

September 11, 2018

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: Thomas D. Harvey, North District Supervisor
Jesse N. Rutherford, East District Supervisor
Ernie Q. Reed, Central District Supervisor
Thomas H. Bruguire, Jr. West District Supervisor – Chair
Larry D. Saunders, South District Supervisor – Vice Chair
Stephen A. Carter, County Administrator
Candice W. McGarry, Administrative Assistant/Deputy Clerk
Debra K. McCann, Director of Finance and Human Resources
Sandra Shackelford, Director of Planning and Zoning
Phillip D. Payne, IV County Attorney
David Blount, TJPDC Legislative Liaison
Daniel Rutherford, Commonwealth Attorney
George Miller, Executive Director Nelson County Service Authority

Absent: None

I. Call to Order

Mr. Bruguire called the meeting to order at 2:00 PM, with all Supervisors present to establish a quorum.

A. Moment of Silence

Mr. Bruguire requested that everyone kept in mind the anniversary of Nine Eleven during the moment of silence.

B. Pledge of Allegiance – Mr. Saunders led the Pledge of Allegiance

II. Consent Agenda

Mr. Bruguire noted that with the impending weather, citizens should get prepared to help themselves. He noted County emergency resources were thin and could not go everywhere. He advised citizens not to go out in their cars and ride around to look at rivers and creeks, or drive through them once the rain began as events were constantly changing. He added that they should be prepared for the worst.

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

A. Resolution – **R2018-47** Minutes for Approval

**RESOLUTION R2018-47
NELSON COUNTY BOARD OF SUPERVISORS
APPROVAL OF MINUTES
(August 14, 2018)**

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RESOLVED, by the Nelson County Board of Supervisors that the minutes of said Board meeting conducted on **August 14, 2018** be and hereby are approved and authorized for entry into the official record of the Board of Supervisors meetings.

B. Resolution – **R2018-48** FY19 Budget Amendment

**RESOLUTION R2018-48
NELSON COUNTY BOARD OF SUPERVISORS
AMENDMENT OF FISCAL YEAR 2018-2019 BUDGET
NELSON COUNTY, VA
September 11, 2018**

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

I. Appropriation of Funds (General Fund)

<u>Amount</u>	<u>Revenue Account</u>	<u>Expenditure Account</u>
\$32,985.10	3-100-009999-0001	4-100-022010-5419
\$13,508.00	3-100-009999-0001	4-100-012180-7007
<u>\$65,404.00</u>	3-100-002401-0002	4-100-093100-9201
\$111,897.10		

II. Appropriation of Funds (VPA Fund)

<u>Amount</u>	<u>Revenue Account</u>	<u>Expenditure Account</u>
\$65,404.00	3-150-004105-0001	4-150-053110-1000

III. Transfer of Funds (General Fund Contingency)

<u>Amount</u>	<u>Credit Account (-)</u>	<u>Debit Account (+)</u>
\$36,439.00	4-100-999000-9905	4-100-032020-5647

III. Public Comments and Presentations

A. Public Comments

1. Al Weed, Lovingson

Mr. Weed stated he would like to speak to the small part the County was playing in ethnic cleansing. He referenced a list of people he had gotten from the Sheriff of those turned over to ICE by the Albemarle Charlottesville Regional Jail. He added that the list showed country of origin and he was shocked to see that all were from south of the border meaning Hispanic. He noted that on Thursday the Regional Jail Board would vote on whether or not to maintain their policy of notifying ICE when those people were released. He noted that ICE would pick them up and if so decide process them for deportation and he questioned the constitutionality and transparency of it. Mr. Weed then noted that those living in rural communities knew how important this labor force was to the economy and ICE would be deporting

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members of that workforce. He then stated that if congress was not doing its job, the only role local government had was to not be complicit in this system. He then asked the Board to instruct the Jail Board representatives of the effect the policy had on the community.

2. Charlie Wineberg, Ennis Mountain Road Afton

Mr. Wineberg noted that the County had collectively decided to develop tourism and they were now seeing the fruits and growing pains of that. He noted the Board was hearing complaints of traffic on Route 151 and he noted the alternative route to Route 151 was Route 635 a winding road that was seeing more use. He then questioned when the Supervisors would insist that new commercial development include turn lanes and he questioned the health and safety risks that Supervisors were asking citizens to absorb. He noted that based on past Boards, the expectation was that commercial ventures would be granted. He then noted he had read in the Board's minutes that the Planning Director was doing rewrites to the Comprehensive Plan when that used to be a partnership between the Planning and Zoning office and citizens etc. He added that was not a task that should be delegated to County staff and all segments should have a voice. Mr. Wineberg noted that the Rockfish Valley Area Plan had seemingly not come to closure and he asked for a halt to willy-nilly development.

3. Dr. Marth Eagle, new School Division Superintendent

Dr. Eagle introduced herself and noted that her door was open. She added that she looked forward to meeting with them in joint meetings in the fall prior to becoming more engaged in the spring.

4. Lewis Elliot, Arrington

Mr. Elliott advised that he was a member of the Lovington Senior Citizen Group and he noted that on October 6th, they were having a benefit concert to aid in fund raising to provide transportation and meals that seniors needed. He added that on October 16th, there would be a 3rd annual Salt Triad meeting Fair and he invited the Board to attend. He noted they would have lunch and presentations from JAUNT, PACE, DSS, and George Krieger from NCCDF. He noted that the October 6th event was from 3pm to 5pm and the October 16th event time was from 10am to Noon.

5. Debbie Speilman, Lovington

Ms. Speilman noted she understood the Board was considering changing the law in the county pertaining to livestock. She noted she understood it was currently a fence out county and she was there to represent herself and Freshwater Cove who supported changing to a fence in county. She noted that fence out may have worked well in colonial days, however it was not working well now and it allowed irresponsible cattlemen to allow their property to roam and cause damage. She added that she was not talking about the ones that got out once in a while, rather she was talking about chronic situations.

6. Daniel Rutherford, Commonwealth Attorney

Mr. Rutherford noted that there indeed was a vote coming up on September 13th at the Regional Jail and he wanted to give his perspective on the issue. Mr. Rutherford noted that the current policy was a fairly rational common sense policy. He noted that individuals who were unlawful aliens serving jail time for breaking laws against the commonwealth and the County of Nelson and who were given active jail time,

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ICE, Federal Authorities were notified of their release dates. He added that it was strictly a notification policy and it applied to all nationalities.

Mr. Rutherford then noted that his office had been prosecuting a host of criminal illegal aliens that were in the country illegally and had committed crimes making them criminal illegal aliens. He added they were criminals because they had committed crimes not because they were illegal aliens. He noted some had gone to jail for as much as thirty years for crimes in Nelson County including racketeering, kingpin distribution, solicitation of sex acts by a minor, a host of crimes and they were prosecuted as anyone else would be and were now in jail.

He then noted that there had been a polarizing force that had infiltrated the Jail Board, not because of Nelson County and he applauded Mr. Carter and Sheriff Hill for maintaining common sense solutions to those problems. He noted there were those that had thrown common sense and ration out of the window and wanted to end the policy. He described people in the back of the Jail meeting with signs that read lock up ICE and end ICE, speaking to those that protect their national security.

Mr. Rutherford noted that there was a broken congress and executive branch; however federal ideals could not be placed onto local boards. He added those groups should be more concerned about rehabbing inmates instead of bringing in federal issues to a local board. He then questioned if they really wanted to abolish the notification of when serious felons after serving their time, were about to be released. He added that the policy had been in place since both Bushes and even since the 1970's and it has not been an issue until now and it should not be because the current policy was common sense.

Mr. Rutherford noted that the policy was notification and there were many other notification policies such as notification of when sex offenders were released from jail and victims were notified when their assailant was released. He reiterated that it was not an immigration issue, there was a Federal law enforcement agency asking to be notified when those persons were released and it was up to them to follow up. He then applauded the county representatives for the steps taken to maintain the common sense policy, continue the notification, and he encouraged the Board to have that continue. He noted that he had attended several of the meetings and Albemarle had joined in to give the Commonwealth's perspectives. He specifically thanked Mr. Carter and Sheriff Hill for maintaining the policy and noted his door was open to discuss it further with the Board and the public.

7. Claudia Van Koba, Tye River

Ms. Van Koba noted that she was there to speak about the one lane underpass bridge on Route 739 that was marked with 11.5 feet maximum clearance, however with mapping programs, 18 wheelers were going that route and getting stuck coming up from Cedar Creek. She noted she thought the programs were giving the trucks a shortcut to Appomattox through that way and then they were getting stuck. She added she was not sure what could be done but it was annoying to residents there.

8. Russell Gibson, Emergency Services Coordinator

Mr. Gibson reported that he was working with the Virginia Department of Emergency Management on Hurricane Florence. He noted he had reached out to fire departments and rescue squads and they were preparing to operate shelters if needed. He noted that Nelson was predicted to get 6-15 inches of rain from Fri-Monday now, which was a decrease from earlier numbers. He advised that he had communicated with the Department of Social Services and was making list of life safety issue residents. He noted that he also heard from the VDOT residency and they were prepared to help in any way they

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could. He noted that Compass Home Health Providers was providing a list of those with medical needs needing power. Mr. Gibson also noted that a Regional Coordination Center would be open in Harrisonburg and would run state run shelters if local ones were overrun. He added that he was compiling a list of local shelters.

Mr. Carter added that staff was posting information on the County's website as it became available and the County would use the reverse 911 system to inform residents. He added the County was being as prepared as possible.

Mr. Rutherford inquired if localities declared emergencies and Mr. Carter noted staff had a declaration prepared for consideration later in the meeting.

Mr. Harvey noted that the County would start needing to use schools for shelters if the emergency were a week or more and Mr. Gibson noted he had spoken with Dr. Eagle about that eventuality. He added that at that point the Red Cross and Salvation Army would also be involved.

Mr. Rutherford asked if the County had a text message notification system and Mr. Carter noted it did have an emergency alert system called Everbridge and it was emphasized that it was by subscription so one had to register their cell phone in order to receive messages. Mr. Gibson advised there was a registration link on the County's website and Mr. Harvey noted that really needed to be pushed out to the public for its use.

9. Danny Johnson, Schuyler EMS Council President

Mr. Johnson thanked the Board for correcting the budget issue earlier and he added that he appreciated their continued support. He then noted that each fire department would be on full alert on Thursday.

Mr. Reed then inquired as to the Jail notification policy being optional or mandatory. Mr. Daniel Rutherford responded that Federal Law was mandatory in his mind as it said shall not may. Mr. Carter added that in relation to the policy, the Regional Jail Authority Board had re-endorsed the policy, maintaining it twice. He noted that this was now the 4th time in one year that the Board would reconsider the policy of a 48 hour notification to ICE. He noted that he had continually asked why it was being reconsidered when the majority had voted to maintain the policy. Mr. Carter then reiterated Mr. Rutherford's comments that the list had also contained Europeans and they were acting in cooperation with a Federal agency.

Mr. Saunders then mentioned that Nelson was not equally represented on the Jail Board and Mr. Carter advised that he had asked for the same number of members as everyone else; however the Member Use Agreement would have to be amended in order to make that happen. He reiterated that Nelson should have equal representation and he had suggested there be no vote until that happened. Mr. Carter advised that there were nine votes for Albemarle and Charlottesville and two for Nelson. He added that he had asked for a joint member as well.

B. VDOT Report

Mr. Carter advised that Mr. Austin was not present due to storm preparation at VDOT and that members could submit any VDOT issues directly to him or to staff.

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C. Presentation- TJPDC Draft Legislative Agenda (D. Blount)

Mr. David Blount, Thomas Jefferson Planning District commission Legislative Liaison addressed the Board. He noted that currently he was taking input on the legislative program and priorities and putting it into the draft for the 2019 session. He advised he would then come back in November to present the program for the Board's approval.

Mr. Blount referenced the one page 2018 summary provided as follows:

2018 Legislative Priorities -

STATE BUDGET and FUNDING OBLIGATIONS: We urge the State to enhance state aid to localities, and to not impose mandates on or shift costs for state programs to localities.

- Adequate state investment for local service delivery is crucial.
- The State should not alter existing funding formulas to save money or shift costs to localities.

PUBLIC EDUCATION FUNDING: We urge the State to fully fund its share of the realistic costs of the Standards of Quality (SOQ) without making policy changes that reduce funding or shift funding responsibility to localities.

- Localities need an adequately defined SOQ that closes the gap between what school divisions are providing and what the State currently funds in the SOQ.
- Localities spent \$3.9 billion more than required by the State in FY16.

LOCAL REVENUE AUTHORITY: We urge the State to diversify revenue options available to localities, to include equalizing revenue-raising authority of counties with that of cities, and to not restrict local revenue-raising authority.

- This proposal removes restrictions on meals, lodging, cigarette and admissions taxes.
- The Communications Sales/Use Tax should be revamped, with portions directed to broadband.

BROADBAND: We encourage and support state and federal efforts and financial incentives that assist localities and their communities in deploying universal, affordable access to broadband technology, particularly in unserved and underserved areas.

- Access to high-speed internet is a critical necessity in the 21st century.
- Expansion should consider fiber/wireless, public/private ventures and regulated markets.

