

February 11, 2009

The Regular Meeting of the Rockingham County Board of Supervisors was held on Wednesday, February 11, 2009, at 3:00 p.m. at the Rockingham County Administration Center, Harrisonburg, Virginia. The following members were present:

- PABLO CUEVAS, Election District #1
- FREDERICK E. EBERLY, Election District #2
- DEE E. FLOYD, Election District #3
- WILLIAM B. KYGER, JR., Election District #4
- MICHAEL A. BREEDEN, Election District #5

Also present:

- JOSEPH S. PAXTON, County Administrator
- THOMAS H. MILLER, JR., County Attorney
- STEPHEN G. KING, Deputy County Administrator
- JAMES L. ALLMENDINGER, Director of Finance
- WENDELL J. EBERLY, Director of Recreation & Facilities
- WARREN G. HEIDT, Director of Public Works
- FRANKLIN P. O'BYRNE, Director of Information Systems
- STEPHEN N. RIDDLEBARGER, Director of Human Resources
- ROBERT A. SYMONS, Fire & Rescue Chief
- WILLIAM L. VAUGHN, Director of Community Development
- RHONDA G. HENDERSON, Director of Planning
- DIANA C. STULTZ, Zoning Administrator
- GRETCHEN M. SALLAH, Deputy Clerk
- DONALD F. KOMARA, Residency Administrator
- Virginia Department of Transportation

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**CALL TO ORDER**  
**PLEDGE OF ALLEGIANCE**  
**INVOCATION.**

Chairman Eberly called the meeting to order at 3:05 p.m.

Supervisor Floyd gave the Invocation and Deputy Administrator King led the Pledge of Allegiance.

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**APPROVAL OF MINUTES.**

On motion by Supervisor Floyd, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the minutes of the regular meeting of January 28, 2009.

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**TRANSPORTATION DEPARTMENT.**

The Board heard Mr. Komara's report on the activities of the Transportation Department including the following:

- Island Ford Road (Route 649) new chevrons were put up at the curve;
- Miscellaneous maintenance, clearing, sign replacement activities.

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Mr. Komara and Administrator Paxton discussed the state’s Transportation Opportunity Fund Grant for the Southeast Connector with the Board.

On motion by Supervisor Floyd, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board approved the recommendation that up to \$3,200,000 from the Stone Spring Road (Route 726) project (UPC# 15796) for secondary roads be moved to the Southeast Connector project (UPC# 85228) for primary roads and that VDOT reimburse \$404,000 from the remaining Southeast Connector Study (UPC# 55638). In addition, the Board stipulated that if the Southeast Connector is not completed, the secondary funds from UPC# 15796 be returned to the County’s Six-Year Secondary Plan for reallocation.

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Supervisor Cuevas asked that VDOT work with the Town of New Market as they extend their water and sewer line to the Broadway Regional Wastewater Treatment System.

Supervisor Floyd asked if VDOT staff can determine if the entire section of roadway from Spotswood Trail (Route 33) to Shen Lake Drive (Route 689) can be a 35 mph zone. Currently it includes sections that have another speed limit.

Supervisor Kyger asked if the right-hand turn lane can be extended from the White Wave truck entrance on Valley Pike Road (Route 11) to Dinkel Avenue (Route 257) to assist motorists with turning.

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**RESOLUTION – GRANT FOR I-81 CORRIDOR.**

The Board discussed a proposed resolution supporting a rail system for passengers and freight along the I-81 corridor before Chairman Eberly referred the matter to the Metropolitan Planning Organization to make a recommendation to the Board.

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**COUNTY ADMINISTRATOR'S STAFF REPORT.**

Administrator Paxton did not have a written staff report.

Supervisor Cuevas revisited the Town of New Market’s request to connect to the Broadway Regional Wastewater Treatment System and stated he had met with Town officials who requested the County’s approval. He asked, and the Board consented, for Administrator Paxton to send a letter to the Town of New Market citing their approval with the following stipulations:

1. The line shall be placed in the VDOT right of way where feasible. Should private easements in Rockingham County prove necessary, the Town shall obtain them at the Town’s expense, but shall coordinate with the County regarding the calculation of fees to be paid for such easements.

2. The Town shall provide a copy of the construction plans to Rockingham County's Director of Public Works for his review and consent prior to construction.
3. No connections to the line in Rockingham County will be permitted without the prior written approval of the County.
4. Should Rockingham County request a connection to said line within Rockingham County and such connection may be reasonably made, the Town shall not unreasonably withhold consent for such connection. Prior approval for such connections shall also be obtained from the Broadway Regional Wastewater Treatment facility. Rates charged for such connections and monthly service shall be the same as those charged for connections within the Town of New Market for similar purpose.

