

March 24, 2010

The Regular meeting of the Rockingham County Board of Supervisors was held on Wednesday, March 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
WARREN G. HEIDT, Director of Public Works
WILLIAM L. VAUGHN, Director of Community Development
RHONDA G. HENDERSON, Director of Planning
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 6:02 p.m.

Supervisor Breeden gave the Invocation and Director of Public Works Heidt led the Pledge of Allegiance.

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RECOGNITION OF STUDENTS.

Students from Spotswood and Eastern Mennonite high schools introduced themselves.

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APPROVAL OF MINUTES.

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 March 10, 2010.

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COUNTY ADMINISTRATOR'S STAFF REPORT.

The Board received and reviewed Administrator Paxton's staff report dated March 18, 2010.

Chairman Cuevas, Vice Chairman Breeden, Administrator Paxton, and Harrisonburg's Mayor Kai Degner, Vice Mayor Richard Baugh, and City Manger Kurt Hodgen traveled to Washington, D.C. last week to meet with special project aides for Senators Mark Warner and Jim Webb, and Congressman Robert Goodlatte to discuss the Southeast Connector Project. They were informed that the project may be eligible for some federal funding, but it is not likely to receive the \$71 million requested. The Senators' aides will prepare a budget amendment and City and County officials will contact Senator Robert Byrd from West Virginia for support and assistance since West Virginia citizens will benefit from the Connector as they travel to work in the eastern portion of the County.

Administrator Paxton stated that a preliminary budget will be provided to the Finance Committee for review this weekend. The Finance Committee will meet on March 29 and a budget work session with the full Board will be held at 6 a.m. on April 1. The Board will also discuss real estate and personal property tax rates for the coming year so the rates can be advertised. The budget hearing will be held at Turner Ashby High School at 6 p.m. on April 14, 2010. The school budget will be considered for adoption on April 28 to meet state requirements for approving the school budget before May 1. The Board will recess the April 28, 2010 meeting to May 5, 6 or 7 (depending on the advertisement date) for a public hearing on the taxes relative to the fiscal calendar year and consideration of the remainder of the budget.

Administrator Paxton reported that the County received a request from Mayor Degner for the County to participate in mediation with the Rockingham/Harrisonburg SPCA, the Harrisonburg Spay and Neuter Clinic and the City. The SPCA and Spay and Neuter Clinic disagree on how to deal with feral cats. Citizens for Animal Welfare has proposed a trap, neuter and release (TNR) program whereby the animals are re-released into the community but some citizens do not want the animals released on their property. Liability issues can arise with a TNR program if injuries, illness or other incidents occur after the animal is re-released.

Administrator Paxton and City Manager Hodgen met with the State Shelter Inspector since the City and County are legally responsible for sheltering animals. All state requirements are currently being met by the two jurisdictions. If compliance issues arise with the SPCA or with the Spay and Neuter Clinic, if a change is made, both jurisdictions can be subject to a \$1,000 a day fine until the issue is corrected. The local SPCA has never been cited for a violation and is considered the gold standard for shelter operation, according to the state representatives.

Administrator Paxton was concerned about open-ended mediation where there is no structure or understanding of the goal for the mediation. If mediation is conducted, the County recommends that a representative from the State Veterinarian's Office attend to ensure decisions are within state law and regulations. The County is also concerned about incurring additional costs as a result of the decisions made during the mediation. Administrator Paxton recommended that the County Attorney research the County's legal requirements.

Chairman Cuevas would like to know what is being mediated, what the procedures are for selecting a mediator, what background the mediator needs to have, and the cost. He would also like to know the SPCA and Spay and Neuter Clinic's ability to handle needed capacity and legal requirements. After this information is received, he said the Board can discuss the issue further.

Supervisor Breeden believes there are more issues than feral cats. He is not opposed to mediation between the two groups if it will help to clear up the disagreement, and they determine best practices to follow. However, he stated the County should not spend any more money than what is currently budgeted for the SPCA.

Chairman Cuevas noted that if there is a change in the service provider, other interested parties should also be considered.

Supervisor Kyger stated he is not opposed to mediation but the Board needs to consider that two governing jurisdictions which share a service may not agree on how to deal with that service. He said the County should not be quick to disregard mediation if the parameters and expectation of mediation are clearly defined. The County needs to determine if it is willing to be bound by the mediation. Supervisor

Kyger suggested the City Council and Board discuss this issue because it deserves attention on a governmental negotiation basis.

