District: 1889 Avon Road / North Election District Tax Map Number(s) / Total acreage: 7-A-4 / 0.94 acres +/- total

Applicant Contact Information: Justin Shimp, 912 E. High Street, Charlottesville, VA 22902; 434- 953-6116.

**Comments:** The subject parcel is currently zoned R-1 and is the site of the previous Anderson Store and an existing three-bedroom home. Because the operation of the store has been discontinued for a period of more than two years, it is no longer able to be operated as a previously-existing, non-conforming use. The applicant is therefore seeking to rezone the property to B-1 with a concurrent special use permit to build an addition to the existing three-bedroom home and convert it to a multi-family dwelling containing four 1-bedroom units and one 3-bedroom unit.

According to §12-7-8G, the parking area must remain at least 15' away from the property lines where the commercial property abuts a residential property. Although the setback line shown on the site plan is set at 10', the parking area shown on the site plan does meet the minimum distance requirements. This section also states that a minimum of 50% of the road frontage shall be landscaped.

**DISCUSSION:**

Land Use / Floodplain: This area is residential in nature. Zoning in the vicinity is R-1 and M-2. There are no 100-year floodplains on this property.

Access and Traffic: Property is accessed from Avon Road (Route 62-638 – AADT 610 trips per day). VDOT has conducted an initial review of the application and has provided comments (see additional information in packet). VDOT has requested additional information regarding trip generation estimates, a turn lane analysis, and the location of the proposed access point. Entrance spacing waivers may be necessary before a permit for a commercial entrance can be issued.

Utilities: Property is served by private water and septic systems. The Health Department has reviewed the application and has provided guidance to the applicant (see additional information in packet). The existing drain field is going to be abandoned, so the new drain field will need to be designed by a soil consultant. There are additional analyses that will need to be conducted to determine if the waste strength of the septic effluent is adequate for the proposed use, as well as evaluating the waste water characterization. Depending on the specific functions that will be conducted on-site, the Office of Drinking Water may also need to be involved in the regulation of the existing well.

The applicant provided a feasibility report for the project which the Health Department has reviewed. At this time, the health department has commented that the proposed drain field is reasonable, but further scrutiny may be needed once the applicant applies for a construction permit. (See email in your packets from the Health Department.)

November 19, 2018

Proffers/Conditions: The applicant has submitted proffers with this request limiting the permitted by-right uses on the property to only food sales/restaurant and restaurants and professional/personal offices. Other conditions were included (see attachment in packet).

The Planning Commission may recommend, and the Board of Supervisors may impose, reasonable conditions upon the approval of the special use permit portion of this request. Conditions recommended by the Planning Commission are that the expansion of the existing house be expanded by no more than 1,232 square feet as shown on the site plan submitted with the request and that the number of multi-family units be limited to three one-bedroom units and one three-bedroom unit.

\*Prior to the Planning Commission meeting, the applicant requested that the expansion limit be increased 10% to 1,355 square feet to allow for any unexpected issues that may present themselves during the design and construction of the multi-family addition.

Comprehensive Plan: This property is located in an area designated rural residential in the Comprehensive Plan, which allows low density residential and compatible nonresidential uses in rural areas where agriculture is not the predominant use. Should the Planning Commission and Board of Supervisors determine the proposed use to be compatible with the residential uses in the area, then this request is consistent with the stated purpose of the rural residential designation.

**RECOMMENDATION:** The approval of requests should be based on one or more of the following factors:

- (a) Good Zoning Practice
- (b) Public Necessity
- (c) General Welfare
- (d) Convenience

This request could be considered to be generally consistent with the Comprehensive Plan. The concurrent special use permit would allow for the existing, derelict buildings to be renovated and put to an appropriate use in consideration of the surrounding area.

The Planning Commission recommended approval of rezoning request #2018-02 by vote of 4-2 with the proffers submitted by the applicant.