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Lacey Whitmore is the acting director of the Community Services Board.

Administrator Paxton announced Deputy County Administrator King and Harrisonburg Assistant City Manager Evan Vass have been named Chairman and Vice Chairman of the Community Policy and Management Team (CPMT). Finance Director Allmendinger was named the fiscal agent for the CPMT.

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Donald Driver, Director of the Harrisonburg-Rockingham Social Services District, made a presentation to the Board on the effect of the economic downturn on the community and requests for services from his agency.

Mr. Driver reported that in September, the office began seeing an increase in people struggling, first with "marginal" employees (those who had seasonal or part-time employment), then two-income households where one income was lost (including many who were self-employed). Currently housing is becoming an issue with some families consolidating living arrangements under a single roof after income is lost and they cannot afford to maintain their own household.

The number of people seeking public assistance such as food stamps and fuel assistance increased, as well as the number that were turned down because they did not meet the financial threshold set by the state guidelines. He told the Board, there are a lot of people "on the edge" who are struggling with this economic climate and changes to their financial picture.

Following an inquiry from Supervisor Cuevas, Mr. Driver informed the Board that travel costs are not factored into determining eligibility for some assistance, but housing costs are used.

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Administrator Paxton updated the Board on the County's budget preparation.

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#### **COUNTY ATTORNEY'S STAFF REPORT.**

Mr. Miller did not have a written staff report.

He requested the Board take action on a Town of Grottoes Resolution that ceases taxation of a subdivision parcel that was dedicated for public use as streets and alleys.

On motion by Supervisor Floyd, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board approved the following Resolution from the Town of Grottoes:

**RESOLUTION**

**THE TOWN OF GROTTUES, VIRGINIA REGARDING PROPERTY TAX FOR BOBBY L. AND LOIS P. DIEHL**

WHEREAS, Bobby L. and Lois P. Diehl purchased 36.96 acres in the town of Grottoes, Virginia from Aubrey A. Harrison and Annie R. Harrison, his wife, by Deed dated October 23, 1973;

WHEREAS, certain portions of the property 25.083 acres, more or less, in the above-referenced purchase were platted lots in the Town of Grottoes and other portions, 11.877 acres, more or less, were dedicated streets as shown on a “Map of Grottoes Virginia 1953 by WM.G. Myers, Civil Engineer and George K. Harnsberger”;

WHEREAS, the Town of Grottoes was recently notified that Tax Map Number 160D2-(1)-L1 identifying 11.8777 acres, more or less, is inaccurate in that according to the land records of the Town of Grottoes said 11.877 acres constitutes the streets and alleys which have been previously dedicated to the Town pursuant to the above-referenced map, but were included in the Deed of conveyance from Harrison to Diehl;

WHEREAS, the Town of Grottoes by this resolution authorized the termination of taxation of the said 11.877 acres (Tax Map Number 160D2-(1)-L1) by the town of Grottoes, Virginia and Rockingham County, Virginia effective January 1, 2009;

NOW THEREFORE, be it resolved by the Town Council that a parcel of real estate containing 11.877 acres, more or less (Tax Map Number 160-(1)-L1) be discontinued and removed from the assessment and tax records of the Town of Grottoes, Virginia and Rockingham County, Virginia effective January 1, 2009.

FURTHER RESOLVED, that the Town Superintendent is authorized to execute such documents and take such actions as may be required to implement this Resolution on behalf of the Town of Grottoes, Virginia and Rockingham County, Virginia.

The undersigned Clerk of the Town Council of the Town of Grottoes, Virginia certifies that the foregoing constitutes a true, complete and correct copy of the Resolution adopted at a meeting of the Town Council of the Town of Grottoes, Virginia held on February 5, 2009 and has not been revoked, rescinded or repealed.

Signed by Town Council Clerk Tara Morris.

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Mr. Miller informed the Board that a contract with Froehling and Robertson to provide inspection services for the RMH construction project was amended and needed to be approved.

On motion by Supervisor Kyger, seconded by Supervisor Floyd and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board approved the following amended contract:

This First Amendment to the Agreement for Building Inspection / Plan Review Services, dated February 28<sup>th</sup>, 2007 (the Contract), is agreed to by and between the County of Rockingham, Virginia, a political subdivision of the Commonwealth of

Virginia (the County), and Froehling & Robertson, Inc., a Virginia corporation (the Contractor), who, in further consideration of the promises, services, duties and benefits of the Contract, agree as of the 10<sup>th</sup> day of December, 2008, as set forth in the following paragraphs:

1. The sub-paragraph entitled “Knowledge, Skills and Abilities” found in Section 5.1.4, Building Inspection Contractor Staff Characteristics, is hereby deleted in its entirety and replaced with the following:

**Knowledge, Skills and Abilities:** Thorough and working knowledge, as acceptable to the Rockingham County Building Official, of the Virginia Uniform Statewide Building Code and related and applicable codes, laws and ordinances, and of all types of construction methods and materials, in all the various stages of construction.

