

June 11, 2019

Virginia:

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

Present: Jesse N. Rutherford, East District Supervisor
Thomas D. Harvey, North District Supervisor – Vice Chair
Ernie Q. Reed, Central District Supervisor
Thomas H. Bruguiera, Jr. West District Supervisor
Larry D. Saunders, South District Supervisor – Chair
Stephen A. Carter, County Administrator
Grace Mawyer, Administrative Assistant/Deputy Clerk
Candice W. McGarry, Director of Finance and Human Resources

Absent: None

I. CALL TO ORDER

Mr. Saunders 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. Rutherford led the Pledge of Allegiance

II. CONSENT AGENDA

Mr. Rutherford moved to approve the Consent Agenda 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 resolutions were adopted:

- A. Minutes for Approval (**R2019-19**)

**RESOLUTION R2019-19
NELSON COUNTY BOARD OF SUPERVISORS
APPROVAL OF MINUTES
(April 9, 2019)**

RESOLVED, by the Nelson County Board of Supervisors that the minutes of said Board meetings conducted on **April 9, 2019** be and hereby are approved and authorized for entry into the official record of the Board of Supervisors meetings.

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B. FY 18-19 Budget Amendment (**R2019-20**)

RESOLUTION R2019-20
NELSON COUNTY BOARD OF SUPERVISORS
AMENDMENT OF FISCAL YEAR 2018-2019 BUDGET
NELSON COUNTY, VA
June 11, 2019

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>
\$25,757.00	3-100-004101-0001	4-100-043020-8101
<u>\$7,546.00</u>	3-100-001901-0015	4-100-012130-5420
\$33,303.00		

II. Appropriation of Funds (School Fund)

<u>Amount</u>	<u>Revenue Account</u>	<u>Expenditure Account</u>
\$199,400.00	3-205-004105-0001	4-205-066100-9305

III. Transfer of Funds (Non-Recurring Contingency)

<u>Amount</u>	<u>Credit Account (-)</u>	<u>Debit Account (+)</u>
\$5,333.00	4-100-999000-9905	4-100-21010-1009
\$20,000.00	4-100-999000-9905	4-100-42030-3016
\$7,600.00	4-100-999000-9905	4-100-43020-5100
\$5,584.00	4-100-999000-9905	4-100-43020-8002
\$7,970.00	4-100-999000-9905	4-100-43020-3006
\$10,257.00	4-100-999000-9905	4-100-43020-5407
<u>\$199,400.00</u>	4-100-999000-9905	4-100-093100-9206
\$256,144.00		

IV. Transfer of Funds (FY19 Employee Salary/ Benefit Adjustment)

<u>Amount</u>	<u>Credit Account (-)</u>	<u>Debit Account (+)</u>
\$1,060.00	4-100-91030-5616	4-100-13020-1001
\$105.00	4-100-91030-5616	4-100-13020-2002
<u>\$5,242.00</u>	4-100-91030-5616	4-100-21010-3016
\$6,407.00		

C. Proclamation **P2019-02** – Designation of July as Park and Recreation Month

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**PROCLAMATION P2019-02
NELSON COUNTY BOARD OF SUPERVISORS
DESIGNATION OF JULY AS PARK AND RECREATION
MONTH**

WHEREAS, parks and recreation programs are an integral part of communities throughout this country, including Nelson County; and,

WHEREAS, our parks and recreation are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region; and,

WHEREAS, parks and recreation programs build healthy, active communities that aid in the prevention of chronic disease, provide therapeutic recreation services for those who are mentally or physically disabled, and also improve the mental and emotional health of all citizens; and,

WHEREAS, parks and recreation programs increase a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and,

WHEREAS, parks and recreation areas are fundamental to the environmental well-being of our community; and,

WHEREAS, parks and natural recreation areas improve water quality, protect groundwater, prevent flooding, improve the quality of the air we breathe, provide vegetative buffers to development, and produce habitat for wildlife; and,

WHEREAS, our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and,

WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month; and,

WHEREAS, Nelson County recognizes the benefits derived from parks and recreation resources.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF NELSON COUNTY, VIRGINIA that July is recognized as Park and Recreation Month in Nelson County.

III. PUBLIC COMMENTS AND PRESENTATIONS

A. Public Comments

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

B. VDOT Report

Mr. Robert Brown of VDOT noted they have mowed 29 recently and it's looking a lot better. He added they are about halfway done with mowing secondary routes. He stated the Colleen Access Project is getting ready to start; the project has a completion date of October 4th. Regarding the Muddy Creek Project on 29, he noted they are hoping to eliminate that switchback and get traffic back on all four lanes in the next few days. The completion date will be fairly soon. He then noted they will be finishing up the paving on Route 6 this week. Also, they are milling on 29 currently and should start putting the pavement down next Monday. He added they should be finishing up paving Prairie Lane soon.

Supervisors then discussed the following VDOT issues:

Mr. Harvey:

Mr. Harvey asked what is going on at Route 6 and added it's a rough road. Mr. Brown noted they had to do a lot of deep milling along the edges and added they will start laying down the top surface tonight. They should finish that by the weekend.

Mr. Rutherford:

Mr. Rutherford referred to the recent unfortunate event in Schuyler with the loss of a young life in the quarries. He asked if VDOT could confer with the group in Culpeper about putting up some more no parking signs along Schuyler Road near Quarry Hill Road. Mr. Brown stated they will work to do this and do whatever they can to help the situation but noted that unless the property owners prohibit people from using their property, the property/quarries will still be used.

Mr. Bruguieri:

Mr. Bruguieri noted that he and Mr. Brown plan to ride around on Friday and look at some roads.

Mr. Reed:

Mr. Reed had no VDOT issues to discuss.

Mr. Saunders:

Mr. Saunders had no VDOT issues to discuss.