The Planning Commission recommended approval of SUP request #2018-08 by vote of 4-2 with the following conditions:

1. The expansion of the existing house be expanded by no more than 1,232 square feet as shown on the site plan submitted with the request.
2. The number of multi-family units be limited to three one-bedroom units and one three-bedroom unit.
3. The proposal be in conformance with appropriate state authority approvals.

Ms. Shackelford then clarified that both uses were necessary for the project to be feasible. She noted that she had spoken to Tom Eick of the Health Department about the drain field and he indicated that others

November 19, 2018

had failed because they were designed for additional capacity and had gone beyond that. She noted that they were okay as long as they did not exceed capacity. She added that they had submitted the maximum intensity use for the property for VDH review.

Ms. Shackelford then noted that the applicant had applied for a 1,355 square foot building with four 1 bedroom apartments and the Planning Commission had reduced the allowed square footage and the number of 1 bedroom units from four to three.

Mr. Rutherford stated that the applicant had proffered conditions 8-1-30 and 8-1-31 in looking at temp events. He noted that a Category 2 event went up to 10,000 and their capacity would not approach that. Ms. Shackelford advised that the thing to keep in mind was the small range for Category 1 events and the Category 2 larger range.

Mr. Bruguere then invited the Applicant Justin Shimp to address the Board.

Mr. Shimp noted that his wife Olivia was the operator and owner of the store and apartments. He added that she had always wanted to run a country store and decided to pursue the opportunity.

Mr. Shimp then provided a site overview and noted that they lived 1/4 mile away from the site. He noted they were asking for the property to be rezoned from R-1 to B-1 with restrictive proffers that limited what they could do. He added that they were sensitive to the scale and the neighborhood and were trying to get the zoning that would allow the store to open and function. He stated they would like to provide locally sourced foods and that they proposed that the store exterior remain the same with a possible small addition on the back side for ADA accessibility and a small kitchen. He noted the addition to the adjacent house would be white with a metal roof and would look like a complex with the store. He added that the addition would be the same size as the existing house.

Mr. Shimp then noted that Small's Grocery with a store building and gas pumps was on a 1 acre parcel and Afton Service Center was a 6,000 square foot building on 1.4 acres and they both fit. He noted he was asking for a small scale use that fit comfortably on the site with room for parking and landscape screening. Mr. Shimp then noted his proffers limiting them to food sales and restaurants and that he wanted to build a Basic Necessities style store with retail sales and some restaurant features. He noted they envisioned selling sandwiches and it was a matter of whether or not those would be take out or eat in.

He noted in terms of the septic, it was designed for the maximum possible use of a restaurant and that parking would be adjusted to the square footage actually used. He noted that they proffered screening to their neighbors on the south and also limited commercial square footage to not to exceed 2,200 square feet. He added it could never be greater than that without the Board's approval.

In conclusion, Mr. Shimp noted he was asking for a limited scope and scale. He added that residential density was limited to seven bedrooms. He noted there was a need for both the residential and commercial service aspects of the project in the county.

Mr. Rutherford asked about the square footage of the four apartments and Mr. Shimp noted they were intended to be 1,250 square feet, however he has asked for 1,300 square feet in case he had to make any adjustments.

November 19, 2018

Mr. Rutherford then asked what he was envisioning with category 1 and 2 events and Mr. Shimp noted he was limited with only 20 parking spaces. He added that he saw maybe having a pop up stand, like a small farmer's market.

Mr. Reed then asked if there were conditions recommended by the Planning Commission for 3 apartment units and Mr. Shimp noted they recommended limiting it to a 3 bedroom unit; however he was asking for no more than seven (7) from the Board in order to preserve the building efficiency of a box structure. Mr. Reed then asked what happened to the proffers if the property ownership changed and Ms. Shackelford noted that they stayed with the property and a new owner would have to come back to the Board for any changes.

There being no further questions from the Board, Mr. Bruguire opened the public hearing and the following persons were recognized:

1. Donna Small, Nellysford

Ms. Small noted she owned a home across from Avon and she remembered Anderson's Store as a child and there was no restaurant, parking lot with lights and no dumpster, loading zone, apartments, or traffic; there was never a negative impact on neighbors. She noted it had been closed for 13 years now and Avon was rural residential and a rezoning application should be evaluated for potential impacts. She noted that in a denied rezoning application dated August 11, 2015, for R-1 to B-1 in Nellysford, the former Planning Director quoted the Comprehensive Plan and future land use stated: multifamily dwellings or commercial parking lots should be placed where they would not affect the neighborhood.