2. Section 14.29, Dispute Resolution, is hereby deleted and replaced with the following:

**14.29 Dispute Resolution.** Should a dispute arise that the parties are unable to resolve by negotiation, or other method of resolution agreed to by both parties at the time, then the parties agree to submit the matter to the appropriate Virginia state court, located in Harrisonburg, Virginia. Virginia law shall be applied in the interpretation of this First Amendment and the Contract.

3. All provisions of the Contract not affected by this First Amendment are reaffirmed in their entirety as originally drafted, and those provisions hereby modified are reaffirmed as modified, then for now, as the sole and entire agreement and understanding between the County and the Contractor, notwithstanding any representations that might appear in any document or memorandum to the contrary, including but not limited to, that certain Agreement for Third Party Inspection Services, dated April 9, 2007, by and between Froehling & Robertson, Inc., and the Griffith Group. Ltd.

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**DEPUTY COUNTY ADMINISTRATOR'S STAFF REPORT.**

The Board received and reviewed Mr. King’s staff report dated February 6, 2009 and included a request from the Virginia Mennonite Retirement Community for a letter endorsing Green House homes, a new assisted living facility on their campus.

On motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board authorized the County Administrator and County Attorney to draft a letter of appropriate language supporting the Virginia Mennonite Retirement Community’s efforts in developing Green House homes for providing long-term nursing care to senior citizens.

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**PUBLIC WORKS DIRECTOR'S STAFF REPORT.**

The Board received and reviewed Mr. Heidt’s staff report dated February 11, 2009.

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**COMMUNITY DEVELOPMENT DIRECTOR'S STAFF REPORT.**

The Board received and reviewed Mr. Vaughn's staff report dated February 11, 2009, which included a zoning ordinance work session, Planning Commission 2008 Annual Report, a list of priority projects and a summary of special-use permit and rezoning requests.

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**INFORMATION SYSTEMS DIRECTOR'S STAFF REPORT.**

The Board received and reviewed Mr. O'Byrne's staff report dated February 5, 2009, which included updates on Phase 2 of the Perceptive Software/Image Now content management software implementation, remote access software, e-mail archiving, Intranet portal development, personal property data import, Eden Systems software update and Swanson software update.

The next meeting for the Information Technology Advisory Committee is April 20, 2009 at 3:00 p.m.

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**FIRE AND RESCUE CHIEF'S STAFF REPORT.**

The Board received and reviewed Chief Robert Symons staff report dated February 2, 2009, which included a summary of the activities of the Training, Prevention, and Public Education divisions.

The Board and Chief Symons discussed the state requirement that volunteer fire companies file timely membership rosters with the Circuit Court Clerk's Office as often as necessary. Currently, seven out of ten companies have not filed updated rosters and Chief Symons agreed to let the Board know which companies in their districts were not in compliance.

The Board briefly discussed the request for proposal for third-party billing for emergency services.

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**RECREATION AND FACILITIES DIRECTOR'S STAFF REPORT.**

The Board received and reviewed Mr. Eberly's staff report dated February 6, 2009, which included personnel issues, facilities maintenance, and recreation programs.

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**COMMITTEE REPORT.**

FINANCE

On motion by Supervisor Cuevas, seconded by Supervisor Breeden, and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board approved the following carryovers and supplemental appropriations recommended by the Finance Committee:

**1. Social Services**

A carryover of unencumbered FY2007-2008 funds of \$957 for the Harrisonburg Emergency Fuel fund.

Carryover Appropriation: \$957

\$ 957 GL Code: 220-05302-200-5766-000 Fuel Assistance – City of Harrisonburg  
\$ 957 GL Code: 220-05201-0100 Fund Reserve – Social Services Fund

**2. Social Services**

A supplemental appropriation of \$5,000 for funds previously received for emergency fuel assistance.

Supplemental Appropriation: \$5,000

\$ 5,000 GL Code: 220-05302-200-5766-000 Fuel Assistance - City  
\$ 5,000 GL Code: 220-01899-0600 Share of Costs-Harrisonburg

**3. Social Services**

A supplemental appropriation of \$39,544 for Adoption Subsidy. This amount is 50% Federal and 50% State funded requiring no local match.

Supplemental Appropriation: \$39,544

\$39,544 GL Code: 220-05302-100-5721-000 Adoption Subsidy  
\$19,772 GL Code: 220-02401-0100 Public Assistance State  
\$19,772 GL Code: 220-03303-0100 Public Assistance Federal

**4. Social Services**

A supplemental appropriation of \$21,482 for Special Needs Adoption. This amount is State funded requiring no local match.