IV. NEW & UNFINISHED BUSINESS

A. Commonwealth Attorney – Employee Compensation

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Mr. Carter noted that an outcome of the 2019 General Assembly Session was a mandate to local governments to fund an additional Assistant Commonwealth Attorney's position for each 1-75 body cameras used in individual jurisdictions. He added this was discussed with the Board during the development of the FY20 budget, and the Board allocated just over \$50,000 per Mr. Rutherford's proposal in lieu of a full-time assistant position that it'd be a part-time position and that specific employees within his office have salary adjustments. Subsequently, when the State budget was finished, Mr. Rutherford has applied for new positions based on caseload, and he was funded by the State Compensation Board a new Assistant Commonwealth Attorney position, and the Secretary's position which has been, to date, entirely funded by local funds, is now funded with Compensation Board funding. An outcome of that decision is that now, those two positions will be State funded with some local support. Mr. Carter stated that the Compensation Board also issued a memo to Mr. Rutherford and the County Administrator's Office saying that an agreement between the two offices is necessary to show the State that the locality is addressing this mandate. He noted Staff has worked with Mr. Payne to develop an agreement, which is included in the Board packets, and Mr. Rutherford came back and said in lieu of the part-time position, he still wanted to fund four of the five positions excluding his with additional compensation, including 2 of those positions with 3% increases next year if the Board approves the budget. He stated to enable that to happen, in the agreement to be processed back to the State by July 1st, the Board would have to adopt the budget and in July, Staff would bring back a budget amendment to add about \$7,235 to make Mr. Rutherford's request for funding complete. He added that amount would be \$58,195; about \$51,000 is included in the budget now but Staff would have to add the addition to provide the compensation that he has requested in lieu of any other means to address this body camera mandate.

Mr. Bruguiere asked if the Commonwealth Attorney's office already has a part-time position. Mr. Carter stated that the office has one full-time Assistant Commonwealth Attorney, an Administrative Assistant, both of which are funded by the Comp Board, and a Secretary position, which after July will also be funded by the Comp Board. In addition to that, the State has funded another Assistant position for his office, which will be effective July 1st. So, the office will have the Commonwealth Attorney, two Assistant attorneys, a Secretary, and an Administrative Assistant. Mr. Carter reiterated that during the budget work session, to address the mandate, Mr. Rutherford initially proposed just a part-time position being added at the County's expense and then the increase of the Assistant Attorney's position and the Secretary and Administrative Assistant's compensation adjustments plus two of those being further adjusted after July 1st by 3%.

Mr. Saunders asked if that basically means those employees are getting two raises, and Mr. Carter stated yes, if the Board approves this.

Mr. Harvey asked if there would be a savings to the County if the positions go to the Comp Board, and Mr. Carter stated it's probably closer to a wash the way it was developed initially with the Assistant position being funded by the County and these adjustments to the 3 employees' compensation.

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Mr. Carter noted that the draft agreement is included in the Board packets, and Staff just needs authority from the Board to sign the agreement to send back to the State by July 1st.

Mr. Harvey asked if this would affect any of the other Constitutional Offices' workloads, and Mr. Carter stated no.

By consensus, the Board authorized Staff to sign the agreement.

B. Adoption of FY20 County Budget – All Funds (R2019-21)

Mr. Carter noted that Staff has prepared a resolution for adoption of the annual County budget for July 1, 2019 – June 30, 2020. It includes all fund groups.

Mr. Bruguiere asked if the School Resource Officers are in place, yet. Mr. Carter stated two out of the four are in place. He added Staff has just received notice that the grant request for the middle school SRO has been approved, so that's about \$66,000 that will fund that position.

Mr. Reed asked if the Board can propose changes to the budget now, without another public hearing. Mr. Carter stated yes, as long as an increase is not over 1%.

Mr. Bruguiere asked if the library expansion could be funded from the General Fund rather than financing it. Mr. Carter stated that Staff checked with the Virginia Resources Authority (VRA) on that; it can be done but probably with more penalty.

Mr. Rutherford noted that regarding the schools' budget situation, the insurance conversation should be had at some point, as far as what they're doing to resolve that. He added at this point, he is open to leaving the budget as it is and hopes going forward to improve relations with the School Board.

There being no other questions or discussion, Mr. Harvey moved to approve the adoption of FY20 County Budget, Resolution **R2019-21** and Mr. Bruguiere 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.

C. Appropriation of FY20 County Budget – All Funds (R2019-22)

Mr. Carter noted that State law requires appropriation of funds before they can be expended, so Staff has developed a resolution to appropriate the various fund groups within the FY20 budget.

Mr. Harvey moved to adopt resolution **R2019-22**, Appropriation of FY20 County Budget and Mr. Bruguiere seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

V. REPORTS, APPOINTMENTS, DIRECTIVES AND CORRESPONDENCE

A. Reports

1. County Administrator's Report

A. BR Tunnel Project: The Phase II Project is proceeding to completion (late July to mid-August). Current focuses include grouting, which provides for long term structural integrity, construction of the parapet wall above the east portal and brick replacement and repointing. County staff are in process with submitting project information to VA-DCR to provide for the use of \$242,000 in Recreational Trails Program funding the County was previously awarded. With the balance of VDOT-TAP funding and the additional DCR-RTP funding, the project engineers have commented that they believe the full restoration of the Tunnel will be completed.

Mr. Carter noted Staff has processed two change orders in the last couple weeks to VDOT. He stated there is more extensive grouting than was anticipated, but that will provide for long-term structural stability of the tunnel. He noted the funding is there to do that.

Additionally, the Phase III Project (western trail and parking lot) has been approved for bidding by VDOT and FHWA. Advertisement of the Phase III Project is anticipated by not later than the third week of June.