Ms. Small noted that the neighbors were confused because Mr. Shimp told the Planning Director and Building Inspector there would be no tables or chairs; just sandwiches to go and told VDOT it would be a doughnut shop. She added that Ms. Shimp told a local paper it would be a café which is defined as a small restaurant selling meals and drinks with tables and chairs. She noted that Mr. Shimp told the Health Department 200 more square feet for a restaurant and told the Health Department 25 seats, which would add more parking.

Ms. Small noted that VDOT had only approved the location of the entrance and did not have enough information to comment on anything else. Ms. Small then noted she did not think Mr. Shimp realized how much trash a store and restaurant generated and that he would need a dumpster and not residential trash bins.

Ms. Small then noted that on October 28, 2018 the Charlottesville Planning Commissioners postponed a decision on a similar rezoning application by Mr. Shimp for the same reasons that the neighbors in Avon are opposed: the stormwater runoff and it not fitting the Comprehensive Plan.

She then asked the Board to not allow Mr. Shimp to bring the projects he does in Charlottesville to Avon. She noted she was afraid it would set a trend of rezoning property to B-1 to accommodate more rentals on small pieces of property. She added that she had single home rentals and this approval could increase the number of her rentals. Ms. Small then questioned what Mr. Shimp considered affordable noting that when he purchases the Mountain View Apartments down the road, the first thing he did was raise the rent.

November 19, 2018

Ms. Small noted that she had spoken every time against Curtis Bruguere's rezoning applications for R-1 to B-1 and each time Mr. Tommy Bruguere refrained from voting and she hoped he would do the right thing that night.

## 2. Mary Lenahan, Afton

Ms. Lenahan noted she was a neighbor of the property, she read aloud a petition of the neighbors and distributed it to the Board. It noted that "they the undersigned, strongly oppose the rezoning request on property in Avon that belongs to Curtis Bruguere and they oppose Mr. Tom Bruguere voting for the first time on the zoning change of R-1 to B-1 in order for his brother to sell the property to Mr. Shimp." She noted that in the past, Mr. Tom Bruguere had recused himself from voting numerous times over the rezoning of the property due to the appearance of a conflict of interest.

Ms. Lenahan questioned what exactly Mr. Shimp wanted to do and noted if it was unsure, the Board could not vote on it that night. She noted that Mr. Shimp has provided incorrect and inconsistent information and he had no right to be above anyone else because he was a Civil Engineer. She noted that she thought the County should have contracted with a firm that could confirm information provided by Mr. Shimp as correct. She then questioned Mr. Bruguere as to what had changed, that Curtis Bruguere had been denied 5-6 times on rezoning the same property. She then added that Mr. Kessler of VDOT did not have enough information to say anything other than where an entrance should go. She then questioned the design standards and asked where tractor trailers would turn around there; asking the Board if they would want that going on in their front or back yards.

Ms. Lenahan noted that they had spoken about erosion and how much would be disturbed and she noted that was not on the site plan and that nobody would want a 22 car parking lot, apartments, dumpsters, and port-o-johns in their front yard to look at for the rest of their lives and she did not want to look at port-o-johns and trash from her front yard.

## 3. Alvin Lenahan, Afton

Mr. Lenahan questioned the acceptability of the septic system, noting that nothing has been approved and they did not know if it would work or not. He added that Ashley's Store had the same septic system and it was not working and he did not want to look at port-o-johns. Mr. Lenahan noted that his septic system had gone bad supporting only three people and he thought it would fail; especially with no reserve. He then noted that they were adding more to the store and the house and there was not enough room to take care of what he wanted to do. He added that there was more than one person out there that would buy that store to keep it a mom and pop deal and the neighborhood would be comfortable with that.

