

February 11, 2020

**Virginia:**

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

Present: Jesse N. Rutherford, East District Supervisor  
Thomas D. Harvey, North District Supervisor – Chair  
Ernie Q. Reed, Central District Supervisor – Vice Chair  
J. David Parr, West District Supervisor  
Robert G. “Skip” Barton, South District Supervisor  
Stephen A. Carter, County Administrator  
Grace Mawyer, Administrative Assistant/Deputy Clerk  
Candice W. McGarry, Director of Finance and Human Resources  
Martha Eagle, School Division Superintendent  
Denise Bonds, District Health Director

Absent: None

**I. CALL TO ORDER**

Mr. Harvey called the meeting to order at 2:01 pm, with all Supervisors present to establish a quorum. He asked Reverend Rose to lead an invocation.

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

Mr. Harvey then welcomed the two new Board members: Mr. David Parr representing the west district and Mr. Skip Barton representing the south district.

**II. CONSENT AGENDA**

Mr. Reed noted that a change needed to be made to the January minutes. He stated the last name of the attorney who crafted the amicus brief is spelled Jaffe, and it was spelled Jaffey in the draft minutes. Ms. Mawyer noted she would make the change.

Mr. Rutherford addressed the budget amendment resolution **R2020-09** and noted he had a few questions. Mr. Harvey stated that they would come back to the consent agenda later.

**III. PUBLIC COMMENTS AND PRESENTATIONS**

Mr. Harvey introduced the VDOT report first.

B. VDOT Report

Mr. Robert Brown of VDOT reported on the concerns that were brought forth in last month's meeting:

- Route 29 southbound lane in front of the high school: shoulders have been clipped to improve the drainage
- Route 56 at Jenny's Creek intersection and Route 56 at Saunders Brothers entrance: there was a report of standing water. The VDOT superintendent looked at these and could not identify an area, but Mr. Brown evaluated and believes that there's some work they can do and will get it scheduled.
- Intersection of 29 northbound lane and Harvey Lane: Traffic engineers are reviewing this. The crash history data does not support there being a crash concern, but there is limited site distance, and they are looking at adding additional signage to make Route 29 traffic more aware that this side street comes out.
- Davis Creek low water bridge on Huffman Way: VDOT did clean this out, and it's clear and running well. To do a structure replacement would be a major project and is out of the scope of what Mr. Brown can do. He noted this is a low water bridge, so it was constructed so water would run over it.
- Salem Road: VDOT has cut more limbs. Mr. Brown asked Mr. Rutherford to call him if there are any other issues there.
- Avon Road: VDOT cleaned out a pipe at 950 Avon Rd.
- Entrance of Route 250 overlook: The potholes will be filled in.

Mr. Brown then provided an update on the upcoming rural rustic unpaved road program and the six-year plan. He distributed the current Nelson County unpaved road/rural rustic priority list and noted that priorities 1-4 are completed. Priorities 5-10 are either completed or under construction. Priorities 11-14 should be under construction this calendar year.

**NELSON COUNTY  
RURAL RUSTIC PRIORITY LIST- FY20 -FY25**

	<b>ROUTE NAME</b>	<b>FROM</b>	<b>TO</b>	<b>LENGTH</b>	<b>TC- VPD</b>	<b>NOTES</b>
1	654 FALLING ROCK DR	1.0 MILE. RTE 657	RTE 661	1.90 Mi.	127 COMPLETED	\$380,000
2	814 CAMPBELL'S MT RD	0.99 Mi. N. RTE 56	1.99 Mi. N. RTE 56	1.00 Mi.	109 COMPLETED	\$200,000

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3	617	BUCK CREEK RD	0.23 Mi. N RTE 29	DEAD END	1.40 Mi.	140	COMPLETED	\$280,000
4	625	PERRY LANE	ROUTE 623	DEAD END	2.00 Mi	118	COMPLETED	\$400,000
5	645	AERIAL DR	RTE 646 E	RTE 646 W	0.20 Mi.	55	UNDER CONSTRUC.	\$40,000
6	721	GREENFIELD DR	RTE 626	0.50 Mi. N RTE 626	0.50 mi.	51	COMPLETED	\$100,000
7	666	JACK'S HILL RD	2.57 Mi. W RTE 678	1.82 Mi. W RTE 678	0.75 mi.	50	UNDER CONSTRUC.	\$150,000
8	628	RHUE HOLLOW RD	Route 764	DEAD END	0.22 MI.	60	UNDER CONSTRUC.	\$44,000
9	794	RHUE HOLLOW LANE	RTE 628	DEAD END	0.20 MI.	60	UNDER CONSTRUC.	\$40,000
10	678	EMBLY'S GAP RD	2.06 Mi. N RTE 676	Rte 666	1.64 Mi.	110	COMPLETED	\$300,000
11	699	CARTER HILL RD	RTE 807	RTE 680	1.29 Mi.	59	FUNDED FY21	\$250,000
12	612	BOTTOMS LANE	RTE 788	DEAD END	0.95 Mi.	50	FUNDED FY21/22	\$200,000
13	623	SHIELDS GAP RD	RTE 151		0.55 Mi.	60	FUNDED FY22	\$100,000
14	650	HIGH PEAK LANE	0.50 Mi. N. RTE 772		1.10 Mi.	90	FUNDED FY22/23	\$220,000
15	654	CEDAR CREEK RD	2.00 Mi. W. RTE 655		1.00 Mi.	100	FUNDED FY23	\$175,000
16	653	WILSON RD	RTE 655		2.83 Mi.	60	FUNDED FY23/24	\$550,000
17	814	CAMPBELL'S MT RD	1.99 Mi. N RTE56		1.00 Mi.	100	FUNDING FY24	\$200,000
18	687	NORTH FORK RD	RTE 56		1.00 Mi.	100	PARTIAL FUNDING FY24	\$200,000

Estimated cost /mile \$200,000-\$250,000  
 Total Estimated Allocation FY 20-25 - \$2,941,475

He noted that page 2 includes a list of projects that have no priority that have been mentioned to Board members from constituents.

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RURAL RUSTIC PRIORITY LIST – DRAFT FY20 – FY25

Priority	Route	Name	From	To	Length	TC-VPD	Estim Cost
	654	Cedar Creek Rd.	3 Mi. West Route 655	Rte. 661	1.24 Mi	100	\$248,000
	814	Campbell's Mt Rd.	2.99 Mi. West Route 56	Rte. 684	1.36 Mi	140	\$272,000
	643	Ball Mt Rd	Rte. 639	Dead End	0.60 Mi	51	\$120,000
	848	Whippoorwill Ln.	Rte. 605	Dead End	0.05 Mi	63	\$10,000
	646	Hunting Lodge Rd.	Rte. 604	Rte. 645	2.00 Mi	60	\$400,000

Mr. Brown noted that this list needs to be revised and roads need to be added this year. He added that a work session could be set up in April and the public hearing could be scheduled in May, which is what has been done in previous years.

Mr. Rutherford asked if there is a traffic count for Road 604, Warminster Road. Mr. Brown noted he would check on this.

Supervisors then discussed the following VDOT issues:

Mr. Parr:

Mr. Parr referred to the parking issue in front of the Dairy Isle in Colleen that was mentioned last month. He noted that trucks are pulling into the island/strip in front of the diesel pumps at the Colleen Feed and Seed, and there are no “No parking” signs there. Mr. Harvey suggested that stripes may be better than signs.

Mr. Brown then reported that he would be talking with Sheriff Hill about the vehicle that has been regularly parking in the road at Gold Mine Road.

Mr. Reed:

Mr. Reed noted that Mr. Derdeyn wanted to thank Mr. Brown for coming out and taking a look at the low water bridge on Huffman Way.

Mr. Rutherford:

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Mr. Rutherford stated that on Route 616/614, there is a clogged culvert pipe. He added this is near where Hickory Creek and Perkins Hollow come together.

Mr. Barton:

Mr. Barton noted that on the south end of Williamstown Road, there are about 30 homes that are close to the road, and people tend to speed through there. He stated that the residents want a 35 mile per hour speed limit zone beginning where the Grants house is at the intersection with Variety Mills Road and ending around Williams Store. He added that there are a lot of children in this area. Mr. Brown stated that there is currently an unposted statutory 55 mile per hour speed limit through there, which means they don't post a 55 mile per hour speed limit but people are expected to drive according to roadway conditions. He noted it is very unlikely that VDOT could post a 35 mile per hour zone on this road, but it might qualify for a 45 mile per hour zone. He stated he would send this up to their traffic engineers and ask them to review.