CHILDREN'S SERVICES ACT: We urge the State to be partners in containing costs of the Children's Services Act (CSA). The State should resist attempts to shift costs of serving children through CSA to localities and schools.

- Localities need flexibility to use State funds for mandated services provided by the locality.
- The State should maintain cost shares on a sum sufficient basis.

LAND USE and GROWTH MANAGEMENT: We urge the state to resist preempting existing land use authorities, and to provide additional tools to plan and manage growth.

- We oppose weakening local responsibility concerning telecommunications infrastructure.
- We support a climate where localities and applicants can openly discuss rezoning applications.

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Mr. Blount noted that the priorities tended to be the same from year to year and were still a good reflection of big issues that remained top concerns today. He reiterated that as they looked to the next General Assembly session, he would bring back changes in the next couple of months.

He advised that the state budget was late last year due to Medicaid Expansion being the hang up. He noted that additional salary money, Go Virginia funds and budget would be the focus in 2019. He reported that the State had a big half billion dollar revenue surplus and there were many policy considerations in 2019 due to federal tax law changes that were made. He noted that policy choices could mean more state revenue through more state taxes for citizens which he hoped would spur discussion about tax reform to achieve a balance in the delivery of services.

Mr. Blount noted that the Governor intended to make significant investments potentially in Broadband. He noted he was unsure of the source of funding; however there was a lot of attention on it and it was emphasized in the General Assembly. He noted that impact fee authority was being discussed and would be a significant step for that legislative position.

Mr. Blount then noted that they would typically see increased local costs associated with the Child Services Act (CSA) that were primarily related to private day placements. He added that there was a state study going on now.

Mr. Blount then noted the Wayfair Decision, where states could collect sales taxes for online purchases even if they did not have a presence in that state. He noted that a 1% local option sales tax was included and the State would have to so act during the General Assembly session to stay true to that 1% making its way back to localities. He reported that those numbers have been around \$250 million and 1% of that would be \$40-\$50 Million statewide.

Mr. Blount then advised that if the Board had particular issues or initiatives to please be talking about those now with him and their legislative representatives.

Mr. Rutherford inquired about the status of proffers and Mr. Blount noted that there had been a number of bills related to proffers to scale back the restrictions from 2016. He noted those bills were carried over for the year and the State Homebuilders Association was going to look at the 2016 law. He advised that they were talking to people about a draft the previous week but not sharing it. Mr. Blount noted that the main provision was an allowance for local governments and applicants to be able to talk; which was the most restrictive thing. He noted they may see changes; however there were a lot of moving parts.

Mr. Rutherford asked about the TJPDC's regional interests and Mr. Blount indicated they were inclined to express support for impact fee legislation.

Mr. Bruguieri inquired if local revenue authority had been brought up before and Mr. Blount noted it had and it was overarching and would give localities some diversity from property taxes. He added that they were advocating for counties to have the same revenue flexibility that cities and towns had such as with meals and cigarette taxes etc. He noted that at the most recent General Assembly session it was sent to never never land. He added that he was hoping it would get to the point that it was spurred by something that would cause a change that would be beneficial for states and localities. Mr. Bruguieri asked what the holdup was and Mr. Blount noted that the Dillon rule was not the issue but some circles thought that if localities were given that authority, they would implement taxes without having a referendum. Mr. Bruguieri noted he viewed some of those taxes as user taxes and he supported alleviating the burden from real estate taxes. Mr. Blount noted that they had pushed for it several years

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ago and as far as the General Assembly, the House was not in favor of it and the Senate was more open to discussion. Mr. Carter added that it went back 30 or more years; with cities feeling threatened by County's having that authority and they opposed it because they thought it undermined their financial stability. Mr. Blount advised that VML was not opposing it but they were not cheering it on and VACo supported it.

IV. New Business/ Unfinished Business

A. Tye River Water System Agreement

Mr. Carter noted that at a recent meeting of the Service Authority Board, the Board had voted to give notice to the County on terminating the current 2006 water agreement. He advised that the agreement was put in place when the water system was installed to remediate well contamination in that area. He noted that in the past year, the Virginia Department of Health had expressed concern about the elevated water tank at the old middle school and strongly suggested it be repaired, replaced etc.

He noted that staff had proposed doing a PER the previous month and then to proceed with a project to replace the tank. He noted that the Board had voted 3-2 to not share 50/50 in the cost of the PER and then the NCSA Board voted to give notice to not operate the system; however they were willing to negotiate a new contract.

Mr. Carter advised that he and Mr. Miller were still comfortable with sharing costs equally; however they needed the Boards' direction. He noted that VDH may be back in November and may issue a consent order.

Mr. Harvey noted that he could not be convinced that the Service Authority as the operator of that system, should be putting up other customers' money to deal with the 5 member group that was affected by the contamination. Mr. Carter advised that he was okay with the Board paying 100% and both he and Mr. Miller were open to a solution.

Mr. Harvey then asked if the County wanted to run the system or continue to have the Service Authority run it. Mr. Carter advised that was the question for the Board and he noted the County did not have certified operators to run the system. He then advised that the estimated cost to replace the water tank was \$80,000 to \$100,000 subject to the PER results. He added the PER cost was not to exceed \$10,000.

Mr. Bruguere stated he did not like the cost of the PER and spending that amount of money on a water tank for five people was troublesome to him. He then asked if it was possible to dig test wells in those locations to see if the wells were still contaminated. He added that it would be cheaper to dig new wells for those people. Mr. Harvey noted that contamination usually did not go away and Mr. Bruguere stated that the contaminator had not paid anything towards the solution. Mr. Harvey noted it had affected the other sites as well as the culprit, similar to in Piney River.

Mr. Bruguere asked about the cost of the tank and Mr. Miller in attendance, noted that would not be known until the PER was completed. He added that the structural stability of the tank was a concern and the PER could include evaluation of the possibility of wells. He added that those could be specified and the consultants would explore all possibilities. Mr. Saunders asked if testing the wells would cause delay and Mr. Miller noted that VDH would see that they were doing something if test wells were done.

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Mr. Carter then advised that the water still served the old Middle School and that would have to be addressed. Mr. Harvey supposed they would need a good sized storage tank and Mr. Rutherford noted that depended on the gallons per minute they were getting.

Mr. Carter then asked if the Board was willing to pay for the PER and if they were to examine test wells, he would have to ask the engineering consultants for the cost of that. Mr. Saunders supposed they could have 4 wells pass and 1 fail.

In response to questions, Mr. Carter noted he would have to confer with DEQ, which was who funded the project. He added that VDH was the regulatory agency on it.

Mr. Miller noted that the water line was an 8 inch line and the chemical building line went out to the median strip to the first right hand turn and was stubbed out for future fire hydrants. It was suggested the line could be used for storage itself. Mr. Harvey noted that it was built or overbuilt in anticipation of future expansion.

Mr. Reed asked what would happen if more families moved in or there was future development. It was noted that the tank may be too small and need to be replaced; however the line size was good. Mr. Harvey then supposed that would be the property owner's issue and Mr. Carter noted not if they were in the mandatory connection zone.

Mr. Bruguere then proposed they authorize funding for the PER and ask that they check to see if contaminants were still there. Mr. Carter then noted that if they proceeded, there was a need to rewrite the agreement to address capital improvement issues. He added that he could send the Service Authority a letter stating they were proceeding with the PER and ask that they delay ending the agreement until the PER results came back.

Mr. Rutherford then moved to fund the PER that Mr. Carter and Mr. Miller had worked together on and Mr. Saunders seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion. Mr. Carter advised the cost was not to exceed \$10,000 and he would have them test the other wells.

A. VRA Financing Terms and Documents – Library Expansion (**R2018-49**)

Mr. Carter noted this subject included consideration of a resolution drafted by Bond Counsel. He added that the County was in process with VRA to borrow \$2.25 Million in November for the library expansion. He added that the documentation was in process and the resolution authorized the Chair and County Administrator to execute financing documents on behalf of the County. He noted that the vehicle was a lease back proposition where the first phase of the courthouse property would be used as collateral.

Mr. Bruguere asked if there was provision to pay off the debt faster and Mr. Carter noted there would be provisions for that in the documents.

Mr. Harvey then asked about the Rockfish River Elementary School debt mentioned in Mr. Carter's summary and Mr. Carter noted that the strategy was to use the debt service that was coming off in October for the RRES debt to pay for this new library expansion debt. He noted that the amounts were almost equivalent and would be a budgetary wash.

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Mr. Carter advised that staff needed the Board's acknowledgement of the 10 year term, which would save \$250,000. Ms. McCann advised that the interest payment would hit in this fiscal year that the Board would have to pay for and Mr. Carter noted that the interest rate shown was projected and was subject to closing, however the VRA staff was very good at predicting the rates.

Mr. Bruguere then asked Mr. Carter to expand on the Architect firm interviews held by staff. Mr. Carter advised that an RFP for Architectural services had been issued with 6 responses received and 3 interviews conducted the previous day. He noted interview committee members were himself, Ms. McGarry, Ms. Huffman, Mr. Saunders, and Mr. Rutherford and they had unanimously recommended hiring Architectural Partners. He added that he would like for the Board to authorize proceeding with hiring them for the project.

Mr. Harvey then moved to approve resolution **R2018-49** Approving Lease Financing of Library Facility Capital Improvements and Mr. Rutherford seconded the motion.

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

RESOLUTION R2018-49
NELSON COUNTY BOARD OF SUPERVISORS
APPROVING LEASE FINANCING OF LIBRARY FACILITY CAPITAL
IMPROVEMENTS

WHEREAS, the Board of Supervisors (**the "Board"**) of Nelson County, Virginia (**the "County"**) has determined that a true and very real need exists for the design, acquisition, construction, expansion, renovation and equipping of County public library facilities on certain real estate owned by the County and currently used for public library and County office purposes (**the "Project"**); and

WHEREAS, the Board has the power to acquire by lease real property and personal property currently being used for County purposes which includes, as may be required by VRA (as defined below) for financing of the Project, all or a portion of real property currently subject to a Prime Lease between the County and VRA dated as of June 1, 2013 and a Local Lease Acquisition Agreement and Financing Lease dated as of April 4, 2013 between the County and VRA (**collectively, the "2013 Leases"**), all as further described in the Local Lease Acquisition Agreement and Financing Lease (as defined below) (**together, the "Leased Property"**); and

WHEREAS, the Leased Property is used by the County for uses including courthouse and administrative purposes and is essential to the governmental functions of the County, and the Board reasonably expects the Leased Property to continue to be essential to the governmental functions of the County for a period not less than the terms of the Prime Lease (as defined below) and the Local Lease Acquisition Agreement and Financing Lease (as defined below); and

WHEREAS, to assist in providing financing of the Project, the Virginia Resources Authority ("**VRA**") intends to (a) issue its Series 2018C VRA Fall Pool Bonds (**as more particularly defined in the below defined Local Lease Acquisition Agreement and Financing Lease, the "VRA Bonds"**) and, subject to VRA credit approval, to make available a portion of the proceeds to the County to finance all or a portion of the costs of the Project in the amount of approximately \$2,250,000 or such other amount as requested by the County in writing

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and approved by VRA prior to the VRA Sale Date, as defined below (**the "Proceeds Requested"**); (b) acquire a leasehold interest in the Leased Property pursuant to the terms of the Prime Lease; and (c) lease the Leased Property to the County pursuant to the terms of the Local Lease Acquisition Agreement and Financing Lease (**collectively, the "Lease Obligations"**); and

WHEREAS, the County has submitted its application to VRA to finance the Project and to undertake the Lease Obligations; and

WHEREAS, VRA has advised the County that the sale date of the VRA Bonds is tentatively scheduled for October 30, 2018 but may occur, subject to market conditions, at any time between October 25 and November 29, 2018 (**the "VRA Sale Date"**), and that VRA's objective is to pay the County an amount which, in VRA's judgment, reflects the market value of the Lease Obligations under the Local Lease Acquisition Agreement and Financing Lease (**the "Purchase Price Objective"**), taking into consideration such factors as the purchase price received by VRA for the VRA Bonds, the underwriters' discount and other issuance costs of the VRA Bonds, and other market conditions relating to the sale of the VRA Bonds; and

WHEREAS, such factors may result in the County receiving an amount other than the par amount of the aggregate principal components of the Lease Obligations under the Local Lease Acquisition Agreement and Financing Lease and consequently the aggregate principal components of the Lease Obligations under the Local Lease Acquisition Agreement and Financing Lease may be greater than the Proceeds Requested in order to receive an amount of proceeds that is not less than the Proceeds Requested;

WHEREAS, the Local Lease Acquisition Agreement and Financing Lease shall provide that the aggregate total principal components of Lease Obligations and the interest component of the Lease Obligations will not exceed the parameters set forth herein; and

WHEREAS, there have been presented to this meeting drafts of the following documents (**together, the "Basic Documents"**) in connection with the transactions described above, copies of which shall be filed with the records of the Board:

A. Amended and Restated Prime Lease, between the County and VRA, dated as of September 21, 2018 conveying certain interests in the Leased Property to VRA (**the "Prime Lease"**);

B. Local Lease Acquisition Agreement and Amended and Restated Financing Lease, between the County and VRA, dated as of September 21, 2018 (i) providing for a portion of the proceeds of the sale of the VRA Bonds to be provided by VRA to the County and (ii) conveying to the County a leasehold interest in the Leased Property (**the "Local Lease Acquisition Agreement and Financing Lease"**); and

C. Amended and Restated Leasehold Deed of Trust and Security Agreement, between VRA and certain deed of trust trustees to be named therein, dated as of September 21, 2018 regarding VRA's leasehold interest in the Leased Property (**the "Leasehold Deed of Trust"**).