Supplemental Appropriation: \$21,482

\$21,482 GL Code: 220-05302-100-5735-000 Special Adoption  
\$21,482 GL Code: 220-02401-0100 Public Assistance State

**5. Schools**

A carryover of unencumbered FY 2007-2008 funds of \$615,124. This amount is to cover three projects previously approved for a supplemental appropriation by the School Board.

Transfer and Carryover: \$615,124

\$615,124 GL Code: 001-09301-000-9521-000 Transfer to School Fund  
\$615,124 GL Code: 001-05201-0100 General Fund Reserve  
\$615,124 GL Code: 201-64200-923-8305-000 Capital Outlay  
\$615,124 GL Code: 201-05101-2001 Transfer from General Fund

**6. Fire and Rescue**

A supplemental appropriation of \$4,000 to be used for the Central Shenandoah Regional Haz-Mat Team. These funds were received from Harrisonburg City and Augusta County to equal-out the state funding for the project.

Supplemental Appropriation: \$4,000

\$ 4,000 GL Code: 001-03201-800-6065-000 Minor Equipment  
\$ 4,000 GL Code: 001-02404-1100 Hazardous Materials

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**APPOINTMENTS.**

On motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board reappointed Chief Robert A. Symons to the Rockingham/Harrisonburg Alcohol Safety Action Program (ASAP) for a five-year term expiring December 31, 2013.

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On motion by Supervisor Floyd, seconded by Supervisor Breedon and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board nominated Jon Ritenour (District 3) for appointment by the Circuit Court to the Board of Equalization to serve during the general reassessment of real estate that the County will complete by January 2010.

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**COMMITTEE REPORTS.**

The Board heard committee reports from staff and Board members:

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**RECESS FOR DINNER.**

Chairman Eberly called a recess for dinner at 4:35 p.m.

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**CLOSED SESSION.**

On motion by Supervisor Kyger, seconded by Supervisor Floyd and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board recessed the meeting from 5:35 p.m. to 6:05 p.m., for a closed meeting pursuant to Section 2.2-3711.A(1), Assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; Section 2.2-3711.A(5), Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community; Section 2.2-3711.A(7), Consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel.

MOTION: SUPERVISOR KYGER                      RESOLUTION NO: 09-03  
SECOND: SUPERVISOR FLOYD                      MEETING DATE: FEB. 11, 2009

**CERTIFICATION OF CLOSED MEETING**

WHEREAS, the Rockingham County Board of Supervisors has convened a Closed Meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Board of Supervisors that such Closed Meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Rockingham County Board of Supervisors hereby certifies that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies; and (ii) only such public business matters as were identified in the motion convening the Closed Meeting were heard, discussed or considered by the Board of Supervisors.

VOTE:  
AYES: BREEDEN, CUEVAS, EBERLY, FLOYD, KYGER  
NAYS: NONE  
ABSENT:

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**CALL TO ORDER.**

At 6:06 p.m., Chairman Eberly reconvened the regular meeting of the Board.

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**PUBLIC HEARING – SPECIAL-USE PERMIT REQUESTS.**

At 6:09 p.m., Chairman Eberly opened the public hearing and Ms. Stultz reviewed the following special-use permit applications:

S09-06 Jeffrey W. Zimmerman, 5444 Daniel Cupp Road, Dayton for a shale pit on property located on the north side of Rumsey Lane (Route 751) approximately 1/2 mile west of Waggys Creek Road (Route 742); Election District #2; Zoned A-2; Tax Map #104-(A)-7.

The applicant was present to answer questions and briefly described the operation.

No opposition was expressed.

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S09-07 Charles William Dove, 8095 Turleytown Road, Singers Glen for a residence involving a division of land on property located at 8065 Bowbenders Lane on the southeast side of Frank Lane Road (Route 776) approximately 1 mile southwest of Morning View Road (Route 776); Election District #2; Zoned A-1; Tax Map #63-(1)-1.

Ms. Stultz reviewed the applicant’s request and stated he hoped to subdivide the land to give it to the Singers Glen Bowbenders Club, a bow and arrow hobbyist club, and reduce the applicant’s liability on the property. He did not have an intention to put a residence on the property, but Ms. Stultz noted that, if approved, he would be able to add a residence.

She further reported this request was a land-use issue, a non-family division of land in the A-1 zone. She reminded the Board, they were looking at the possibility that a residence could be built and that if approved, the special-use permit would convey if the land were sold.

The applicant was present to answer questions and outline his intentions to reduce his liability by subdividing the property to the ownership of the club’s LLC.