Mr. Barton then referred to the bridge on Tye River Road near Gladstone. He noted that a culvert was recently put in at the bottom of that hill, and the residents there have noted that this is a place that ices up frequently. He asked if something could be done to help this situation, such as adding guardrails so that people don't slide into the culvert. Mr. Barton added that another concern here is that there are not enough signs giving information about clearance under the railway bridge. He noted there should be signs on 29 explaining that this is a place where trucks can get stuck. Mr. Brown noted that VDOT reviewed this in the last 2 or 3 years, and there is a sign about restricted height and width as soon as you turn off of 29.

Mr. Harvey:

Mr. Harvey had no VDOT issues to discuss.

A. Public Comments

Mr. Harvey stated that the Board will spend about 15-30 maximum on public comments, and if there is more, they can speak after the Board gets their business done.

1. Margaret Napier Greene, Arrington VA

Ms. Greene spoke of an incident that occurred on the afternoon of October 25<sup>th</sup>, 2019 at the residence of her parents, the late Massie Napier, Jr. and Ester C. Napier. She stated her mother was ill at that time, the family called 911, and the Wintergreen crew responded. She noted that the crew decided that Mrs. Napier needed to be transported to Lynchburg Hospital. Ms. Greene stated that her mother's records and doctors were at Martha Jefferson Hospital in Charlottesville, and the family requested for Mrs. Napier to be transported there. The crew told them that she could not be transported there, and they would take her to Lynchburg. She noted that at another time when her mother needed to be taken to the hospital, the response team from Wintergreen transported her to Martha Jefferson. She stated that the family would

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like to know what the procedure is for this and if it is discretionary or if there is a cut-off. Ms. Greene noted that her sister, Edith Napier, would use the balance of her time to speak next.

Ms. Napier asked why the first responders refused to transport her mother to Martha Jefferson Hospital, where her doctors and medical records were located. She noted that one of the responders reacted to the concerns of the family and reported them as a “rowdy family.” She stated that the family asked for the name of the first responder’s supervisor so that they could employ him to take her mother to Martha Jefferson Hospital, and the supervisor never answered their phone call. Ms. Napier noted that people in the southern area of Nelson County are in a quadrant and would like to go where their doctors are located. She added that other neighbors have also been affected by this decision, and she asked that this policy/procedure be looked at.

## 2. Mary Kathryn Allen, Gladstone VA and Justin Derkie, Arrington VA

Ms. Allen noted that she and Mr. Derkie are representing Dixie Youth Baseball and would like to discuss the idea of a youth sports complex in the county. She stated they have worked with the Parks and Recreation department on continuing to provide what they can, especially in Dixie Youth Baseball. She noted that this would be not just for baseball, but also softball and soccer. She noted a swimming pool could be put into a sports complex as well, but emphasized that sports are what we need. Ms. Allen stated that these kids need a place to play, but we cannot expand any further with what we have, and we are losing kids to other places like Amherst because we cannot provide for them. She noted that we can’t do softball because there aren’t enough fields, and the Rec Department can’t grow programs to offer other programs for adults because we’re having to move to other fields. She added that if we want the programs in high school to succeed and start winning state championships again, they must start learning how to play the sport at youth. She stated that we cannot continue to argue over space and added that it would be a good revenue opportunity for the County with all of the travel teams the kids are playing. Ms. Allen and Mr. Derkie asked if the Board could get a small group of people together to figure out where the location could be and if it’s financially feasible.

## 3. Paul Cangialosi, Gladstone VA

Mr. Cangialosi spoke about the U.S. and Virginia Constitutions. He stated that these were written by the founding fathers as a set of negative liberties, which were based upon the foundation of principle that every human being is born and endowed with certain rights by our creator, and these rights exist outside of government, and the government cannot infringe on these rights. He added that the government has the duty to protect against the infringement of these rights by others, and we shouldn’t have to beg the government to give us our rights. He referred to the Second Amendment and noted it is a right conveyed outside of the government and may be utilized individually or collectively, and it is not a gift or privilege which must be begged for or licensed. Mr. Cangialosi noted that this Board voted in December to support the Constitutional rights of the citizens of this county to keep and bear arms, and the Board joined with 90 other counties, 16 cities, and 34 towns to express their resolve that the Second Amendment will not be infringed or destroyed in Nelson County. In response to this declaration of support, the Governor of Virginia has said that if law enforcement officers are not enforcing Constitutional laws, there are going to be consequences. Mr. Cangialosi noted that Attorney General,

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Mark Herring, has said that when the General Assembly passes new gun safety laws, they will be enforced and followed. He stated that he is here to talk about the next step in the process of protecting not just Second Amendment rights, but all Constitutional rights of the citizens of Nelson County. He noted the Virginia Militia already exists in the state and was created by a popular vote of the citizens in 1771, and a group of concerned citizens in Nelson County is preparing to take the next step in the struggle against tyranny by preparing to call a militia muster to get information from members of the unorganized militia. This is to call together a group of citizens who are already members of the legal, government sanctioned, Constitutional militia. He noted that the group is offering the Board the chance, as the local civil power, to exercise their authority over the local unorganized militia. Also, as the group is unable to utilize the emergency services system to mobilize members and are unable to do background checks, County oversight would benefit everyone involved. He stated he is asking the Board to support a resolution calling for a militia muster and pledging County oversight and support to the unorganized militia of Nelson County. Mr. Cangialosi distributed the proposed resolution to the Board and Staff:

### CALL FOR MUSTER OF UNORGANIZED MILITA OF NELSON COUNTY, VIRGINIA

WHEREAS, from the founding of this Nation. Virginians have embraced the principle of resistance to abuse of power; that when a higher government overreaches, it is the duty of the lesser governments to interpose themselves, to protect the People, to give meaning to the protections of the U.S. and Virginia Constitutions; and

WHEREAS, in the face of overreach, James Madison posited that lesser governments are "to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them;" and

WHEREAS, Thomas Jefferson went further, stating that when a higher government "assumes undelegated powers, its acts are unauthoritative, void, & of no force;" and

WHEREAS, the natural right of self-defense with arms belongs both to the individual and to the People of this County, collectively; and is recognized in Article 1 Section 13 of the Virginia Constitution, which describes the "militia" as "the body of the people, trained to arms" and ordains that "in all cases the military should be under strict subordination to, and governed by, the civil power;" and this natural right is also recognized in the Second Amendment to the U.S. Constitution; and

WHEREAS, since time immemorial in England and in this Commonwealth, militia have been raised at the county level; and

WHEREAS, George Mason, the author of Article 1 Section 13 of the Virginia Constitution, at a meeting of 21 Sept. 1774 chaired the creation of an independent company of volunteer militia for Fairfax County, independent of the royal governor; and Patrick Henry, the first governor of Virginia, raised an independent company of volunteer militia under similar exigent circumstances; and

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WHEREAS, notwithstanding the recognition by Virginia Code § 44-1 of the "unorganized" "**militia of the Commonwealth of Virginia**" and the recognition by U.S.C.A. § 246's of the "Unorganized Militia" of the United States, the County's power to call for a voluntary muster of the "unorganized" militia within its borders is not in any way foreclosed, nor is its power to raise the Nelson County Militia under exigent circumstances, to preserve civil order and prevent civil rights violations; and

WHEREAS, the Board of Supervisors of Nelson County, Virginia has sought to protect the rights of the People by declaring Nelson County a "Second Amendment Sanctuary," providing new safeguards for their future security; and

WHEREAS, the Board of Supervisors has called upon the Nelson County Sheriff and the Commonwealth Attorney; their deputies and employees; and the People of Nelson County, to resist tyrannical attempts to deprive the People of certain firearms and components which are necessary for self-defense; militia service; law enforcement, and national defense; THEREFORE,

1. The BOARD OF SUPERVISORS of Nelson County hereby calls for a voluntary muster of those law-abiding citizens, without regard to race, religion, color, sex, or creed, who currently constitute the Unorganized Militia of Nelson County, who are between the ages of 18 and 55, and those citizens above the age of 55, who may currently lawfully possess a firearm, and who are willing to serve as Auxiliary Sheriff's Deputies or as members of a future Nelson County Militia, or in support thereof, should circumstances require, to present their persons for review at LOCATION on DATE, subject to the following conditions,

- a) Dressed in khaki trousers, seasonal clothing, and boots or shoes suitable for maneuver training and operating in the field;
- b) Openly and safely wearing a holstered handgun, preferably semi-automatic, and capable of accepting a magazine of 10 or more rounds capacity of 9x19mm or .45 ACP; and/or
- c) Openly and safely carrying, by means of a sling, an unloaded semi-automatic rifle, in good working order, preferably a variant of the AR-15 platform, that is capable of firing the .223 Remington/5.56x45mm NATO standard cartridge; and carrying at least three (3) loaded magazines of 20 or 30 rounds capacity, within magazine carriers worn and secured on the person, to facilitate as much as possible the interoperability of equipment.
- d) Willing to provide contact information to the Nelson County Sheriff's Office, for the purpose of incorporation into the Nelson County emergency management plan; for background checks, for assessment of skillsets, and for addition to a phone tree, text messaging or other communication system, in the event of an emergency, including but not limited to a terrorist attack or other invasion upon the rights of their fellow citizens in Nelson County.