NOW, THEREFORE, BE IT RESOLVED, THAT:

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1. It is hereby found and determined that the terms of the Basic Documents in the respective forms presented to this meeting and incorporated in this Resolution are in the best interests of the County for the design, acquisition, construction, expansion, renovation and equipping of the Project.

2. The Basic Documents and related financing documents are hereby approved in substantially the respective forms presented to this meeting. The Chairman, Vice Chairman, County Administrator and any officer of the Board who shall have power generally to execute contracts on behalf of the Board be, and each of them hereby is, authorized to execute, acknowledge, consent to and deliver, as appropriate, the Basic Documents, any amendments to the 2013 Leases or related financing documents (**together, the "Prior Lease and Financing Documents"**) that may be required by VRA for financing of the Project and any other related financing documents, with any changes, insertions and omissions therein as may be approved by the individuals executing them, such approval to be conclusively evidenced by the execution and delivery thereof. The actions of the Chairman, the Vice Chairman and the County Administrator, each of whom is authorized to act, shall be conclusive, and no further action shall be necessary on the part of the County.

The final pricing terms of the Local Lease Acquisition Agreement and Financing Lease will be determined by VRA, subject to VRA's Purchase Price Objective and market conditions described in the Recitals hereof; provided, however that (i) the Lease Obligations shall be composed of principal components having a maximum aggregate principal amount of not to exceed \$2,500,000 (**the "Maximum Authorized Principal Amount"**) and interest components with a maximum interest rate of 4.0% per annum (exclusive of "supplemental interest" as provided in the Local Lease Acquisition Agreement and Financing Lease) and (ii) the Lease Obligations shall be payable over a term expiring not later than December 1, 2033. Subject to the preceding terms, the Board further authorizes VRA to determine the aggregate total of principal and interest components of the Lease Obligations, establish a schedule of Lease Obligations including the dates and amounts and the optional and extraordinary prepayment provisions, if any, of the Lease Obligations, all in accordance with the provisions hereof. The term of the Prime Lease shall not be more than five years longer than the term of the Local Lease Acquisition Agreement and Financing Lease; such term is intended to provide security to VRA in the event of default or non-appropriation by the County, all as more fully set forth in the Local Lease Acquisition Agreement and Financing Lease (or any supplement thereto).

Given the Purchase Price Objective and market conditions, it may become necessary to enter into the Local Lease Acquisition Agreement and Financing Lease with aggregate principal components of the Lease Obligations greater than the Proceeds Requested. If the limitation on the maximum aggregate principal components of Lease Obligations on the Local Lease Acquisition Agreement and Financing Lease set forth in this Section 2 restricts VRA's ability to generate the Proceeds Requested, the Local Lease Acquisition Agreement and Financing Lease may be entered into for an amount less than the Proceeds Requested.

The Chairman, the Vice Chairman, the County Administrator, or any of them and such other officer or officers of the County as either may designate are hereby authorized and directed to enter into the Local Lease Acquisition Agreement and Financing Lease, the Prime Lease and any amendments to the Prior Lease and Financing Documents that may be required by VRA for financing of the Project.

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As set forth in the Local Lease Acquisition Agreement and Financing Lease, the County agrees to pay such “supplemental interest” and other charges as provided therein, including such amounts as may be necessary to maintain or replenish any VRA Reserve (as defined in the Local Lease Acquisition Agreement and Financing Lease).

Rental Payments (as defined in the Local Lease Acquisition Agreement and Financing Lease) due under the Local Lease Acquisition Agreement and Financing Lease shall be payable in lawful money of the United States of America and otherwise comply with the terms set forth in the Local Lease Acquisition Agreement and Financing Lease. The County may, at its option, prepay the principal components of Rental Payments upon the terms set forth in the Local Lease Acquisition Agreement and Financing Lease.

3. The same officers of the Board, and the County Administrator and the County Attorney be, and each of them hereby is, authorized and directed to take all actions and procure, execute and deliver any and all other agreements, financing statements, papers, instruments, title insurance policies, real property surveys and inspections, opinions, certificates, affidavits and other documents, and to do or cause to be done any and all other acts and things necessary or proper for carrying out the purposes and intent of this resolution, the Basic Documents and any amendments to the Prior Lease and Financing Documents that may be required by VRA for financing of the Project, including the final selection of property to be utilized as the Leased Property as may be required by VRA prior to the recording of the Local Lease Acquisition and Financing Lease. The same officers are authorized and directed to work with the County’s bond counsel, Sands Anderson PC, and representatives of VRA, including without limitation McGuire Woods LLP, Bond Counsel to VRA, to perform all services and prepare all documentation necessary or appropriate for the execution, delivery and recording, as appropriate, of the Basic Documents.

4. The County represents and covenants that it shall not take or omit to take any action the taking or omission of which would (a) cause the VRA Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (**the “Code”**) or (b) otherwise cause interest on any VRA Bonds to be includable in the gross income for Federal income tax purposes of the registered owners thereof under existing law. Without limiting the generality of the foregoing, the County shall comply with any provision of law that may require it at any time to rebate to the United States any part of the earnings derived from the investment of the gross proceeds of the VRA Bonds. The County shall pay any such required rebate from legally available funds.

5. The County covenants that it shall not permit any proceeds derived from the Lease Obligations to be used in any manner that would result in (a) 10% or more of such proceeds being used in a trade or business carried on by any person other than a governmental unit, as provided in Section 141(b) of the Code, provided that no more than 5% of such proceeds may be used in a trade or business unrelated to the County's use of the Project, (b) 5% or more of such proceeds being used with respect to any "output facility" (other than a facility for the furnishing of water), within the meaning of Section 141(b)(4) of the Code, or (c) 5% or more of such proceeds being used directly or indirectly to make or finance loans to any persons other than a governmental unit, as provided in Section 141(c) of the Code; provided, however, that if the County receives an opinion of nationally recognized bond counsel that compliance with any such covenant is not required or is no longer required in order to prevent the interest on the VRA Bonds from being includable in the gross income for Federal income tax purposes of the registered owner thereof under existing law, the County need not comply with such covenant to the extent provided in such opinion.

6. Such officers of the County as may be requested are authorized and directed to execute and deliver a tax compliance agreement in relation to the Lease Obligations (**the "Tax Compliance Agreement"**) in the form approved by the Chairman or Vice Chairman of the Board or the County Administrator, or any of them, in collaboration with the County's bond counsel, with such completions, omissions, insertions and changes as may be approved by the officers of the County executing such Tax Compliance Agreement, whose approval shall be evidenced conclusively by the execution and delivery thereof.

7. The undertaking by the County under the Local Lease Acquisition Agreement and Financing Lease to make Rental Payments and any other payments due under the Lease Obligations shall be a limited obligation of the County, payable solely from funds to be appropriated by the Board from time to time for such purpose and shall not constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit of the County beyond any fiscal year for which the Board has lawfully appropriated from time to time. Nothing herein or in the Lease Obligations shall constitute a debt of the County within the meaning of any constitutional or statutory limitation or a pledge of the faith and credit or taxing power of the County.

8. The Board believes that funds sufficient to make payment of all amounts payable under the Lease Obligations can be obtained. While recognizing that it is not empowered to make any binding commitment to make such payments beyond the current fiscal year, the Board hereby states its intent to make annual appropriations for future fiscal years in amounts sufficient to make all such payments and hereby recommends that future Boards do likewise during the term of the Lease Obligations. The Board directs the County Administrator, or such other officer who may be charged with the responsibility for preparing the County's annual budget, to include in the budget request for each fiscal year during the term of the Lease Obligations an amount sufficient to pay all amounts coming due under the Lease Obligations during such fiscal year. As soon as practicable after the submission of the County's annual budget to the Board, the County Administrator is authorized and directed to deliver to VRA evidence that a request for an amount sufficient to make the payment of all amounts payable under the Lease Obligations has been made. Throughout the term of the Lease Obligations, the County Administrator shall deliver to VRA within 30 days after the adoption of the budget for each fiscal year, but not later than July 1, a certificate stating whether an amount equal to the Rental Payments and any other

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amounts due under the Lease Obligations which will be due during the next fiscal year has been appropriated by the Board in such budget. If at any time during any fiscal year of the County, the amount appropriated in the County's annual budget in any such fiscal year is insufficient to pay when due the amounts payable under the Lease Obligations, the Board directs the County Administrator, or such other officer who may be charged with the responsibility for preparing the County's annual budget, to submit to the Board at the next scheduled meeting, or as promptly as practicable but in any event within 45 days, a request for a supplemental appropriation sufficient to cover the deficit.

9. The County authorizes and consents to the inclusion of information with respect to the County to be contained in VRA's Preliminary Official Statement and VRA's Official Statement in final form, both prepared in connection with the sale of the VRA Bonds, a portion of the proceeds of which will be used to purchase the Lease Obligations. If appropriate, such disclosure documents shall be distributed in such manner and at such times as the Chairman of the Board, the Vice Chairman of the Board or the County Administrator, each of whom is authorized to act, shall determine. The Chairman of the Board, the Vice Chairman of the Board or the County Administrator, each of whom is authorized to act, are authorized and directed to take whatever actions are necessary and/or appropriate to aid VRA in ensuring compliance with Securities and Exchange Commission Rule 15c2-12.

10. The recitals to this resolution are hereby incorporated by reference and are declared to be findings of the Board in connection with its decision to finance the Project.

11. The Board hereby determines that it is in the best interests of the County to authorize the County Treasurer to participate in the Virginia State Non-Arbitrage Program in connection with the Lease Obligations if requested by VRA.

12. Nothing in this Resolution, the Basic Documents or other related documents shall constitute a debt or a pledge of the faith and credit of the County, and the County shall not be obligated to make any payments under the Basic Documents except from funds that may be appropriated by the Board.

13. All acts of the officers, agents and representatives of the County that are in conformity with the purposes and intent of this resolution and in furtherance of the leasing of the Leased Property by the County to finance the Project are hereby approved, ratified and confirmed.

14. Any authorization herein to execute a document shall include authorization to deliver it to the other parties thereto, to record such document where appropriate and to pay from County funds all appropriate recording fees, taxes and related charges.

15. This Resolution shall be effective immediately upon its adoption.

Mr. Saunders then moved to negotiate a contract with Architectural Partners for Architectural Services for the library and Mr. Rutherford seconded the motion.

Mr. Saunders then noted that they would have schematics by the end of October. Mr. Harvey asked if there were any boundary adjustments there that might be helpful and Mr. Carter advised potentially so,

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however it was not necessary. He noted all thought the plan suggested was good. Mr. Saunders noted that the north side of the building was pretty tight there.

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

Mr. Carter provided the following report:

A. Courthouse Project Phase II: The project is complete.

B. BR Tunnel Project: Authorization to award Phase 2 (Tunnel Restoration) has been received and work is in process to award the project to Fielder's Choice Enterprises.

Mr. Carter advised that the contract would be issued soon after Hurricane Florence.

C. Broadband: Approval from federal NTIA and VA-DHCD to transfer the local network to Central VA Electric Cooperative continues to be in process.

D. Courthouse Damage: The operational systems impacted by inclement weather in August have been fully restored. An insurance claim with VACORP Insurance Programs is in process.

Mr. Carter advised they were still investigating the cause.

E. Library Project: Interviews will be conducted on 9-10 with three of six architectural firms that submitted responses to the County's Request for Proposals. A recommendation "may" on the top ranked firm be forthcoming to the Board on 9-10. Project financing through the VA Resources Authority is also in process and is an agenda item for the 9-10 session.

F. Sale of McGinnis Property: The property sale was not concluded.

Mr. Carter reported that the realtor had called to let him know the property was available if the County was interested in purchasing it.

G. Lovingson Revitalization & Schuyler STP: County and TJPDC staff met on 8-30 with VA-DHCD staff to discuss CDBG planning grant applications for funding towards a Lovingson Revitalization Project and for improvements and/or conversion of NCSA's Schuyler Sewer Treatment Plant/System. TJPDC staff are facilitating completion and submittal of preliminary program requirements that provide for next step funding decisions by VA-DHCD.

Mr. Carter noted that TJPDC staff were in the process of answering 8 questions for preliminary consideration and he noted the County could only apply for one grant right now and that there would be a wait for Schuyler. Mr. Rutherford suggested that staff give DHCD a heads up on the Library housing a business hub as there may be funding for that.

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H. School Division Transportation Study: TJPDC staff met with County staff on 8-30 to discuss next steps on the proposed study. As a meeting outcome, TJPDC staff agreed to confer with UVA faculty on possible use of students to facilitate the study during the University's second semester (2019). The alternative is a pending proposal from TJPDC to utilize transportation software for the conduct of the study ([preliminary cost estimate = \$15,000).

Mr. Reed asked if results would be available for the next budget cycle if the students completed it and Mr. Carter advised he would check. He agreed it would be important to have in hand for budgetary consideration. Mr. Carter advised that the premise was to evaluate it for routing efficiencies and Mr. Harvey added that length of time on the buses also needed to be evaluated.