Supervisor Eberly stated the SPCA and Spay and Neuter Clinic need to be aware of the magnitude of the issues and the volume of animals. They need to follow the law and be able to handle the responsibility.

Chairman Cuevas suggested Administrator Paxton communicate the Board's concerns to City Manager Hodgen and ask the City to draft a structure for the mediation to address the County's concerns.

Administrator Paxton noted that during the last budget period Chief Symons discussed call response issues in the Bridgewater and Dayton area. There has been a concerted effort to recruit additional volunteers in the past year, and this has been somewhat successful. The problem is that the majority of those recruited are young and are not qualified to drive apparatus, and lack the training to serve as the primary responder during a call. Chief Symons has requested, as part of his 2010-2011 budget submittal, the addition of four 24-hour shift fire and rescue positions for the Bridgewater area. If approved by the Board, 24-hour staffing will be provided in all areas of the County. Administrator Paxton stated these two areas are to be commended for serving the public with volunteers as long as they have.

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 authorized the four 24-hour shift Fire and Rescue positions to be stationed in the Bridgewater area.

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 adopted the following resolution:

RESOLUTION ENDING THE LOCAL EMERGENCY IN ROCKINGHAM COUNTY, VIRGINIA

WHEREAS, the Board of Supervisors of ROCKINGHAM COUNTY, Virginia, declared a local emergency due to the occurrence of a snow storm beginning on February 9, 2010, that had the potential to adversely affect the lives, safety and property of the residents of Rockingham County; and

WHEREAS, in accordance with the provisions of Section 44-146.21 of the Code of Virginia, the Board is required to take action to end the declared emergency;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Rockingham County that the “Declaration of a Local Emergency” is hereby ended, effective immediately.

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Chairman Cuevas requested the Board support a proclamation declaring March as Brain Injury Awareness Month.

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 approved the following proclamation:

PROCLAMATION

WHEREAS, brain injuries are a serious national public health epidemic that, according to the Centers for Disease Control, strike an estimated 1.6 million Americans and 20,000 Virginians annually; and

WHEREAS, each year another 80,000 Americans (2,500 of them Virginians) sustain moderate to severe brain injuries, resulting in 5.3 million people who live with permanent disabilities that include significant physical, cognitive, and emotional impairment; and

WHEREAS, the Defense and Veterans Brain Injury Center reports that traumatic brain injury is the “signature injury” for troops serving in Iraq and Afghanistan, with more than two-thirds of blast-injured veterans identified as having a brain injury; and

WHEREAS, the average lifetime cost of care for a person with a severe traumatic brain injury ranges from \$600,000 to \$1,875,000; and

WHEREAS, the effects of brain injuries are devastating emotionally and financially to survivors and their families; and

WHEREAS, many individuals with brain injuries can make valuable contributions to our society with appropriate services and supports, especially from within their community; and

WHEREAS, the Department of Rehabilitative Services, as the state agency designated to coordinate services for people with brain injuries, works collaboratively with the

Brain Injury Association of Virginia and other advocacy groups to meet the needs of Virginians with brain injuries; and

WHEREAS, the Greater Shenandoah Valley Brain Injury Support Group, this region's advocacy group dedicated to providing emotional support, education, and resource information to brain injury survivors and their families, works in association with Crossroads to Brain Injury Recovery, Inc., which provides case management services in the Shenandoah Valley; and

WHEREAS, the Brain Injury Association of America annually recognizes March as National Brain Injury Awareness Month to enhance public awareness of the extent, causes, consequences, treatment, and prevention of brain injuries;

NOW, THEREFORE, BE IT PROCLAIMED, by the Rockingham County Board of Supervisors, acting through its Chairman and on behalf of the citizens of the County, that March 2010 is to be

BRAIN INJURY AWARENESS MONTH

in Rockingham County, and this observance is called to the attention of all Rockingham County citizens.

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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, and the I-81 guardrail project. The Board will hold a public hearing for the six-year secondary road plan at the April 28, 2010 Board meeting. Mr. Komara noted that there is very little funding available and no new projects will be added to the plan. Mr. Komara also noted that the deadline for the Revenue Sharing program is June 18, 2010. Since there is less money available for the program, VDOT will assign locally-administered projects as tier 1. VDOT is performing maintenance work such as repairing and stabilizing shoulders, grading roads, flushing pipes, sweeping bridges, cutting brush, repairing signs, and cleaning snow removal equipment.