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- i) The volunteer information collected shall be organized geographically based on regions within the County.
  - ii) Such information shall be privileged from disclosure under open records laws as personnel records 2.2-3705.1 (1) of the Code of Virginia; personal contact info from a person desiring contact from a public body by email or cell phone (§ 2.2-3705.1 (10)); and as plans and information to prevent or respond to terrorist activity, the disclosure of which would jeopardize the safety of any person (§ 2.2- 3705.2 (4)), per written invocation requirement.
  - iii) No information or registration shall be required of any prospective Auxiliary Sheriff's Deputies or of any prospective Nelson County Militia regarding their personally-owned firearms and accout-rements.
- e) Nelson County BOS/SHERIFF WILL ONLY CONSIDER FOR BACKGROUND CHECKS, AND ADDITION TO AN EMERGENCY COMMUNICATION SYSTEM LIST THOSE CITIZEN VOLUNTEERS WHO STRICTLY COMPLY WITH THE DETAILS OF THIS REQUEST, including the following:
- i. Volunteers desiring consideration by Nelson County for purposes of future notification and communication shall not be under current firearms disabilities or restraining orders; shall not be a current felon; shall present a neat and orderly appearance and bearing; shall wear clothing containing no political messages; shall carry no signs; and shall carry, wear or display only the flag of the United States, the flag of the Commonwealth of Virginia, or the flag of Nelson County.
  - ii. A volunteer described in Section I who does not possess a preferred handgun or rifle described in this section may bring a holstered handgun, an unloaded rifle or shotgun with sling, or no weapon at all, and may appear at the voluntary muster attired as described above in Section 1.a. to express his or her desire for further notification and communication. **Handguns shall be safely carried only in a holster. Long guns shall be unloaded and carried only via a sling worn on the person.**
  - iii. Volunteers from neighboring counties or other communities within the Commonwealth of Virginia may present themselves as described in Section 1, and provide contact information, with their status as non-residents of Nelson County noted.
2. Within 90 days, the Nelson County BOS COMMITTEE/SHERIFF'S OFFICE intends to present findings and a plan, which may be drafted by or in conjunction with volunteers, to the Board of Supervisors for consideration. The findings and/or plan may include a) a draft ordinance for standing up an organized Nelson County Militia, including provision for election of officers and non-commissioned officers, based on training and experience; b) scheduling of future voluntary musters and training of the Unorganized Militia under County auspices; and c) integration of volunteer contact information into the County's Emergency Management Plan and EMS system, to enable

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members of the Unorganized Militia who reside in Nelson County to be notified in the event of a terrorist attack or emergency, including but not limited to any attempt to confiscate commonly-owned semi-automatic rifles, pistols and/or shotguns lawfully owned prior to January 13, 2020; to unlawfully arrest owners of such arms, after January 13, 2020; or to unlawfully prevent the previously legal sale or transfer of such arms, after January 13, 2020, in violation of the Second Amendment to the United States Constitution and Article 1 Section 13 of the Virginia Constitution.

3. In the event that the Nelson County Militia is raised, its purpose shall be to fulfill the intent of the Founders of the Commonwealth of Virginia and of the United States, that the People of the County might provide for their safety and security, and protect all of the rights set forth under the Constitutions of the United States and this Commonwealth. In time of war, the Militia shall serve as a local force dedicated to protecting their families and community from foreign enemies. In time of natural disaster, the Militia shall serve the citizens of this County, particularly the elderly, the infirm, the orphan and the widow. In time of domestic tyranny, the Militia shall serve as a force of last resort, subject to the civil power of the County, to preserve the natural rights of the People, including, but not limited to, the rights of life and liberty; the freedom of speech; the free exercise of religion; the right to trial by jury; the right to private property; the right to defense of self and defense of the community; and the Rule of Law.

#### 4. Putnam Ivey, Virginia Department of Health

Ms. Ivey presented the Board with copies of the 2019 MAP2HEALTH report. She noted that MAP2HEALTH is our district's community health assessment process, and they had 146 different agencies, organizations, and divisions participate in the process, including 19 here in Nelson County through the Nelson Interagency Council. The second half of the report contains health-related data, and she encouraged the Board to take a look. Ms. Ivey noted that the report includes a plan for action and strategies from the organizations represented here today from 5 different community coalitions working in Nelson including the Nelson Wellness Alliance. She then invited the Board and anyone else in the room today to a celebration on Wednesday, March 25<sup>th</sup> from 5:30 to 7:30 pm in Charlottesville at the Jefferson School African American Heritage Center. A formal invitation will be sent out by email.

#### 5. Linda Hughes, Roseland VA

Ms. Hughes expressed her appreciation to Supervisors Rutherford and Parr for reaching out and meeting with her a couple of weeks ago on the issue of our county as a Second Amendment sanctuary. She noted this was a great step toward building an honest partnership with her as a constituent. She stated that many constituents were not given the opportunity to speak or were cut short at the December 10<sup>th</sup> Board of Supervisors meeting, and they felt the decision to become a Second Amendment sanctuary was ramrodded down their throats. She added that having a town hall meeting before the Board's vote where all could speak would have been a lot wiser, or even hosting focus groups to get the pulse of the community before the vote. Ms. Hughes implored the Board to revisit the resolution and amend paragraph 7, now that they have 1/3 new representation. She stated this paragraph financially burdens

the taxpayers in the Board's wish to disregard the laws of the Commonwealth and country that each Board member swore to uphold.

6. Joyce Loving and Joyce Gray, Shipman VA

Ms. Loving complained about her road, Helena Lane, stating how many potholes it has. She added part of the road is actually sinking. She stated that she has lived there for 15 years and wishes the residents could get something done to their road, adding that she knows they have to do their part too. Joyce Gray, another resident on this road, concurred that the road is in awful condition and asked if this road could be considered under one of the road projects. Mr. Harvey noted that the Board will soon be going through the process for the six-year plan.

7. Eleanor Amidon, Afton VA

Ms. Amidon stated that she is advocating for peace and quiet in the Rockfish Valley. She was concerned to read about Shenandoah Valley Soaring's request for a pump and haul permit because last summer, while at the Nelson County Farmer's Market, she could hear the tow planes flying practically right over 151. She noted that this was noisy and added that there are Rockfish Valley Foundation trails nearby, and people on these trails don't want to be hearing the noise. Ms. Amidon also noted concern that approval of the pump and haul permit could create more traffic on 151 and potentially create dangerous conditions for the residents and businesses along 151. She cautioned the Board on approving any expansion of this business.

8. Joe Williamson, Arrington VA

Mr. Williamson noted that he is a member of the Shenandoah Valley Soaring Association and addressed Ms. Amidon's concerns. He noted the organization is new to Nelson County, and they did respond to neighbors about the noise and have taken steps to decrease that noise by taking different routes with their tow plane. He stressed that they want to be good neighbors to Nelson County and in the next section of the meeting, they will talk about their need for the pump and haul permit. He added that they will continue to work with their neighbors.

Mr. Harvey then closed the public comments.