I. Federal Rail Administration (Positive Train Control): Additional input from CSX Corporation staff on this subject is pending receipt.

Mr. Carter noted no change in status yet per an email he received from CSX staff.

J. Piney River Water System (TTHM Corrective Action Project): With concurrence from County staff, NCSA staff have effected an agreement with Bowman Consulting Group for provision of engineering services to facilitate a project to address compliance with state/federal drinking water requirements for total Trihalomethanes. Commencement of this project is in process.

Mr. Carter reported that they would implement a pilot study first to see what worked best. He noted they had proposed an inline unit to filter water of the organic compound.

K. Board Retreat: Scheduling of the retreat (October dates have been provided to the Board) is pending. Mr. Chip Boyles of TJPDC has agreed to facilitate the retreat, if his services are determined necessary. Staff (S. Carter) had an initial meeting on 8-31 with School Division Superintendent Dr. Martha Eagle who recommended a joint meeting with the County's School Board for a date, TBD, in September or October. Dr. Eagle also proposed tours of the County's schools with the members of the Board of Supervisors and participation in a similar tour or meeting with state legislators proposed for January 2019.

L. (Local) Health Department/Meeting with Blue Ridge Medical Center: The meeting with BRMC was postponed at the request of BRMC until a date subsequent to 9-10.

Mr. Carter advised that Mr. Pirtle would be suggesting a new date in October.

M. Introductory Meeting with Lynchburg District CTB Member (Mr. Bruce Dodson): Mr. Bruce Dodson, recently appointed by Gov. Northam to serve as the Lynchburg District member of the Commonwealth Transportation Board, has scheduled an introductory meeting with County staff on September 12th at 2 p.m. Lynchburg District VDOT staff will also attend the meeting. Mr. Dodson welcomes the participation of representatives from the Board of Supervisors until such time as he is able to schedule time to attend a regular session of the Board.

Mr. Carter advised that Mr. Dodson will have to reschedule the meeting and he would report back.

N. Personnel: Filling of the Secretary 3 position in County Administration is pending but in process.

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Added: Regional Jail ICE Policy:

Mr. Carter reported that the Regional Jail ICE notification policy was revised the previous year so that when release dates came up they were not holding them longer than that. He added that they gave them 48 hours' notice, they were not held and were released and it was up to ICE to pick them up when they were supposed to be released.

He reiterated that as stated earlier, there was a lot of sensationalism about the policy from the Charlottesville community and he had gotten emails recently from those wanting them to retain the policy. He reiterated that he had questioned why the Board was reconsidering the policy after they had already voted to keep it.

Mr. Carter then noted that Nelson wasn't an original member of the Regional Jail and when the County closed its local jail, the General Assembly funded the County's membership in the Regional Jail and the member use agreement was amended to include 2 members from Nelson. He reiterated that Nelson should have equal representation.

Mr. Harvey then noted that the Board did not need to tell the Jail representatives how to vote. Mr. Saunders advised Mr. Carter to remind Sheriff Hill to send an alternate representative as he may be attending a funeral that day.

Mr. Bruguiere then inquired as to who Legal Aid was representing and Mr. Carter noted a consortium of interests to request that the policy be set aside and the immigrant community.

Mr. Carter advised that Mr. Daniel Rutherford had written a letter and the Commonwealth Attorney of Charlottesville had written a letter to the editor which was a very good justification for maintaining the policy.

2. Board Reports

Mr. Saunders and Mr. Harvey had no report.

Mr. Reed:

Mr. Reed reported that the Nelson County Wellness Alliance was moving forward with establishing a family treatment court in Nelson. He noted that they had met with Judge Bennett who supported the project; which was needed in order for it to proceed. Mr. Reed explained that they would get funding from the state to add another judge for the county to free up time for Judge Bennett to be in the family treatment court. He added that they were waiting to hear if they had the grant funding to proceed and he commended the Alliance members and noted it had been a collaborative effort.

Mr. Reed then explained that this type of court was usually called Family Treatment Court or Family Drug Court. He noted it served families that required drug treatment and were also involved with family court. He advised that it put agencies together on it and the funding would go to formalizing the coalition and creating a nonprofit organization. He noted that people would have the option to sign up for the court and it gave them the opportunity to have their case wiped and to get their kids back when they make a two year commitment to meeting with the Judge etc.

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Mr. Reed reported that Medicare Part D changes were being made and he advised that 90% of those having Medicare part D had the wrong plan. He noted that JABA and Medicare were providing a free evaluation service for seven days from October to December in Nelson. He advised that people could also get the service in Charlottesville during that time.

Mr. Rutherford:

Mr. Rutherford reported that affordable housing was discussed at the TJPDC meeting and that they were forming a board that addressed that on a regional level and he was excited to see that happening. He then noted that the FCC Broadband auction had allocated \$8 million to unreached areas of Nelson County and he thought that parts of the east and south districts should benefit from it. He added that an announcement would be made regarding the auction winner after the quiet period.

Mr. Bruguere:

Mr. Bruguere noted that the Planning Commission had turned down the Afton Depot SUP; however had sent over a list of conditions they would like to see if approved by the Board.

C. Appointments

<u>(1) New Vacancies/Expiring Seats & New Applicants :</u>					
<u>Board/Commission</u>	<u>Term Expiring</u>	<u>Term & Limit Y/N</u>	<u>Incumbent</u>	<u>Re-appointment</u>	<u>Applicant (Order of Pref.)</u>
NC Social Services Board	6/30/2018	4 Years/ 2 term limit	Joan Giles-West (served 2T)	N/A	None
JABA Board of Directors	7/15/2018	2 Years/No Limit	Diane Harvey	N	Ernie Reed
JAUNT Board	9/30/2018	3 Years/No Limit	Delores "Dee" Green	Y - Email	None

Ms. McGarry noted there were no new applicants for any of the vacancies listed and Ms. Green wanted to be reappointed to the JAUNT Board. It was noted that Mr. Reed was still interested in being appointed to the JABA Board of Directors.

Mr. Harvey moved to appoint Mr. Ernie Reed to the JABA Board of Directors and Mr. Rutherford seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

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Mr. Saunders moved to reappoint Dee Green to the JAUNT Board and Mr. Harvey seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

C. Correspondence

Mr. Carter noted the two items for informational purposes and no action was taken by the Board. Mr. Carter advised that staff was participating in the FEMA and DCR risk mapping and assessment planning which included attending a workshop and completing a survey.

1. Dept. of Historic Resources – “Arrowhead” Historic Register Nomination
2. FEMA & DCR Risk Mapping and Assessment Planning

D. Directives

Mr. Harvey and Mr. Rutherford had no directives.

Mr. Saunders:

Mr. Saunders asked if staff would check into resolving the plumbing issue in the Men’s bathroom in the new courts addition. Mr. Carter advised he would look into it.

Mr. Bruguire:

Mr. Bruguire noted that the Sheriff had noted to him that there were some dispatchers that were upset about getting a 2% raise and taking home less due to the increase in health insurance costs. Mr. Carter noted that was not the case for all and some had benefitted from a 33% pay study increase. He noted that family insurance coverage was expensive and the premium increase may have exceeded the 2% raise. He added that the one person he was aware of was a Compensation Board employee and the Sheriff may be able to fix that.

Mr. Bruguire then asked if it was possible for the County to offer different plans with different deductibles and Mr. Carter advised that the County was currently doing that with one being more expensive than the other. Ms. McCann added that the County could only offer two plans because of its group size and an Expanded and 250 plan were available. She noted that they also had a 500 plan and a high deductible plan that could be chosen. She noted that in the past, nobody wanted to take the high deductible plan. She noted the 500 plan could be offered but it would have to be offered with the 250 plan. Ms. McCann advised that she would have to re-evaluate the high deductible plan. Mr. Carter then advised that they had only heard that complaint from one individual. He added that he had not polled everyone; but most seemed very happy with the insurance coverage provided. Ms. McCann noted that employees were happy and thankful that the Board was willing to support that benefit.

Mr. Bruguire noted that the Sheriff had also imparted to him how much it was costing them now for transports. He noted that he had heard that the Blue Ridge Regional Jail offered free transports and he asked if they should take a look at that. Mr. Carter noted his understanding was that the County would have to pay to get out of the Albemarle Charlottesville Regional Jail and would also have to pay into the Blue Ridge Regional Jail. He noted that would need to be evaluated again as previously, the cost was prohibitive. Mr. Carter then noted that other than the recurring issues over ICE, the ARCJ was one of the best facilities in the state for rehabilitation and limiting recidivism. He added that they had many

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programs assisting them while incarcerated and it was a good facility. Mr. Rutherford confirmed that TJCCJB members say they wish they were in that jail for its quality of services. Mr. Carter added that the Per Diem was one of the lowest among comparable sized facilities but he was concerned that Nelson's population had increased 10% and that type of sustained increase in the five year average could mean an additional cost \$900,000.

Mr. Reed:

Mr. Reed noted that a new Board picture was needed for the website.

VI. Closed Session Pursuant to Virginia Code § 2.2-3711(A) (1) Personnel

Mr. Rutherford moved that the Nelson County Board of Supervisors convene in closed session to discuss the following as permitted by Virginia Code § 2.2-3711(A) (1): discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body. Mr. Saunders seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

The Board conducted the closed session and upon its conclusion, Mr. Rutherford moved to reconvene in open session and Mr. Saunders seconded the motion. 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. Reed seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Following certification of the closed session, no action was taken by the Board.

VII. Other Business (As May Be Presented)

Introduced: Local Emergency Declaration:

Mr. Carter noted that declaring a local emergency was a first step in the process and that staff may come back with a disaster declaration depending on the impact of Hurricane Florence. Mr. Carter noted that the proposed resolution provided the designation of authority during an emergency event.

Mr. Rutherford inquired if they had been done before and staff and Supervisors noted they had.

Mr. Harvey stated he thought it may be a little premature and that the State had already declared an emergency which covered a lot of things. He then suggested that they wait until Thursday.

Mr. Carter clarified that the emergency could be declared and then the Board could ratify it after the fact within thirty days.

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Mr. Bruguiera and Mr. Saunders thought it should be done and Mr. Saunders moved to approve resolution **R2018-50**, Declaration of a Local Emergency, Hurricane Florence. Mr. Reed seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion and the following resolution was adopted:

**RESOLUTION R2018-50
NELSON COUNTY BOARD OF SUPERVISORS
DECLARATION OF A LOCAL EMERGENCY
HURRICANE FLORENCE**

WHEREAS, pursuant to §44-146.21 of the Code of Virginia, The Board of Supervisors of the County of Nelson does hereby find:

1. Due to Hurricane Florence, the County of Nelson is facing dangerous weather conditions; and
2. Due to Hurricane Florence, a condition of extreme peril to life and property necessitates the proclamation of the existence of an emergency;

NOW THEREFORE BE IT RESOLVED, that a local emergency is imminent and/or exists throughout Nelson County and during the existence of said emergency, the powers, functions, and duties of the Director of Emergency Services or his designee shall be those prescribed by State Law and the Ordinances, Resolutions, and approved plans of Nelson County in order to mitigate the effects of said emergency.

VIII. Adjourn and Continue Until 7:00 PM

At 4:10 PM, Mr. Rutherford moved to adjourn and continue the meeting until 7:00 PM and Mr. Saunders seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.

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

I. Call to Order

II. Public Comments

1. Kim Peele, JABA Director of Philanthropy and Communications

Ms. Peele noted that they now had 10-15 local seniors coming on the fourth Friday of the month at their pop-up site at Schuyler Baptist Church and they were reaching out to seniors around the county such as in Gladstone, Rockfish, and Ryan School Apartments. She added that they had received support from the Moose lodge in Waynesboro, where they were helping the Lovingston seniors go to the Moose Lodge for bingo and other activities. She noted this replaced some JAUNT funding that was no longer available to them.

Ms. Peele then noted that because of the Board's support, senior members were able to get out and be active and recently the Cecilia Epps Senior Center seniors went to the Kluge aboriginal art museum, had

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a picnic, and painted for the day. She noted that they were also bringing all of the seniors together in September for the Fall Ball.

Ms. Peele noted that Medicare Part D enrollment started October 15th and last year in Nelson County, they saw 91 clients who saved \$51,000 by switching plans. She noted that they would be having a mobile clinic at Lovington, RVCC, BRMC, and Schuyler. She then distributed related flyers to the Board and staff.

2. Massie Saunders, Roseland

Mr. Saunders noted he has lived in Nelson for over 60 years and was proud to call it home and he loved to tell others where it was and what they had here. He noted that he has worked all over the state and in DC and Puerto Rico. He noted there was a lot to offer in the County and with all of those attractions, they have seen and would begin to see many people coming in and developers taking advantage of the revenue that visitors were willing to leave.

Mr. Saunders noted that as an Engineer and Surveyor in the county for over 30 years himself and with his family having 100 years of service in the county, they had designed many facilities in the County and across the state such as churches, firehouses, athletic complexes, office buildings, stores, storage facilities, gas stations, restaurants, and various types of residential structures etc. He added those designs had been critiqued by all levels of government. Mr. Saunders noted that they were now at a place where fixing up was the way to go and developers were rehabilitating old structures that did not need to be rehabbed in order to try to gain space by encroaching into buffers. He noted that the County had a Zoning Ordinance and a Comprehensive Plan that said what could and could not be done in the rural Nelson community. He added that growth was inevitable, but it must be controlled in order to maintain a beautiful county. He stated that the Planning Commission and the Board needed to work together through local guidelines to keep the growth going in a direction they could all be proud of.