Administrator Paxton stated the concern was not what the property was going to be used for currently, but what would happen in 10 years and he and County Attorney Miller discussed options with the applicant and Board to restrict uses on the land, if approved.

Darrel Tuner, president of the Singers Glen Bowbenders Club, described the club's history, operation and membership, and supported Mr. Dove's request.

Kelly Straughen stated his support for Mr. Dove's request and offered his assistance to the applicant to offer suggestion on ways to reduce his liabilities.

No one spoke in opposition.

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S09-08 Shawn J. Orebaugh, 5516 North Valley Pike, Harrisonburg for a small engine repair business on property located on the east side of North Valley Pike (Route 11) approximately 2300' north of Trinity Church Road (Route 724); Election District #2; Zoned A-2; Tax Map #80A-(1)-1, 2, & 3.

Ms. Stultz reviewed the applicant's request and informed the Board that the application was a result of a zoning violation. She pointed out a discrepancy in his application and the drawing provided for the location of a storage shed. She gave the Board two letters in support and two letters in opposition to the request and will keep copies in the applicant's file.

The applicant was present to answer questions and described his repair business.

Kelly Straughen spoke in support of the applicant's right to use the property for profit and against government regulation which prohibits its use for a small engine repair business.

Treva Orebaugh, mother of the applicant and owner of property, spoke in favor of the request and said that if approved, the storage building would be used to house the equipment so that it would not be visible from the road. After her son suffered permanent injuries in an accident five years ago, it was her hope that he would be able to support himself doing this work and she made provisions on her property to do so.

Susan Lance, adjacent landowner, submitted a letter to the Board in opposition to the request outlining the unsightly conditions of the property, her proximity to the proposed shed, the noise, debris, and fumes, as well as the wayward travelers mistaking her driveway for Mr. Orebaugh's business. She was available to answer any questions from the Board.

Ms. Stultz informed the Board, if the applicant wished to be open to the public, the conditions would need to be amended and that sales were not allowed in the A-2 district.

The Board questioned Mr. Orebaugh about the repairs and sales he discussed and then Chairman Eberly asked the audience to indicate who was opposed (two people) and who were in favor of the request (four people).

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S09-09 Michele R. Christopher, 4238 Spotswood Trail, Penn Laird for a bed and breakfast on property located on the south side of Spotswood Trail (Route 33) approximately 1/2 mile east of Massanetta Springs Road (Route 687); Election District #3; zoned A-2; Tax Map #126B-(A)-19.

Ms. Stultz reviewed the applicant's request.

The applicant was present to answer questions and briefly described the history of the home, property and her plans for its use.

Donna Weakley, a resident of Lakewood subdivision, expressed her support for Ms. Christopher's request.

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S09-10 John & Laura Sonifrank, 8154 Orchard Drive, Timberville for a commercial dog kennel on property located on the northeast side of Orchard Drive (Route 881) approximately 1/2 mile southeast of North Mountain Road (Route 613); Election District #1; zoned A-2; Tax Map #28-(2)-1.

Ms. Stultz reviewed the applicants' request and informed the Board that while the application was a result of a zoning violation, the applicants had operated their kennel for four years without complaint. Ms. Stultz indicated that if the applicants were not open to the public and sold puppies off-site, they would need to provide a letter stating their intentions.

Laura Sonifrank, owner and applicant, stated they had been unaware they needed a special-use permit until recently and planned to sell their dogs off-site as a condition.

Paul Helbert, a nearby neighbor, expressed his support for his neighbors, but later asked for a definition of a commercial kennel from the Board and staff. He also wanted to know what would happen if they sold the property, would a new owner be able to open a larger kennel than currently operated?

Ms. Stultz responded that the special-use permit conveys with the sale of the property, but if vacated for two years, the request would need to be made again. She said there was no condition that limits the number of dogs at the kennel. If the kennel was open to the public, they would have to provide a VDOT-approved entrance and restrooms that conform to the Virginia Uniform Statewide Building Code.

Robert Siever, who lives across from the Sonifranks, supported the request and stated he had never seen a loose dog, heard excessive barking or been bothered by traffic concerns.

Supervisor Breeden inquired what the applicants do with the waste, to which John Sonifrank informed them it was collected in buckets and spread with the other animal waste on a 200-acre farm where he works.

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Chairman Eberly closed the public hearing at 7:08 p.m. and reconvened the regular meeting.

On behalf of Chairman Eberly, on motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; and subject to the following conditions, the Board approved S09-06, Jeffrey W. Zimmerman, 5444 Daniel Cupp Road, Dayton for a shale pit on property located on the north side of Rumsey Lane (Route 751) approximately 1/2 mile west of Waggys Creek Road (Route 742); Election District #2; Zoned A-2; Tax Map #104-(A)-7.