**IV. NEW & UNFINISHED BUSINESS**

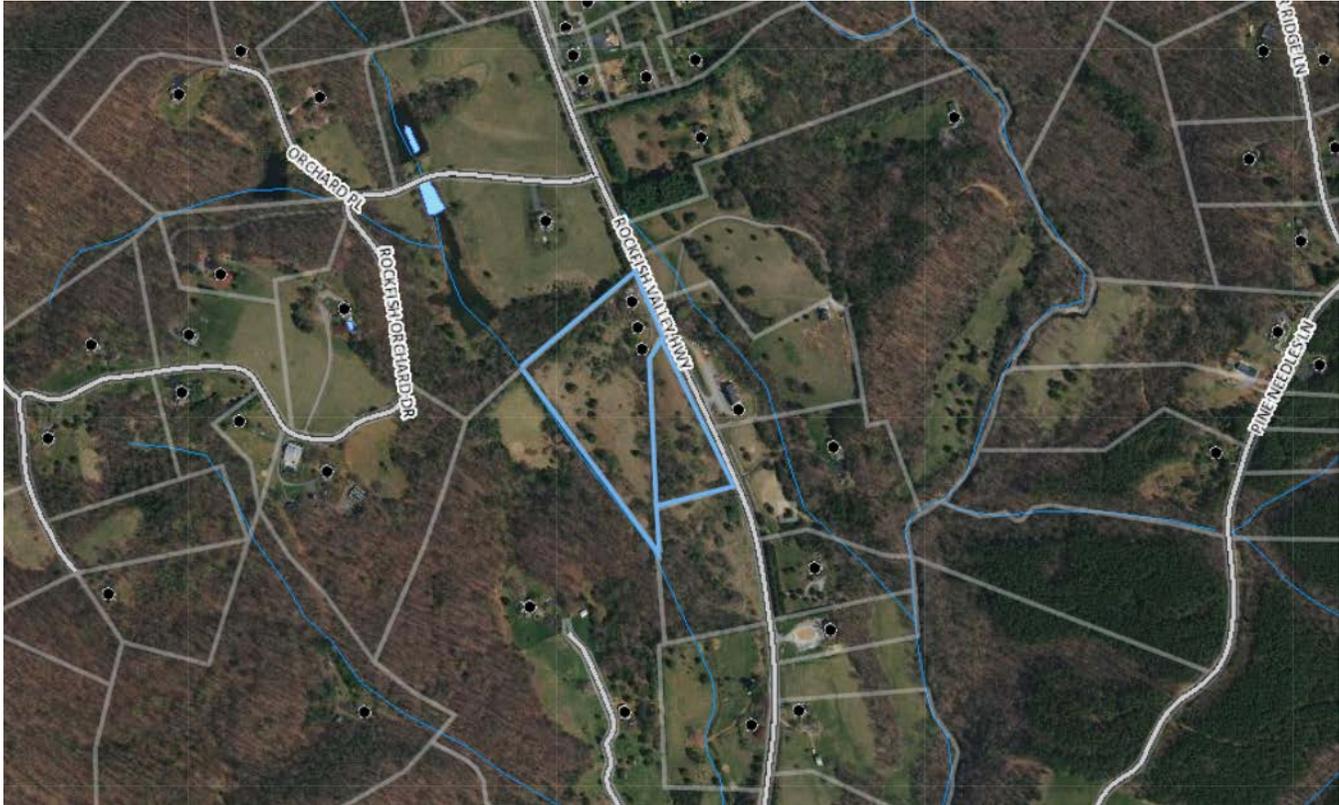
A. Extension of Special Use Permit #2018-05 – Farm Winery Remote Retail Establishment and Restaurant (deferred from November meeting)

Consideration of extension of a previously approved Special Use Permit requesting County approval to use the specified subject property for Farm Winery permanent remote retail and

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Restaurant use. The subject property is located at Tax Map Parcels #6-A-131 (8.126 acres) and #6-A-163D (2.811 acres) at 9485 Rockfish Valley Hwy. The subject property is zoned A-1 and owned by Rockfish Valley Events LLC.

Ms. Bishop provided the following report:



Timeline:

*September 11, 2018* – BOS approves SUP #2018-05 for a farm winery permanent remote retail establishment and restaurant with conditions.

*September 11, 2019* – Applicant applies for an extension of the previously approved special use permit.

*October 23, 2019* – PC holds a public hearing on the application, and votes (4-2) to recommend approval of the extension request.

*November 14, 2019* – BOS holds a public hearing on the application, and votes (4-1) to table the discussion. Staff was asked to confer with the County Attorney to determine if the applicant would be

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prohibited from submitting a new application of substantial similarity for a period of one year if the extension is denied. It was advised that because this application is for an *extension* rather than a new special use permit, the denial of the extension would mean that the original special use permit would become null and void, and would not preclude the applicant from submitting a new application of substantial similarity.

*December 10, 2020* – Application was deferred by the County due to high turnout for another agenda item.

*January 14, 2020* – Application was deferred at applicant's request due to scheduling conflict.

The previously approved special use permit was issued with conditions to allow a three-unit structure including two special uses for (1) a farm winery permanent remote retail establishment and (2) a restaurant in the A-1 Agriculture District. The third unit is proposed for a by-right use (farm winery). This extension request entails only what was approved – the two special uses within the three-unit structure with the attached conditions as imposed by the Board. Should the Board approve this request, the previously approved special use permit would remain in-tact, as-is for an additional 12 months from the date of approval. The applicant would be required to submit a revised site plan which would require final approvals from the appropriate agencies (VDOT, Health Department, Erosion & Sediment Control, DEQ, etc.) prior to any permits being issued.

Below are the conditions that were imposed with the original approval of SUP #2018-05:

- 1) Outdoor amplified music shall be limited to the hours between 1:00 pm and 6:00 pm on Sundays, and between the hours of noon and 8:00 pm Mondays through Saturdays.
- 2) All exterior lighting shall be fully-shielded and no light trespass shall be permitted on adjacent properties. All light fixtures shall meet professional standards for fully-shielded, full cut-off fixtures designed to protect the dark night sky. Parking lot light poles shall be limited to 18 feet in height.
- 3) All businesses shall be limited to operating between 9:00 am and 8:00 pm Sundays through Thursdays, and between 9:00 am and 9:00 pm Fridays and Saturdays.
- 4) The developer shall construct an 8-foot tall privacy board fence along the entire length of the northern property line abutting tax parcel #6-15-18. The developer shall install a three-board fence with rolled wire along the western property line on the east side of the creek from the northern-most point of the property line extending south to the point where the property becomes marshy, which is approximated at the location of analysis point 2 as shown on page C5.00 of the site plan dated June 25, 2018.

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- 5) The site shall be developed in substantial conformance with the site plan and other plans submitted with the request.

Ms. Bishop noted that a new site plan would be required, and likely a major site plan due to the size threshold for structures, which is 5,000 square feet. The reason that only a minor site plan is required for SUP applications is so the applicant doesn't expend resources with the possibility of denial. She stated that per the last correspondence with VDOT, VDOT would also require a revised site plan including revised drainage calculations and a traffic analysis based on the uses. Ms. Bishop noted that the question is if these uses are still compatible with the pattern of development in the area, and should they be permitted an additional year to be established. She also noted that there is a code section in the general provisions regarding Special Use Permits stating: "An SUP shall be revocable upon written order of the Board at any time because of the failure of the owner/operator of the use covered by the permit to observe all requirements with respect to the maintenance and conduct of the use and all conditions in connection with the permit that were imposed in issuing the same. A revoked permit will become null and void."

Mr. Reed asked about the acreage of the area in question for this SUP. Ms. Bishop stated it is approximately 10.937 acres.

Mr. Harvey then invited the applicant, Mr. Todd Rath, to come up and speak.

Mr. Rath thanked the Board for having him here today and apologized for the scheduling conflicts. He noted to Mr. Parr and Mr. Barton that this has subject been going on for a couple of years and added he can answer any questions that the Board may have.

Mr. Barton asked why there have been delays. Mr. Rath stated there have been numerous delays with legal counsel on the neighborhood side as well as DEQ and VDOT reviews.

Mr. Harvey stated that nothing has been going on with this property, and a lot of things could have been done to make the place look better. Mr. Rath stated that he can't go out there and start knocking over houses and doing things like that without final DEQ approvals. He pointed out that there has never been an SUP taken away from a person in the entire history of Nelson County and spoke of legal pressure from the neighborhood next door.