He noted there were several projects in review stages that had various issues and he noted developers would try to push things until the locality pushed back. He noted there were many projects that were pushing further and further until there would be many nonconforming projects in the county. He noted there were multiple sites that developers were currently looking at that would be commercial facilities right on the highway or right on top of residential neighborhoods that were bad for the community. He noted that they had to take a stand now. He noted that sites were being developed that were not making people the first priority. He noted that buildings too close together created fire hazards, buildings too close to the roads created hazards for visitors, passersby, and children that may run off the porch playing tag. He then questioned how many people needed to be hurt or killed before it was stopped.

Mr. Saunders then quoted a section of Article 11-1-3 pertaining to nonconforming structures as follows:

“If any nonconforming use (structures or activity) is discontinued for a period exceeding two (2) years after the enactment of this ordinance, it shall conform to the requirements of this ordinance.”

He noted there were no questions, it was straightforward.

He then quoted Zoning Ordinance Article 11-1-4 regarding expansion and enlargement and he noted he thought it was getting confused with Article 11-1-3. He added that it was meant to apply to structures

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that were in use and then discontinued for more than two years, it did not apply to structures that had been abandoned for more than two years.

He then suggested that the County get all project information on the front end including all elements of site plans. He noted item C. of Minor Site Plan Requirements in the Zoning Ordinance, required the disclosure of the location of all streets, pathways, easements, and all proposed uses of the land. He reiterated it required all and not some information. He then asked how they could take a project without the total package that was required. He noted he had worked on projects where elements of a piece of property were not disclosed to out of town buyers. He noted that they must maintain a high respect for the land and its beauty and govern the development in a more responsible way so that developers won't come in, make their money, and leave them with the mess that they had created. He noted that he knew about some of those type projects, he had been involved in some of those projects, and he had worked against some of those type projects. He concluded by stating they must take a stand before it was too late.

III. Public Hearings

A. Special Use Permit #2018-05 – Farm Winery Permanent Remote Retail & Restaurant

Consideration of concurrent Special Use Permit applications requesting County approval to use the specified subject property for Farm Winery Permanent Remote Retail and 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. Shackelford gave the following staff report:

BACKGROUND: This is a request for a special use permit on property zoned A-1, Agricultural to allow for the construction of a building that will contain three suites. One of the suites will be used as a nano-brewery where farm products used by the facility will be grown on-site. This will be considered a farm brewery based on the state definition and does not require a special use permit. One of the suites will be used as a farm winery permanent remote retail establishment (§4-1-16a) and the other will be used as a restaurant (§4-1-34a).

Public Hearings Scheduled: P/C – June 27, 2018, July 25, 2018; Board – September 11, 2018 Location / Election District: 9485 Rockfish Valley Highway / North Election District

Tax Map Number(s) / Total acreage: 6-A-131 & 6-A-163D / 10.937 acres +/-

Applicant Contact Information: Todd Rath, 161 Wood House Lane, Nellysford, VA 22958; 434- 996-7133.

Comments: The applicant applied for, and was granted, a special use permit previously for six one-bedroom cabins and to convert the existing building on the east side of the property into a tasting room/restaurant and use the storage building beside it as an accessory to that use.

Ms. Shackelford added that there had recently been a zoning determination of that Special Use Permit being deemed null and void.

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He had originally requested additional special use permits for other businesses that would potentially be interested in locating on the property, but at the time of the original request, the businesses that would likely locate in the space had not been identified and the applicant withdrew that portion of the request prior to final action being taken by the Board of Supervisors.

At this point, the applicant has signed letters of intent from two businesses (farm brewery not needing a SUP and farm winery permanent remote retail establishment) that would occupy the proposed building, and additionally has a potential tenant that would like to use the third space for a chocolate/gelato shop that would fall under the definition of a restaurant in the zoning ordinance.

(a) *Approval of the Special Use Permit does not constitute final site plan approval.*

Ms. Shackelford noted that the final site plan approval would need to happen with the Planning Commission should the Board approve the SUP.

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, but a traffic impact analysis is not required at this time. VDOT previously reviewed the proposed development when the initial special use permits were requested. They indicated that the entrance would need to be relocated to align with the entrance into Silverback Distillery. Eventually the development will require a right turn taper and a left turn lane. VDOT has not received the information from the applicant at this time to determine whether the proposed development has reached this threshold, but the applicants will be required to comply with VDOT requirements prior to any zoning approvals being issued.

Utilities: Property is served by private well and septic systems.

Conditions: The Board of Supervisors may impose, reasonable conditions upon the approval of the special use permit. The Planning Commission discussed potential conditions at length, but did not end up reaching a consensus on recommended conditions that should be included since they ended up recommending denial of the request. Based on their discussion, staff is recommending the Board of Supervisors considers including the following conditions should it decide to approve this request:

1. Amplified music shall be limited to the hours between 1:00 pm and 7:00 pm Sunday through Thursday, and between the hours of noon and 8:00 pm Friday and Saturday.
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 Sunday through Thursday, and 9:00 am and 9:00 pm Friday and Saturday.
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

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fence 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 (approximately 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.

Ms. Shackelford then explained that the subject property was between what was considered Rural Residential areas in the Comprehensive Plan and was outside the immediate scope of that. She noted technically it was considered Rural and Farming.

RECOMMENDATION:

Per the statement of intent for the Agricultural District:

This district is designed to accommodate farming, forestry, and limited residential use.

While it is recognized that certain desirable rural areas may logically be expected to develop residentially, it is the intent, however, to discourage the random scattering of residential, commercial, or industrial uses in this district.

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

1. The use shall not tend to change the character and established pattern of development of the area or community in which it proposed to locate.

The proposed use could be considered to be consistent with the development pattern along the 151 corridor in this general area. However, there is concern about continued expansion of higher intensity uses along 151.

2. 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.

The proposed could be considered complimentary to other uses in the area. The Silverback Distillery is located directly across the highway from this site. The businesses that would potentially be permitted are small in scale and are similar in nature to the other existing businesses in the area. There is pushback from the neighboring property owners that the use would not have adverse impacts on the residential uses in the near vicinity of this request.

3. The proposed use shall be adequately served by essential public or private water and sewer facilities.

The applicant will work with the engineers and the health department to ensure adequate facilities are provided.

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4. The proposed use shall not result in the destruction, loss or damage or any feature determined to be of significant ecological, scenic or historical importance.

There do not appear to be significant ecological, scenic or historical features that would be impacted by the proposed use.

The Planning Commission recommended denial of this request by vote of 4-2.

Mr. Bruguere then noted the Board would hear from the Applicant.

Mr. Rath, the applicant asked to speak after the public hearing because he thought he would be better able to address concerns. Mr. Bruguere advised that would be appropriate and Mr. Rath then asked to clarify a couple of things noted by Ms. Shackelford in her report.

Mr. Rath clarified that he had not withdrawn the first Special Use Permit application for this because he wanted to but rather because the County had asked them to because of failed procedures and a possible lawsuit. He noted it was not for anything they had done.

Mr. Bruguere then asked Mr. Rath to explain the process and project for those that may not have heard it previously.

Mr. Rath then noted that in 2013, he bought the southern 8.5 acres in two parcels from the Fox family and he had a vision of creating lodging for tourism. He noted that he had surveys done that revealed he would need a half million dollar septic system to support a 50 room hotel. He then purchased the Wintergreen Winery and the Fox property became idle. He added that he subsequently purchased the northern part of the Fox property later on. He noted both Fox parcels had been for sale for one to two years and the latter one for about 8 months. Mr. Rath noted that he had lived in Afton until 2014 but moved after he began to have kids because of the traffic on Route 151.

Mr. Rath noted the project has been significantly delayed and he advised that he had spent \$190,000 on the project to date and was trying to build a nice agribusiness and tasting room for the community along with a chocolate and ice-cream shop that fell under the zoning definition of restaurant.

Mr. Rath noted he understood the opposition and their rights. He added that he found that 7 out of 13 of the opposing residents bought their property in 2013 or more recently. He added that there were 8,000 cars per day then and the traffic has been there so he did not agree with the increased traffic argument. He added that Rockfish Orchard was an orchard and it was turned into a subdivision.

Mr. Rath noted they were going to build business in the community that citizens would like, like a grocery store that would bring Afton some services since there was no grocery store or shopping center at which to get things.

He noted that if the Board denied Special Use Permits for those things, they would be forced to build by right and that meant more alcohol. He advised that building the project by right could have been done, however he wanted a nice mix of businesses for the community. He added that he was primarily in the alcohol business and bought a million pounds of Nelson County apples; but wanted to put a mix in there for families to enjoy. He noted that breweries and cideries were a family thing now and they were not just where people got drunk anymore.

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Mr. Rath then noted that the Board's choice was clear, either they would build by right or they could work out SUPs in order to bring in businesses people would enjoy as other things were needed on Route 151.

Upon the conclusion of Mr. Rath's remarks, Mr. Bruguire opened the public hearing and the following persons were recognized:

1. Ian Kelly, Rockfish Orchard and Kelly and Forensick Group

Mr. Kelly spoke in opposition to approving the SUP. He noted that Mr. Saunders had covered much of what he wanted to say and he thanked the Board for holding the public hearing. He noted that he had gone through previous meeting minutes to see how the Board considered things and made decisions. He referenced comments made by Mr. Bruguire concerning getting trucks off of Route 151 and back on the interstates and that was the type of protection they were looking for. He noted he was not against planned growth, breweries, or the project team; however this project plan went against the Comprehensive Plan, did not conform to the Zoning Ordinance, would absolutely erode property values, and inarguably have adverse effects on the quality of life and safety of the residents.

He then advised the Board to look at the Comprehensive Plan that was written in 2002 but was updated in 2014 and had to have taken into account the growth in the beverage industry. He noted that the most popular restaurant in Afton was opened in 2007 and in fact the Blue Toad restaurant was there in 2014 so have seen that type of planning. He acknowledged that those uses were by right and was not necessarily a bad thing. He referenced page 40 of the Comprehensive Plan that addressed land uses and identified the Afton/Avon area as Rural Residential and defined that as areas that were low density residential and had compatible non-residential uses, meaning low density as well.

He noted that he would agree that one by right brewery coming in was appropriate; however six businesses with six to twenty cabins and an event hall etc. was too much. He added that not only was it not covered in the Comprehensive Plan, the plan specifically said that type of business should not go there, there should not be strip malls. He noted that it did provide for the area of Nellysford as an area for mixed use, which was a moderately dense center of rural activity that was surrounded by sparsely populated and developed rural land. He added that it said at its center was a central gathering place, which was what RV was looking for. He noted that the project was the right design for a central gathering place and was needed in the county; however it was the wrong location for it. He added the applicant planned to put four acres into conservation easement which left only six acres on which to build out his plan. He noted the other five acres would entail multiple SUPs which would be too much. He then noted that the Board must consider the legislative intent of the Zoning Ordinance and Comprehensive Plan.

Mr. Kelly then stated that it was not just VDOT that governed the roads, the Board needed to look at the effects on the road system as they evaluate SUPs. He added that the proposed project would hurt home values, noting the nearest home was on 19.28 acres and had a value of \$673,000, the next closest one had a value of almost \$1 Million, and the next closest a value of over \$700,000. He then quoted a third generation local realtor that stated "that it would be nonsensical to think that property values would not be adversely affected by this development. No one was going to move to 30 minutes from Charlottesville next to a densely commercial area with live music." He then noted a court case which upheld that effect on property values mattered in special uses.

Mr. Kelly then noted that the farm brewery was allowed by right; however they did not need the whole thing in such a small area. He added that the applicants knew when they purchased the property, they were extremely limited in what they could do by right and were expecting the Board to ignore all of their rules and regulations and do something for them. He then asked the Board to follow the Zoning Ordinance and follow the Comprehensive Plan in making their decision; which included protecting their property values and quality of life. He implored the Board to stop zoning via SUP and vote as if they owned both the development property and the neighboring properties and that they were going to raise a family in a house 120 yards away. Mr. Kelly concluded by noting that the neighborhood had over fifty different people in attendance represented through their attorney and he and others had resided there for over ten years.

2. Lindsay Dorrier, Afton Nelson 151 President

Mr. Dorrier spoke in favor of approving the SUP. He noted he represented a local organization that consisted of craft brewers and other symbiotic businesses along Route 151. He noted that they supported the SUP and they thought the project would enhance Nelson County as a premier destination for Agri – tourism and would make Nelson a better place to live, work, and play by providing goods and services for local residents. He noted they thought it would add well compensated jobs to ensure the next generation of Nelson residents had local opportunities and it would contribute important tax dollars towards municipal revenues that would allow the Board to continue to reinvest in the community. He noted there were some legitimate concerns related to traffic that he thought they needed to work together to solve and they wanted to be part of the solution and not the problem and would love to be part of a working group in order to be able to address the concerns brought up by the neighbors. Mr. Dorrier then noted that they had a stake in solving them as well and preserving the rural vitality of the community, which was why so many businesses were successful in the area. He concluded by stating that stagnation was not the answer and he asked the Board to approve the SUP.