In response to questions from Administrator Paxton, Mr. Komara said the realignment of the Reservoir Street/Port Republic Road intersection is part of Phase 1 work. VDOT is awaiting the survey to ensure the alignment is as anticipated. Rockingham Memorial Hospital (RMH) is working to complete the tie-in to provide access to RMH from Reservoir Street. Mr. Komara is talking with the contractor about completing the tie-in with the Southeast Connector sooner than October as traffic issues will result without a signal. When work is completed, traffic will turn onto the

Southeast Connector or go straight into the hospital. Work on Ridgedale Road to the landfill will be one of the last phases since excess dirt that needs to be moved at the intersection will be used throughout the project.

Supervisors Kyger and Floyd stated there is a blind curve on Ridgedale Road (Route 710) at the intersection of Grassy Creek Road (Route 711) going toward the landfill, which will worsen as the foliage thickens. Supervisor Kyger suggested Mr. Komara contact the property owner regarding VDOT moving the fence. Mr. Komara will look at modifying the turning radius so it is not as sharp.

Supervisor Kyger and Mr. Komara discussed the bridge replacement on Airport Road (Route 727).

Supervisor Kyger received a call regarding paving work approved 15 years ago that has not been done on Horeb Church Road (Route 732). Due to budget constraints, VDOT will look at dust control rather than paving the road at this time. Supervisor Kyger suggested as another option the “pave in place” program since there are 22 houses located on the road, creating significant farm and residential traffic. Supervisor Kyger asked Mr. Komara to update the Board on the road projects for paving that are on the approved list.

Supervisor Breeden expressed appreciation on behalf of Elkton residents for the installation of a traffic signal on Spotswood Trail (Route 33) at East Point Road (Route 602), just east of the entrance to Massanutten.

Supervisor Eberly requested an update on the blind curve on Chrisman Road (Route 771) at the intersection of Singers Glen Road (Route 765). VDOT has looked into relocating this intersection in the past and the property owner was not interested. If the property owner is still not interested, Mr. Komara will consider other alternatives for that intersection such as signs, a mirror or flashing lights.

Supervisor Eberly noted a citizen requested improvements to Armentrout Path (Route 722).

Mr. Komara reported that Governor Bob McDonnell invited a representative from each VDOT Residency Office to Richmond. Gary Via from the Harrisonburg Residency Office went and the Governor expressed appreciation for VDOT employees’ work on snow removal this winter.

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PUBLIC WORKS DIRECTOR’S STAFF REPORT.

The Board received and reviewed Mr. Heidt’s staff report dated March 24, 2010.

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COMMUNITY DEVELOPMENT DIRECTOR'S STAFF REPORT.

The Board received and reviewed Mr. Vaughn's staff report dated March 24, 2010.

The Wind Energy Workgroup completed their review of the draft ordinance. Staff recommended that the Board forward the draft ordinance to the Planning Commission for consideration.

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 will forward the draft Wind Energy Ordinance to the Planning Commission.

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 removed from the table: S09-32, Kyger Land Company, 3173 Spotswood Trail, Harrisonburg for a cemetery on property located at the dead-end of Windswept Lane (private) approximately 1/2 mile southwest of Lawyer Road (Route 655) - (property address being 1886 Windswept Lane), Election District #3, Zoned A-2. Tax Map #140-(A)-149.

Supervisor Kyger made the following statement:

The applicant is my second cousin but I do not have any business partnership or business financial residual aspects in this matter. I am in no way connected with his business or his actions on this property. Therefore, I believe, based under the conflict of interest rules, I am legally and impartially able to discuss, participate and vote in this matter.

Supervisor Floyd made a motion to approve S09-32 for Kyger Land Company and it was seconded by Supervisor Eberly.

Supervisor Breeden stated that he was concerned with prohibiting farmers from burying cattle on their property, but approving the burial of unembalmed bodies. The Department of Game and Inland Fisheries believes some of the adverse affects on fish are from medication in the water. The illnesses and medications and/or treatments received prior to death may adversely affect the water stream and wells of citizens in that area, Supervisor Breeden said.