Mr. Parr stated that he would need to see that something has changed in a negative light that would prevent the Board from approving a continuance for this application. He noted that one concern he's heard mentioned is that there's a "For Sale" sign on the property where he's actively working on a project. Mr. Rath stated that with all the pushing and shoving against him, he thought he would throw it out there to see what the market would bear, and maybe the neighbors would get a better neighbor or project.

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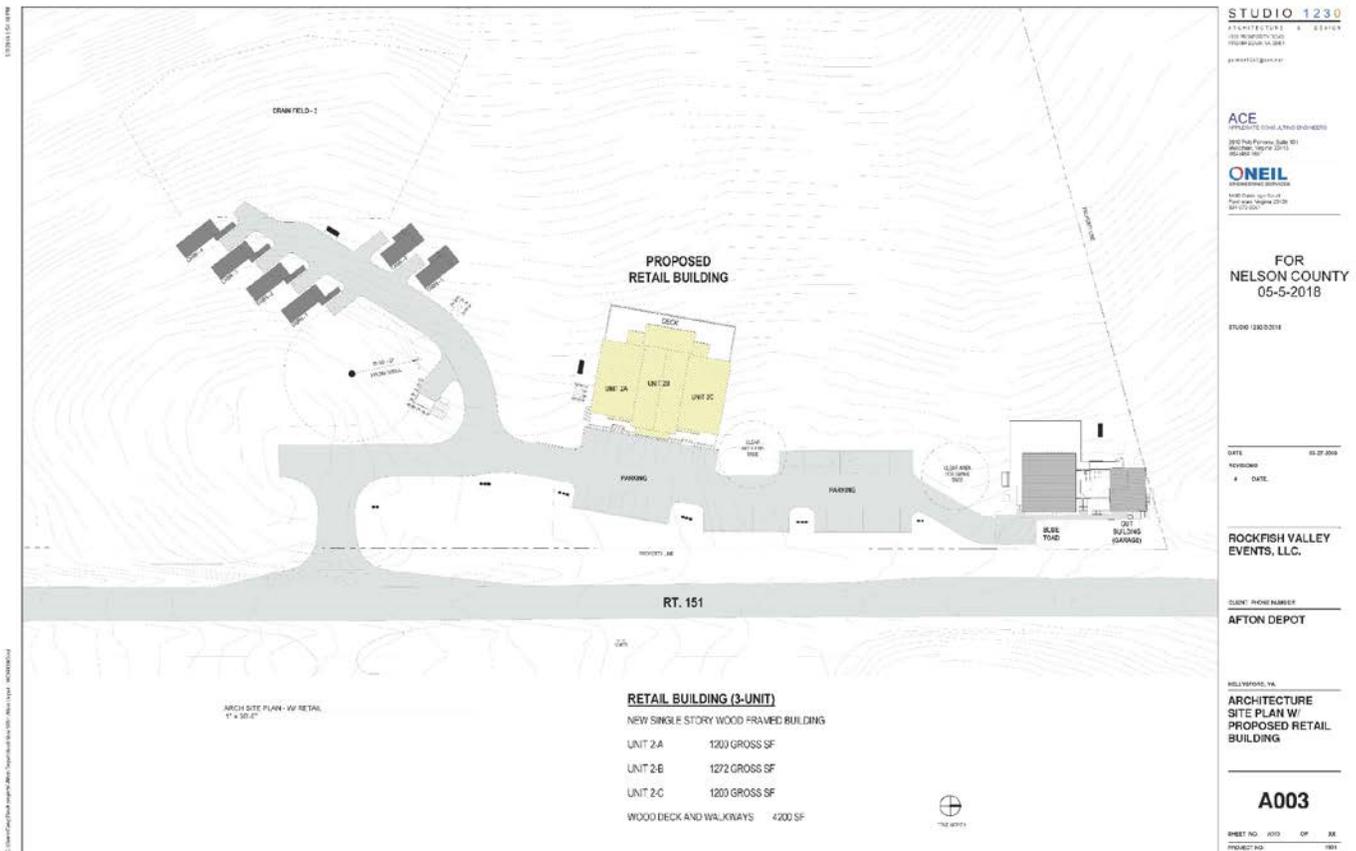
Mr. Parr asked what Mr. Rath's timeline would be, if the extension is granted. Mr. Rath noted that, as Ms. Bishop stated earlier, a lot of things would have to be resubmitted, and he would act right away on that. He added that he cannot control DEQ, VDOT, or the lawyers.

Mr. Rutherford agreed with Mr. Parr and stated that unless there's a situation that is outstanding that has changed a circumstance, he does not see an issue of approving a continuance.

Mr. Reed asked if there is any new information since Mr. Rath was last here that should go into the Board's decision. Mr. Rath noted that during this time, he has learned about the preexisting conditions in buildings, and since his first permit was taken away, he has learned that there's a type B bed and breakfast that can happen under A-1 without any Board approval.

Mr. Reed asked if it has been possible in the last 4 months for Mr. Rath to take any positive steps in terms of developing either of these properties. Mr. Rath noted that as he said from the start, there is a totality here, and he wants comfort in knowing that these things are all going to work together for the totality of the project; he can't build one without the other, and he doesn't want to build one without the other. There is too much investment and engineering there for one or the other.

Mr. Reed noted that he voted against this and the other project originally for the reason that they are in an A-1 area, adding that Mr. Rath is allowed in an A-1 area to do this, according to our zoning and comp plan. Over a year ago, when Mr. Reed asked Mr. Rath about the agricultural use of the area, Mr. Rath mentioned that he would plant a couple of apple trees. Mr. Reed stated that if Mr. Rath can put something like this in an area that's zoned A-1, he believes that is a loophole big enough to allow a lot of things that he would certainly be willing to vote against. He noted that he would not approve this unless there is perhaps some condition that a percentage of the acreage would be an agricultural use. Mr. Rath noted that the total land is 16.33 acres, and this only touches 10.8, adding that he is more than willing to put agriculture on it because he can find a use for it, whether it's in cider making or wine partners, etc. Mr. Rath noted that the fact that the property is zoned A-1 is not his problem, and there is nothing he can do about it. He added it should have been zoned B-1, and it was an Amoco station years ago. He noted that his neighboring property was an orchard, and a different yankee came down, plowed it all over, and built houses. He stated he is not plowing down any agriculture, and there is only junk on this property now.



Mr. Harvey stated there is a lot more showing on the plan than what’s being proposed. Mr. Rath clarified that what’s being talked about is the yellow highlighted building, and this does show what DEQ approved.

Mr. Rutherford asked Ms. Bishop if everything done outside of the yellow building would have to be done by right and approved by the Department of Health, VDOT, DEQ, etc. Ms. Bishop confirmed. Mr. Harvey noted he does not understand how there is a by right status on a structure that is way too close to the road. Mr. Carter noted the structure is nonconforming. Ms. Bishop noted that the new nonconforming ordinance that will be brought before the Board in April clears a lot of this up, and the current ordinance doesn’t really address uses in a nonconforming structure. Mr. Carter suggested that maybe the Board should defer action until the nonconforming use revision is brought forward that addresses this.

Mr. Parr stated that the Board is reviewing this project based on the rules today, not how they wish the rules were written in 1970 or how they plan to write the rules in 2020. He noted this project has been

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approved by the Planning Commission and Board of Supervisors, adding it is a disservice to the businessman and the community to continue to delay this.

Mr. Harvey stated it is a disservice to the community and neighbors to stick an eyesore out there that doesn't meet setback requirements while everyone else has to meet setback.

Mr. Harvey allowed an adjacent landowner to come up and speak.

Philip De Jong, Afton VA

Mr. De Jong stated that he shares 1800 linear feet of property line with the applicant, and there is a 2.5-year history with this project. He noted that he has applied legal pressure on this matter, and even though just the 3-unit building is being discussed today, the history of the project goes far beyond that. He stated that at one point, we were talking about 48 cabins, an event center, and other buildings. He noted that a neighborhood, Rockfish Orchard, is right next door, and they're already dealing with problems relative to Silverback Distillery and the Brewing Tree with noise on weekends. Mr. De Jong reiterated that nothing has happened with this project in 2.5 years, and at this point, the property is for sale, so it is clear that Mr. Rath has no intention of moving forward except to enhance the sale opportunity with respect to that SUP transferring to whoever the new owner is. He urged the Board to let the new owner address whatever plans he/she may have, if the property is to be sold. He stated it would be better for Mr. Rath to reapply and move forward appropriately with his entire plan for this property rather than a piecemealed one.