## 4. Theresa Goins, Avon

Ms. Goins stated that she begged the Planning Commission to look this over carefully and now the Board. She stated that people in the community think the Board has already made up its mind without them coming. She noted that a senior citizen, Ms. Loretta Lockett, who lives across from the store, was afraid of people coming into the community and she prayed they would make the right decision not because of money or for the owner to sell the property. She asked the Board to look at the residential area which was about families and people's homes. She stated that Mr. Shimp was not doing it for the community he was doing it for the tourists, his sandwiches would be \$17, and did not care about the

community; they would rather have a post office there. She then questioned what was different now when Curtis Bruguere had been turned down time after time and approving this application would not be fair. She added that people would suffer if it was approved and there would be no more privacy. She noted that she would not mind a small store there or a post office, but there would be no peace with what Mr. Shimp wanted to do there. She added that people could not move out of the area if they were not happy with it and she asked the Board to consider not passing it and looking into it more.

5. Eleanor Amidon, Afton

Ms. Amidon noted she thought what Mr. Shimp wanted to do on 1 acre was far too much. She added that a housing complex was inconsistent with the residential neighborhood it would be in and the lack of public utilities there did not support high density. Ms. Amidon then noted that she thought Nelson County wanted each new home to have a minimum of 2 acres and there was more to consider such as building close together and the need for drain fields and wells. She added they needed to consider how the adjacent property owners would be affected as well as the effects on their water and drainage. She noted that if the project was built, then they would potentially have traffic 24/7 and trucks coming and going with store there. She noted the potential congestion right at the corner of a busy road from traffic from North Branch School down the street, with residential traffic, and the project was a bad idea.

6. Deb Brown, Afton

Ms. Brown noted that she supported the project. She noted that she has lived at Ennis Mountain for 14 years and Windy Acres now for 14 years. She noted that she enjoyed Andersons store when it was open and it supported the community as a place one could get bread, milk or a sandwich and she would like to see it resurrected. Ms. Brown noted that she recognized that doing so would bring in tax income and improve infrastructure and schools. She added that the apartments would help sustain the development of the store and she thought it would be a wonderful improvement to the gateway of the county and would eliminate the blight that it was right now.

There being no other persons wishing to be recognized, the public hearing was closed. The following comments were submitted by email prior to the meeting and for the record as follows:

Phillipa Proulx, Planning Commissioner submitted the following comments:

Dear Supervisors,

Below are my reasons for opposing the rezoning and the conditional use permit for the Bruguere/Shimp request at the intersection of Rt. 151 and Avon Road. Since the request is for both at one time it is hard to separate the two, particularly as the rezoning request requires a minor site plan.

The property is too small for all the uses intended. Apartments and store/restaurant don't fit with the character of the residential neighborhood surrounding it. It has not been established that the proposed uses are feasible there.

Application for rezoning to B-1 conditional should be denied:

The primary responsibility of the BOS is to the citizens of an area, not to a single business. It is not consistent with Comprehensive Plan. It is not in a designated growth area.

November 19, 2018

It is not compatible with R-1 residential use in stable, long established community

B-1 zoning has zero set back on most sides, encroaching even more into quiet, residential R-1 neighborhood

Further, it should not be rezoned unless it is clear the proposed uses are feasible. It can be used as a residential lot as is.

With rezoning it is important to look at worst case scenario. For example, the Zenith Quest land was rezoned to industrial for a solar panel factory that never happened and now is a munitions warehouse. That is not what the county expected, whether it is appropriate or not. The applicant is not bound by what is said in the rezoning application. In B1, including the conditional B1 applied for, restaurants are by right. A by right restaurant could be a loud, late night business with music on the deck. That may not be what this applicant plans now but properties get sold or plans change. Something like that would have a very negative impact on the surrounding residential neighborhood.

Applications for rezoning to B-1 at this location have been turned down repeatedly for the reasons above. Now there is only approximately half as much land as there was before the VDOT road improvements when previous applications were denied.