Supervisor Floyd noted that staff had no concerns after reviewing detailed reports and researching this matter fully.

Chairman Cuevas talked with staff at the local and state health departments who were not able to provide input on the consequences of this request. He expressed concern about the number of bodies buried on an acre of land. Since there are chicken houses near the entrance and neighbors have voiced concerns, Chairman Cuevas said he is not in favor of this request.

Supervisor Kyger called for the question. Chairman Cuevas then asked the Board if it was ready to end debate and move to a vote on the motion. Carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board ended debate on this issue.

By a vote of 3 to 2, voting recorded as follows: BREEDEN - NAY; CUEVAS - NAY; EBERLY - AYE; FLOYD - AYE; KYGER - AYE; the Board approved S09-32, Kyger Land Company, 3173 Spotswood Trail, Harrisonburg for a cemetery on property located at the dead-end of Windswept Lane (private) approximately 1/2 mile southwest of Lawyer Road (Route 655) - (property address being 1886 Windswept Lane), Election District #3, Zoned A-2. Tax Map #140-(A)-149.

Supervisor Floyd made a motion that the Board remove from the table: consideration of the revocation of S99-09, Brad Davis, 3881 Pineville Road, Port Republic, a special-use permit for a garage and associated salvage yard on property located on the east side of Pineville Road (Route 672) approximately 1/4 mile south of Goods Mill Road (Route 708); Election District #3; zoned A-2; Tax Map #140-(A)-78 which was tabled on January 13, 2010.

Supervisor Kyger seconded the motion to remove from the table the matter of the revocation of S99-09, and it was carried by a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - AYE; KYGER - AYE.

Ms. Stultz stated that on January 13, 2010, the Board gave the Davises until March 24, 2010 to bring the garage and associated salvage yard into compliance with the conditions as stipulated in S99-09. Upon visits to the property on March 19, 2010 and March 24, 2010, all the vehicles were in the salvage lot. Ms. Stultz reported that there is a wire fence along a portion of the salvage yard, and trees along part of the salvage yard. On January 13, 2010, the Board requested that the salvage yard be completely fenced. In addition to the salvage vehicles being behind the fence, there was a tractor-trailer in the driveway and most of the furniture, junk, trash and debris

was removed from the yard. Some debris remained in the yard as of March 24, 2010. Ms. Stultz stated Brad Davis has a DMV dealer's license that extends until August, 2010. She said there was no condition in S99-09 requiring where the automobiles were to be sold, just that car sales were associated with the garage.

In response to questions from Supervisor Floyd regarding the fence, Ms. Stultz indicated the kind of fence to be erected was not specified. If the special-use permit is not revoked and a fence is required, the Davises are willing to erect a fence. If the garage and salvage yard is allowed to stay, Ms. Stultz noted the Board may want to consider requiring the salvage yard be completely enclosed by a board fence and all vehicles kept within the fenced area, except when cars are moved for pick up.

Ms. Stultz confirmed for Supervisor Eberly that all the stipulations the County required at the January 13, 2010 meeting have been met except the erection of the fence.

Ms. Stultz stated that staff was not making a recommendation, but if the Board elected to allow continuance of the special-use permit, there were additional conditions that staff recommends be placed on the permit. The board fence should be erected by a certain time to be established by the County. Additionally, three days before vehicles are moved, the Davises be required to contact the Zoning Administrator's office to report when the vehicles will be removed, how many will be removed and how many days they will be outside the salvage yard. Each time the DMV license is renewed, Mr. Davis is required to submit a copy to the Zoning Administrator. If the Davises do not accomplish any of these tasks, the permit will be immediately considered for revocation by the Board. Ms. Stultz stated that if the Board does not revoke the permit, a letter will be sent to Mr. Davis informing him of the additional conditions that must be met. In addition, Mr. Davis will be informed in the letter, that any time any of the conditions are not complied with, the permit will be referred to the Board for revocation.

Supervisor Breeden stated the Board needs to look at the Davises past practices and disregard for their neighbors. If the permit is not revoked, the County will continue to visit the property.

In response to a question from Chairman Cuevas, Ms. Stultz stated the issue has been ongoing for eight or nine years. The Davises clean up the property after a complaint, and then let it deteriorate again until the next complaint.

Chairman Cuevas stated that some of the junk was moved to another location in the County where it should not have been placed. He suggested that the permit be revoked since Mr. Davis has had plenty of opportunities to comply.