Mr. Parr then moved to approve the Extension of Special Use Permit #2018-05 Farm Winery Permanent Remote Retail Establishment and Restaurant with the conditions recommended by the Planning Commission, and Mr. Rutherford seconded the motion. There being no further discussion, Supervisors voted (2-2-1) by roll call vote to disapprove the motion with Mr. Reed and Mr. Harvey voting No and Mr. Barton abstaining due to not feeling that he knew enough about the history of the project.

#### B. Virginia Department of Health Office Relocation

Mr. Carter noted that Dr. Bonds, the regional medical director, is present and may assist with any questions the Board may have. He added that this subject was carried forward from the January meeting and pertains to consideration of the use of the County's property at Callohill Drive for relocation of the local Health Department offices. He stated that for the past 12-18 months, the Virginia Departments of General Services (DGS) and Health (VDH) have been working to relocate the Nelson County VDH office, which is currently located in the Blue Ridge Medical Center (BRMC). BRMC has given notice to VDH that it must relocate by 5-31-20, and BRMC is not amenable to extending the lease any longer. He noted that DGS has solicited proposals from interested parties to provide a site for relocating the local VDH office but, to date, a new location has not been determined. Mr. Carter stated that the three options for consideration of the use of the County's property are:

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1. Reconfigure the existing maintenance building
2. Construct a new facility for either the Health Department or in combination with the local Department of Social Services (DSS)
3. Using the rear of the maintenance facility site as the location for a modular structure

Mr. Carter noted that a report has been provided to the Board that was drafted in January from Architectural Partners on the feasibility of each of the three considerations, but the Board had deferred any action, and Staff is requesting input on one of the three uses for the County's property. He added at this point, with the May 31<sup>st</sup> deadline soon approaching, the modular option is probably the best time-wise, but it could still take 6-9 months minimum. He noted that the overall scope would be about 5,000 square feet, and it's been difficult to locate a suitable property in Nelson to date.

Mr. Harvey noted that he is not in favor of using modular buildings. Mr. Carter stated that if the Board is amenable, Staff can continue to work towards finding at least a temporary location, which may not be exactly suitable as far as space needs and how it's configured, but it would enable the Board to seriously sit down and look at this financially with respect to construction of a new facility for the Health Department, the Health Department and DSS, or County facilities overall.

Mr. Rutherford asked Mr. Carter if he has a suggestion for a temporary location. Mr. Carter stated he is not sure, but Staff has reached out to the Heritage Center but has not heard back. Mr. Rutherford noted that JABA in the Nelson Center has some space they may be able to share, and Mr. Carter noted that Dr. Bonds has indicated that she has spoken to the Nelson Center, and there is no space there for a temporary location.

Mr. Barton asked how much clinical space is needed. Dr. Bonds stated that currently, they have 4 exam rooms that they use for clinical services, and if they were to go into a temporary space, it would need to have at least 2 clinical spaces. She added that they would need to have room for their vaccine refrigerator and freezer and a separate laboratory area to process specimens. Also, the environmental health offices must have sufficient storage capacity and processing capacity for all of the permits and vital records, and there is a certain amount of equipment storage they must have.

Mr. Parr asked about the turnaround time for a modular building. Dr. Bonds stated it could be 6-9 months or even a year, depending on the company's backlog. She noted that they will not enter into a lease agreement until they have an existing land use agreement.

Mr. Reed asked if this is predicated on the County providing the land for the Health Department. Dr. Bonds stated no, and because they are a State agency, she cannot enter into an agreement with anybody, and it's actually the Bureau of Real Estate Services in the General Services group who has been looking for appropriate options for housing the Health Department.

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C. Request for Pump & Haul Permit – Shenandoah Valley Soaring Inc.

Mr. Carter stated that the consideration is for the Board to authorize the request of the Shenandoah Valley Soaring, Inc. for a pump and haul permit. He noted that the County does hold a current pump and haul permit with the Department of Health, and if the Board endorses this request, the Health Department would review a series of information from the soaring club and if it's consented to, the club would be added to the County's permit. To date, the soaring club has done geotechnical analysis of its property, and it's not suitable for a traditional drain and septic system. They have looked at alternatives proposed by the Health Department, and those are not suitable either because of the underlying geology. Mr. Carter noted that they have proceeded with development of a tank system with some alarms that would enable them to ensure the wastewater wouldn't overflow into the environment. They have worked with a local septic company to haul the waste to a facility in Albemarle County. He added that everything is in line, but in order for the facility to have a pump and haul permit, the County as the locality, per State law, is the entity that holds that permit, and this requires the Board's endorsement, if they are amenable. Staff would then write a letter to the Health Department indicating the Board is amenable to incorporating the club into the pump and haul permit.

Mr. Rutherford asked about liability, and Mr. Carter stated that there would be an agreement the County would submit to the club that basically holds the County harmless from any liability.

Mr. Carter noted that per the information the club submitted, it would only be used every other weekend or so by about 10 participants in the club and annually generate about 2500-3000 gallons of wastewater and potentially 2-3 hauls per year to the regional wastewater treatment facility.

Mr. Reed noted that he spoke with Mr. Shingleton, Treasurer of the soaring club, and also Tom Eick with the Health Department, and they were certain that this is the best alternative.

Mr. Reed then moved to approve the request for the pump and haul permit by Shenandoah Valley Soaring Inc. and Mr. Rutherford seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

*The Board then returned to considering the Consent Agenda.*

Mr. Rutherford referred to the budget amendment resolution and asked Ms. McGarry about item II. A Transfer of Funds (Employee Benefits Within the Department). Ms. McGarry noted that these are transfers within certain departments who have some salary and benefit related lines that have excess in them and some have deficits. Mr. Rutherford then asked about item II. C Transfer of Funds (School Resource Officer Reserve) for \$87,161.00. Ms. McGarry noted this is salary and benefits for the remainder of the year. Mr. Harvey asked if we have all the school resource officers hired at this time, and Ms. McGarry stated no, and there is at least one vacancy.

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The Board decided to consider each resolution in the Consent Agenda separately.

Mr. Rutherford then moved to approve Resolution **R2020-08 Minutes for Approval** with Mr. Reed's earlier amendment and Mr. Parr 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 R2020-08  
NELSON COUNTY BOARD OF SUPERVISORS  
APPROVAL OF MINUTES  
(January 14, 2020)**

**RESOLVED**, by the Nelson County Board of Supervisors that the minutes of said Board meeting conducted on **January 14, 2020** be and hereby are approved and authorized for entry into the official record of the Board of Supervisors meetings.

Mr. Rutherford then moved to approve Resolution **R2020-09 Budget Amendment** and Mr. Reed 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 R2020-09  
NELSON COUNTY BOARD OF SUPERVISORS  
AMENDMENT OF FISCAL YEAR 2019-2020 BUDGET  
NELSON COUNTY, VA  
February 11, 2020**

BE IT RESOLVED by the Board of Supervisors of Nelson County that the Fiscal Year 2019-2020 Budget be hereby amended as follows:

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

<u>Amount</u>	<u>Revenue Account</u>	<u>Expenditure Account</u>
\$5,567.00	3-100-003303-0026	4-100-033010-3002
<b>\$5,567.00</b>		

**II.A Transfer of Funds (Employee Benefits Within the Department)**

<u>Amount</u>	<u>Credit Account (-)</u>	<u>Debit Account (+)</u>
\$120.00	4-100-012090-2002	4-100-012090-1001
\$1,692.00	4-100-012090-2005	4-100-012090-1001