The argument has been made that it's been a business and should have been zoned that way. It was a very small country store in a time before wastewater and wells and runoff and noisy events became issues, in a completely residential area. The owner lived in the back of the store.

The rezoning application is not clear on how much is proposed as retail and how much as restaurant. That would affect how much parking and what kind of driveway entrance is required, and consequently affect the amount of land disturbance. Our county ordinance requires a site plan of proposed uses for rezoning application that addresses these items.

Boundary lines and determination of acreage are critical in this application. If it is less than an acre it doesn't need E & S unless more than 10,000 sq. are disturbed. If it is more than an acre it does. If the applicant plans a 25 seat restaurant as his onsite waste water engineering report says there are not enough parking spaces shown on the plan which, with the disturbance for building the apartments, looks like it would put them over the 10,000 mark requiring E & S plan. Further, the applicant plans to expand the footprint of the existing store building, creating more land disturbance.

The applicant has not provided a current survey. A site plan must show boundaries. The boundaries shown are not based on plat of record. The 2008 plat done by Morris Foster wasn't recorded and thus isn't official. When I pointed this out, Mr. Shimp changed the notation on the plat to say both boundaries and topography were done by Stanley Land Surveys. I spoke with Stanley Land Surveys in Palmyra. They did not do a boundary survey and did not give a determination of acreage.

I have been told that an adjoining property owner is disputing the joint boundary. While normally this would be strictly a matter for the lawyers in this case it could make a difference to the feasibility of the proposal.

In order to determine the feasibility of the proposed septic system it is necessary to be sure of the boundaries. **Further, the health department official can't assess the proposal until after the BOS**

November 19, 2018

**November 19 meeting. Any decision should be postponed until after that determination is made. See section 12-1-5 below.**

And please note, septic systems have failed or are failing in a number of commercial locations along 151 that have used this type of system.

Inconsistencies in materials presented -

Preliminary onsite waste water submission from applicant's engineer is not based on accurate information- refer to cover page- says 3 bedroom house renovated to 3 bedroom apartment and 4 studio apartments with one person occupancy. Application says 4 one bedroom apartments, which one would assume could be at least 2 person occupancy. Mr. Shimp's narrative refers to 4 one bedroom apartments and one "multiple bedroom residence." That suggests he might be thinking of modifying it into more bedrooms than the current 3.

The same page says the retail space will be open from 11 am to 6 pm. In statement to the PC Shimp said they would be open in the mornings so families taking children to school at North Branch could stop for a bagel. The engineer's report refers to 25 seats for the restaurant. The application doesn't specify.

P. 21 of the engineer's report says there are 3 acres available for **dispersal** of highly treated effluent- which would have to mean it goes on to neighbor's property. When I asked Mr. Shimp about that at the PC meeting he said it didn't mean dispersal it meant coming into the system. It would not be "highly treated" coming in and the sentence is very clear. This puts the wastewater on someone else's property.

The plat that the engineer worked from differs from site plan submitted. It does not show 40' utility easement that cuts through back of property. CVEC has to grant permission for anything in their easements. The Verizon easement not on it. It shows 10' parking setback, not 15'. All of that would affect space available for the system. On a small property all of this could be critical.

The landscaping shown on Mr. Shimp's site plan appears to be in CVEC easement. They have not obtained permission from CVEC.

Determination of the number of parking spaces required is important both in assessing the amount of land disturbance and the space available for other aspects of the development. Spaces required depend on how much of the existing and expanded store will be restaurant and how much retail. Also whether there will be 4 apartments or 7 will make a difference to parking required. The site plan does not show loading area or trash area for the restaurant/retail. That has to be situated with reference to parking so access to the work areas and to the parking is not blocked.

It appears that the run off from the property goes into VDOT culvert. VDOT won't deal with that until site review but it suggests that applicant doesn't have a way to deal with storm water on the small site.

As of November 14, VDOT still has not received the information requested to determine that commercial access is possible. They have only okayed the location of an entrance. They have not

November 19, 2018

addressed what improvements might be required and the width where it meets Avon Road. This could add to the amount of land disturbance.

