

February 24, 2010

The Regular meeting of the Rockingham County Board of Supervisors was held on Wednesday, February 24, 2010, at 6:00 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
WARREN G. HEIDT, Director of Public Works
WILLIAM L. VAUGHN, Director of Community Development
DIANA C. STULTZ, Zoning Administrator
TAMELA S. GRAY, Deputy Clerk
DONALD F. KOMARA, Residency Administrator
Virginia Department of Transportation

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CALL TO ORDER
INVOCATION
PLEDGE OF ALLEGIANCE.

Chairman Cuevas called the meeting to order at 6:01 p.m.

Chairman Cuevas gave the Invocation and Director of Finance Allmendinger led the Pledge of Allegiance.

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RECOGNITION OF STUDENTS.

Students from Eastern Mennonite and Spotswood high schools introduced themselves.

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APPROVAL OF MINUTES.

Administrator Paxton advised the Board of a change to be made to a motion in the February 10, 2010 minutes under the Building and Grounds Committee section regarding bids for the natural gas contract. The motion should state that the Board authorized the County Administrator and County Attorney to award bids for the natural gas contract at County facilities after consultation with the Finance Committee.”

On motion by Supervisor Eberly, 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 minutes of the regular meeting of February 10, 2010 with the following correction to the motion in the Building and Grounds Committee section on page 7.

On motion by Supervisor Breedden, 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 award bids for the natural gas contract at County facilities after consultation with the Finance Committee.

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TRANSPORTATION DEPARTMENT.

The Board heard Mr. Komara’s report on the activities of the Transportation Department which included the Port Republic Road (Route 253) project, the Bergton Road (Route 820) project which will go to the Commonwealth Transportation Board on March 17, and a rural addition on Farren Lane (private). VDOT continues to work on snow removal and replenished the salt supplies. Many gravel roads in the County are soft and Mr. Komara asked to be notified if roads need additional gravel. The six-year plan will be distributed in March and reviewed at the April 28, 2010 Board meeting.

In response to a question from Administrator Paxton regarding the new hospital opening, Mr. Komara said he attended several meetings and signage is being prepared.

At Supervisor Eberly's request, Mr. Komara will look into the blind curve on Chrisman Road (Route 771) at the intersection of Singers Glen Road (Route 765) where a school bus and truck collided recently.

Mr. Komara will meet with Supervisor Floyd and Administrator Paxton to discuss the turning radius for the requested No Thru Truck route on Pleasant Valley Road (Route 679). Since the stop bar needs to be back 280 feet, trucks will not be able to make the right turn, but improvements can possibly be made to several curves.

Supervisor Breeden inquired about Hensley Hollow Road (Route 622) as the school bus backs up a half mile to turn around. Mr. Komara said perhaps a culvert can be installed where the road washes out since this is a narrow road with a stream on one side and a cliff on the other side.

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COUNTY ADMINISTRATOR'S STAFF REPORT.

The Board received and reviewed Administrator Paxton's staff report dated February 17, 2010.

Two bills addressing the taxation of short-term rental equipment were passed which allow small businesses to continue to pay a merchants capital tax because the short-term rental tax would have been a hardship on many small businesses. Delegates R. Steven Landes and Matthew J. Lohr, and Senator Emmett W. Hanger, Jr. guided these Bills through committees on which they serve.

Administrator Paxton reported that TIGER grant recipients were announced last week and no Virginia projects were funded. Senator Jim Webb's office suggested the County and City of Harrisonburg submit an application through the Non-Defense Appropriation Request for the \$70.1 million Erickson Avenue, Stone Spring Road and Southeast Connector project. The City Council has approved a resolution endorsing the submission of the appropriations request. Senator Webb requested that the Chair, Vice Chair, staff and counterparts from the City meet with his staff in March to review the project.

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 adopted the following resolution:

**RESOLUTION ENDORSING THE SUBMISSION OF A NON-DEFENSE
APPROPRIATIONS REQUEST FOR ERICKSON AVENUE,
STONE SPRING ROAD AND SOUTHEAST CONNECTOR**

WHEREAS, Non-Defense Appropriations Request applications made to Senator Jim Webb and Senator Mark Warner's offices are to support projects that are of importance to the Commonwealth of Virginia; and

WHEREAS, Erickson Avenue, Stone Spring Road and the Southeast Connector will provide a six-mile long multimodal east-west corridor through the City of Harrisonburg and Rockingham County, addressing deficient capacity and critical safety concerns; and

WHEREAS, the Connector is the number one priority project for secondary roads in the Harrisonburg Metropolitan Area as outlined in the Constrained Long-Range Transportation Plan; and

WHEREAS, the project is included in Rockingham County's Comprehensive Plan and the City of Harrisonburg's Comprehensive Plan; and

WHEREAS, the project is included in the State Transportation Improvement Program (STIP) and the Six-Year Improvement Plan (SYIP) and meets all federal, state, and local requirements for construction; and

WHEREAS, the project passes through existing fully-developed commercial areas and areas recently rezoned and planned for future residential and commercial development, and provides significant road improvements for access to the newly-constructed Rockingham Memorial Hospital; and

WHEREAS, the award of the Non-Defense Appropriation provides funding to complete the six-mile long project, and allows the project to proceed in collaboration with the City of Harrisonburg, Rockingham County, and the Stone Spring Consortium, a group of private sector property owners along portions of the proposed alignment.

NOW, THEREFORE, BE IT RESOLVED that the *Rockingham County Board of Supervisors* hereby endorses the Non-Defense Appropriations Request application by the City of Harrisonburg, Rockingham County and the Stone Spring Consortium requesting \$70.1 million for the construction of Erickson Avenue, Stone Spring Road and the Southeast Connector, extending between the western city limits and Route 33.

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DEPUTY COUNTY ADMINISTRATOR’S STAFF REPORT.

The Board received and reviewed Mr. King’s staff report dated February 19, 2010, including the request to declare older radios from the Sheriff’s Department as surplus so they may be disposed of appropriately. Staff wants to place all these items on the online auction service, Public Surplus, with a minimum starting bid of \$200 for the 50 Motorola HT1250 portable radios which are being considered for donation to the Shenandoah County Sheriff’s Office (35 radios) and the Page County Sheriff’s Office (15 radios).

On motion by Supervisor Kyger, seconded by Supervisor Eberly 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 declared the following items as surplus:

- (50) Motorola HT1250 portable radios, approximate value \$400.00 each
- (95) Motorola HT1000 portable radios, approximate value \$200.00 each
- (2) Motorola HT750 portable radios, approximate value \$400.00 each
- (6) Motorola HT600 portable radios, approximate value \$50.00 each
- (3) Motorola VISAR portable radios, approximate value \$25.00 each
- (1) Motorola Expo portable radio, approximate value \$25.00
- (1) Vertex VX-10 portable radio, approximate value \$25.00

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FINANCE COMMITTEE REPORT.

On motion by Supervisor Breeden, seconded by Supervisor Eberly, 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 supplemental appropriations as recommended by the Finance Committee:

HARRISONBURG – ROCKINGHAM SOCIAL SERVICES DISTRICT FUND APPROPRIATIONS

1. Foster Parent Respite Care

A supplemental appropriation of \$500 for Foster Parent Respite Care. This is 100% funded by the State and local funds are not required.