Mr. Carter noted that Staff bid that project in the Lynchburg paper this past Sunday and bids are due July 17th. Also, today, Staff is sending out a package of information to the Department of Conservation and Recreation in an effort to draw down about \$242,000 in recreational trails grant funding that will go towards Phase II. He added there will be a pre-bid meeting for Phase III on June 20th.

Mr. Bruguiere asked if it could be another year before funding is obtained for the western trail and parking lot. Mr. Carter stated that the funding is already in place; what happens is the Transportation Board approves the funding usually in the spring, and the engineers had to put together the construction manual with all the details, such as construction drawings and all the federal and state requirements. He noted it's probably taken 90+ days since Staff submitted the project manual to VDOT to get approval. He reiterated that the funding is there, and once authorized to bid it, the project will go forward if the bids come in within funding. He stated if we are able to get a successful bid in July, this project should be overall completed by sometime next year and possibly this time next year.

B. Broadband: The final network transfer agreement (Fiber Backbone Transfer Agreement) has been approved and signed by all of the agreement's signatory entities (BOS, NCBA, CVSI, EDA). The agreement and supporting schedules was mailed with cover letter to federal NTIA and state DHCD on Tuesday, May 28. A timeframe for federal and state approval of the local network's transfer to CVSI is not established.

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C. Library Project: A Notice of Award was sent on behalf of the County by Architectural Partners to Jamerson-Lewis by letter dated May 16 and the project agreement. The project contract was signed on May 22nd and a Notice to Proceed is in process with a project commencement date, per discussion with J-L and Architectural Partners, of June 17, 2019. Jamerson-Lewis must complete the project within 12 months of 6-17-19.

D. Lovingson Revitalization: The project committee met on May 21st with consensus for TJPDC to solicit UVA, VA Tech and JMU community outreach or related programs for assistance with the planning grant project. The premise is a team from one of the universities would assist in development of the revitalization plan for Lovingson.

E. Closeout of Groundwater Monitoring Program: The County received notice by letter dated May 21st (copy attached) from VA-DEQ providing for the “Termination of Post-Closure Activity (TPCA)” and to enable the County to request voluntary revocation of the permit for the closed landfill (SWP328). Next steps include notice to adjacent property owners of the termination of post closure care, a 30-day comment period, procedures for requesting a public hearing and a location(s) for the public to review the TPCA documents. This is a major milestone. Nelson County will be one of, possibly, only two VA localities that will be removed from post closure care requirements by VA-DEQ.

F. FY 19-20 Budget: Approval of the FY19-20 Budget and appropriation of budgetary funds are included within the June 11 meeting agenda.

G. Piney River Water System (TTHM CAP): Bowman Consultants, the County’s consulting engineer, submitted plans and specifications on 5-29-19 to the VA Department of Health, Office of Drinking Water (Lexington), as required by the Consent Order with VDH, for the construction/installation of the inline Granular Activated Carbon system designed to facilitate compliance with TTHM regulatory requirements. The current Pilot Program will continue into the fall to provide for final decisions on the GAC system.

H. Regions 2000 Service Authority: The Authority approved its FY19-20 Budget in session on May 22nd. The member tipping fee will remain at \$30.25 per ton. The Authority will meet again on June 12 to discuss the question of whether or not to accept waste from Bedford County via a contract agreement. Authority staff have projected that accepting Bedford County’s waste would reduce the operational life of the Authority’s Livestock Road Landfill (in Campbell County) by one year while having the potential benefit of reducing the member tipping fee by \$3.00 per ton+/- . The Livestock Road is currently projected to close in 2030 but due to the proposed construction of a private regional landfill in Cumberland County by County Waste, which could result in a loss to the Authority of an estimated 50,000 tons per year of commercial waste, the Livestock Road Landfill could continue to operate to 2033. Acceptance of Bedford’s waste would reduce this to 2032. The associated question is how excessive revenue from Bedford County would be utilized (either as increased distributions to Campbell County and Lynchburg City or for Authority operations).

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I. Norwood-Wingina Rural Historic District: Staff from VA-DHR (Marc Wagner) conducted a required project public meeting at 6 p.m. on May 16th in the former Board Meeting Room (County staff Carter and Mawyer attended the meeting) to provide for the submittal of the project's final report to the state Board of Historic Resources and State Review Board, which will meet at 9 a.m. on 6-20 at Sweet Briar College including approval consideration of the report and nominations for the NWRHD to be placed on the VA Landmarks Registry and, subsequently, on the National Register of Historic Places. Mr. Wagner noted during the meeting that DHR staff have a 90%+ approval rate.

J. Gladstone Depot Project (VDOT-Transportation Alternatives Program): County staff have begun work on the TAP pre-application due by July 1st for the Gladstone Depot Project.

K. Personnel: Ms. Dylan Bishop has been employed in the position of Director of Planning and Zoning. Dylan will begin work on July 8th.

Mr. Rutherford asked where the County is currently with recycling. Mr. Carter stated the County uses both Sonoco Products in Madison Heights and another entity that was previously called Cycle Systems. Most or all of the County's metals are taken to the other entity, and the County's plastics, cardboard, and mixed paper are taken to Sonoco. Sonoco has just implemented tipping fees for the recycling materials, so County Staff is tracking those expenses to report back to the Board in July. He noted the tipping fees are \$40 and \$60 versus \$30 and \$25 for solid waste. He added that to date, it doesn't look like the expenses the County is incurring are significant, but Staff will still report on this in July.

2. Board Reports

Mr. Rutherford:

Mr. Rutherford referred to the recent incident in Schuyler where a young man lost his life in a quarry. He noted he had a meeting in Schuyler a few days before the incident, and the number one topic for this group of about eight citizens was the quarries and the belligerent people going to those quarries throwing trash. He added he has been in correspondence with Albemarle County's Supervisor Liz Palmer as well as their law enforcement and also Nelson County's. He urged to get the word out to tell kids not to go to these quarries. He added that it needs to be figured out how to take down the online videos and blogs that are telling people all over the East Coast to go to these quarries. He noted they are all privately owned.