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\$952.00	4-100-012130-2005	4-100-012130-1001
\$1,102.00	4-100-012150-2001	4-100-012150-1001
\$3,012.00	4-100-012150-2005	4-100-012150-1001
\$396.00	4-100-012180-2005	4-100-012180-1001
\$4,526.00	4-100-013020-2005	4-100-013020-1001
\$34,103.00	4-100-021010-3016	4-100-021010-1001
\$2,585.00	4-100-021010-3016	4-100-021010-2001
\$6,720.00	4-100-021010-3016	4-100-021010-2005
\$437.00	4-100-021010-3016	4-100-021010-2006
\$240.00	4-100-021010-3016	4-100-021010-2009
\$1,954.00	4-100-021060-2005	4-100-021060-1001
\$30,458.00	4-100-022010-1007	4-100-022010-1001
\$5,425.00	4-100-032010-2005	4-100-032010-1001
<u>\$6,904.00</u>	4-100-034010-2005	4-100-034010-1001
<b>\$100,626.00</b>		

**II. B Transfer of Funds (Employee Benefits Line Non-Departmental)**

<u>Amount</u>	<u>Credit Account (-)</u>	<u>Debit Account (+)</u>
\$7,408.00	4-100-091030-5616	4-100-012010-1001
\$2,304.00	4-100-091030-5616	4-100-012010-2002
\$3,128.00	4-100-091030-5616	4-100-012090-1001
\$3,928.00	4-100-091030-5616	4-100-012130-1001
\$1,099.00	4-100-091030-5616	4-100-012150-1001
\$7,542.00	4-100-091030-5616	4-100-012180-1001
\$284.00	4-100-091030-5616	4-100-013020-1001
\$5,028.00	4-100-091030-5616	4-100-013020-1003
\$198.00	4-100-091030-5616	4-100-021060-2009
\$1,840.00	4-100-091030-5616	4-100-022010-2001
\$735.00	4-100-091030-5616	4-100-022010-2011
\$11,982.00	4-100-091030-5616	4-100-031020-1001
\$12,397.00	4-100-091030-5616	4-100-031020-2002
\$2,005.00	4-100-091030-5616	4-100-031020-2011
\$10,105.00	4-100-091030-5616	4-100-032010-1001
\$7,233.00	4-100-091030-5616	4-100-032030-1001
\$465.00	4-100-091030-5616	4-100-032030-2001
\$699.00	4-100-091030-5616	4-100-032030--2002
\$95.00	4-100-091030-5616	4-100-032030-2006
\$162.00	4-100-091030-5616	4-100-032030-2011
\$345.00	4-100-091030-5616	4-100-035010-2011
\$2,701.00	4-100-091030-5616	4-100-042030-1001
\$6,763.00	4-100-091030-5616	4-100-042030-1003
\$11,279.00	4-100-091030-5616	4-100-043020-1001

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\$1,004.00	4-100-091030-5616	4-100-043020-2002
\$764.00	4-100-091030-5616	4-100-043020-2005
\$147.00	4-100-091030-5616	4-100-043020-2006
\$646.00	4-100-091030-5616	4-100-043020-2011
\$3,022.00	4-100-091030-5616	4-100-071020-1001
\$750.00	4-100-091030-5616	4-100-071020-1003
\$666.00	4-100-091030-5616	4-100-071020-2005
\$6,276.00	4-100-091030-5616	4-100-081020-1001
\$2,063.00	4-100-091030-5616	4-100-081020-1003
<u>\$600.00</u>	4-100-091030-5616	4-100-081020-2001
<b>\$115,663.00</b>		

**II. C Transfer of Funds (School Resource Officer Reserve)**

<u>Amount</u>	<u>Credit Account (-)</u>	<u>Debit Account (+)</u>
<u>\$87,161.00</u>	4-100-999000-9910	4-100-031020-7015
<b>\$87,161.00</b>		

**II. D Transfer of Funds (Recurring Contingency Reserve)**

<u>Amount</u>	<u>Credit Account (-)</u>	<u>Debit Account (+)</u>
<u>\$22,000.00</u>	4-100-999000-9901	4-100-091050-7097
<b>\$22,000.00</b>		

*Mr. Harvey then continued public comments.*

Charlie Wineberg, Afton VA

Mr. Wineberg read aloud the following prepared statement:

Good Afternoon, I'm Charlie Wineberg living on Ennis Mountain Road, Mr. Harvey's district.

As some of you know, I'm a real estate agent. I had the old Pharmacy, or White House, on Front Street listed and had a call to show it. I met a retired business woman at the property and she told me she grew up here in Nelson and was returning and looking for opportunities to stay busy. I recounted how I'd been told the Soda Fountain in the Pharmacy was a popular hang out, and did she ever go there. No she replied, we weren't allowed. And I realized what she meant, she was African American. As a Realtor I hadn't thought of her race, and was embarrassed to not have a sufficient grasp of history to have stumbled into asking that question.

Later on, I was selling a different property in Lovingson. I like research and traced the deed back to the 1949 inception of the Green Acres subdivision. In Deed Book 81, here in the Courthouse, are the (quote)

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"restrictions, easements and rights on, against and for" the subdivision. It begins {quote} "KNOW ALL MEN BY THESE PRESENTS" and lists 8 items. Number 7 states in part (quote) "That no lot in said subdivision (sic) shall be owned, nor the buildings on any of said lots occupied, by any person not a member of the Caucasian race...". That same paragraph also prohibits hogs or cattle. This document contains the names of many notable Nelsonians, so notable some didn't need their full names on this legal document. P. D. Payne Jr., H. D. Mawyer and their wives are the owners. Robert Goad was the Notary and Mr. Embrey was the Clerk of the Court. It's embarrassing to tell prospective buyers that restriction is part of the history of their new property..

But in each instance, the folks felt they were exercising their Rights. I know you know, as upholders of the Constitution, that the Supreme Court has the final say over what's Constitutional. Segregation policies were brought forward to the Court and their 1954 decision in Brown vs the Board of Education of Topeka Kansas ruled segregation in public schools unconstitutional. What did the good people of Virginia do? They formed a Special Interest group, "Defenders of State Sovereignty and Individual Liberties", to promote their interpretation of their rights. That has a familiar ring, not unlike "Virginia Citizens Defense League."

Then their elected representatives in Richmond decided States Rights overshadowed the Constitution and adopted an Interposition Resolution stating the Federal Government had no authority to mandate what was Constitutional. Also sounds familiar. The end result: Virginia adopted Massive Resistance, a plan designed so that Virginians could hold onto their perceived 'rights' in opposition to the Supreme Court's rulings. That divided Virginia and Virginians for years. Eventually things settled down and we have a better, stronger American society as a result. But it's also embarrassing history for me.

After the last election a wave of discontent at the results swept Virginia. Fear at being at the effect of Legislation proposed in Richmond led some Virginian's to decide their interpretation of the Constitution determined what is or isn't Constitutional. And as you know, having taken the your oath to uphold the Constitution, the Constitution names the Supreme Court as the final say as to what's Constitutional and from those decisions, the rule of law to follow in the United States. In its often cited 2008 decision in Heller vs DC, the Supreme Court ruled that all US citizens have the right to bear arms. But speaking for the majority, Justice Scalia writes:

(quote) "There seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms. Of course the right was not unlimited, just as the First Amendment's right of free speech was not ...". Justice Scalia was an originalist and textualist, not one to give much credence to interpreting the Framers intent, in other words, a champion of Conservative thought.

Reinforcing that very strong statement he writes: {quote} "Like most rights, the Second Amendment right is not unlimited."

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This is at odds with what many citizens think is true. But the Framers didn't intend, or even trust, for every shop keeper and farmer, or local Board of Supervisors, to be adjudicators of the Constitution.

He goes on {quote} "It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose: For example, concealed weapons prohibitions have been upheld under the Amendment or state analogues. The Court's opinion should not be taken to cause doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualification on the commercial sale of arms. *Miller's* holding that the sorts of weapons protected are those 'in common use at the time' finds support in the historical tradition of prohibiting the carrying of dangerous and unusual weapons"

AS though he foresaw December's Nelson County Board of Supervisors meeting, Justice Scalia continued: (quote) "Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19<sup>th</sup> century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." These are words that the last Board could have read aloud at the meeting where Resolution R2019-49 was proposed.

If it isn't clear enough that the Court believes that the Second Amendment isn't absolute, we can also thank Justice Scalia for stating: (quote) "We also recognize another important limitation" ANOTHER he says "on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those 'in common use at the time.' We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapon'".