Supplemental Appropriation: \$500

\$ 500	GL Code: 220-05302-100-5727-000	Respite Care for Foster Parents-County
\$ 500	GL Code: 220-02401-0100	Public Assistance-State Revenue

2. Adoption Subsidy

A supplemental appropriation of \$581,438 for Adoption Subsidy. This is 56.2% funded by the Federal Government and 43.8% funded by the State. No local funds are required.

Supplemental Appropriation: \$581,438

\$390,672	GL Code: 220-05302-100-5721-000	Adoption Subsidy Payments-County
\$190,766	GL Code: 220-05302-200-5721-000	Adoption Subsidy Payments-City
\$326,768	GL Code: 220-03303-0100	Public Assistance-Federal Revenue
\$254,670	GL Code: 220-02401-0100	Public Assistance-State Revenue

3. Special Needs Adoption

A supplemental appropriation of \$718,292 for Special Needs Adoption. This is 100% funded by the State and local funds are not required.

Supplemental Appropriation: \$718,292

\$434,010	GL Code: 220-05302-100-5735-000	Special Adoption-County
\$284,282	GL Code: 220-05302-200-5735-000	Special Adoption-City
\$718,292	GL Code: 220-02401-0100	Public Assistance-State Revenue

4. Refugee Resettlement

A supplemental appropriation of \$10,700 for Refugee Resettlement. This is 100% funded by the Federal Government and local funds are not required.

Supplemental Appropriation: \$10,700

\$10,700	GL Code: 220-05302-100-5715-000	Refugee Resettlement-County
\$10,700	GL Code: 220-03303-0100	Public Assistance-Federal Revenue

Administrator Paxton explained that the County serves as fiscal agent for the Social Services District and the City is responsible for 30% of the supplemental appropriations.

Chairman Cuevas asked Administrator Paxton to invite the Director of Social Services, Donald Driver, to provide a presentation on adoption and refugee resettlement. Administrator Paxton commended Social Services in their efforts to place children into permanent adoptive homes as they are more successful in later years than children who remain in foster care and are moved around.

Supervisor Breeden reported that foster care families have experienced a financial hardship in the past taking in foster children but Mr. Driver has greatly improved that financial gap.

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PUBLIC WORKS DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mr. Heidt's staff report dated February 24, 2010.

In response to a question from Supervisor Breeden, Mr. Heidt stated McGaheysville has been pumping waste water to the Regional Sewer Authority for two months rather than the McGaheysville Wastewater Treatment Plant, which is being aerated and having the sludge digested.

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COMMUNITY DEVELOPMENT DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mr. Vaughn's staff report dated February 24, 2010. He reported that Free Will Baptist Church's street vacation for Leyland Lane has been withdrawn.

On motion by Supervisor Breeden, 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 removed from the table: OA09-14 and OA09-15, Amendment to Chapter 17, Zoning Ordinance, Article III, Section 17-6, to define short-term rental, and Article VI, Section 17-64(t), to permit short-term rentals in the R-4 (Residential Planned Community) Zoning District.

Supervisor Breeden made the following statement:

Mr. Chairman, fellow Board members, we are back today to address the issue of the rental - on a short-term basis - of residential single family structures in the County, and more specifically - for these ordinances - the R4 zone in the Massanutten community. This is an important matter that has been discussed and deliberated for more than three years. Those involved in the discussions during this time have worked hard to try to find a solution that is reasonable and equitable for all. It goes without saying that such a solution has been elusive. It is

also very important to remember that the practice of renting homes on a short-term basis has existed since Massanutten was first developed.

As we discussed last month, the most often stated concerns of those opposed to the short-term rental of residential property relates to the occupants' conduct. This conduct may include excessive noise at inappropriate times of the day, improper public behavior, improperly-contained or strewn trash, improper parking, and other similar types of behavior. More recently, some have alleged immoral and possibly illegal conduct is occurring from time-to-time within houses rented short-term. These people further argue that all of these situations are made worse as more people are allowed to occupy a home.

I know from talking with each member of this Board that we sympathize with these residents, and any other residents in this County that may live near this type of behavior, because this type of conduct is not limited to areas where there are short-term rentals. It also occurs at owner-occupied homes. It occurs at homes that are occupied by a large group of people, and it occurs at homes that are occupied by smaller groups of people. It is unfortunate that all people are not considerate of their neighbors, be they neighbors for a weekend or for a number of years.

Massanutten is a diverse resort community. It includes property owners with similar but different goals and uses for their residential properties. The County must protect all of these interests and property rights to the best of its ability. That said, Massanutten is a community of private property owners, governed by a property owners association with multiple covenants and rules, in a gated community, with private streets and a police department. This community, through its Board of Directors, has a responsibility to enforce its own rules and regulations. The existing covenants prohibit most of the activity that opponents of short-term rental have complained about, including all "noxious or offensive activities" and "unreasonable annoyance or nuisance to the neighborhood".

Based on the language of the covenants, enforcement options should include a judicial sanction, which means not only the \$50 per offense punishment that this Board has heard about, but action by a court as well. Contempt of court is a serious matter and failure to follow the decisions of a court will bring more severe punishment.

This is a difficult matter. It very clearly pits two groups of interested parties that have very different views about the use of their property against each other. However, in the final analysis, I believe

that the members of this community have several options before them – first, the property owners in each neighborhood have the opportunity to amend the covenants which provide guidelines for the permissible activities in that subdivision; next, they must ultimately look to the MPOA Board to represent, and fulfill its legal obligation to manage the properties within Massanutten; and finally, they have the option of the judicial process through the court system to address any illegal activity that may occur.

*By enforcing private restrictive covenants and existing state and local laws, the MPOA Board of Directors, through its staff and the MPOA Police Department, has the means and the authority to address the complaints from full-time residents of Massanutten. Under Virginia laws, persons who want to address inappropriate actions by “neighbors” may take legal action. This is true for any two property owners anywhere in the County. Furthermore, and I want to emphasize this, the MPOA Board has the duty and responsibility to address those complaints. As was discussed with Sheriff Farley during the January 27th public hearing, the MPOA Police Department has the same authority, **and duty**, to enforce not only the rules set by the MPOA Board, but the ordinances of this County and the laws of the Commonwealth of Virginia. The MPOA Board has a duty to the property owners of Massanutten to see that its staff and police department do so.*

I will not repeat the comments I made at the earlier meeting regarding the hours of investigation and analysis that County staff conducted to review the issues of the number of persons allowed to occupy a house, and the health and safety provisions in either the Fire Prevention Code or the Uniform Statewide Building Code. There are no issues that we can find. County staff has contacted other jurisdictions with resort areas that have short-term rentals intermingled with owner occupancy, and those localities have come to the same conclusion we reached.

Mr. Chairman and fellow Board members, in the final analysis, it appears that the passage of these ordinances, while having the opportunity to clarify to some degree what constitutes a short-term rental property, I do not think these ordinances add any significant clarity or provide any solution to the “good neighbor” issues raised by those that oppose the short-term rental of single family residences. There are laws, ordinances and covenants already in existence to address those grievances, and I expect that some will take advantage of those options. Mr. Chairman, in light of the findings I have outlined

today, I move that the Board reject the two proposed ordinances recommended by the Planning Commission.