Granting the SUP would essentially give this property two zonings- B1 and R2 in the middle of an R1 area. There has been much neighborhood concern about putting apartments in this community. The applicant has referred to the need for low cost housing for restaurant workers, etc., in the area. A host at Blue Mountain Brewery makes \$8.50 an hour. If that person works 40 hours a week they gross about \$1360 per month. Assuming about 20% deductions that leaves \$1088 per month. General principal is that rent should not be more than 30% of income. In this example that would be \$326 per month. It is unlikely that the applicant can make his investment back renting at that level. I don't think the low cost argument is valid, even if the location were appropriate.

**The rezoning request and the SUP application should be denied based on the principals listed at the beginning. However, if the Supervisors are still considering approval any decision should be postponed until all information on the feasibility has come in.**

The following comments were submitted by Ellie and Brian Ray:

Sandy/Emily,

I think this project is going to the Board today, so I wanted write to express our support again. My husband and I recently learned about the application currently under consideration for the Anderson's Grocery property at the corner of 151 and Avon. We live about a half mile from this site and we have always thought it was a great opportunity for a small local store. When we first moved here, Anderson's was still open and it was great to be able to support a local shop owner so close to home. We like the idea of retaining the existing store and being able to purchase local goods close to home. As it is now, we buy many Nelson County made products in Albemarle or Charlottesville because there is no convenient location in the northern end of the County that carries these items. We also understand that the residential units proposed with this application make a small local store more financially feasible. We learned about today's hearing just this morning, so we are unable to attend the meeting, but we wanted to express our support nonetheless.

Thank you for your time,  
Ellie & Brian Ray

The following comments were submitted by Marilyn Shifflett:

Dear Board of Supervisors,

Anderson's Store Rezoning, please do make my note part of the minutes.

While there is much to be said about the inconsistent site plans, lack of detailed examination of possible impacts to adjacent properties from well and septic plans, lack of any recent survey of at least, the most current boundaries, and the exact amount of acreage of this parcel (as it may relate to whether DEQ should be involved), there remains much to say about what I and a former planning director view as spot zoning of this parcel, and the impacts to surrounding residents, and their property values, and the broader North District community from this proposal.

November 19, 2018

This intersection was just recently upgraded for safety reasons. Why rezone this corner to B-1 and lose some percentage of safety gained by the tremendous dollars that went into these improvements?

The applicant's drawings were attractive, but failed to put the project in the context of surrounding properties. A one bedroom apartment building plopped onto a proposed business parcel has a negative impact. A one-bedroom apartment building has a negative impact to surrounding "owned" and long-time residences. One cannot and should not ignore this. While one-bedroom apartments maximize profit per square foot, they do not tend to attract long term renters and can become a nuisances to neighbors. One bedroom renters tend to be less financially stable, less vested in the community, and result in a high turnover, which translates to concerns from stable surrounding families.

I was stunned to hear one Planning Commissioner, who ultimately voted in favor of recommending to the BOS, that she failed to see an alternative for this property. Are we really so lacking in creativity? This parcel is zoned R-1. What if a community conscious buyer decided to transform the old store into an open floor plan, one bedroom residence for a possible renter, like a senior couple looking for low maintenance, easy access to medical care, and easy access to both C'ville and W'boro? What if that buyer repaired the current home as well, to use as a family rental? The store building retains its rural appeal. The home remains a solid rental. No commercial entrances, loading zones, dumpster sites, commercial septics, etc., etc. needed. Limited impact to surrounding residents. The fact is, that the current owner allowed this property to fall into disrepair, and if his profit is less than he might have realized if he had maintained it, I find little sympathy.

I remain unopposed to re-zoning to A-1, and allowing the proposed "new owner" to reopen the store and use the existing house as a rental, but I remain opposed to rezoning to B-1, destroying the charm of the old store, trying to cram a restaurant, store, apartments, family rental, etc. into less than one acre. This applicant struggles to peddle the same concepts to supervisors in Albemarle. And, there's a reason for that, I think.