Sheriff David Hill was in attendance, and Mr. Bruguere asked him if those people trespassing get a summons. Sheriff Hill stated yes. He advised that he had been in touch with one of the property owners last summer. They had been posting No Trespassing signs, but trespassers were removing those signs. He noted that deputies had been giving warnings, but he has advised them that if they see a sign that is posted, to write them. He added that as of this week, close to 100 summons have been issued within the

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past two months. He noted that there have been many times that they have responded down there and the people have vacated. Sheriff Hill added that there is so much trash there in the quarries that they've become an eyesore. He assured his office is doing everything they can to try to help out and discourage that from happening.

Mr. Bruguire asked if letters could be sent out to the quarry landowners to see if they could post signs and facilitate cooperation. Sheriff Hill said that is an option and added that they plan to see if Albemarle can do extra patrols there. He noted an approach they may use is called directed patrolling, which, similar to DUI enforcement, has money set aside specifically for that type of patrol.

Sheriff Hill also noted that the main quarry people are going to is on 800, which is right off the side of the roadway, and there have been residents who have said they are unable to get to their homes because the roadway is being blocked. He stated that's when his office gets the phone calls.

Mr. Harvey suggested putting in a sign like they have at Crabtree Falls listing the number of fatalities there. Sheriff Hill stated it unfortunately still happens. He also noted he had no idea how slick that soapstone is until he walked up there with the leasee recently.

Mr. Rutherford noted beside this, other concerns in Schuyler are the drug situation and road maintenance.

Mr. Bruguire:

Mr. Bruguire noted that he had a conversation with the head forester in Buena Vista and found out that the fees at Crabtree Falls are going up from \$3 to \$5. There are some areas outside of Nelson where the fees are almost doubling. He stated he is unsure how they enforce this as it's just a voluntary box.

Mr. Rutherford asked if there has always been a fee at Crabtree Falls, and Mr. Bruguire stated no, but he's unsure how long the fee has been there.

Mr. Reed:

Mr. Reed congratulated Mr. Rutherford for being the new Vice-Chair of the Thomas Jefferson Planning District Commission (TJPDC). He stated he talked to some of the commissioners there about the transportation school bus study that we had hopes they could complete, but never happened. He stated it evidently never reached closure because even though they were able to get some comparisons with other counties, the data that they would need was so detailed and specific that trying to compare them beyond broad specifics would be beyond their ability. They expressed the same disappointment that they didn't have a better outcome.

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Mr. Reed noted he is looking forward to seeing a better relationship with the School Board in the future. He added there are some tools we have, especially to be able to have regular meetings and get-togethers with the School Board, both in formal and informal capacities.

Mr. Harvey:

Mr. Harvey noted the Planning Commission did not meet this past month.

Mr. Saunders:

Mr. Saunders had no report.

B. Appointments

Ms. Mawyer reviewed the following table:

(1) New Vacancies/Expiring Seats & New Applicants :					
Board/Commission	Term Expiring	Term & Limit Y/N	Incumbent	Re-appointment	Applicant (Order of Pref.)
Agricultural & Forestal District Advisory Committee	5/13/2019	4 Years/ 3 term limit	Andy Wright (T3)	Y	Agreed to 4th term
	5/13/2019	4 Years/ 3 term limit	Dr. Andre Derdeyn (T3)	Y	Agreed to 4th term
	5/13/2020	4 Years/ 3 term limit	Bill Halverson (T2)	N - resigned	None
	5/13/2019	4 Years/ 3 term limit	Bruce A. Vlk (T2)	N - resigned	None
	5/13/2019	4 Years/ 3 term limit	Chapin Wilson, Jr. (T3)	N - resigned	None
			Staff Member		
			Pam Campbell-Comm. Of Rev.		
			Thomas H. Bruguere, Jr.-BOS		
Nelson County Economic Development Authority	6/30/2019	4 Years/None	Mark B. Robinette	TBA	
			John Bruguere	TBA	
Nelson County Library Advisory Committee <i>Appointed by District</i>	6/30/2019	4 Years/None	Jane Strauss - Central District	TBA	
Piedmont Workforce Network Board-business repres.	6/30/2019	3 Years/None	Melanie Thigpen (UT)	TBA	
Nelson County Social Services Board	6/30/2019	4 Years/ 2 term limit	Tanya Stewart-South District (UT)	TBA	

Ms. Mawyer noted that there are still three vacancies on the Agricultural & Forestal District Advisory Committee, and she reached out to the people who had reached their 3 term limit. Two people did agree to serve another term, and one person did not want to continue to serve. She added there are also the two resigned seats. She spoke with Susan McSwain who said she would help be on the lookout for anybody who might be interested.

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Ms. Mawyer noted there are upcoming terms expiring on the EDA, Library Advisory Committee, Piedmont Workforce Network Board, and Social Services Board, and she has sent letters out to see if those people would like to be reappointed.

C. Correspondence

Mr. Carter noted that three letters were included in the Board packets. One is correspondence from Beth Cunningham and Mr. Rutherford requesting that Ms. Cunningham (Victim Witness Program) be relocated out of the Commonwealth Attorney's office due to the addition of staff in that office. He stated that Staff has been looking for a spot, but it has been somewhat difficult. He initially thought of moving her office to where Animal Control is, since they will be moving out to the shelter once the new facility is put in place for the officers. However, the Sheriff expressed concern that the public should not be back in that restricted area. Staff regrouped and spoke to Court Services about having Adult Probation co-locate with Court Services, which did not work out. He noted the Courthouse has one office where the Finance Staff was previously located, and it was Building Inspections prior to that. It is the first office on the left on the hall where the Treasurer's Office is located. He added that the assessors have been using that office when the County has general reassessment, and it has also been used for storage. But, besides the Magistrate's Office, this is basically the only possibility. He stated unless the Board has any concerns, this is where Staff proposes Ms. Cunningham's office to be relocated.