Mr. Chairman, after a second is obtained, I would ask that the County Attorney be given the opportunity to address a number of legal issues that have been raised by others related to this matter. Once he has finished his comments, I will have some further remarks.

Supervisor Kyger seconded the motion. Chairman Cuevas asked County Attorney Miller for his comments.

County Attorney Miller made the following comments:

In the course of the public debate over short-term rentals in Massanutten a number of issues have been raised that need to be clarified.

In June 2007, the Virginia Supreme Court released its decision in the Scott v. Walker case. The Court's decision was announced while Rockingham County was involved in litigation with property owners in Massanutten over the short-term rental of residences.

The Scott case arose in Bedford County, where there are neighborhoods, like Massanutten, that have both owner-occupied homes and non-owner occupied homes. The non-owner occupied homes were sometimes rented for short periods of time.

The Scott case focused on the allegation made by the owners of owner-occupied homes that the restrictive covenants for the subdivision forbid the rental of homes in their neighborhood for short periods of time. They based their case on the language in the covenants that said that homes in the neighborhood could only be used for residential purposes. The covenants provided no further guidance. The covenants did not define what was, and what was not, included in the term "residential". Furthermore, the covenants were completely silent on the question of length of time of renting the homes, and whether the length of time had any bearing on the issue of residential use.

The court case that Rockingham County was party to when Scott v. Walker was reported was virtually identical to Scott in all relevant aspects. The County Code states that the R-4 district is a residential district and that it is restricted to residential uses, with a few exceptions not important to this discussion. But, like the covenants in Scott, the County Code does not specify what is or is not considered a residential use. Furthermore, the Code does not address the length of time a home

may be rented, just as the covenants in Scott did not address the length of time issue.

The only difference between the Rockingham County case and the Bedford County case was that the case in Bedford County involved private restrictive covenants and the Rockingham County case involved a zoning ordinance. This difference is irrelevant in this instance.

The Supreme Court wrote a clear and concise decision, stating that the use of the land in Scott v. Walker was a residential use. The fact that one group of people used a home for residential purposes for a few days, and then another group moved in and used it for residential purposes for a few days, did not change the residential use of the property.

The Court made it clear that the covenants could have forbidden the short-term rental of the property. The point was that, the covenants had not done so.

Neither does Rockingham County's Code.

Because of the holding in Scott v. Walker, the previous County Attorney advised the Board of Supervisors to withdraw from the pending case in 2007. Mr. Brown consulted with me when making this recommendation because he had announced he was leaving his position and I had been appointed to replace him. I reviewed the Scott case and concurred with his recommendation to the Board. There was a clear correlation between Scott v. Walker and the County's pending case.

Since June 2007, some have claimed that Scott v. Walker has no bearing on the County's situation because Scott was about restrictive covenants and the County's case is about zoning ordinances. This contention is simply wrong.

Scott v. Walker is concerned with the Virginia Supreme Court's definition of residential land use. It is immaterial whether the use is regulated in one case by private agreement and in another case by government ordinance.

Another misconception involving Scott v. Walker is that the County interpreted it to mean that the County was forbidden to prohibit short-term rentals. This is simply not true. Neither county attorney ever advised the Board, publicly or privately, that this case prohibited such action.

In fact, County staff, including the Attorney, along with members of the Board of Supervisors, worked very hard looking at ways to regulate, and potentially prohibit, short-term renting in different zoning districts since the reporting of Scott v. Walker. Staff and the Board would not have wasted time on this matter if the County believed the Supreme Court had prohibited such action.

Some explanation is appropriate regarding the regulating of short-term renting as opposed to prohibiting it.

Many different approaches to regulation were studied. All were found to lead to results that would be difficult, if not impossible, to enforce and which would be unnecessarily intrusive on private property rights.

In addition to the County's efforts, the MPOA Board and a private citizen offered different draft ordinances for the County's consideration. The County reviewed each of those drafts and found them to be replete with issues too numerous to address at this time. The point here is, even those having the greatest interest in the County regulating short-term rentals were unable to come up with regulations that the County could enforce.

One of the difficulties a governmental body faces when attempting to regulate the short-term rental of residences is the equal protection clause of the federal Constitution. This clause has been interpreted by the U.S. Supreme Court to protect two substantially similar people, or groups of people, from differing governmental treatment, unless the government treating those two groups differently can articulate a sufficiently compelling governmental interest to do so.

The local government's interest in public health, safety and welfare could well provide such a justification for the regulation of short-term rentals, but any attempt at regulation must be crafted carefully and be minimally intrusive. After much study, the County determined that the minimal regulation that would pass constitutional scrutiny would have little practical effect on the short-term rental situation in Massanutten.

As an aside, the constitutional concerns raised by regulating homes lived in short-term versus homes lived in long-term had nothing to do with Scott v. Walker, as some apparently have imagined.

It is critically important to note that the Massanutten neighborhoods have the benefit of the foresight exhibited by their

developers. Those developers crafted restrictive covenants that cover many pertinent issues, and provided a mechanism for additions and amendments to the covenants.

County officials have been told repeatedly by those with concerns over short-term rentals that most of the houses rented short-term are located in the Greenview Hills area, the area which, according to the interpretation of the MPOA Board, has the least ability under the original restrictive covenants to regulate short-term renting.

This may well have been by design, rather than oversight.

On the master plan of the Massanutten development, Greenview Hills is the area of single family dwellings most closely associated with the “resort area”. Greenview Hills lies adjacent to the golf course. On the opposite side of the narrow golf course are located time share units. Time share units and small commercial areas bookend Greenview Hills. Anyone buying in such an area should have been aware of these immediately adjacent land uses.

By way of contrast, the other areas of single family dwellings in the development are separated from Greenview Hills and the resort activities by both a significant distance over road, and by many feet of elevation. The impression from the master plan of the difference in the two areas is quite striking.

Significantly, though, the restrictive covenants of the Greenview Hills area have a very liberal amendment policy, as do the covenants for the immediately adjacent areas called Unit 9 and Unit 10.

The amendment policy requires only a simple majority of properties to implement a change in the covenants. Not the super majority one might expect; only 50% of the properties, plus one.

Greenview Hills has 195 lots platted within it. Half is 97.5; rounding up to the nearest whole lot, 98. A simple majority would then be 99. (As opposed to 51%, which would require 100 lots.)

The opponents to short-term rentals have informed the Board that there currently are 58 short-term rentals in all of Massanutten. If all were in Greenview Hills, which is not the case, that would mean that there are 137 lots not being rented short-term in Greenview Hills. Out of that 137 lots, those with concerns about short-term rentals need only to gain approval from 99 property owners to completely rewrite the restrictive covenants.

And that is assuming they would want to rewrite the covenants in such a way that they would have unanimous opposition from short-term renters. Short-term renters have, in fact, shown a willingness to agree to reasonable regulations.

Yet, to the knowledge of County staff, there has been no attempt to amend the covenants.