Best Regards,  
Marilyn Shifflett

The following comments/questions were submitted by Henrietta Lockett, Alvin Lenahan, and Mary Lenahan:

Dear Board of Supervisors and Planning Director for Nelson County:

We the adjoining property owners of Avon, who will be affected by the development being presented have the following concerns that are listed below:

- A minor site plan requires for the approval of a soil and water requirement plan which includes a storm water run-off. Our county Building Inspector is presently certified to only review less than 10,000 square feet of any disturbed soil. Mr. Shimp, at the Planning Commission Meeting, increased the size of the apartments from his initial request. This project would disturb 10,000 square feet or more which is 100 x 1.00 square feet. Why was this not required to be reviewed by DEQ?
- There are no parking spaces for restaurant use, therefore there will be no areas for tables or chairs for customers to consume food or beverages on the premises as Mr. Shimp has suggested to the public.

November 19, 2018

- Where will the dumpster be located since this project closely joins the other property owners?
- Where will the loading zone be located that closely joins the other property owners? (12FT wide by 30FT Long)
- How do we know the true boundaries in order to make an informed decision?
- Why did Mr. Shimp turn in different setbacks to the Health Department than to the County and VDOT?
- Should a water draw test be completed to determine what effect the project would have on the surrounding wells?
- The Charlottesville Health Department cannot inspect the plans and site for the alternative waste system until after the meeting on the 19<sup>th</sup>
- This approval would be essential in knowing if this system will be adequate to handle the proposed development on a small lot.
- What do you call apartments added to a single family dwelling? Accessory dwelling?

We would like these questions addressed before a decision is determined in order to prevent future adverse effects on the character of this residential area and the future quality of life to the neighbors in this community. We would like to thank you for your consideration in listening to our many concerns dealing with the many uses requested on a small lot.

Mr. Saunders then asked for clarification of operating hours and Mr. Shimp noted the restaurant hours were opening possibly at 7:00 am for breakfast and then lunch five days per week and dinner 1 day per week.

Mr. Rutherford noted in looking at the concept of affordable housing and saving mom and pop restaurants and what that looks like. He questioned how they could promote a small country store as opposed to a franchise owned business and he noted he would like to see something locally owned and managed and he was excited about helping somebody make that happen. He referenced the Dollar General concept and noted that he thought if it took having small apartments to sustain the store, he would rather see that than a Dollar General located there. He added that category 2 events would not be appropriate and asked if the Board could put conditions on that. Ms. Shackelford noted they could amend the conditions put on the residential use; however, proffers had to be amended by the applicant prior to the Board meeting.

Mr. Harvey clarified that a Category 1 event was up to 500 people and up to 1,000 for non-profits and a Category 2 event was up to 10,000. He noted he did not think they would ever get into a situation that would get to a Category 1 event and Ms. Shackelford generally agreed.

Mr. Saunders questioned the practice of rezoning something when they were not sure what would happen to the property; noting that somebody else could buy it and do something else. It was noted that only the uses left in could be done or the person would have to come back to the Board for another SUP and go through the public hearing process.

November 19, 2018

Mr. Harvey then questioned the necessity for a B1 zoning versus an A1 and Mr. Shimp noted that the A1 setback was the reason; with that they could not do any expansion to the store and there was a potential issue with multifamily use in A1. He added he thought the request was the cleanest way to do it. Mr. Harvey asked how close the front of the store was to the VDOT right of way and Mr. Shimp noted that the porch touched it and he had spoken to VDOT and he would have to get an in place permit from them. He added it was challenging to get smaller stores back up and running. Mr. Harvey stated that no matter what the Board did, Mr. Shimp still had to meet all agency requirements. He then asked if there was a 100% reserve for the drain-field and Mr. Shimp noted there was.

Mr. Bruguire asked if VDOT had said they could meet their requirements for an entrance and Ms. Shackelford noted that they were just short of issuing the permit and they were good to go. Mr. Harvey stated he thought they had only met the entrance location requirement. Mr. Shimp noted they had to approve the drainage however, there was nothing that materially affected what they were looking at. Mr. Harvey noted he would love to see the old store back but was not sure how the other fit with it. He added that the former owners had built the brick home right on top of it. Mr. Shimp acknowledged it was a challenging piece of property; however they were very much locked in and once it was built out, it would not be torn down in order to put in a Dollar General; which the site he noted was more conducive now for that.