Mr. Carter noted that the County also did receive a request from CASA for office space, and he believes they could co-locate with the Victim Witness Program in the new office, if that works out.

Mr. Carter noted that Staff did follow up on the Board's directive to send notice to the owner of the property north of the Courthouse about the condition of that apple storage shed. The owner's response is included in the Board packets. He wrote that he is in the process of rebuilding that structure. Mr. Carter stated it will either get reconstructed or torn down, one way or the other. Mr. Saunders asked if there is a time limit, and Mr. Carter stated he would have to talk with Mr. Miller, the County's Building Code Official, about that.

Mr. Carter noted that lastly, included in the Board packets is a letter from Dr. Eagle dated May 31st, requesting approval to proceed with some of the school division's capital improvement projects:

- Repair of the Gymnasium Roof at Tye River Elementary School
- Resurfacing of the Track at Nelson County High School
- Replacement of Vehicles
- A facilities study of NCHS/Middle School Complex to include the location of a welding facility, brick and mortar concerns of the exterior brick façade of NCHS and parking lot and driveway pavement concerns of both school campuses

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He added that with approval of the budget and appropriation of the funds, there's about \$800,000 for capital improvements for the school division. He noted what was discussed during the budget work sessions was that the school division would present their projects for the Board's review and consent, then they would go to procurement, come back with those outcomes, and then the Board would allocate the funding.

Mr. Harvey noted there are no cost figures listed in the letter.

Mr. Carter stated there are four proposed initiatives noted in the letter, and Staff just needs direction on how to proceed so they can advise the school division.

Mr. Bruguiere suggested the school division get three bids for the repair of the gymnasium roof to start with, and then select one.

Mr. Carter asked if the Board is comfortable with all four things, and if so, they can proceed with procurement and report back.

Mr. Harvey questioned if these are all top priorities with all the maintenance improvements that need to be done.

Mr. Carter noted he followed up with Dr. Eagle about the replacement of vehicles, and she stated it would probably be two buses and two cars, subject to the School Board's decision. He added that he believes Dr. Eagle's intent was just to get ahead of this while schools are out.

By consensus, the Board agreed to have the school division obtain prices on the projects and bring them back for the Board to approve/turn down.

Mr. Rutherford had no correspondence.

Mr. Bruguiere had no correspondence.

Mr. Reed had no correspondence.

Mr. Saunders noted he recently talked with someone from the Rotary Club. They were having an emergency service talk at one of their monthly meetings, and two of their members made personal visits to the County's EMS officer to ask him to come to speak, and he did not show up. Also, the Sheriff was asked to come, and he did not show up either. Sheriff Hill, in attendance, stated this was a rescheduled event and he had planned to attend the original event.

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Mr. Carter noted he had another item to present. He stated Staff has run into difficulty with solar installations as they are not addressed in the zoning ordinance. To date, the planning staff and building department have been allowing installation of rooftop solar panels or in the yard as an accessory use, but now, the County is receiving requests for commercial installations, etc. so Staff is proposing to the Board a referral to the Planning Commission to develop a solar ordinance to be included in the zoning ordinance.

Mr. Rutherford asked if this is just for commercial, or for all solar installations. Mr. Carter stated it would be for all, both commercial and residential. He noted the purpose is to develop provisions on how this would all work. To date, the County would probably continue allowing the solar panels to be installed on residences as an accessory use, but there are instances where that is not the case, and there is nothing in the ordinance that would allow or not allow these solar farms, etc. to be authorized or not.

Mr. Bruguire asked what Albemarle County does, as there is a privately owned solar farm in Coveseville. Mr. Carter stated he is not sure what they do, and he met just briefly with Mr. Payne and Mr. Miller to discuss this. He added that he looked at Albemarle's zoning ordinance, and he didn't find anything that addressed solar installations.

Mr. Carter reiterated that this is not being proposed as a deterrent; the County just does not have a way to approve these things.

Mr. Harvey noted that he can understand the solar farms needing to be addressed.

Mr. Carter stated that potentially, the ordinance if drafted, would address whether or not the public utilities would have any responsibilities for solar installations as well. He added if at this time, CVEC decided to build a 500-acre solar farm somewhere in the county, as long as it's in A-1, they could do it.

Mr. Carter noted that Staff developed a resolution to refer to the Planning Commission and included the provision that they have to report back within 100 days. Mr. Harvey stated that is impossible, and Mr. Carter noted the Board could strike that provision. Mr. Harvey noted the Planning Commission will not have a director until July, they already have pending matters now, and this likely won't be top priority when the director does come in. Mr. Carter noted she would of course have to get up to speed, and Mr. Harvey stated it should just be on the radar. Mr. Saunders stated there should be a time limit, and they could always come back and ask for an extension. Mr. Bruguire stated 100 days should be plenty of time for them to do the research with surrounding counties, and he added that letters have already been received from people who want to do this. Mr. Carter echoed that the Commission could always come back and ask for an extension.

Mr. Bruguire then moved to approve Resolution **R2019-23**, Solar Installations Referral to Nelson County Planning Commission, and Mr. Reed seconded the motion.

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Mr. Harvey asked if the 100 days provision will be taken out. Mr. Bruguere stated no and added if they need more time, they can request it.