The covenants in Greenview Hills may not be amended at any random time. They were first recorded in February of 1975, and by their terms would automatically renew 25 years later unless amended by a recorded instrument signed by this simple majority that we just talked about.

They then automatically renew every ten years, again unless amended as noted above. Coincidentally, the most recent automatic renewal date or opportunity for amendment passed just barely two weeks ago.

In summary: because of a very clearly worded Supreme Court decision, the County had no choice but to withdraw from the case in 2007 where it was trying to prohibit short-term rentals under the current wording of its zoning ordinance.

Though the County has spent countless hours analyzing and evaluating possible options for amending its ordinances to prohibit short-term rentals, or to allow them with regulations, the legislative determination that is being proposed tonight has been made that doing either is not in the best interests of the County at this time.

Meanwhile, that area that is the special focus of the short-term rental debate, the Massanutten single family dwelling neighborhoods, and most particularly the Greenview Hills area, does have many tools readily available to it to address the concerns of its property owners. In addition to the tools already in the hands of the MPOA, and its staff and private police force, is the option to amend the covenants.

Supervisor Breeden followed up with the following statement:

Gentlemen, you may recall that at the January meeting, I requested that staff develop an ordinance that provided for the permitting of short-term rentals. The delay in action on this matter has given me an opportunity to consider further this matter and the goal behind the proposal, which was to protect the safety of those using these

homes and the surrounding properties. In my discussions with staff, I have determined that current building and fire prevention codes address these issues for the newer homes in the development. It is difficult to see how implementing the ordinance will accomplish the stated goal of improving the safety; therefore, I ask that no further work be done on that ordinance. I want to thank staff for its work in trying to find a mechanism to get some degree of control on this matter. We've spent hours and hours and hours trying to find a way to find some agreement here. It is my belief that the short-term rental of single-family residences is much bigger than Rockingham County. It may be that some future General Assembly will want to address the property rights issues that arise from this matter.

Thank you, Mr. Chairman.

Chairman Cuevas then noted that it appeared the Board was ready to vote on the motion by Supervisor Breeden. The motion to reject the ordinance amendments carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER – AYE. The Board rejected ordinance amendments OA09-14 and OA09-15, Amendment to Chapter 17, Zoning Ordinance, Article III, Section 17-6, to define short-term rental, and Article VI, Section 17-64(t), to permit short-term rentals in the R-4 (Residential Planned Community) Zoning District.

Chairman Cuevas expressed appreciation to Supervisor Breeden and staff for their work on the short-term rental issue. Supervisor Kyger expressed gratitude to the Planning Commission for their efforts and time spent in public hearings regarding this issue.

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ADDITIONAL COMMITTEE REPORTS.

Chamber of Commerce

Chairman Cuevas noted that a business forum was held to inform the community of local economic conditions with Mr. Vaughn providing a report on behalf of the County.

Virginia Association of Counties (VACo)

Supervisor Kyger requested that Board members read the daily VACo alerts and contact local legislators or offer VACo assistance as requested.

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RECESS.

At 6:49 p.m. Chairman Cuevas recessed the meeting.

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PUBLIC HEARING – SPECIAL-USE PERMIT REQUESTS.

At 7:01 p.m. Chairman Cuevas opened the public hearing and Ms. Stultz reviewed the following special-use permit applications:

SUP-028 Carrizo (Marcellus), LLC, 1000 Louisiana, Suite 1500, Houston, Texas for gas well drilling, completion, stipulation and production on property located on the south side of Crab Run Road (Route 820) approximately 2/10 mile northwest of Bergton Road (Route 865/820); Election District #1; Zoned A-2; Tax Map #10-(A)-24.

Ms. Stultz informed the Board that the permit applied for by Carrizo is for the entire gas system operation, including potential future gas well development, not just the specific test well. In the staff report, several issues were raised for the Board's consideration including the site's location in the 100-year floodplain, the chemicals used in the hydro-fracking process, and public safety concerns related to an emergency plan and the flaring of excess gas on site, Ms. Stultz said.

Chairman Cuevas and Supervisor Floyd discussed that there were a number of test wells drilled in this area in the 1960s. The wells from this work were capped. It was noted that a gas line from West Virginia travels over the northwestern section of the County.

Chairman Cuevas requested that the applicant and the Virginia Department of Mines, Minerals and Energy (DMME) provide written answers to Ms. Stultz's questions.

Mr. Schnitz explained that Carrizo proposes to build pit walls above the floodplain and the pits will remain there a couple weeks during the test phase. They will not be permanent structures. Soap, oil and high-pressured water will be put into the well to force any gas through the shale. The spoil pits will be used to hold the return water for a month or less because after this test process is completed the water and other substances will be removed. If Carrizo finds gas, the stimulation of frack will not begin for some period of time after the testing.

Carrizo requested that the special-use permit include phases beyond testing because the company is investing \$1 million drilling the test well and wants to be assured they will be able to pump gas should it return sufficient gas.

Mr. Schnitz reported that fracks are designed on a well-by-well basis so he could not specify what chemical composition would be used, but said the chemical concentration is less than one percent (1%) and the chemical agents used are friction reducers to achieve more pressure. Twenty percent (20%) of the chemicals pumped will be remediated on-site or hauled away.

Mr. Schnitz noted that the frack will be 3,700 feet deep and drinking water is usually found within the first 600 feet so fracking in the ground water will not be an issue. However, if a well in the area becomes cloudy due to the fracking, Carrizo will fix the problem.

David Asbury from the Virginia Department of Mines, Minerals and Energy (DMME), Division of Gas and Oil stated this is the first Marcellus well in Virginia. The state statutes require water testing and ground water protection. Wells within 750 feet of the drilling have complete replacement protection if there are water well issues, Mr. Asbury said. DMME's mission is to ensure a safe working environment while growing the local and state economy. The Division of Gas and Oil will be on site if problems arise. He said that DMME is the lead agency and that other agencies will also be involved such as the Department of Environmental Quality (DEQ), the U.S. Forest Service, State Forestry Department and U.S. Fish and Wildlife Service.

Mr. Schnitz stated Carrizo will perform testing according to the DMME standards for contaminant levels. He said there is little chance of a fire but, if there is one, Carrizo will bring in specialized equipment. He will put together a fire safety contact list and said he would be willing to talk with the fire department and develop fire procedures.

Supervisor Kyger asked how fast specialized fire forces could be at the site in the event there was a danger since the site borders the National Forest and there are homes nearby. Mr. Schnitz stated there is not enough pressure in the area for a fire to get too wild, but he said a fire would be the best case scenario as blowing gas that is not burning is worse. Equipment will be on site to address most problems. Specialized firemen would arrive within a few hours to contain a fire but it could take "a while" for fire equipment to arrive.

In response to a question from Supervisor Kyger regarding procedures for evacuating people, Mr. Schnitz said local fire departments would keep traffic away and evacuate citizens downwind. Those citizens would be housed in a hotel at Carrizo's expense.

Chairman Cuevas asked Mr. Schnitz to communicate with the Fire & Rescue Chief, the Fire Marshal and Bergton Fire Department, if this request is approved.

Chairman Cuevas again asked Mr. Schnitz to answer the questions in Ms. Stultz's staff report in writing and asked that the DMME also forward information to Ms. Stultz.