3. Marilyn Shifflett, Afton

Ms. Shifflett spoke in opposition to approving the SUP. She noted that she had reviewed minutes for both Planning Commission and Board of Supervisors meetings and was dismayed at comments made in regard to this project. She noted she had the utmost respect for the jobs the Supervisors have; however she noted several comments made that were disturbing, such as " the Comp Plan is out of date" and " By all means work on it but it is what we have and it must be followed", "many apple trees were cut down to develop the Rockfish Orchard community".

Ms. Shifflett noted that she had lived in Nelson for fifty years and must point out that the former orchard had not produced for several decades prior to the sale of that property. She noted she assumed that community was reviewed and approved by County officials at the time. She stated that to imply that current residents lose their voice because of the history of their property leads one to believe that all of them should move and contact the nearest Native American tribe so they could reclaim what belonged to them. "This property was not zoned correctly in the 70's ", "point taken" but it was now residential area and must be viewed as such. "It's only 3,600 more square feet". She noted that in reality the SUP was for 4,200 square feet and it was short-sighted not to consider the entire development. She noted the original plan called for two retail buildings, the Blue Toad Cidery pub, a 4,000 square foot event barn, and forty-eight one bedroom cabins and simply because the applicant chose to parse the project in to multiple SUPs, did not mean the entire development should not be

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considered and that the concerns expressed a year or two down the road were not valid. She noted that was rather the entire point of planning. In regards to Route 151 traffic issues she noted the quote "It's not that bad" which was a statement from someone that did not live in the north or central district or drive that route every day.

Ms. Shifflett then noted that while the Comprehensive Plan lists Afton as Rural and Farming, the land use map lists Afton specifically as Rural and Residential. She noted that given the Plan has been in effect for 16 years, when could they expect that to be a consideration. She then added that at the last Planning Commission meeting, Ms. Shackelford had noted that there were many items to be worked on along Route 151.

Ms. Shifflett then noted the mission statement of the Board of Supervisors as follows:

"It is the mission of the Board of Supervisors to maintain Nelson County as a beautiful, safe, healthy, and prosperous rural county; where public services are effective, efficient, adequate and responsive to the needs of its citizens; where education is a life-long process; where citizens are involved in all aspects of their governance; and where the community is well planned to assure respect for and dedication to its traditions and resources, while continuing to improve its economic viability."

4. Deborah Justice, Rockfish Orchard Drive Afton

Ms. Justice spoke in opposition to approving the SUP. She provided the Board with a petition of 307 Community signatures and noted that the petition said "Enough is enough. We are tired of the Planning Commission, Planning Director, and Board of Supervisors of Nelson County, Virginia, using Special Use Permits to develop rural and agriculturally zoned land. This is ruining our quality of life and threatening us and our families on the road. We are against the Rockfish Valley Events, LLC application of a Special Use Permit for more development on Highway 151."

Ms. Justice then noted that the applicant himself said he did not want his kids to live on Route 151 anymore due to traffic. She then asked what about the kids in their neighborhood and added that Rockfish Orchard was characterized as not being a farm anymore; however they did farm there. She noted the project itself was not a bad idea; it was just the wrong place for it.

5. Margaret Flather, Rockfish Orchard Drive Afton

Dr. Flather spoke in opposition to approving the SUP. She asked the Board to remember their Mission Statement of being responsive to the needs of their citizens and to be involved in their governance and they should not hold it against them that they came there to express their concerns. She then asked the Board to keep and honor their word and promises.

Dr. Flather then addressed the four points of consideration when evaluating an SUP. She noted that the first item was not true, the proposed project would change the character of the area and would be the straw that would break the camel's back. She noted most of those places were one business and spread out; however the project would put a cluster of businesses across the street from a brewery and a distillery.

She noted that number two was absolutely not true. She reiterated that the project would adversely affect the community and the whole north end of the County. She added there would be a strip mall in a

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rural agricultural and residential area. Dr. Flather further noted that it would be loud and disruptive as sound really carried in that area since it was between two mountains.

Dr. Flather noted that in regards to number three, there was no public water and sewer, it was all well and septic system.

She then noted that related to number four, at the bottom of the property, there was a flat marshy wet area that went into a stream.

Shen then concluded that she did not think any of the criteria were valid.

Dr. Flather then noted that Route 151 was extremely dangerous as evidenced by the DMV website alcohol related statistics as follows: there were 18 alcohol related accidents in 2016, 24 in 2017, and 21 so far in 2018. She added that if the same pace was extrapolated it would be around 30. She then noted that there have been less DUIs because the Sheriff's Office was down deputies. She noted that according to a letter submitted by the Mothers Against Drunk Driving (MADD), if the SUP was approved, the County would have to hire more deputies; which would cost the County, citizens, and the community and the price was too high.

Dr. Flather referenced the conditions presented and noted that to make the project fit and be a good neighbor for the community, they would have to wrap the decks with sound barriers and not have amplified sound etc., completely fence the property with fences that could not be climbed, add turn lanes, and refuse to grant any more SUPs for that parcel. She noted that the developer had already refused those so the clear choice was not to approve the SUP.

6. Brenda Saunders, Dick Woods Road Afton

Ms. Saunders spoke in opposition to approving the SUP. She related that she was affected by events at Veritas, Blue Ridge Brewery, and Valley Road Winery (Albemarle County) noting that the noise levels from those places was terrible. She added that she could sit in her soundproof house and hear all of the music. She did acknowledge that Veritas had complied fairly well.

Ms. Saunders then stated that the Board was elected to represent them and to do what was right for them. She asked that they not support just one, but that they look at all of the people that the project would affect. Ms. Saunders noted that traffic was indeed horrendous on Route 151 and that it was not patrolled for DUI because there was nowhere along Route 151 to pull anyone over. She noted that the project was not wanted and recommended that Mr. Rath go to Nellysford or Lovingston with his project and not try to have it in a rural community. She added that if they kept building, there would not be any scenery to enjoy.

Ms. Saunders then noted that every time Mr. Rath has spoken, things changed and she thought that if he were allowed to speak after the public hearing, then the public should get to counter. She added that he always got in the last word and they wanted to refute most of what he has said because it was not true. She concluded by stating that she lived on Route 151 and was not leaving, she did not want the project, the neighbors did not want the project, and the Route 151 businesses were negatively affecting their lives.

7. Adam Sullivan, Nellysford

Mr. Sullivan spoke in favor of approving the SUP. Mr. Sullivan noted that many interesting points had been made. He noted he had been in the County for five years and had moved to Nelson because he had kids and wanted to leave the city. He noted he understood the growth and rural development issues; however, he liked the ability to have things to do while having the rural – that duality was important to him. He noted that they all went to the wineries and breweries, he was privileged to live in Nelson, and he did not see approving the SUP as a bad move. He stated that there could be large corporations coming in having larger impacts and this project was small and being able to go to an ice cream shop with his small children was a huge value. Mr. Sullivan reiterated that he felt the project was a positive and he saw the traffic on Route 151, which has been there, although there were more cars with out of state plates that gave him pause. He added that he did not think having the small cidery there would change that as people were cutting over on Route 151 to Route 29; which was a much larger issue that he sympathized with.

Mr. Sullivan concluded by stating that he thought they were all there for the right reasons, he was glad the issues were being discussed, and he wanted an amicable solution for all.

8. Angela Passanesi, Nellysford

Ms. Passanesi spoke in favor of approving the SUP. She noted that she grew up in Charlottesville and spent lots of time in Nelson County in Afton. She noted she had been gone for 22 years and lived in other more populated areas and was now living here. She noted that she had a 15 month old child and she understood the concerns and also the value. Ms. Passanesi noted that the poverty level in Nelson was around 12% which was lower than the national average. She added that was a result of businesses in the area that made Nelson County thrive. She noted a documentary was done on why Nelson County thrived and she noted it was because commerce allowed for better schools for children and the County needed it for them to succeed in the future. She noted she would love to have an ice cream shop and saw Nelson as a community of amazing people and it should be allowed to grow within reason. Ms. Saunders noted she thought the comments about children being killed and people dying in more accidents were outlandish and extreme measures were being taken to discuss a 3,700 square foot building. She asked the Board to think about what they were looking at and what they wanted to do and how they wanted to do it. She added that she supported the project 100% and hoped they would find a way to make it work as she thought they were all there to do that. She then asked the Board to consider the facts and remove the emotion from the decision.

9. Jerri Lloyd, Afton

Ms. Lloyd spoke in opposition of approving the SUP. She noted that she lived on Route 151 directly across from the proposed project and had since 1991. She noted that she and her husband bought property up Glass Hollow Road in 2014 because they wanted more land and land on the river with beautiful views of the mountains across the street. Ms. Lloyd noted that the plans as presented were not correct since the six cabins approved were on a section that was null and void, so the cabins shown could be considered “in addition to” which made the plans incorrect. She noted that the plans called for retail and said so in the packet. She added that the SUP did not support retail in Nelson County and all plans called for retail.

Ms. Lloyd then noted that there was no VDOT approval for the second phase. She then noted that the

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Planning Commission denied approval for the SUP based on a plethora of information presented and she hoped the Board would also deny it. Ms. Lloyd then noted that they lived in between the Brewing Tree and Silverback and the Brewing Tree was not a good neighbor. She noted that even with the air conditioner on etc. they could still hear the loud music.

Ms. Lloyd stated that the area was rural and not commercial. Mr. Rath talked about the septic system that would cost him too much for fifty rooms and she questioned how it could now handle potentially 300 customers. She also questioned how the septic system would support the cabins, and not a hotel. She noted that Mr. Rath did not want to live on Route 151 because of traffic; but expected those that had to stay there to deal with it. She concluded by noting the community did not like the plan and did not want it in their area. Ms. Lloyd noted that the taxes in Nelson came from property taxes and the amount from businesses was not 50% of what people bring. She noted that area was not for the center and she hoped the SUP was denied.

10. Cameron Tabor, Nellysford

Mr. Tabor spoke in favor of approving the SUP. Mr. Tabor noted he had been a Nelson County Resident for nearly three years. He noted he was a CTO of tech based company and volunteer for Wintergreen Rescue Squad. He noted his was a family of six, with four children, 3 at Rockfish and 1 at Nelson Middle School. He noted that while he had not been in Nelson long, he was invested in the community. He noted four factors brought them to the County: Scenery, nature, skiing, and the variety of local businesses. He noted that the combination of those factors was important and without any of them the area was diminished somewhat. He added that they would visit the area and would see locals hiking, tourists, families picnicking with their dog, and knew Nelson was the place for them. He then noted it was his understanding that the facility plans would provide a nature walk, would seek a natural foods grocer, and other family friendly shops. He added those were attractive things and it was refreshing to hear that many people thought it was a good idea but not necessarily the right spot. Mr. Tabor noted he definitely supported the idea and thought that responsible growth and viable businesses were important to the community. He noted he hoped the business owner and the community could work together with the Board to ensure the long-term viability of the community by facilitating responsible growth and opportunity for new businesses.

11. Michael Fox, Afton

Mr. Fox spoke in opposition to approving the SUP. He noted he lived beside the Brewing Tree and across from the proposed development. Mr. Fox then noted he wanted to relate his experience with Special Use Permits.

Mr. Fox related that the land he lives on has been in his family since 1759 and his great grandfather was buried there and his great grandfather was also buried there. He noted he was thrilled to move there and when his dad needed to downsize, he sold 50 acres to the Rigglemans who told him they would build 3 houses on the property. He noted they instead built Silverback right next to his father's driveway and his appraised property value versus the sale value decreased 25%. He noted the Lloyds resided in one of the houses.

Mr. Fox then noted that the SUP granted to the D'Ambola's restaurant was bad for them. He noted there were some limits and considerations and they learned to live with it. He noted that Blue Toad arrived next in that location and it was a terrible experience and now it was the Brewing Tree that played loud

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amplified music several nights per week and they could not get away from it. He added that his home was well insulated etc. and he was asking the Board to consider what they were already living with in that area and to please not make those problems worse by approving the SUP.

12. Connie Fox, Afton

Ms. Fox spoke in opposition to approving the SUP. She noted that she was the previous speaker's wife. Ms. Fox noted being concerned about the 55 mph speed limit that combined with dangerous sight lines there, was a real problem for them. She noted that in the southbound lane, there was a slight curve and the right of way brush was usually so high, you could not see when she was already stopped at her driveway and she had been hit from behind there by a lady going 65 mph that did not see her coming around the curve. She noted there had been several times when she was waiting to turn left into the driveway right before the Brewing Tree and cars hit brakes squealing or they ran off of the road to keep from hitting her.

Ms. Fox added that there was no shoulder on that section of road and an acquaintance of theirs, who was also a State Trooper for Nelson, had said they would not be pulling people over for speeding because it was too dangerous and there was no safe place to do so. She noted that was a condition made worse by more and more businesses in the area.

Ms. Fox questioned whether or not surveys were required for new businesses because of their experience with the Brewing Tree mowing down their trees because they did not know where the property line was.

Ms. Fox reiterated how loud the amplified music was and she noted that the Planning Commission had discussed non amplified music and she was confused about the seemingly arbitrariness of their approvals. She added those were her concerns about additional business on an already dangerous road.