Supervisor Kyger commended Supervisor Floyd for attempting to help Mr. Davis through this process, but stated he remembers the Board's initial discussion on

this special-use permit and the unkept promises made by the Davises. The problems continued and the conditions have not been fully met since the January 13, 2010 meeting.

Supervisor Floyd made a motion that S99-09, Brad Davis, 3881 Pineville Road, Port Republic, a special-use permit for a garage and associated salvage yard on property located on the east side of Pineville Road (Route 672) approximately 1/4 mile south of Goods Mill Road (Route 708) not be revoked with the addition of the following conditions: (1) that junk, trash and debris shall not be allowed to accumulate on the property except for the junked vehicles, which shall be kept within the approved salvage yard area except when they are moved for pick up; (2) the salvage yard shall be completely fenced by a board fence; (3) the Zoning Administrator shall be notified three days prior to vehicles being removed from the salvage yard with a date when the vehicles will be removed, how many will be removed and how long they will be outside the salvage yard; and (4) a copy of the DMV license will be provided to the Zoning Administrator each time it is renewed. He noted that the Board reserves the right to reconsider this decision at a later date. If any of these conditions are not met, the property will be considered in violation and the issue will be referred to the Board immediately.

Supervisor Kyger seconded the motion. By a vote of 1 to 4, voting recorded as follows: BREEDEN - NAY; CUEVAS - NAY; EBERLY - NAY; FLOYD - AYE; KYGER - NAY; the Board denied the motion not to revoke S99-09, Brad Davis, 3881 Pineville Road, Port Republic, due to violations of a special-use permit for a garage and associated salvage yard on property located on the east side of Pineville Road (Route 672) approximately 1/4 mile south of Goods Mill Road (Route 708); Election District #3; zoned A-2; Tax Map #140-(A)-78.

On motion by Supervisor Kyger, seconded by Supervisor Breeden and carried by a vote of 4 to 1, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY - AYE; FLOYD - NAY; KYGER - AYE; the Board revoked S99-09, Brad Davis, 3881 Pineville Road, Port Republic, due to violations of a special-use permit for a garage and associated salvage yard on property located on the east side of Pineville Road (Route 672) approximately 1/4 mile south of Goods Mill Road (Route 708); Election District #3; zoned A-2; Tax Map #140-(A)-78.

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COMMITTEE REPORTS.

FINANCE

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 approved the following supplemental appropriation as recommended by the Finance Committee:

SCHOOL CAPITAL PROJECTS SUPPLEMENTAL APPROPRIATION

A supplemental appropriation of \$440,800 for capital improvements at Broadway and Turner Ashby high schools. Funding will be provided by a transfer from the General Fund.

Supplemental Appropriation: \$440,800

\$ 2,340	GL Code: 103-09402-301-3100-000	Purchased Services-BHS
\$ 44,460	GL Code: 103-09402-301-8305-000	Site Improvements-BHS
\$ 2,340	GL Code: 103-09402-304-3100-000	Purchased Services-TAHS
\$ 391,660	GL Code: 103-09402-304-8305-000	Site Improvements-TAHS
\$ 440,800	GL Code: 103-05101-2001	Transfer from General Fund

Supervisor Breeden made the following statement:

The Finance Committee has reviewed the proposals submitted by the three certified public accounting firms to undertake the audit for the next engagement that begins with the fiscal year ending June 30, 2010. Each of the firms submitted thorough and professional proposals to provide financial and compliance audit services for the County, School Activity, Massanutten Technical Center, and Sheriff's Canteen funds. After the Committee's review, I move that the Board award the contract to the firm of Robinson, Farmer, Cox Associates. The firm will be compensated for this service based upon the following schedule:

<u>Fiscal Year ended</u>	<u>Total Fee</u>
June 30, 2010	\$108,000
June 30, 2011	\$110,100
June 30, 2012	\$112,500

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 awarded the auditing contract to Robinson, Farmer, Cox Associates.

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 approved the following supplemental appropriation as recommended by the Finance Committee:

GENERAL FUND SUPPLEMENTAL APPROPRIATIONS

Sheriff

The U.S. Department of Homeland Security awarded a \$302,000 State Homeland Security Program Grant for an armored incident response vehicle. The grant period is from April 1, 2010 – July 31, 2011. Funding would be provided from federal funds with no local matching funds required.