Malcolm Cameron, a retired Virginia Department of Transportation environmental engineer who has a B.S. in Geology and worked with erosion and sediment control, stormwater management and water quality permit compliance, stated this application raises a lot of "red flags." He said more questions need to be asked and more information obtained on the chemicals to be used. He reviewed the site plan for erosion and sediment controls, which he does not believe meets minimum standards with adequate perimeter controls. Dewatering at the site and excavation of the pits was not addressed, he said. Mr. Cameron noted that water will slosh around in the pits and will have to be adequately filtered before it flows back into the streams.

Mr. Cameron said there is no experience with fracking Marcellus Shale in Virginia but there have been ground water and surface water stream contamination problems in West Virginia and other states. The chemicals used for fracking include hydrochloric acid, petroleum-based lubricants, solvents, corrosion inhibitors and micro killers such as benzene or ethylene glycol. He does not believe there is a definite benefit to the County in revenue or jobs. He thinks there is an environmental risk, particularly in issuing an open-ended special-use permit.

In response to questions from Chairman Cuevas and Supervisor Kyger, Mr. Cameron suggested researching hydrologic fracking and Marcellus Shale. He said even though Carrizo will try to take precautions, pits in upland areas can be left behind with the potential for leakage. He indicated the wastewater treatment plant needs a list of chemicals used in the process in order to comply with their DEQ discharge permit. Mr. Cameron said the test wells drilled in the 1960s did not use a hydrological fracking process to fracture bedrock and draw out gas. He does not know where Carrizo will get all the clean water needed for the fracking process.

Ana Maria Mendez-Ritchie, a resident of German River Road, said chemicals used in fracking are kept confidential. Some of the chemicals pose health risks and a danger to drinking water. She said there could be contaminants that do not surface for decades and contamination can occur without a flood. Numerous violations in the Marcellus Shale process can be found on the Internet, she said.

Jeff Kelble, a Shenandoah Riverkeeper that protects water quality in watersheds, stated riverkeepers in other localities are dealing with fracking technologies and potential long-lasting impacts. He explained that wells drilled in the western United States are different from those on the east coast because there is not much ground water in the west, while the Shenandoah Valley is very "water rich."

Marcellus Shale in Virginia is sandwiched between sandstone and by drilling down and then laterally, a tremendous amount of pressure is produced to release the gases and destroy the shale layer. He indicated six million gallons of water and 30,000 gallons of contaminants are pressurized into the ground. He said DEQ is not involved in this matter. Concentrated salt water is put into the ground; 20% is regurgitated but 80% remains in the ground and can cause problems later as the chemicals diffuse into the ground and water. The poultry industry uses ground water and could be adversely affected, he said.

Supervisor Kyger asked Mr. Kelble to provide detailed information for the Board to review if the request is tabled as this is a lot of information to digest at once.

Bruce Ritchie said his family has owned property in Bergton many years and noted the previous wells were not productive. He stated the company will use explosives to break open the rock structures at the end of a horizontal well prior to the fracking process. He indicated there is a Federal Frack Act and this type of drilling must meet the Safe Drinking Water Act. These drilling methods are exempt from the safe water standards and the company does not have to disclose chemicals used in the fracking process.

John Q. Adams noted the United States imports 70% of its oil and Carrizo is willing to put \$1 million in the ground to locate gas so he is in favor of this project. If gas is located, it will be good for the economy and help the United States to be less dependent on foreign countries for oil. He said people who are worried about contaminating the earth should give up their cars.

Seth Coffman, Project Coordinator for Trout Unlimited, Shenandoah Headwaters Home Rivers Initiative, a leading national organization for cold water conservation, said he has a lot of questions and concerns for the protection of natural resources, water quality, water quantity and downstream effects. He believes this is a bad location for the well because it is between two head streams and in the floodplain. The amount of water required is not addressed in the application, he said. In Pennsylvania between two and six million gallons of water are used for fracking. If surface water is used, it will have a devastating effect on the headwater streams and ecosystems in the streams. He questioned why the Department of Game and Inland Fisheries was not consulted. He asked if the wastewater treatment plants can treat the chemicals in the water and handle the volume of water from these wells. If more wells are drilled, it will place a greater burden on wastewater treatment plants, the County, taxpayers and citizens. He asked about the amount of the surety bond for mitigation purposes to clean up damage that could occur.

Kim Sandum distributed photos showing what the facility may look like. She included a letter from a West Virginia Mayor whose locality experienced problems in their water treatment plant. She stated the permit application is vague and asked the Board to obtain more information on the water, chemicals and procedures. Ms.

Sandum pointed out that this request does not comply with the Comprehensive Plan for A-2 – it does not maintain and encourage the rural character of the land, is not compatible with surrounding uses, is detrimental to the character of surrounding land, and is not in the public interest. Noise and flaring are also concerns, she said. She stated a member of a Pennsylvania watershed foundation which is working with Marcellus Shale hydro fracking will be in the area on April 14, 2010 and is willing to meet with the Board.

Seth Coffman reiterated that the DEQ has no authority in this project.

In response to questions from Supervisor Eberly, Mr. Schnitz said 5,000 to 6,000 PSI of surface pressure at the perforation will dissipate out. The water volume used will be in the 300,000 gallon range rather than two to six-million gallons as reported earlier.

SUP-69 National Communication Towers, 5413 Patterson Avenue, Suite 101, Richmond, 23226 for a 195' telecommunications facility on property located at the dead-end of Creekside Drive (Route 989) northeast of Friedens Church Road (Route 682); Election District #3; zoned M-1; Tax Map #138-(A)-14.

In response to a question from Supervisor Floyd, Ms. Stultz noted that a balloon test was performed in January and the balloon was left up longer than usual. A community meeting held after the balloon test was attended by one person.

Supervisor Kyger confirmed with Ms. Stultz that the tower height is out of Dynamic Aviation's flight pattern.

Elliott Harrigan, the owner of National Communication Towers, said his company has developed towers since 1997 and only erects them if there is a tenant for the tower. It typically takes 12-24 months for carriers to locate on the tower due to their budgeting cycle. His firm is not a wireless carrier; they identify locations with little or no coverage and market the site to wireless carriers. Towers are spaced close enough to the handoff tower to benefit all carriers, Mr. Harrigan said. Sales information was sent to all wireless carriers in the area. AT&T expressed interest and they believe the site will work well for them.

In response to a question from Chairman Cuevas, Mr. Harrigan stated a tower of this size can accommodate six carriers.

Supervisor Floyd asked how many requests were received from citizens for a tower at this location. Mr. Harrigan stated National Communication Towers is not

directly in contact with the general public. They map an area, identify carriers in that area and use an independent wireless engineering firm to determine the need.

Supervisor Kyger stated this communications tower is needed because his cell phone often drops him in the Mt. Crawford area.

Devon Anders from Lispen, LLC, the owner of the property where the proposed tower will be erected, said the site is not a developable parcel of land so this is a good use of the property.

No opposition was expressed.