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

**RESOLUTION R2019-23
NELSON COUNTY BOARD OF SUPERVISORS SOLAR INSTALLATIONS.
REFERRAL TO NELSON COUNTY PLANNING COMMISSION**

WHEREAS, Nelson County's Zoning Ordinance does not specifically provide for land uses and/or installations that generate electricity through solar energy; and,

WHEREAS, Nelson County is receiving applications and inquiries that pertain to land uses and/or installations that generate electricity through solar energy; and,

WHEREAS, the Nelson County Board of Supervisors finds it necessary that the local Zoning Ordinance be amended to provide for definitions and provisions that address land uses and/or installations that generate electricity through solar energy.

NOW, THEREFORE, BE IT RESOLVED, by the Nelson County Board of Supervisors that the subject of land uses and/or installations that generate electricity through solar energy be referred to the Nelson County Planning Commission, pursuant to the provisions and requirements of §15.22-285 of the Code of Virginia, for the purpose of submitting the Planning Commission's recommendations, including draft provisions, to amend the Nelson County Zoning Ordinance to incorporate such terms, conditions and provisions necessary to provide for land uses and/or installations that generate electricity through solar energy.

Mr. Bruguere then noted he had one other item for correspondence. He had been doing research on the old packing shed by the Courthouse and stated it seems that we have not gotten a new plat for the Courthouse lot. He stated he talked with the Circuit Court Clerk and found that there is no plat. Mr. Carter stated there is a plat. Mr. Bruguere noted they looked back to 2018 and there is no recorded plat. Mr. Carter stated we have a plat, and the Board actually vacated some of the unopened streets when the first Courthouse Project was done. He noted he would double check to see if it was recorded or not and added that we did do a boundary survey. Mr. Bruguere noted that it needs to be recorded. Mr. Carter stated some of the unopened streets may still be there, but the Board, when the first Courthouse addition was done in 2008 or so, acted officially to abandon some of those streets as part of the project. He added that a boundary survey was completed by Wiley & Wilson. He then noted Staff will check about the recordation.

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Mr. Rutherford stated it would be healthy for the Board to find some way to heal communications with the School Board and suggested joint meetings or some effort to have some informal meetings together. Mr. Saunders noted it was brought up previously that the Board of Supervisors wouldn't meet with the School Board, but they tried several times to schedule meetings, and it didn't suit everybody to attend, so the meetings didn't happen. He added it wasn't that the Board did not try to have meetings, but the scheduling never could work for all members, so it got dropped in the cracks. He clarified that he is not against what Mr. Rutherford suggested. He added that nobody from this Board is against having joint meetings, but they would like to have both full boards in attendance. Mr. Rutherford stated that he learned that Green County has the concept of one member from each board meeting to discuss the true priority of capital projects. He noted this could be a more effective method for our boards to approach capital improvements. Mr. Bruguire stated our boards used to have two on two meetings, and he is not sure why they stopped. Mr. Rutherford reiterated that he hopes to heal the relationship moving forward and more conversations need to be had.

Mr. Reed noted that the Rockfish Valley Plan, which the planning team was supposed to be compiling and the commission would be reviewing, seems to have fallen off the radar. He stated that he would like to see the data that came through the Planning Commission compiled in some way that it would be in a form that they could circulate some information and move forward on it. Mr. Bruguire noted that he believed Ms. Shackelford had it all ready to write up, and he was not sure if she got it done before she left. He then suggested making a call to her to ask. Mr. Harvey noted concern that the new plan may be less restrictive than the old plan, adding that development needs to be controlled. Mr. Reed stated that may be the case and added that unless they can take a look at what's there, they can't make any value judgments about whether it's good, bad, or indifferent. He noted he knows things are in transition in that office currently, but he wants to make sure that gets on the plate. Mr. Bruguire stated they can call Ms. Shackelford to find out the status of the plan.

Mr. Harvey thanked Ms. McGarry for the wonderful job she did doing the budget and especially the presentation. The Board echoed her excellent work.

The Board then took a 5-minute recess.

VI. OTHER BUSINESS (AS PRESENTED)

A. Closed Session Pursuant to Virginia Code § 2.2-3711 A.3 & A.7

Mr. Rutherford moved that the Nelson County Board of Supervisors convene in closed session to discuss the following as permitted by Virginia Code Section 2.2-3711 (A)(3): Discussion or consideration of the acquisition of real property for a public purpose; and Virginia Code Section 2.2-3711 (A)(7): Consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation where such consultation or briefing in open meeting would adversely affect the

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negotiating or litigating posture of the public body. Mr. Harvey 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 reconvene in public session. Mr. Bruguiera seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Upon reconvening in public 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 specifically identified in the motion to convene in closed session and lawfully permitted to be discussed under the provisions of the Virginia Freedom of Information Act cited in that motion. Mr. Bruguiera seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

VII. ADJOURN AND CONTINUE – EVENING SESSION AT 7 PM

At 4:14 PM, Mr. Rutherford moved to adjourn and reconvene at 7:00 PM and Mr. Bruguiera seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.

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

I. CALL TO ORDER

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

II. PUBLIC COMMENTS

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

III. PUBLIC HEARINGS

A. Special Use Permit #2018-11 – Restaurant

Consideration of Special Use Permit application requesting County approval to use the specified subject property for a 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.

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Mr. Carter provided the following report:

I. BACKGROUND: The Planning and Zoning Department received a Special Use Permit application (included herein) on November 29, 2018 from Mr. Todd Rath on behalf of the property owner, Rockfish Valley Events, LLC. The SUP application seeks approval for a Restaurant Use within an existing structure located at 9485 Rockfish Valley Highway in Afton (Tax Map 6-A-131).

The property is 8.126 acres+/- and is zoned Agricultural District (A-1) within the North Election District. A copy of the site drawing from the Minor Site Plan is included herein.

Comments: The applicant would like to use the existing building located at 9485 Rockfish Valley Highway and convert it into a restaurant. This is part of the same use that was previously approved by the Board of Supervisors in August of 2017 and was since determined to have expired. This does not include any of the other uses that were part of that original request.