Conditions:

- (1) Use shall be located in substantial accordance with plot plan as approved.
- (2) A commercial entrance permit shall be obtained from VDOT's Residency Office. A copy of this permit shall be submitted to the Zoning Administrator to become a part of the special use permit file.
- (3) The entrance shall be completed and approved by VDOT prior to any operation of the shale pit.

- (4) As required by VDOT, the applicant shall take measures to assure that dust and other materials are not being drug on to the state highway.
- (5) All regulations of the Department of Mine and Minerals shall be met.

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On behalf of Chairman Eberly, on motion by Supervisor Breedon, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board tabled S09-07, Charles William Dove, 8095 Turleytown Road, Singers Glen for a residence involving a division of land on property located at 8065 Bowbenders Lane on the southeast side of Frank Lane Road (Route 776) approximately 1 mile southwest of Morning View Road (Route 776); Election District #2; Zoned A-1; Tax Map #63-(1)-1.

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On behalf of Chairman Eberly, on motion by Supervisor Breedon, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board denied S09-08, Shawn J. Orebaugh, 5516 North Valley Pike, Harrisonburg for a small engine repair business on property located on the east side of North Valley Pike (Route 11) approximately 2300' north of Trinity Church Road (Route 724); Election District #2; Zoned A-2; Tax Map #80A-(1)-1, 2, & 3.

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On motion by Supervisor Floyd, seconded by Supervisor Cuevas and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; and subject to the following conditions, the Board approved S09-09, Michele R. Christopher, 4238 Spotswood Trail, Penn Laird for a bed and breakfast on property located on the south side of Spotswood Trail (Route 33) approximately 1/2 mile east of Massanetta Springs Road (Route 687); Election District #3; zoned A-2; Tax Map #126B-(A)-19.

Conditions:

- (1) Use shall be located in substantial accordance with plot plan as approved.
- (2) All requirements of the Virginia Uniform Statewide Building Code pertaining to this use shall be met, and the proper permits shall be obtained.
- (3) The entrance and required taper shall meet VDOT requirements. An entrance permit shall be obtained from VDOT for this work. A copy of the permit shall be submitted to the Community Development Department prior to issuance of building permits.
- (4) Applicant shall contact the Food Services Division of the Health Department with regards to the serving of food. All requirements of the Health Department shall be met.
- (5) This permit is contingent upon a site plan being submitted to and approved by the County. No permits shall be issued by the Department of Community Development and no work shall be done on the property until such time as a site plan is approved.
- (6) On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.
- (7) There shall be no off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.
- (8) Off-street parking shall comply with the Rockingham County Code, and there shall be no parking on VDOT's right-of-way.

- (9) The business shall not begin operation until a certificate of occupancy is issued by the County. No certificate of occupancy shall be issued until all other conditions of this permit are met.

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On motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 4 to 1, voting recorded as follows: BREEDEN - NAY; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; and subject to the following conditions, the Board approved S09-10, John & Laura Sonifrank, 8154 Orchard Drive, Timberville for a commercial dog kennel on property located on the northeast side of Orchard Drive (Route 881) approximately 1/2 mile southeast of North Mountain Road (Route 613); Election District #1; zoned A-2; Tax Map #28-(2)-1.

Condition:

- (1) Use shall be located in substantial accordance with plot plan as approved.
- (2) Building shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained to convert the building from a private use to a commercial use.
- (3) With the requirements of restroom facilities, the applicant shall contact the Health Department with regard to the septic.
- (4) This permit is contingent upon the applicant being able to meet satisfactory septic requirements from the Health Department. Verification from the Health Department of the requirements being met shall be submitted to the Community Development Department prior to the applicant obtaining a building permit.
- (5) This permit is contingent upon the applicant being able to meet VDOT requirements with regard to the commercial entrance. A copy of the commercial entrance permit shall be submitted to the Community Development Department prior to the applicant obtaining a building permit.
- (6) This permit is contingent upon a site plan being submitted to and approved by the County. No permits shall be issued by the Department of Community Development and no work shall be done on the property until such time as a site plan is approved.
- (7) On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.
- (8) There shall be no off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.
- (9) Off-street parking shall comply with the Rockingham County Code, and there shall be no parking on VDOT's right-of-way.
- (10) If the applicant chooses not to have the business open to the public, a letter stating same and stating how they will operate the business selling the puppies off site shall be submitted to the Zoning Administrator to be placed in the special use permit file.
- (11) If the business is not open to the public, the building requirements, VDOT requirements, and requirements for septic (conditions 2 – 5 above) shall not be required to be met.
- (12) If at a later date the applicant determines they want to be open to the public or if it should be found that they are allowing the public to come to the site, the requirements under conditions 2 – 5 above shall be met.