SUP-102 Harold W. Theiss, 4584 Fawn Crossing, Bridgewater for a 50' wind energy turbine on property located on the north side of Fawn Crossing (private) approximately 2/10 mile northwest of Hill Gap Road (private); Election District #4; zoned A-2; Tax Map #122-(A)-35A.

The applicant stated he has lived at the site for 12 years. He is trying to set an example to help conserve resources. This turbine will help generate electricity and better the planet, he said.

In response to questions from Supervisor Kyger, Mr. Theiss stated this unit will generate five kilowatts with 29-mile per hour winds. Since his home uses approximately 1,400 kilowatt hours per month, he estimates that over a year the turbine will supply 80% of his electrical needs. The turbine is tied to a grid so Shenandoah Valley Electric Commission will buy back any excess electricity. Mr. Theiss explained that the turbine is on a hydraulic tower so it is easy to service and would be easy to remove if it were no longer used.

No opposition was expressed.

SUP-104 Bridgewater I-81, LLC, c/o Eddie Edwards Signs, 560 Waterman Drive, Harrisonburg for in increase in sign height to 64'-1.5" and increase in sign area to 212.4 square feet on property located on the northwest side of Friedens Church Road (Route 257) and Walton Way (Route 950), property address being 995 Friedens Church Road; Election District #3; zoned B-1; Tax Map #137-(A)-87.

Applicant Chris Runion stated he wants to use the existing sign which was erected in the 1960s and it will not be enlarged. The sign or any advertising will be

removed if it is no longer in use. Mr. Runion will certify the structure is safe before using it.

Denman Zirkle, Executive Director of the Shenandoah Valley Battlefields Foundation, the organization responsible for the acquisition and protection of battlefield land, as well as its management, interpretation, and promotion in the eight-county area of the Shenandoah Valley National Historic District, including Rockingham County, read the following statement:

I am here this evening to confirm an understanding between the Battlefields Foundation and Holtzman Oil Corporation regarding the proposed travel center to be developed by Holtzman Oil at the Bridgewater interchange on I-81.

Holtzman Oil has agreed to provide, for a nominal lease fee, space in the proposed travel center to Rockingham County for use as a visitors/orientation center.

If such a visitors/orientation center is developed and operated by Rockingham County, the Battlefields Foundation will want to provide our Civil War orientation displays and other materials. We therefore, support this offer by Holtzman Oil.

It should be noted that the Battlefields Foundation has installed Civil War displays and materials related to the Civil War in the Shenandoah Valley in visitors/orientation centers in McDowell, Winchester, and Harrisonburg, and is currently working with an operator to establish a fourth center at Luray.

John Jordan stated he and his wife are the closest residents to this site and are in favor of the request.

No opposition was expressed.

SUP-110 Eric Good, 2107 Silver Lake Road, Dayton for a small contractor's business (excavating) on property located on the east side of Silver Lake Road (Route 701) approximately one mile north of Eberly Road (Route 732); Election District #4; zoned A-2; Tax Map #107-(A)-138 and 107(A)-139.

Ms. Stultz reported this special-use permit request is the result of a zoning violation. She also noted a small contractor's business allows for five pieces of

equipment on a site. There were eight pieces of equipment on the property at the time of the visit but this may have been due to the snow, she said.

The applicant was present to answer questions.

Craig Martin, an employee of Mr. Good, asked that the request be granted so he can retain his job.

Cheryl Lyon, owner of the Silver Lake Mill, stated Mr. Good is a good neighbor who helps people at a fair rate. She indicated the vehicles on his property are no different than others in the farming community.

Lisa Hawkins, legal counsel for Linda Jacobs, whose property surrounds Mr. Good's site on three sides, provided the Board with photographs from her client's home showing additional vehicles on the premises prior to the snowstorm. Ms. Hawkins noted that staff's summary of this request indicates a special-use permit in the A-2 district should be compatible with the surrounding uses and not detrimental to the character of adjoining land. She stated this use is detrimental and not compatible as it is not similar to an agricultural use. The summary also indicates the project should be consistent with the zoning ordinance and in the public interest. Ms. Hawkins explained that the business is across from Silver Lake and an agricultural-forestal district. The lake is used for recreation and is a drinking water source for Dayton and Harrisonburg. Ms. Hawkins noted the business is not in compliance with the zoning ordinance's definition of a contractor's small business due to the number of vehicles and equipment, as well as the size of the building (maximum of 3,500 square feet) and stipulation that all business be conducted under roof. Mr. Good's building is 5,000 square feet and he conducts business outside the building, including a gravel pile and storage. Additionally, the equipment is not screened from view. Ms. Hawkins asked that if the request is approved, appropriate screenings be considered.

SUP-114 Little Peoples Preschool – Peoples Baptist Church, 3523 Spotswood Trail, Penn Laird for preschool/daycare on property located on the northeast side of Spotswood Trail (Route 33) approximately 900' southeast of Massanetta Springs Road (Route 687); Election District #3; zoned A-2; Tax Map #126-(A)-120.

Ms. Stultz reported this special-use permit request is the result of a zoning violation.

Jay Hanger from Peoples Baptist Church was available to answer questions and stated the preschool wants to be in compliance.

No opposition was expressed.

SUP-115 Trudy L. Cole, 5679 Snapps Creek Road, Singers Glen for a commercial horse boarding stable on property located on the northwest side of Snapps Creek Road (Route 752) approximately 1/2 mile southwest of Well Hollow Road (Route 777); Election District #2; zoned A-2; Tax Map #77-(A)-93 with a sign advertising the business being located on adjoining property shown on Tax Map #77-(A)-100B.

The applicant was available to answer questions.

In response to questions from Supervisor Eberly, Ms. Cole said the maximum number of horses she will board is 10, but she plans to start with four horses due to the cost of insurance. She responded that it is expensive to feed large animals and has been told the hardest part of her business will be obtaining payment. If the owner does not pay her, she will probably keep the horse.

No opposition was expressed.

SUP-116 Greg Garr (Country Estates), 17 Country Estates Blvd., Crimora for a manufactured home sales center and commercial storage center on property located on the west side of South East Side Highway (Route 340) approximately 2500' south of Sapling Ridge Road (Route 634); Election District #5; zoned M-1; Tax Map #131-(2)-4A.

Ms. Stultz noted the applicant withdrew the mini-warehousing portion of this request so the Board is considering the manufactured sales center only. The statutory business will continue if approved. Without the mini-storage center there is less concern about flooding since there should be ample warning to move the manufactured homes.

The applicant stated Country Estates has been in business almost 40 years. He is remodeling the inside of the building and making improvements to the site.

Mr. Garr plans to install a dry hydrant and make it available for fire department use. Supervisor Kyger informed him that the Division of Forestry may provide some funding for the hydrant.

No opposition was expressed.

SUP-120 Steven D. and Barbara B. Yoder, 4947 Bloomer Springs Road, P.O. Box 376, Elkton for a commercial dog kennel on property located on the northeast side of Bloomer Springs Road (Route 646) approximately 1500' north of East Point Road (Route 602); Election District #5; zoned A-1; Tax Map #113-(A)-45B.

Ms. Stultz reported this special-use permit request is the result of a zoning violation.

In response to a question from Supervisor Breeden, Ms. Stultz stated the right-of-way is 15-foot wide and two homes are served by it. The County will not allow another division of land.