Since this use was initially considered by the Board of Supervisors, there has been another SUP that was approved that would allow for a three-unit building to be constructed and would permit a restaurant, farm winery remote retail establishment (off-site wine tasting room), and then the third unit would be used for a by-right use not requiring a special use permit.

There has been much debate about the appropriate use for this property. This use would require the renovation of an existing structure that is legally non-conforming; it does not meet the current front set-back requirement. This building was also previously used for commercial purposes.

A chronology related to the SUP application is, as follows:

11-29-18 - SUP Application Received by Planning & Zoning Department

1-23-19 - Planning Commission Public Hearing on SUP (Recommendation Deferred)

2-27-19 - Planning Commission Completes Recommendation to Deny SUP (5-1)

3-26-19 - Appeal to Board of Zoning Regarding Director of P&Z's written determination providing for use of Non-Conforming Structure

5-6-19 - BZA upholds Director of P&Z's written determination on use of Non-Conforming Structure

6-4-19 - Writ of Certiorari and Appeal filed with Circuit Court to appeal the BZA's decision to uphold the Director of P&Z's written determination providing for use of Non-Conforming Structure (A decision is pending).

DISCUSSION:

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

Access and Traffic: Property is accessed from Rockfish Valley Highway (Route VA-151 – AADT 4,800 trips per day). The proposed development will generate additional traffic along this corridor. As the process has been underway, VDOT has continued to be involved in the review of the project. The entrance alignment has been adjusted upon VDOT's request to be located across from the entrance to Silverback. VDOT will continue to review the requests and make recommendations for road improvements as anticipated traffic counts trigger improvements.

Utilities: Property is served by private well 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. Conditions recommended that were placed on the two currently active special use permits include the following:

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

Comprehensive Plan: This property is located in an area designated as rural and farming use based on the current Comprehensive Plan.

Mr. Carter noted that the applicant submitted a letter indicating that they no longer plan to use the cinderblock structure located on the north property line.



Mr. Carter noted that the side setback is compliant, but the front setback is not; It is supposed to be 75 feet, and this is 67 feet.

II. REVIEW CRITERIAL: Section 12-3-2 of the County's Zoning Ordinance denoted the General Standards and Criteria for Special Use Permit Review. The criteria include:

- A. The use shall not tend to change the character and established pattern of development of the area or community in which it proposes to locate;**
- 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;**
- C. The proposed use shall be adequately served by essential public or private services such as streets, drainage facilities, fire protection and public or private water and sewer facilities;**
- D. The proposed use shall not result in the destruction, loss or damage of any feature determined to be of significant ecological, scenic or historic importance.**

III. ADDITIONAL CONSIDERATIONS:

1. Per the Zoning Ordinance's Section 12.3-3, "**The Board of Supervisors may grant or deny the application either in part or in full and may impose such modifications, regulations, or restrictions, including a limitation of the time for which the permit shall be valid, which said Board in its discretion may determine necessary or requisite in order that the general objectives and purpose of this ordinance shall be complied with**".

The Planning Commission considered several conditions (see staff reports and power point) but recommended denial of the permit due to the existing nonconforming condition (front set back).

2. SUP #2018-05 (Tax Parcels 6-A-131 & 6-A-163D) - September 2018 - Commercial structure with three suites for Nano-Brewery, Farm Winery Permanent Remote Retail and Restaurant uses. **Approved with conditions. No progress has been made on this permit.**

3. SUP #2018-10 (Tax Parcels 6-A-131 & 6-A-163D) -January 2019 - six cabins. **Denied.**

4. Approval of a Final Site Plan is required if SUP #2018-11 is approved. VDOT review, to date, inclusive of SUP #2018-05 denotes the likelihood of a requirement for right and left turn lanes, as condition of approval (see attached VDOT letter)

5. The appeal to the Circuit Court of the BZA's decision to uphold the P&Z Director's written determination regarding allowance of a nonconforming structure is pending.

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A consideration related to this subject is the property owner prior to Rockfish Valley Events LLC last held a Business License with Nelson County in 2010. This can be an additional factor with respect to the Planning Commission's decision to recommend denial of SUP #2018-10 per the nonconforming setback condition.

6. Per Section 12-3-6 of the County's zoning ordinance, "Unless a longer period is agreed to by the applicant, the Board shall act within one (1) year of the official submission of the application.

The one-year date from the date of the application is November 29, 2019.

Mr. Bruguere asked if the setback goes to the middle of the road or to the edge of the property. Mr. Carter stated it could be measured either way. He added in this instance, it was measured for the drawing from the middle of the road. He noted that the ordinance prescribes that it can be measured from the middle of the road or from the edge of the property line. He stated that either way, it does not comply in this case.

The Board had no further questions and Mr. Saunders invited the Applicant, Mr. Rath to address the Board.

Mr. Rath stated that based on the engineers he has been working with, it is 75 feet from the dead center of the property. He noted this property is 8 feet in the right-of-way, so it's 67 feet. In regards to this, he stated he believes something has been appealed that is un-appealable, which was pointed out by Ms. Shelby Bruguere. He asked how can you appeal something that hasn't been decided on, rather than something that has been reviewed and given an opinion on by the County lawyer and the County Planning Director. He added that the appeal that they already had to go through should have never happened, based on the comments by Ms. Bruguere and information he has reviewed.

Mr. Rath stated in regards to VDOT, there is no left hand turning lane required. He read a letter from VDOT: "The left turn lane analysis indicates that warrants are close to being met. Any increase in development beyond Units 1, 2, and 3 as shown in this report will require the construction of a left turn lane and a full right turn lane." He noted with that being said, when they presented this, they presented the building currently being discussed. This was in the drawing along with the 3-unit building and cabins. He stated that what they came forward and said was to take the 50-foot right hand taper and stretch it to 100 feet, which he noted they did in the drawings.