13. Phil DeJong, Afton

Mr. DeJong read the following prepared statement in opposition to approving the SUP:

My Name is Philip DeJong, my wife Christine and I Live at 305 Falling Springs Drive, Afton, VA and our property has the unfortunate distinction of sharing nearly 1400 feet of property line with the proposed development.

As you consider this SUP, I would like to reiterate your own principles found in the RVAP as you evaluate the appropriateness of this project.

Those principles are:

- 1) To minimize unplanned growth and prevent undesirable change.
- 2) To protect rural residential areas.
- 3) To identify future land use patterns that are most desirable and appropriate.
- 4) To maximize quality of Life for residents.

These principles are similar to those of the Alcohol Beverage Control Act (section 4.2.d): The ABC may refuse to grant a License if the applicant 11IS so located with respect to any residence or residential area that the operation of such place will adversely affect real property values or

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substantially interfere with the usual quietude and tranquility of such residence or residential area"

While these principles sound good they are of little value if they are not enforced. The inherent problem with SUP's is that the ABC usually follows the lead of the County. If an alcohol related SUP is granted, ABC is more than likely to issue a license even if it violates their own principles. They are looking to the County to take the Lead and do the right thing.

Case in point: We have discussed D'Ambola's restaurant Located across the street from the proposed Afton Depot development and the former home of Blue Toad. The unintended consequence of that SUP issued years ago has resulted in now another by-right brewery, Brewing Tree Brewery. If you'll allow me I'd Like you to hear what our neighborhood's quietude and tranquility now sounds like.

Mr. Dejong then played a brief recording of very discernable amplified music.

This was recorded with my iPhone on my front porch Last Sunday afternoon from a distance of over a quarter mile. My neighbors in Rockfish Orchard also hear this from over half a mile and more. Each weekend we are imposed with the Likes of a mini-LOCKN festival. While I like the Rolling Stones as much as anyone, Imagine the cacophony of noise if Afton Depot is approved and their amplified music is added to what already exists at Silverback and Brewing Tree.

Which brings me to my final point: If Afton Depot is approved we will have FIVE alcohol related establishments within a 1000 foot stretch of 151, ALL adjacent to residential communities. Again, (section 3.) of the ABC regulations state:

The number of Licenses existent in the Locality is such that the granting of such License is NOT detrimental to the interest, safety or welfare of the public. This is the issue you the Planning Commission and the Board of Supervisors needs to consider: There has to be a Limit to this. Property values will decline. Quality of rural Life will erode. Alcohol related accidents will increase. ALL due to the unintended consequences of issuing SUP's and an ABC License.

PLEASE, Do not allow this alcohol themed STRIP MALL to proceed. Thank you!

14. Maynard Sipe, Attorney representing Rockfish Orchard HOA and Adjacent Neighbors

Mr. Sipe spoke in opposition to approving the SUP on behalf of his clients.

Mr. Sipe related that he had over 20 years' experience in land use and planning. He noted that the proposed SUP was one piece of a larger grand project shown to the County at various times with one component approved one year prior, whose approval had expired.

He then asked the Board to evaluate the impact of the proposal in its bigger sense. He noted that the Applicant described it as a town center and he noted it was basically a commercial strip shopping center. He noted that the project was probably more intense in activity than anything they had approved along Route 151 by SUP before.

Mr. Sipe stated that the project went against the Comprehensive Plan's goals and went against the Agricultural A-1 Zoning District as stated in the Zoning Ordinance. He added it was inappropriate in terms of good planning practices and was one reason he took on the case. He noted that a Special Use

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was special because it had been identified as a type of use that was not appropriate for the zoning district in which it was generally and as one likely to have impacts on adjacent property owners or the public that needed to be mitigated. He noted that in designing the A1 district in the Zoning Ordinance, the use was placed in the Special Use category for that purpose and to recognize that it was not appropriate in general and to evaluate whether or not the impacts could be mitigated. Mr. Sipe noted that in this case, as evidenced by the public's comments tonight and the record of the Planning Commission, there were considerable impacts to adjacent owners and the public including noise and traffic that has been discussed.

Mr. Sipe noted that to approve the SUP without including well considered conditions was patently unreasonable. He added that approving projects under the SUP process as it appeared the County has been doing for years, undermined efforts at comprehensive planning, and at protecting agricultural areas of the county. He noted that continuing to dole out SUPs like candy created an environment that would not work in the long run.

He suggested the Board get back to looking at planning, such as the Rockfish Valley Area Plan that was pending and it should be considered before more uses such as the proposed one went forward. Mr. Sipe asked on behalf of his clients, that if the Board voted that night that they vote to deny the application.

There being no other persons wishing to be recognized, the public hearing was closed and the Board took a five minute break.

Following the break, Mr. Bruguiere invited the Applicant, Mr. Rath to speak.

Mr. Rath questioned what other counties did if they did not use the SUP process for uses other than agricultural on agricultural land. He also noted that he was curious as to what other vehicle other than the SUP process was available to him.

Mr. Rath noted his distaste for the use of the word strip mall relative to his project as he hoped the architectural renderings proved it would be better than that. He added that a strip mall was not what he would build; rather it would be more of a Town Center and used as more of a gathering place not akin to a northern Virginia Town Center. He also questioned the use of the word monstrosity in describing his proposed 3,700 square ft. building and noted that septic systems for hotels were classified by VDH much differently than for a restaurant and a taproom where less was required.

Mr. Rath then noted that VDOT made them aware of the fact that because the project had different businesses within the property, they would therefore get a traffic deduction because of foot traffic between properties.

Mr. Rath noted that Nelson County survived on Agribusiness and Tourism with the County constantly growing and education not getting any cheaper, which meant they needed to keep tax bases going. He noted some speakers advised he should go to Nellysford; however a sporting goods business had been turned down there so he was not sure where else he could go. He noted his farm in Roseland was part of an HOA and he could only build a house or winery there.

Mr. Rath acknowledged that great points had been brought up by those that live, work, and play in the county and he was just trying to keep revenue flowing and to provide good jobs. He added that his

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property was 17 total acres, with 4 acres going into an environmental easement, which left 13 acres in which to do the project.

Mr. Rath stated that everyone in the room was trying to protect the rural character of the county; however they had different definitions of rural. He noted that he thought Nelson County was staying rural through supporting its agribusinesses and Agri-tourism and that was not the case in the views of others and it was a difference of opinion.

Mr. Rath then addressed the bad noise mentioned by Mr. Fox that had come from the Blue Toad; noting that he thought they had a good relationship and he had taken care of any problems that he let him know about. He added that he had never heard complaints from the Lloyds and he thought he had been a good neighbor.

Mr. Rath concluded by noting he was just trying to create something good for the community at that location that fit in and had a little bit of history of Afton as well as create some good paying jobs and work together to fix any issues they may have with one another.

Mr. Bruguere then opened the floor for questions and comments from the Board:

Mr. Reed asked Mr. Rath what the agricultural use of the property would be and Mr. Rath noted he planned to grow hops and apples. He added that he was not required to put that information on the site plan; however he did intend to grow something. Mr. Reed questioned why it was not on the site plan and Mr. Rath noted that it was not required; however it would be decided once everything else was set. Mr. Reed commented that would be an important feature in an agriculturally zoned parcel and Mr. Rath noted that he had a good spot on the southern part of the parcel that was open with some shade.

Mr. Rutherford asked that in terms of the conditions, when it came to the lighting, was Mr. Rath confident that he would be able to install something similar to the lighting at Devil's Backbone and Mr. Rath noted that he was and that they had mimicked what they had done, were shining downward and shielded. Mr. Rutherford then asked about the condition related to fencing of the property lines and was Mr. Rath still planning to do the same with the northern fence. Mr. Rath replied he was and it was in the plan even though it was part of the first SUP that had expired. Mr. Rutherford expressed his concern regarding the swampy area relative to the neighbors and children and he asked if there was an opportunity to fence that off and Mr. Rath noted affirmatively that he would be open to that and had agreed to at in the Planning Commission meetings. Mr. Rutherford then asked about his plan for the hours of operation and Mr. Rath noted his plan was that all businesses would close at 9pm Monday-Saturday and would close 6-8ish on Sundays. He added that the music would stop well before 6pm on Sundays and around 8pm on Fridays and Saturdays. He added that he was referring to outdoor music that would not be a five piece amplified band as it was not that kind of business.

Mr. Harvey asked for clarification on them closing the businesses down at 8pm and Mr. Rath noted the music would stop at 8pm and the businesses would close at 9pm. Mr. Rutherford noted he thought that was customary for similar businesses and Mr. Rath noted that Blue Mountain closed at 10pm. Mr. Harvey disagreed noting that their parking lot was basically empty any night by 8:30 pm and Mr. Rath stated their operating hours were until 10pm.

Mr. Harvey then questioned the comment that Mr. Rath made that a restaurant required a lot less septic system. Mr. Rath noted that the gallons were less, but the BOD (Biochemical Oxygen Demand) was higher. He added that seats counted less than beds and Mr. Harvey agreed.

Mr. Harvey noted that the site plan showed the old store and old garage still in the plan and he asked if Mr. Rath still planned on using them, to which Mr. Rath noted he was. He noted they planned on using the garage as an accessory building and Blue Toad tasting room was going to go in the old store. Mr. Harvey then questioned him being able to meet the setbacks from the road to the store or from the side property line to the garage, which was required by Ordinance. Mr. Rath's engineer noted that those things would be covered under a separate SUP and were not related to this one part of the entire plan and he reiterated they could not address that with the current SUP. Mr. Harvey disagreed that it didn't matter and that the setback to the highway mattered. Mr. Rath then advised that his Engineers and DEQ say the buildings are there and can stay and if he finds out differently they will go. He added that if they find out from the Building Code Official there is a problem, then they won't touch it and may have to tear it down. He noted that during the whole process, he has been advised that because they were existing they could be used and approved for what he wanted to do. Mr. Harvey noted that he thought Mr. Saunders had spoken to that issue earlier, noting that just because it was there did not mean the use was approved. Mr. Rath reiterated that if it did not meet the requirements as spelled out by law, then they will have to change their plans.

Mr. Bruguire then asked Ms. Shackelford if the uses were allowed in the first Special Use Permit with the setbacks being adequate. Ms. Shackelford noted that the setbacks were not adequate but they did clarify that there was a distinction between an existing nonconforming use and a nonconforming structure. She noted those buildings were nonconforming structures, therefore if the special use was approved then the use would be conforming. She added that the structures were still nonconforming but they were still allowed to use them.

Mr. Harvey asked if one of the businesses was being done under the farm exemption and Mr. Rath noted it was the farm brewery that would occupy the middle unit of the building. Mr. Harvey questioned the plans showing all of them being retail and Mr. Rath advised he was referring to a marketing document that showed the spaces as retail. He noted that people in the business that were not in that room called it retail for marketing purposes. He added that the word retail had been taken off of all of their documents.

Mr. Harvey then questioned what would happen if the farm brewery failed and Mr. Rath noted that they would have to bring another business in at that point. Mr. Harvey noted that the whole basis for getting the building built was based on the Farm Brewery exemption and Mr. Rath noted that his basis was to get the Special Use Permits for a farm winery remote retail establishment and a restaurant that would house a chocolate and gelato company. He noted he was advised he did not need to get a farm brewery SUP and Mr. Harvey agreed but maintained that was his premise for getting the building approved. Mr. Rath noted that he had never approached it that way and he came in thinking that they could agree on the SUPs or they could build it by right.

Mr. Harvey explained that his point was that the County had been burnt by some things coming in as Farm Exempt and they had turn out not to be as presented. Mr. Rath reiterated that he was told not to file an SUP by the Planning and Zoning office for that business since it could be done by right. Mr. Harvey further explained that if he went and built that building as farm exempt, he questioned what happened if it became empty; would he have to come back to get other Special Use Permits for an empty building. Ms. Shackelford then advised that they would have to put something by right in there or come and apply for a SUP for that new use. Mr. Rath concurred that in that case they would try to attract another agri-business or work together to get an SUP for another business. Mr. Rath then added that he took the path of trying to get the SUP and not going ahead and building because he wanted a usable building for the long term.

Mr. Harvey then questioned the cabins shown on the site plan and Mr. Rath noted that the cabins on the site plan meant nothing relative to the application currently being considered. He added that since the first SUP had expired he did not know where the cabins would go; however the desired general location was shown. Mr. Harvey then noted that they had no idea what he was going to do, when he was going to do it, or where. Mr. Rath noted that was not his fault as he was waiting for government agencies such as DEQ and the County.

Mr. Harvey then questioned if Mr. Rath had an approved highway permit and Mr. Rath noted he did for the old store, the garage, the cabins and a two unit building but not for the three unit building on the SUP being considered. Mr. Harvey supposed that approval was gone when the permit expired and Mr. Rath referenced the appeal process. Mr. Rath reiterated that if they could not figure out the current SUP that night, he would build a 2 unit building by right and put in the farm winery and the farm brewery for which he had the approvals already. Mr. Harvey and Mr. Rath briefly debated whether or not Mr. Rath had the VDOT approvals for the 2 unit building.