Steve Yoder said he and his wife have raised dogs since 1987 and consider them family companions. Bernese Mountain dogs are a calm breed that does not make much noise. The Yoders did not realize a special-use permit was required. Mr. Yoder built a barn and improved the $\frac{3}{4}$ -mile lane. He stated the closest neighbor is one-quarter mile away and the neighbor who registered the complaint lives a half mile away.

In response to a question from Supervisor Breeden, Mr. Yoder said he and his wife live in a mobile home and plan to build a house.

Jim Hutchins from Stuarts Drafts met the Yoders on a website when he was looking for a dog. Dr. Hutchins said the facility has high standards and does not look like a kennel. Dr. Hutchins went through three interviews and the Yoders visited his home before selling him a dog. If a buyer decides they no longer want the dog, the Yoders take it back.

JoAnne Frederick stated her property borders the Yoders' farm. She has never heard dogs barking and the dogs never come close to her property. Ms. Frederick said this is a home, not a kennel.

Lesley Shifflett, who owns the property which the right-of-way encompasses, indicated the Yoders travel 7/10 of a mile through his farm to access their land and he is concerned about increased traffic with this business. Mr. Shifflett sold this land-locked property to a woman who resold it to the Yoders. He believes the kennel will be a liability to his farming operation which requires large equipment and consists of an embryo business. He said there is no protection for his cattle as the gate may be left open and a vehicle could hit a small calf. The Shiffletts have children who want to build on the farm but do not want to build next to a business.

Ordinance amendment to reordain Rockingham County Code Section 7-21,
Tax Relief for the Elderly and Disabled.

Administrator Paxton advised that the net worth categories exclude a home and one acre of land. If approved, this amendment will be retroactive to January 1, 2010.

There were no public comments regarding this amendment.

Chairman Cuevas closed the public hearing at 9:43 p.m. and reconvened the regular meeting.

Chairman Cuevas stated he would like to table the Carrizo (Marcellus) LLC request to allow time for him and staff to look into the details of the concerns raised and meet with people at James Madison University and those in attendance who are knowledgeable on the subject.

On motion by Supervisor Kyger, on behalf of Chairman 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 tabled SUP-028, Carrizo (Marcellus), LLC, 1000 Louisiana, Suite 1500, Houston, Texas for gas well drilling, completion, stipulation and production on property located on the south side of Crab Run Road (Route 820) approximately 2/10 mile northwest of Bergton Road (Route 865/820); Election District #1; Zoned A-2; Tax Map #10-(A)-24.

On motion by Supervisor Floyd, 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; and subject to the following conditions, the Board approved SUP-69, National Communication Towers, 5413 Patterson Avenue, Suite 101, Richmond, 23226 for a 195' telecommunications facility on property located at the dead-end of Creekside Drive (Route 989) northeast of Friedens Church Road (Route 682); Election District #3; zoned M-1; Tax Map #138-(A)-14.

1. Use shall be located in substantial accordance with plot plan as approved.
2. Telecommunications facility shall be constructed in accordance with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
3. The telecommunications tower as approved under this permit shall not exceed 195'.

4. Approval shall not constitute or imply support for or approval of the location of additional telecommunication towers, antennas, etc., even if they may be a part of the same network or system as any antenna approved under this permit.
5. Should use of this facility be discontinued, applicant shall remove the tower from the property within ninety (90) days from the date it is last used. If ownership of the tower changes hands, the owner at the time use is discontinued shall be responsible for its removal.
6. Should the ownership of the tower change hands, the Community Development Department shall be given written notice that the ownership has changed and stating who the new owner is.
7. The owner or operator of the telecommunications facility shall meet all requirements of Division 6A Telecommunications Facilities of the Rockingham County Code.
8. No request for a building permit shall be made by the applicant until such time as the applicant provides to the Zoning Administrator a binding contract from at least one wireless provider.
9. As requested by the applicant and supported by the County's consultant, a waiver to the landscaping requirements shall be granted as a part of this special use permit for the reasons spelled out in the narrative statement provided by the applicant.
10. As requested by the Health Department, applicant must ensure placement does not encroach on any existing sewage disposal system and/or reserve area.
11. This telecommunications facility shall not be placed into operation until such time as a certificate of occupancy is issued from the County.

On motion by Supervisor Kyger, seconded by Supervisor Eberly 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 SUP-102, Harold W. Theiss, 4584 Fawn Crossing, Bridgewater for a 50' wind energy turbine on property located on the north side of Fawn Crossing (private) approximately 2/10 mile northwest of Hill Gap Road (private); Election District #4; zoned A-2; Tax Map #122-(A)-35A.

1. Use shall be located in substantial accordance with plot plan as approved.

2. All requirements of the Virginia Uniform Statewide Building Code shall be met.
3. This wind energy turbine shall not exceed 50' in height.

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; and subject to the following conditions, the Board approved SUP-104, Bridgewater I-81, LLC, c/o Eddie Edwards Signs, 560 Waterman Drive, Harrisonburg for in increase in sign height to 64'-1.5" and increase in sign area to 212.4 square feet on property located on the northwest side of Friedens Church Road (Route 257) and Walton Way (Route 950), property address being 995 Friedens Church Road; Election District #3; zoned B-1; Tax Map #137-(A)-87.

1. Use shall be located in substantial accordance with plot plan as approved.
2. Sign shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
3. The sign shall be shown on the site plan for the business.
4. The sign shall be kept in good repair; and if not kept in good repair it shall be removed from the property.
5. If any business advertised on the sign should cease operation, that business shall be removed from the sign face within 30 days from the date the business last operates.
6. As required by the Building Official, engineered drawings shall be submitted for approval.
7. This permit is contingent upon the sign complying with all Outdoor Advertising Laws as required by VDOT.
8. Applicant shall be responsible for assuring that the lighted sign does not reflect onto the highway or in any way create a traffic hazard.
9. All pertinent regulations of Article 7, Division 5. Signs of the Rockingham County Code shall be met.
10. If required by the Building Official, a certificate of occupancy shall be obtained from the County for this sign.

On motion by Supervisor Kyger, seconded by Supervisor Breedon and carried by a vote of 5 to 0, voting recorded as follows: BREEDON - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; and subject to the following conditions, which includes the addition of condition 16 as requested by Supervisor Kyger, the Board approved SUP-110, Eric Good, 2107 Silver Lake Road, Dayton for a small contractor’s business (excavating) on property located on the east side of Silver Lake Road (Route 701) approximately one mile north of Eberly Road (Route 732); Election District #4; zoned A-2; Tax Map #107-(A)-138 and 107(A)-139.