Supplemental Appropriation: \$302,000

\$ 302,000	GL Code: 001-03102-170-8001-000	Machinery & Equipment
\$ 302,000	GL Code: 001-03900-4000	Federal Revenue - Homeland Security Grant

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 appropriation as recommended by the Finance Committee:

Public Works

A supplemental appropriation of \$49,000 for the TV transmission system operation and maintenance. The original budget projected operations would cease within the first six months of the fiscal year. Additional repairs and maintenance have been incurred and operations are now expected to continue through the end of the fiscal year. Funding would be provided from the Contingency Fund.

Supplemental Appropriation: \$49,000

\$ 5,000	GL Code: 001-04308-000-3301-000	Repairs & Maintenance
\$ 37,000	GL Code: 001-04308-000-3302-000	Maintenance Service Contracts
\$ 2,000	GL Code: 001-04308-000-5101-000	Electrical Services
\$ 6,000	GL Code: 001-04308-000-5402-000	Lease/Rent Buildings
\$ 8,000	GL Code: 001-04308-000-6007-000	Repairs & Maintenance Supplies
\$ 1,000	GL Code: 001-04308-000-6008-000	Vehicle & Equipment Fuel
\$ (10,000)	GL Code: 001-04308-000-8001-000	Machinery & Equipment
\$ (49,000)	GL Code: 001-09110-000-5800-000	Contingency Fund

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 approved the following supplemental appropriation as recommended by the Finance Committee:

Transfer to School Capital Projects Fund

A supplemental appropriation and a transfer of \$440,800 from the General Fund to the School Capital Projects Fund for capital improvements. Funding will be provided by the General Fund Reserve.

Supplemental Appropriation: \$440,800

\$440,800	GL Code: 001-09301-000-9513-000	Transfer to School Capital Projects Fund
\$440,800	GL Code: 001-05201-0100	General Fund Reserve

SOCIAL SERVICES

Supervisor Breeden reported that the Social Services Advisory Committee will meet on March 25, 2010 at 3:00 p.m.

VIRGINIA ASSOCIATION OF COUNTIES (VACo)

Supervisor Kyger stated that the VACo Regional Meeting will be held on March 25, 2010 at 5:00 p.m. at the James Madison University Festival Center.

CHAIRMAN

In regard to SUP-028, Carrizo (Marcellus) for gas drilling, Chairman Cuevas advised that members of the Board, staff and Jeff Kelble from the Shenandoah Riverkeepers took a trip to West Virginia. Additionally, a meeting was held with James Madison University (JMU) geology and chemistry experts. Staff, representatives from the Department of Mines, Minerals and Energy (DMME) and the Department of Game and Inland Fisheries met with the JMU Department of Science regarding surface and underground water. Staff has been gathering information and contacting government representatives in New York and Pennsylvania, where similar activity has taken place. Staff will continue to gather information and meet with Mr. Kelble. Chairman Cuevas noted that Kim Sandum from the Community Alliance for Preservation has been asked to serve on a committee to screen the information received. Chairman Cuevas encouraged anyone with professional input to contact staff.

Chairman Cuevas stated this special-use permit request will be brought before the Board when he, Supervisor Breeden and staff are prepared to make a recommendation for consideration.

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RECOGNITION OF STUDENTS.

Students from James Madison University introduced themselves.

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RECESS.

At 7:27 p.m. Chairman Cuevas recessed the meeting.

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PUBLIC HEARING – REZONINGS.

At 7:35 p.m. Chairman Cuevas opened the public hearing and Ms. Henderson reviewed the following rezoning requests:

- RZ09-11 Gregory Propst, 5215 Scholars Road, Mt. Crawford, to rezone 1.475 acres from A1 (Prime Agricultural) to A2-C (General Agricultural with Conditions) on a portion of tax parcel 138-(A)-L123. The site is located north of Scholars Road (Route 988), and approximately .2 mile east of Valley Branch Road (Route 989), in Election District #3. The Comprehensive Plan designates this area as Agricultural Reserve. If the rezoning is approved, the applicant plans to apply for a special-use permit to operate a small contractor's business. The applicant has proffered to limit the uses available under A2 zoning.