Mr. Rath also clarified that the Planning Commission has already approved this plan comprised of the cabins and 3-unit building. Mr. Harvey stated that is not correct and noted the 3-unit building was approved but the cabins were not. He added that they are waiting on Mr. Rath to build it. Mr. Rath stated he is waiting for this to be over so he can make sure he has a sound business plan.

Mr. Rath asked how many cell phone towers are in this county that have been approved but not yet built. He stated SUPs sit out there for years and years and yet the Board uses his project to do an

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unprecedented takeback of an SUP when the cabins and restaurant were already approved. Mr. Harvey stated that Mr. Rath was approved for the site plan of the 3-unit building, he has every approval he needs from the County, and still hasn't done anything. Mr. Rath stated he is waiting for this to be over to make sure this will all work and jive together. He noted he wanted to come into this meeting from the start two years ago with the whole plan, but he was advised not to.

Following Mr. Rath's address, Mr. Carter clarified the determination and how it works. He stated what necessitated what has become an appeal to the Circuit Court is that the zoning administrator had to make a determination/interpretation of the ordinance to decide whether or not the proposed structure for this SUP could move forward because there is a nonconforming condition on the property. He noted the zoning administrator made that determination which is in accordance with State law, and so is the right of others to appeal that decision to the Board of Zoning Appeals. He added that is the way the County code and State law prescribe, subsequently, the individuals who filed the suit would also have the right, pursuant to State law, to appeal the Board of Zoning Appeals' decision to the Circuit Court. Ultimately, if the Circuit Court decides whichever way, that can probably also be appealed further, but, the next step beyond the BZA is the Circuit Court.

Mr. Saunders then opened the public hearing and the following persons were recognized:

1. Shelby Bruguere, Nellysford VA

Ms. Bruguere noted that she wasn't planning on saying anything tonight, but since Mr. Rath mentioned her during the BZA meeting, she wanted to make a clarification. She stated she is an alternate on the BZA, and she asked a question of our County Attorney at that meeting as to whether or not the applicants had standing, and his comment, which is on record, was that there wasn't time to prepare for the appellant to actually make a determination and write down why they thought they had the ability to appeal. The County Attorney stated that since they were all there at the time, they may as well vote. She stated she just wanted to clarify that.

2. Philip Dejong, Afton VA

Mr. Dejong stated he was representing Shirley McGatha and Margaret Flather. He noted as the Board is aware, they have filed an appeal relative to the BZA's ruling. He urged the Board to defer any action on this request for the SUP until that matter is resolved.

3. Gerry Lloyd, Afton VA

Ms. Lloyd stated she was in agreement with Mr. Dejong and urged the Board to defer a vote. She noted that the Planning Commission overwhelmingly chose to deny this particular section by 5-1 and stated that it is zoned A-1 agriculture, adding the Board and Planning Commission continue to chip away at that. She noted that her neighborhood has been very negatively impacted by that constant chipping away all in the name of revenue. She stated that Mr. Rath's original SUP expired because he did nothing. She added that her neighborhood has been suffering already with the Brewing Tree next door with their

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amplified music. If this project goes forward, she stated the neighbors, herself in particular, will be 75% surrounded by alcohol establishments and loud music. She asked why the Board would continue, noting the lives of these residents have been vastly altered and adding that this entire project would completely and totally alter the character of their neighborhood. She urged the Board to deny this SUP and to let whatever's already been approved go forward and stated we do not need an alcohol mall, adding that's exactly what this is.

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

Mr. Rutherford stated there is an obvious need to create clarity on the definitions of nonconforming use and nonconforming structure. He was in favor of holding off on a vote.

Mr. Bruguere noted he saw two things that could correct the situation. One was to rezone to Business, which would do away with setbacks and allow the building to go forth by right. The other thing would be to tear down the building and move it back to the required setbacks as an immediate solution. He noted there is a court case in front of the Board, so whatever they do may be mute.

Mr. Reed stated the outcome of the court case is vital and noted he believes the County's planner and County Attorney got it wrong, adding nonconforming means nonconforming. He agreed with Mr. Bruguere, stating that whatever decision is made that night runs the likelihood of being overturned. He noted it makes more sense to have more information before a decision is made.

Mr. Harvey had no comment.

Mr. Saunders agreed with the other Board members and said he would rather not make a decision on something that is court pending. He noted he is pro-business and would like to see this move ahead, but with the pending court cases, he doesn't see how they can do much.

Mr. Bruguere asked if the requested cabins are in court as well. Mr. Carter stated no, noting that the approved SUP that included the cabins which became null and void because the owners didn't proceed within one year, is what is being appealed.

Mr. Rath came forward and pointed out that they are both filed as appeals and could just sit there for eternity. He stated if the Board does not make an action, they will just sit, and the Board will never get the decision that they speak of. He noted he called today and both are pending; there is nothing being pushed forward, and there won't be, unless a decision is made. He stated in his opinion, there is nothing to appeal until a decision is made.

Mr. Rath stated in regard to the cabins, they decided to do a by-right use for cabins.

Mr. Saunders noted again that he believes it's difficult to make a decision on something that's pending.

Mr. Harvey noted he would like to deny it for the same reasons that the Planning Commission denied it.

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Mr. Rutherford stated that getting a good definition from the courts might be helpful for the Board to see how the Judiciary branch is interpreting it.

Mr. Bruguiere stated if this hasn't been put on the docket by the next Board meeting, he believes they need to vote on it.

Mr. Rutherford then moved to postpone the vote on **SUP #2018-11** until the July Board of Supervisors meeting and Mr. Bruguiere 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.

IV. OTHER BUSINESS (AS PRESENTED)

There was no other business considered by the Board.

V. ADJOURNMENT

At 7:33 PM, Mr. Harvey moved to adjourn and Mr. Rutherford seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.