Elected officials shouldn't pass up a chance to educate citizens what it means to take an oath to uphold the Constitution. And December 2019 was a perfect opportunity for the members of that Nelson County Board of Supervisors to cite what the Supreme Court states is Constitutional as regards to the Second Amendment. Instead it decided to fan the flames of fear and divisiveness. The last Nelson County Board of Supervisors passed a Resolution in Support of Second Amendment Rights, seemingly without knowing much about those rights. Since there hasn't been a move by Richmond to abridge the right to bear arms, or as I've read, a proposal that would fly in the face of the Supreme Court's position on the Constitutional right to limitations on the Second Amendment, then the Resolution passed by the last Board of Supervisors will likely live on to be as embarrassing as the Covenants and Restrictions for Green Acres, both forever recorded here in the Courthouse

It is my hope that this Nelson County Board of Supervisors will act in a more thoughtful and less provocative manner than the last.

Thank you.

**V. REPORTS, APPOINTMENTS, DIRECTIVES AND CORRESPONDENCE**

A. Reports

1. County Administrator's Report

**A. BR Tunnel Project:** The project team is currently working to obtain re-approvals of state/federal regulatory requirements (e.g. environmental, right of way, right of entry, etc.) from VDOT and the Federal Highway Administration (FHWA) to enable minor areas of realignment of the western trail to be approved. The realignment areas provide for better constructability, project cost savings, improved trail walkability and benefit to trail maintenance. Construction of Phase 3, which will complete the BR Tunnel Project, continues while the re-approvals are in process. The project's completion date of 6-30-20 will likely be delayed due to the necessity to re-comply with regulatory requirements.

**B. Nelson Memorial Library Project:** Architectural Partners (J. Vernon) Field Report No. 08 is attached hereto. The project is proceeding per plan and schedule. The substantial completion date is June 15, 2020.

**C. Lovington Revitalization:** The TJPDC facilitated application to UVA's School of Architecture (and Planning) to utilize graduate students to assist with completion of the planning grant project was not approved. Subsequently, at the project's 1-21 meeting it was agreed that TJPDC would retain planning consultant services to assist with project completion with County and TJPDC staff working together on the project's economic restricting plan. The project is scheduled for completion by 6-30-20.

**D. Piney River Water System – GAC Project:** The Notice of Project Award, including the project's contract documents, were issued to Waco, Inc. on 1-21-20. The Notice to Proceed was also issued on 1-21 and provides for project initiation on 2-21-20. The project contract denotes Substantial Completion within 180 days of 1-21 and final completion within 210 days of 1-21. Waco, Inc. is currently ordering the GAC system components and will advise the County when it is positioned for the project's initial project meeting and actual project implementation. The project will address compliance with VDH water quality requirements.

**E. Tye River Water System:** Bowman Consulting Group, the County's project engineer, is currently completing project design drawings for submittal to the VA Department of Health (Office of Drinking Water) to provide for VDH's approval of the project. The project entails replacement of the current elevated water storage tank with a series of inline pressure vessels. A schedule for project completion is pending Bowman's submittal to VDH and VDH approval of the project.

**F. FY18-19 Comprehensive Annual Financial Report (CAFR/Audit):** The draft CAFR/Audit Report for Fiscal Year 18-19 was received from Robinson Farmer Cox the week of 2-3. County and School Division staff are reviewing the draft report for consistency. County staff are also in process with

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completion of the management report, which is summary status of fiscal year 2019-20 and outcomes related thereto.

**G. FY20-21 Budget:** Administrative review of the draft FY20-21 Budget is in process. Staff anticipates the initial presentation of the draft FY21 Budget to be conducted at a work session in late February or early March.

**H. Work Session with School Administration:** County and School Division administration staffs (Eagle, Irvin, McGarry and Carter) met on 2-6 to confer, specifically, on the respective status of the County's and Division's FY20-21 budget documents. The meeting agenda prepared by Division staff included consideration of other subjects (capital improvements, communication and future meetings). With respect to FY 21 budget statuses, Division staff did not provide any specific details, noting that School Board approval of the Division's FY 21 Budget was anticipated in March. County staff related that the County's draft FY 21 Budget would likely be completed within the ensuing two weeks (last week of February) at which time another meeting could be scheduled to share information with the Division.

## 2. Board Reports

Mr. Harvey asked Mr. Parr if he went to the emergency services council meeting. Mr. Parr replied that he was unaware that a meeting took place. Mr. Harvey stated it is the third Tuesday of every month, and Mr. Parr took note.

### Mr. Rutherford:

Mr. Rutherford noted that the TJPDC had a great meeting, and Ms. Bishop also attended. He added that they had some conversations about what is foreseen in our area related to affordable housing.

### Mr. Reed:

Mr. Reed had no report.

### Mr. Parr:

Mr. Parr had no report.

### Mr. Barton:



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

#### D. Directives

Mr. Rutherford referenced a letter received from the Vietnam War and Foreign Conflicts Foundation about the topic of finding a location for their museum. He noted that they are not soliciting any funding, but are hoping the Board will give them an endorsement for them to build in the Colleen Business Park. He noted that the Central Virginia Electric Cooperative (CVEC) and their Board essentially control the decision and then asked if the Economic Development Authority has a say as well. Mr. Carter stated no, and the County, Service Authority, and CVEC have input on the subject, but CVEC makes the final decision.

Mr. Reed noted that the history of the Vietnam War was not a unique source of pride for him and many people, and he would not vote in favor of this.

Mr. Harvey stated that this museum is a teaching experience and hands-on.

Mr. Barton spoke of the feeling between the soldiers who went to Vietnam and the people who did not go. He noted there was a connection there that is not fully understood and concurred with Mr. Harvey's comments. He noted that the soldiers who came back from Vietnam were treated well and weren't looked down on because they were the ones who paid the price of that war. He added that we need to understand how conflicts undermine us as a society. He stated he would support this because we learn from difference of opinions.

Mr. Harvey noted that he does not think the soldiers who came back from Vietnam were well received. He added that this museum is not only about Vietnam, but rather all of the different conflicts up to the ones today.

Mr. Rutherford then moved to endorse the Vietnam War and Foreign Conflicts Foundation to locate their museum in the Colleen Business Park and Mr. Parr seconded the motion. Mr. Reed thanked Mr. Barton for being at this meeting today and for speaking out on this, adding that he is moved by the opportunity that this could present. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

#### **VI. OTHER BUSINESS (AS PRESENTED)**

Mr. Harvey then invited Dr. Eagle to address the Board.

Martha Eagle, School Division Superintendent

February 11, 2020

Dr. Eagle noted that the School Division has started their budget meetings, and her Staff has met with Mr. Carter and Ms. McGarry. She referred to a recent letter shared with the Board concerning some thoughts from the School Board and wanting to talk further. She noted that she is looking forward to the next couple of months and hopefully making it a positive experience.

Mr. Harvey then invited a constituent to come up and speak about an issue that had been introduced during the January meeting.

Ellen McGinnis Gatling

Ms. Gatling spoke of an incident that occurred on New Year's Eve. She was getting ready to go to bed and heard dogs barking behind her house. She went outside and found a black lab mix tearing up one of her cats. She was able to separate the animals and brought her cat to the emergency vet in Charlottesville; unfortunately, her cat did not make it. She found out that one of her neighbors owns this dog, and the dog is often let out to run. She went to the owner's house and spoke to him, and he informed her that there is no leash law. She added that later, she found out that after this dog left her house that night, the dog was out all night barking at a neighbor's house. She asked the Board to consider meeting the people of Nelson County halfway and at least have a curfew for animals being on a leash and not being let out in the middle of the night to run all night long. She noted that there was another dog running with the black lab mix that night, and whenever two dogs get together, they get into a pack mentality. She added that the dog owner lives in Lodebar Estates, which is a subdivision. Ms. Gatling noted there is a leash law in Stoney Creek and Wintergreen and asked why there is not one in Lodebar. She reiterated that her cat was killed on her property.

Mr. Harvey noted that this subject has been looked at many times, but he would be glad to look at it again.

Mr. Reed mentioned that it was April of 2018 when they last had a public hearing on an ordinance concerning this, and at that time, it was tabled. He added there was an addendum in the minutes that said they would take the subject up again sometime.

## **VII. ADJOURNMENT (AN EVENING SESSION WILL NOT BE CONDUCTED)**

At 4:53 PM, Mr. Rutherford moved to adjourn and continue the meeting until Thursday, February 20, 2020 at 2:00 PM and Mr. Parr 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.