The Planning Commission recommended denial on a 4-0 vote on March 2, 2010, concurring with staff's recommendation, which stated:

This area, in farmland and scattered residences, is designated as Agricultural Reserve in the Comprehensive Plan. The Comprehensive Plan states "one of the primary goals of the Plan is to preserve the agricultural industry and economy" and that "commercial uses are more appropriate in the Urban Growth Areas located around Harrisonburg and the towns, as delineated on the conceptual land use maps in the Comprehensive Plan.

In response to a question from Supervisor Eberly, Ms. Henderson said this property was zoned A1 either in 1985 during the comprehensive rezoning, or before.

In response to a question from Supervisor Floyd, Ms. Henderson stated this could be considered spot zoning since the property is being rezoned for the sole benefit of that land owner and not for the greater benefit of the community.

The applicant indicated he was a farmer for 18 years and sold his Singers Glen farm in 2006. When he purchased this property in 2007, he was informed by Community Development that he could not build a garage. Since he owned agricultural tools, he erected an agricultural building. Later he built two houses which led into an excavating business. Mr. Propst stated he was not aware this use for his building was a violation. He provided the Board with copies of petitions and letters.

In response to a question from Chairman Cuevas, Mr. Propst reported that the total acreage of his farm is a little over 11 acres.

In response to a question from Supervisor Eberly, Mr. Propst stated all the citizens who signed the petition live on Scholars Road.

In response to a question from Supervisor Breeden, Mr. Propst said the equipment on his property consists of pick-up trucks and two dump trucks that are parked at this site in the winter but are parked at job sites in the summer.

Elaine Sacra, who signed the petition in favor of Mr. Propst's request, drives by his property daily and said it is a very neat place. She is in favor of Mr. Propst conducting his business at this location.

Michael Beckler, attorney for Joe Buckner, said his client has lived near this property 34 years and since Mr. Propst moved in, there is a lot of truck traffic and equipment is moved at all hours of the day. Mr. Beckler said the building Mr. Propst constructed is not a farm building and is used as a storage building for his contractor's business, which is in violation of the zoning ordinance. Since Mr. Propst is a contractor and obtains permits for his clients, he should have known this was a violation, Mr. Beckler said.

Ms. Henderson advised that the State Corporation Commission listed Propst Excavating, Inc. as a corporation owned by Mr. Propst in June 2006 when he lived on Chrisman Road in Singers Glen.

RZ09-08 Skybox, LLC, 1168 Nelson Drive, Harrisonburg, VA to rezone 14.94 acres from A2 (General Agricultural) to R2-C (Medium-Density Residential with Conditions) on tax parcel 94-(A)-L5C. The site is

located on the east side of Harpine Highway (Route 42), and directly across from Willow Run Road (Route 767), in Election District #2. The Comprehensive Plan designates this area as Community Residential. The applicant has proffered to limit the proposed development to no more than 40 residential units, of which at least 16 units shall be single-family detached units.

Ms. Henderson noted that the applicant added a proffer today, March 24, 2010, to plant vegetative screening within a ten-foot wide easement on the northern and eastern sides of tax parcel 94-(A)-L15.

The Planning Commission recommended approval on a 4-0 vote on March 2, 2010, concurring with staff's recommendation, which stated:

The Comprehensive Plan designates this area as Community Residential within an Urban Growth Area. The Community Residential areas are planned for a variety of housing types, but primarily single-family detached homes at a net density of two (2) to six (6) dwelling units per acre. The rezoning site is primarily surrounded by low-density residential uses and the proposed development should be both compatible and respectful of these adjoining uses.

Seth Roderick from Valley Engineering explained that work began on this project in mid-2008 and there have been water and sewer challenges for this development. Public water is proposed to connect from Harmony Heights Subdivision across Harpine Highway (Route 42). He explained how the sewage will be handled and noted this has been discussed with Director of Public Works Heidt. Skybox plans to build single-family homes and two-unit attached units (duplexes) which will blend well with the surrounding area. The property owner has worked extensively with VDOT, the designers and County staff on the road layout. Mr. Roderick stated an agreement has been reached with adjoining neighbors to the north of this property by providing them primary access control. It is estimated that the development will include 14 to 16 children with the largest impact (eight students) at Linville Edom Elementary School. This is a small school with 189 students currently enrolled and a maximum capacity of 222 students.