Mr. Harvey then noted that he had never seen a project that was so piecemeal and Mr. Rath was trying to use the VDOT approval for the first SUP that had expired for the current approval until his hand had been called on it. He added that they should reference the Board's evaluation criteria that says the use shall not change the character or establish a pattern of development of the area or community. He noted that there was nothing close in similarity to the proposed project until you got to Nellysford.

Mr. Harvey then referenced the second Board evaluation criteria noting the use shall be in harmony with the uses permitted by right in that zoning district and he noted there was nothing like it in the area and he had no other issue with the project but its location. He added that he would like to see it in Colleen if there were land available or Beech Grove; however there were restrictions there. Mr. Rath questioned Mr. Harvey wanting him to go to Beech Grove after having noted feeling sorry for the residents near Devil's Backbone. Mr. Harvey explained that Devil's Backbone was an ever-growing construction site there and Mr. Rath suggested they be asked to clean it up.

Mr. Harvey then stated that a problem with the proposed project site was that he was unsure of how it would be built as shown on the site plan given that there doesn't seem to be enough space for the two rows of parking and the building and it seemed like the back of the buildings dropped off that cliff there and all of the land leaned towards the creek. Mr. Harvey then noted being aware that Mr. Rath was trying to buy both parcels of the Fox property and when the soil scientist came out, he could only find enough septic for one 3 bedroom house. He reiterated that there were issues with the soils there and the site dropped off to the creek.

Mr. Harvey stated that he did not think they were ready to vote on it now; however if there were any intentions of the Board approving it, they had to give consideration to the things the Planning Commission discussed as they had spent a lot of time on it. He noted that if not, he was not sure why they even had a Planning Commission if they were going to be ignored, when they were trained and highly familiar with the proposed project. Mr. Harvey stated that the biggest problem was traffic, noting that there were more accidents at the Distillery and it was on the longest straightest part of the highway. He added that he feared people would be distracted looking around and would not see those cars waiting to turn off of Route 151. He added that he feared that with all of the distraction it would also not be safe for people across the road, like the Foxes to turn. Mr. Harvey then agreed that it appeared that the majority of traffic was cutover traffic from Route 151 to Route 6 to Route 29, with people going to work etc. and VDOT has reported that they would not reduce speed the limit further there on Route 151. He

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added that he thought they had to get traffic speeds down which had really worked at the Rhodes Farm Entrance area as evidenced that there had been no major accidents there since the speed limit was reduced. Mr. Harvey stated that he was asking the Board to deny the request, but if they did not he requested that they approve the full blown SUP with the recommended conditions.

Mr. Saunders spoke to the statement that the site would be hard to build on, noting that 90% of people said that it would be impossible to build Wintergreen on those steep slopes. He then noted that there were so many different septic systems that could be used nowadays and he didn't see that as an issue. Mr. Saunders agreed that the traffic on Route 151 was through traffic as much as anything and he did not think it would increase due to the project. He then noted that he did not think the project was a strip mall; rather it was one building with three businesses inside it. He concluded by noting that the cabins could be reconsidered in another SUP and if they did not like it, they could deny the request. He stated that the developer had been delayed long enough and he thought it was time to vote on the application so they knew if they could proceed or not.

Mr. Rutherford stated that in looking at the property being discussed that day, they were just looking at a structure that was a 3,700 square ft. building for three businesses, a farm brewery, restaurant, and farm winery/tasting room. He noted that he has a huge appreciation for the Planning Commission, however he had experience with them related to his father's company, a retailer of manufactured housing, was denied by them initially and later the Board of Supervisors saw fit to approve it and now they employed 30 Nelson County workers and built affordable housing in Nelson and across central Virginia.

Mr. Rutherford reiterated the fine qualifications of the Planning Commission and noted that some of the recommendations they made would be discussed further. He noted however that they needed to look at the project and the nature of the county, which had a shrinking school population and less tax revenue than four years ago. He noted new revenue sources have been discussed; however the county could not turn away business as it had in the last twenty years. He noted having members of his family that could not afford to live in Nelson anymore because there were not enough jobs. He concluded by noting the building in question was a small 3,700 square foot building and he thought it was appropriate to vote on it that day.

Mr. Reed noted that the agricultural zoning area was important and if one was making an application to put something in that area, it was a red flag to him that there was no reference to any agricultural use on the application or the site plan. He added that the larger deal breaker for him was that the proposed SUP was predicated on SUP #1 that was now null and void; making the site plan that was submitted inaccurate now. He added that many things had come to light with the original SUP that needed to be corrected; one being the survey of the garage that was two inches from the property line. He reiterated that if the site plan was updated, then a new SUP that was factually accurate had to be provided and for any SUP that was provided to the Board for consideration and they did not currently have that.

Mr. Reed then noted he agreed with Mr. Harvey on the value of the time and energy that the Planning Commission has put into consideration of the SUP and he would tend to defer to their conclusions on things he did not know quite as much about. Mr. Reed acknowledged as noted that they had a Zoning Ordinance that was written in 1977 and amended and a Comprehensive Plan that needed to be updated. He further stated that the Special Use Permit requirements were not clear to the applicant so that they could have a clear application to work with from the beginning and it had gone back and forth.

Mr. Reed stated it was his responsibility to listen to people especially the adjoining land owners because of the special use permit consideration. He noted that in the same way he would defer to the Planning

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Commission, he would defer to the adjoining property owners on how the project might adversely affect neighboring properties.

He added that if the Board voted on the SUP over his objections, he thought it important to have significant protections and conditions that would minimize the project's impacts. He added he agreed with Mr. Bruguere who said it was a bad idea to agree with conditions that would not stand up in court and he thought that was where they were. He concluded by noting he thought that according to the County Code, the Board could request a traffic impact analysis and a fiscal impact analysis; which were things they have had conflicting perspectives on and he thought it would be good to get some clarity on that before moving forward.

Mr. Bruguere noted it was unfortunate that the people who developed the first Zoning Ordinance did not have the foresight to accommodate growth and everything was pretty much zoned Agriculture as there was not much else. He added they failed to identify any areas where growth may happen. He noted there were several places along Route 151 that should have been zoned Business or even Service Enterprise; something other than Agriculture. He added that there was no agriculture going on at the subject parcels as they once contained a garage and a gas service station which were there for years. Mr. Bruguere asked Hugh Swain about it and he said at the time, Supervisors did not think anything else was coming to Nelson and now they were stuck with SUPS as the only vehicle aside from rezoning and to him an SUP was tantamount to rezoning. He noted the applicant could have come in and asked for the whole thing to be rezoned business, but then that would result in spot zoning.

Mr. Bruguere noted that the County also had a restriction that something had to be done within 1 year of the SUP approval and Mr. Rath was not able to do that because he was waiting for state agencies to make determinations and that was not his fault. He added that the county needed to coordinate closer with those agencies so that they responded within an appropriate timeframe. He added that VDOT and DEQ were not playing fair with him and other developers; which also happened elsewhere.

Mr. Bruguere stated that the Board was only considering the current 2nd SUP as the first was now null and void. He added that Mr. Rath could appeal that to the BZA for a determination and it would be out of the Board's hands. He noted that VDOT approved the first SUP that was null and void and it was not up to the Board to decide those, the DEQ, or the Department of Health issues as without their approvals, the project would not happen. He added that there were three agencies that controlled the project beyond the Board.

Mr. Harvey disagreed and stated that the delay from VDOT had nothing to do with them, they made determinations based on what Mr. Rath had presented when he presented it. He added Mr. Rath was the one that had waited so long and VDOT waited until Mr. Rath brought them what was required.

Mr. Saunders then pointed out that on those particular parcels, there was commercial business there for years namely the garage, the gas station and convenience store. He noted they sold Amoco gas and his trucks delivered gas there.

Following comments from Supervisors, Mr. Reed moved that the Board of Supervisors take no action on the proposed Special Use Permit until the BZA has had an opportunity to review the appeal on the 1st SUP and Mr. Harvey seconded the motion.

Mr. Carter advised that Mr. Rath would have to make an application of appeal to the BZA and he was not aware that he had done that. Ms. Shackelford added that Mr. Rath had 30 days to file an appeal and

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he could base the motion on that timeframe. Mr. Payne in attendance advised he could also word his motion such that the Board would take no action until the BZA had reviewed the appeal or a thirty day time period had elapsed. He noted that the object was to defer any action until the BZA decided on an appeal or the 30 days for appeal had elapsed and there was no appeal.

Ms. Shackelford advised that Mr. Rath was notified the previous Thursday so he had 30 days from the date her official determination was made to file an appeal and the BZA had 60 days to act on an appeal.

Mr. Reed then restated his motion such that he moved that the Board of Supervisors take no action on the Special Use Permit until either the BZA has ruled on an appeal or if no appeal has been made, upon the expiration of 30 days of the issuance of the denial of the original SUP.

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

Mr. Rutherford then asked Ms. Shackelford to review the previously discussed recommended conditions in order to solidify his motion.

1. Amplified music shall be limited to the hours between 1:00 pm and 7:00 pm Sunday through Thursday, and between the hours of noon and 8:00 pm Friday and Saturday.
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 Sunday through Thursday, and 9:00 am and 9:00 pm Friday and Saturday.
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 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 (approximately 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.

Mr. Rutherford modified the first condition above to read: 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. He noted his understanding would be that would be an hour before his expected closing time and he did not wish to discuss his office hours as noted in condition number three above.

Mr. Rutherford then read aloud the second condition above related to lighting making no changes therein and noting that he was making reference to the same lighting as used by Devil's Backbone.

Mr. Rutherford then discussed the fourth condition related to fencing with Ms. Shackelford pointing out the locations on the screen. Mr. Bruguiere advised that the Planning Commission had discussed the three board fence to include woven or rolled wire in between such that people would not climb through and he

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then modified the three board fencing to included woven or rolled wire in between the boards. It was clarified that the wire would not be electrified.

Mr. Bruguere asked if they had discussed limiting music to inside and Ms. Shackelford noted that was discussed at the Planning Commission but not with the Board. She noted it had been brought up but there was no actual discussion of it.

Ms. Shackelford then re-read the three conditions as modified by Mr. Rutherford as follows:

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. 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.

Mr. Rutherford then moved that with the three conditions noted by Ms. Shackelford (and listed above) to approve the Special Use Permit 2018-05 and Mr. Saunders seconded the motion.

Mr. Carter then suggested that the motion include all five recommended conditions as revised and Ms. Shackelford noted the two not currently included were as follows:

- All businesses shall be limited to operating between 9:00 am and 8:00 pm Sunday through Thursday, and 9:00 am and 9:00 pm Friday and Saturday.
- The site shall be developed in substantial conformance with the site plan and other plans submitted with the request.

Mr. Rutherford reiterated that he did not want to address business hours as he did not think that was appropriate.

Ms. Shackelford noted that the statement regarding the site plan would help to ensure it was developed as aesthetically represented and Mr. Carter noted that all five of the conditions were recommended by staff.

Mr. Rutherford then conceded to including all five staff recommended conditions as revised including the hours of operation as written verbatim and he amended his motion as such. Mr. Saunders then seconded the amended motion.

Mr. Bruguere called for any further discussion.

Mr. Harvey stated that he had represented the district for 33 years and had more experience than all of the Supervisors put together and he did not understand. He noted there was already so much

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development over there supporting the County and he noted he did not see how they could technically vote for it and face the people there and vote for it, especially after some of them had said they would not support it.

Mr. Reed stated that another issue was that it was very likely that it could be the focus of a future lawsuit that they would have to deal with. Mr. Saunders noted that anything was a possibility for a lawsuit and Mr. Harvey and Mr. Saunders agreed that was not a reason to vote yes or no and they could not make decisions fearing lawsuits.

Mr. Reed then noted he would like to add an amendment to the motion to reinstate the Planning Commission condition #12 about open fires and fire extinguishers. Mr. Rutherford noted his position on that was that would only be pertinent if the cabins were still a factor and they currently were not. He then stated for the record that he would not support approving the six (6) cabins if it came back to the Board.

Mr. Harvey noted that there was some point of development where they were required to provide fire protection and Ms. Shackelford noted that would be contained in the building code. Mr. Harvey noted he thought that was in the Ordinance and Ms. Shackelford noted that the provision of access for emergency vehicles was in the Ordinance.

Mr. Reed then inquired as to how the current proposed SUP would stand in the case where the original SUP was null and void and if appealed and denied or not appealed and he questioned if its status would then be unconditional. Ms. Shackelford advised that the current SUP was a separate request, therefore the status of the first one had no direct bearing on the current one and if approved, he would be allowed to move forward as long as he acted within the correct timeframe.

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

IV. Other Business (As May Be Presented)

Introduced: Lighting Requirements in Zoning Ordinance

Mr. Bruguere inquired as to there being no lighting requirements in the Zoning Ordinance and Ms. Shackelford confirmed there was not. Mr. Bruguere suggested that if the County wanted to put stipulations on development related to lighting they may need to have something. Ms. Shackelford noted that if they wanted something standardized regardless of if it were by right or special use permit, then they would need to add something to the Ordinance. Mr. Bruguere then noted that without it, it could not be required and Ms. Shackelford noted that if it was pertaining to an SUP and it was related to the requested use, they could make it a conditional requirement. She added that they could not do it on a by right use during site plan review and Mr. Carter concurred.

V. Adjournment

At 9:25 PM, Mr. Rutherford moved to adjourn and Mr. Harvey seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.