Mr. Saunders noted he liked the idea of having the store back; however he thought there was no guarantee that was what would happen. Mr. Shimp noted that the allowed uses limited him severely to that particular use. Mr. Saunders questioned what would happen if something changed, it did not work or the sale did not go through – would it be abandoned after it was rezoned. Mr. Shimp noted he knew it could work as shown and Mr. Saunders noted his concern that the plan would not happen.

Mr. Reed noted that there was much about the proposal that was positive. He noted the need for housing was acute in the county for many reasons and the refurbishing the store would be a wonderful thing. He added that the Route 151 corridor brought different color to what was going on and until they had better tools to make decisions, the Board was stuck with what they had. Mr. Reed then noted that half of the evaluation criteria were subjective and it was problematic to make decisions based on what would be happening when people felt really intensely about it and there were only subjective variables to consider. He noted that he did not think the project was the worst thing that could happen and he would have to defer to the community for at least evaluation criteria 1 and 2 as to what that meant. Mr. Reed noted that although there were no environmental features impacted by the use, it could be argued that the concentration of structures and the use of property could be considered an ecological and scenic impact that might not be considered positive.

Mr. Harvey then inquired as to what would keep the rezoning from being spot zoning and Ms. Shackelford noted that there was a difference between spot zoning and an illegal spot zoning. She noted there could be legal spot zoning, if the rezoning was supported by other factors such as the use of the property, what was going on in other areas, whether it was consistent with the Comprehensive Plan. She added that illegal spot zoning was when property was zoned differently from all other properties around it in a way that was to just benefit the owner of that particular parcel. Mr. Bruguire referenced Blue Mountain an example of spot zoning and it was one of the more profitable businesses in the county and there were others that fit the definition of spot zoning.

Mr. Saunders then noted the two separate items presented, the rezoning for the store and then the SUP for the house remodel and Ms. Shackelford advised that the Board could approve the rezoning for the

November 19, 2018

store without approving the Special Use Permit for the house remodel but not vice versa. Mr. Saunders clarified that approval of the rezoning does not approve the SUP; which Ms. Shackelford noted to be correct.

Mr. Rutherford suggested the Board defer action for 30 days to see if there was any new information available by then. Mr. Bruguere asked if the VDOT report would be available by then and it was noted that the Health Department permit was pending and they had not yet applied for a VDOT permit.

Mr. Carter advised that there was no time limit on the deferral and Ms. Shackelford noted if anything it could be 6-12 months; although she was not recommending that. Mr. Bruguere noted that a delay would cost people money and Mr. Shimp noted he was not opposed to delaying action for 30-60 days in order to answer more questions.

Mr. Bruguere questioned when the VDH permit would be reviewed and Mr. Shimp noted that they had a 60 day window; however it should be back that week. He added that they had submitted plans but they needed to make another submittal for permit approval and VDH was the more complicated of the two. Mr. Bruguere noted it would be good for them to have those permits in hand and it was noted that Board approval could be contingent upon those approvals coming through since they could not move forward without them.

Mr. Rutherford then moved to delay action until the January Board of Supervisors meeting and Mr. Harvey seconded the motion.

Mr. Bruguere then clarified that the Special Use Permit was for Mr. Shimp and not his brother Curtis Bruguere. He added that he had consulted with the County Attorney and was cleared to vote as there was no conflict of interest. He reiterated that it was not his brother in front of them tonight. Mr. Harvey agreed and supposed he would not be in conflict even if his brother was the applicant. Mr. Bruguere added that the County Attorney had advised he could have voted in the past had he wanted to.

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

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

There was no other business considered by the Board.

#### **V. Adjournment**

At 8:20 PM, Mr. Rutherford moved to adjourn and Mr. Saunders seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.