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.
3. A commercial entrance permit shall be obtained from VDOT’s Residency Office to upgrade the existing entrance. A copy of the permit shall be submitted to the Community Development Department prior to issuance of a building permit.
4. The entrance shall be completed and approved by VDOT prior to issuance of a certificate of occupancy from the County.
5. This permit is contingent upon the applicant satisfactorily addressing VDOT’s concerns regarding the sight distance to the south. Any requirements made by VDOT regarding improving sight distance shall be met by the applicant. Applicant shall provide to the Zoning Administrator written notification from VDOT that those concerns have been satisfactory addressed prior to obtaining any building permits.
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. All requirements of the small contractor's business definition shall be met.
11. This request is contingent upon the applicant providing to the Fire Marshal information on the needed fire flow for the building and contingent upon the fire flow being made available to the site.
12. As requested by the applicant 1800 square feet of an existing building shall be used for the shop with the remainder of the building being used for storage.
13. This use shall be limited to no more than 4 employees in addition to the applicant.
14. The business shall be operated from the shop shown on parcel #107-(A)-138. Parcel 107-(A)-139 was included as the entrance is on that property. However, except for the entrance, no business shall operate from that parcel.
15. 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.
16. The property boundary to the north, south and east shall be screened with evergreen trees beginning and ending at the two opposite sides of the structure housing the business. The screening vegetation should be maintained throughout the existence of the business operation on the property.

On motion by Supervisor Floyd, seconded by Supervisor Eberly 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 SUP-114, Little Peoples Preschool – Peoples Baptist Church, 3523 Spotswood Trail, Penn Laird for preschool/daycare on property located on the northeast side of Spotswood Trail (Route 33) approximately 900' southeast of Massanetta Springs Road (Route 687); Election District #3; zoned A-2; Tax Map #126-(A)-120.

1. Use shall be located in substantial accordance with plot plan as approved.
2. If food is to be prepared and served to the children, the applicant shall contact the local Health Department to discuss the requirements.
3. As required by the Fire Marshal, the fire lanes shall be marked and shall be done within sixty (60) days from approval of the permit.

4. When the fire lanes have been marked, the Zoning Administrator shall be notified by the applicant. The Fire Marshal will then inspect the area to determine all requirements have been met.
5. On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.

On motion by Supervisor Eberly, 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 SUP-115, Trudy L. Cole, 5679 Snapps Creek Road, Singers Glen for a commercial horse boarding stable on property located on the northwest side of Snapps Creek Road (Route 752) approximately 1/2 mile southwest of Well Hollow Road (Route 777); Election District #2; zoned A-2; Tax Map #77-(A)-93 with a sign advertising the business being located on adjoining property shown on Tax Map #77-(A)-100B.

1. Use shall be located in substantial accordance with plot plan as approved.
2. As required by VDOT, the utility pole in the entrance shall be moved.
3. VDOT reserves the right to require upgrades in the future should conditions warrant.
4. The sign named in this request is contingent upon all outdoor advertising laws being met. The applicant shall notify VDOT with regard to outdoor advertising.
5. There shall be no other off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.
6. Off-street parking shall comply with the Rockingham County Code, and there shall be no parking on VDOT's right-of-way.
7. 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.
8. This request is contingent upon the applicant providing to the Fire Marshal information on the needed fire flow for the building and contingent upon the fire flow being made available to the site.

9. Applicant shall notify the Zoning Administrator in writing when the business is opened to assure that all time periods are met.

On motion by Supervisor Breeden, seconded by Supervisor Eberly 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 SUP-116, Greg Garr (Country Estates), 17 Country Estates Blvd., Crimora for a manufactured home sales center and commercial storage center on property located on the west side of South East Side Highway (Route 340) approximately 2500' south of Sapling Ridge Road (Route 634); Election District #5; zoned M-1; Tax Map #131-(2)-4A.

1. Use shall be located in substantial accordance with plot plan as approved.
2. Buildings shall comply with the Virginia Uniform Statewide Building Code, and the proper permits shall be obtained.
3. As required by VDOT, the existing entrance shall be brought up to current standards including a turn lane. A permit shall be obtained from VDOT's Residency Office, and a copy of the permit shall be submitted to the Community Development Department prior to issuance of a building permit.
4. This use shall be limited to a manufactured home sales lot under this permit. The existing use (statuary business shall be continued).
5. As required by the Health Department, there shall be no more than six employees.
6. If required by the Zoning Administrator or Building Official, elevation shots shall be obtained and presented to the Community Development Department.
7. An erosion and sediment control permit shall be submitted to and approved by the County prior to any further work on the berm.
8. Also prior to any further work on the berm, FEMA approval shall be obtained.
9. 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. The existing business shall be included in any site plan submittal to show what all uses will be on the property.

10. Off-street parking shall comply with the Rockingham County Code, and there shall be no parking on VDOT's right-of-way.
11. On-premise advertising sign shall comply with the Rockingham County Code, and a permit shall be obtained for any sign.
12. There shall be no off-premise signs allowed unless all County and VDOT requirements for outdoor advertising signs are met.
13. Model homes shall be situated on the lot in such a manner as to not impede sight distances for vehicles exiting the property.
14. This request is contingent upon the applicant providing to the Fire Marshal information on the needed fire flow for the building and contingent upon the fire flow being made available to the site.
15. If the Building Official requires certificates of occupancy 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.

Supervisor Breeden stated there is no question about the level of care the Yoders provide their dogs or the benefit provided to the people at the Elkton Community Center. However, Supervisor Breeden noted this is a land use issue and he has issues with a commercial business in an A-1 district and on a right-of-way.

On motion by Supervisor Breeden, 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 denied SUP-120, Steven D. and Barbara B. Yoder, 4947 Bloomer Springs Road, P.O. Box 376, Elkton for a commercial dog kennel on property located on the northeast side of Bloomer Springs Road (Route 646) approximately 1500' north of East Point Road (Route 602); Election District #5; zoned A-1; Tax Map #113-(A)-45B.

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 approved the following ordinance amendment:

**ORDINANCE REPEALING
AND RE-ENACTING
SECTION 7-21
OF THE CODE OF ORDINANCES OF
ROCKINGHAM COUNTY, VIRGINIA**

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA:

Sec. 7–21. Amount of exemption, be and hereby is repealed and re-enacted as follows:

Sec. 7–21. Amount of exemption. Persons qualifying for and claiming exemption shall be relieved of that portion of the real estate tax levied on the qualifying dwelling and land in the amount calculated in accordance with the following schedule:

AMOUNT OF EXEMPTION

<i>Range of Income</i>	<i>Range of Net Worth</i>		
	<i>0 to \$35,000</i>	<i>\$35,001 to \$50,000</i>	<i>\$50,001 to \$70,000</i>
0 to \$12,000	100%	75%	50%
\$12,001 to \$17,000	80%	65%	40%
\$17,001 to \$24,000	50%	40%	30%
\$24,001 to \$32,000	25%	15%	10%
Over \$32,000	0%	0%	0%

Subsection 7–21(b) is repealed in its entirety.

This ordinance shall be effective from the 1st day of January, 2010.

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CLOSED MEETING.

On motion by Supervisor Eberly, 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 recessed the meeting from 9:51 p.m. to 10:29 p.m., for a closed meeting pursuant to Section 2.2-3711.A(7), Consultation with legal counsel and staff members pertaining to actual or probable litigation where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the County; and consultation with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel.

MOTION: SUPERVISOR EBERLY
SECOND: SUPERVISOR KYGER

RESOLUTION NO: 10-04
MEETING DATE: FEB. 24, 2010

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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ADJOURNMENT.

Chairman Cuevas adjourned the meeting at 10:29 p.m.

Chairman