- (13) If the applicant submits notice that the business is not open to the public, and it is later determined that the public is coming to the property, it will be a violation of the special use permit, and the permit may be revoked.
- (14) The business shall not begin operation until a certificate of occupancy is issued by the County if the business is open to the public. No certificate of occupancy shall be issued until all other conditions of this permit are met.

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Supervisor Cuevas stated that he supports small businesses, but they need to take place in a proper location without impacting neighbors.

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**RECESS.**

Chairman Eberly called for a recess at 7:20 p.m.

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**PUBLIC HEARING – REZONING REQUEST.**

At 7:26 p.m., Chairman Eberly declared the meeting open for a public hearing and Ms. Henderson reviewed the following rezoning request:

RZ08-21 David O’Donnell, 3288 Taylor Spring Lane, Harrisonburg, VA, to rezone 32.88 acres from A2 (General Agricultural) to R2-C (Medium Residential with Conditions) on tax parcels 125-(A)-L112E and 125-(A)-L112E1. The site is located southwest of Taylor Spring Lane (Route 688) and 2,200 feet southeast of Boyers Road (Route 704) in Election District 3. The Comprehensive Plan designates this area as Community Residential. The applicant has proffered to develop no more than 55 single-family detached dwelling lots. R2 zoning allows a density of 3.6 dwelling units per gross acre. The proposed development would have a density of 1.7 dwelling units per gross acre.

At its meeting on January 6, 2009, the Planning Commission voted 4-0 to recommend to the Board approval of the request. The applicant submitted revised proffers dated January 22, 2009, and a request to rezone the site to R2-C (Medium Density Residential with Conditions), rather than R3-C (General Residential with Conditions).

Staff recommended approval of the request and stated the following:

The Comprehensive Plan states the County’s objective is to locate 80% of new development in the designated Urban Growth Areas. In addition, new development should be in areas served by public water and sewer services and accessed by public streets. The proposed rezoning would result in a residential development, located in the Urban Growth Area, served by public water and sewer services, and along a dedicated public street system. Finally, the proposed development would be consistent and compatible with the surrounding residential land uses.

Ms. Henderson informed the Board that she and the Planning Commission received at least 33 letters and e-mails regarding the request. In summary, the letter-writers were mainly concerned with two issues: the construction of townhomes and duplexes and the post-construction stormwater runoff and its effects on nearby Lake Shenandoah and the Chesapeake Bay tributaries. Copies of the correspondence will be kept with the file in Community Development.

In response to an inquiry from Supervisor Floyd who asked if the stormwater issues raised in the correspondence had been addressed by staff and the applicant, Ms. Henderson replied that stormwater issues are addressed after the rezoning is approved and the site plan is submitted by the applicant. The site plan must comply with the County's stormwater ordinance.

David O'Donnell, applicant, stated he lived on the property with his wife and owned part of the property with his brother. He indicated lot sizes would be bigger than the surrounding areas. He stated, "I am an island in a sea of development." And further indicated that he would not build a subdivision that he would not want to live in.

Richard Blackwell, engineer for the project, stated he was working with Mr. O'Donnell and could answer questions if necessary.

Carla Semaan, President of Lakewood Homeowner's Association, thanked Mr. O'Donnell and Mr. Blackwell for meeting with the group, addressing some concerns and keeping communication open on some outstanding issues.

John Widener, resident of Lakewood, asked the Board about Representative Matthew Lohr's legislation regarding land development rights and if this property would be affected, if the legislation passed. Mr. Widener did not support the legislation.

Administrator Paxton relayed his understanding of the legislation and indicated that even if someone purchased land development rights, the Board would still have to approve their use, and if the land already had proffers from an earlier rezoning, they would have to adhere to them.

Supervisor Kyger further indicated that the transfer of development rights (TDR) would help certain farmers in areas where there is pressure to develop their land and is not available on every piece of land.

Kathy Moran, President of the Lake Shenandoah Preservation Association, who attended the Planning Commission meeting and met with staff from Community Development regarding stormwater and drainage issues, stated she was unclear who is responsible and will pay for stormwater management in this new development.

County Attorney Miller informed Ms. Moran that the new stormwater ordinance passed by the County last year places the responsibility for maintenance of stormwater management facilities on the property owners and homeowner's associations.

Mr. O'Donnell stated that he was going to "follow the law" on the issue and that he too was concerned about the impact runoff has on the tributaries.

Community Development Director Vaughn addressed the Chairman and stated that when staff met with representatives from many of the homeowner's associations in the area, staff informed them that regular inspections would occur and a site plan would have to address how the stormwater for this request would be maintained.

Gina Hurtzenberg, a resident of Kentshire Estates, was not opposed to the rezoning request, but to the execution of the Comprehensive Plan and not following the Plan when developing roads and pedestrian access (sidewalks, walking trails), as well as aesthetic landscape buffers.

Robert Wilson, a resident of Lakewood, expressed his concern with the stormwater drainage, the notification process of the Planning Commission public hearing on the rezoning request, and the County's ordinance governing stormwater management.

Mr. Wilson addressed the Board with concerns over the Planning Commission's decision to approve the request instead of tabling the matter for further review, how they handled the meeting and treated attendees.

Supervisor Kyger cited the recent passing of another rezoning request, which took more than a year in the deliberation and planning with developers, as a more representative approach taken by the Planning Commission.

General discussion ensued with the Board and staff regarding the rewriting of the rezoning and subdivision ordinances, and the Board's desire to have covenants that require property owner to address ongoing stormwater management.

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Chairman Eberly closed the public hearing at 8:33 p.m. and reconvened the regular meeting to vote on the previous rezoning request.

Supervisor Floyd concurred with the staff recommendation and was satisfied that the issues of stormwater drainage would be addressed by the site plan review. He indicated that many of the citizens who did not want townhouses or duplexes in the development indicated they would be satisfied if the rezoning included only single-family homes. He motioned to approve the request.

Supervisor Cuevas seconded the motion.

Supervisor Kyger stated waiting 30 days might allow the Board to address the concerns raised by citizens during the public hearing.

Chairman Eberly felt the law was clear in that stormwater runoff generated by new construction cannot be greater than the current stormwater runoff.

Supervisor Floyd asked the applicant what effect waiting two weeks would have on him.

Mr. O'Donnell addressed the Board and stated that the stormwater issue would be addressed at the site plan level and he asked for fairness from the Board. He stated he had filed his application in September and was not responsible for the notification process. He further pointed out that the additional delay would be at his expense retaining his consultant and may only be for the sake of appearances. This is a rezoning, not the site plan, he said. He reminded the Board that he would follow the law and urged them to vote on the rezoning request.

On motion by Supervisor Floyd, seconded by Supervisor Cuevas and carried by a vote of 4 to 0 to 1, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - ABSTAIN; and subject to the following proffers, the Board approved RZ08-21, David O'Donnell, 3288 Taylor Spring Lane, Harrisonburg, VA, to rezone 32.88 acres from A2 (General Agricultural) to R2-C (Medium Residential with Conditions) on tax parcels 125-(A)-L112E and 125-(A)-L112E1:

- (1) Only one public street shall be connected to Taylor Springs Lane, Route 688.
- (2) One street shall connect to the existing Briarwood Court through an existing right-of-way, although due to the topography, the street grade may exceed the generally accepted standards.
- (3) The general road layout as shown on the attached rezoning plan dated January 2, 2009 shall be employed in the final design. All streets as shown shall be designed and constructed by the developer to VDOT standards and dedicated to VDOT for public use.
- (4) There shall not be more than a total of 55 single-family detached lots.
- (5) No more than 21 lots shall be platted and recorded within any 12 month period.

- (6) All lots shall be served by County water and sewer, installed by the developer and built to County standards.
- (7) Only the three lots fronting on Taylor Springs Lane shall have entrances onto Taylor Springs Lane. All other lots shall have entrances on the proposed internal streets.
- (8) Lot sizes shall not be less than one-third of an acre.

*A copy of the O'Donnell Property Rezoning Master Plan as approved is attached.*

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**PUBLIC HEARING – CAPITAL IMPROVEMENT PLAN.**

At 8:50 p.m., Chairman Eberly opened the public hearing to receive public comment on capital projects in the FY 2010-2014 Capital Improvement Plan.

Administrator Paxton outlined the plan and indicated that no new projects were added. The total capital project cost for FY 2010-2014 was \$98,387,715 and included the completion of projects that are currently underway; including two hospital projects, McGaheysville Sewer Project, the Harrisonburg-Rockingham Regional Sewer Authority and Landfill Expansion.

Future projects in the Capital Improvement Plan include the Three Springs Water Sourcing Project, Regional Jail Addition, Human Services Building and Rockingham Pike Road Improvements Project (part of River Bend Elementary School and East Rockingham High School). The total capital project costs were \$208,146,667.

No one spoke on this matter.

At 8:54 pm, Chairman Eberly closed the public hearing and reconvened the regular meeting.

On motion by Supervisor Cuevas, seconded by Supervisor Kyger and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board approved the FY2010-2014 Capital Improvement Plan.

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**ADJOURNMENT.**

On motion by Supervisor Kyger, seconded by Supervisor Breeden and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board adjourned the meeting at 9:00 p.m.

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Chairman