In response to questions from Supervisor Eberly, Mr. Roderick confirmed that a Home Owners' Association will be established for this development and there is no age restriction. Each unit will have an individual grinder pump (E-1 system) which will feed into the public force main. Mr. Roderick explained that each pump and lateral will be privately-owned and maintained. There will be no public pump station.

Chairman Cuevas verified that Mr. Heidt is in agreement with the water and sewer system. Mr. Heidt said E-1 systems have been used in the County for years with no problems and there are no issues with the force main. The County will have no additional maintenance requirements, Mr. Heidt said.

Mr. Roderick noted that the City expressed concern that the existing infrastructure is not capable of providing the desired fire flow of 1,000 gallons per minute. He indicated 730 gallons are available per minute. Fire and Rescue Assistant Fire Marshal John Huddle is satisfied with obtaining as much water as possible from the public system with additional water supplied by dry hydrants.

Due to pressure flow issues with fire protection, Supervisor Kyger discussed with Mr. Roderick the possibility of using residential sprinklers in the homes to increase the Insurance Service Office (ISO) fire rating. Supervisor Kyger noted that studies show these sprinkler systems can extinguish a fire within 80 seconds and should only add \$4,000 to the cost of each home. Mr. Roderick said he could mention this to the home buyers as they prepare to build. Supervisor Kyger stated this system will need to be installed in every house in the subdivision to work effectively.

No one spoke in opposition to this request.

REZ-123 Virginia State Free Will Baptist Church, 794 Gailcrist Drive, Harrisonburg, VA to rezone 2.411 acres from A2 (General Agricultural) to R3-C (General Residential with Conditions) on tax parcel 109A-(1)-L45. The site is located on the east side of Vine Street (City Street), and approximately 400 feet north of Longview Drive (City Street), in Election District #2. The Comprehensive Plan designates this area as Community Residential. The applicant has proffered to limit the site to 24 townhouse units.

The Planning Commission recommended approval on a 4-0 vote on March 2, 2010, concurring with staff's recommendation, which stated:

The Comprehensive Plan designates this area as Community Residential inside an Urban Growth Area. The Plan states that like other growth areas around the City, the areas north of the City are expected to absorb a significant amount of future development during the next several decades. The proposed development would be served by public water and sewer services meeting one of the goals of the Plan to concentrate at least 80 percent of new development in areas served by public water and sewer. This development would connect to an adequate City road network, and the applicant has agreed to reserve land for an alternate connection to any future road constructed just south of the property.

Administrator Paxton questioned whether there was a fire flow issue due to the statement in the staff report, "If the rezoning is approved, Fire and Rescue will require the developer to provide an acceptable means of getting the necessary fire flow to the

site.” He stated there was a similar issue in another area of the County and the Board and the developer should be aware of any deficiencies, since the County will not share in the cost to rectify any such deficiency. Ms. Henderson said there is a slight deficiency, but that it is not an issue that Fire and Rescue and the developer cannot resolve. She stated that staff and Fire and Rescue will not approve a site plan that does not meet the requirements.

Dick Blackwell from Blackwell Engineering explained that if it is necessary, sprinklers will be used to obtain the proper Insurance Service Office (ISO) rating. He also noted that the City is trying to improve the water pressure in this area. Mr. Blackwell indicated that the owner will dedicate the City section of the paper street to the City since Vine Street may be improved in the future.

Rev. Paul Collins, pastor of Virginia State Free Will Baptist Church, stated the church met all the rezoning requirements and proffered a landscaping screen on the edge of the paper street. They have requested that the developer build high-quality homes. When the church purchased this parcel, the congregation hoped not to divide their property but, due to the economy, Rev. Collins said they want to sell a portion of the land to have funds to complete the church building without incurring excessive debt.

Supervisor Floyd clarified with Rev. Collins that this property will be sold to a developer with conditions to ensure top-quality homes are built.

William May, who owns property on Longview Drive that adjoins this parcel, said in 2001 the property was subdivided into 10 lots which were designed for single-family housing and had restrictions placed on them. Four lots were sold and the remaining six lots were combined into one parcel when the City abandoned the paper street. Mr. May said he thinks the restrictions still apply to the parcel currently owned by the church. If this land is developed, Mr. May believes there will be a negative impact to Lacey Spring Elementary and Broadway High schools. He also anticipates traffic problems. He said there are already vacant houses in the area, so additional housing is not needed. Mr. May explained that residents on Longview Drive have taken steps such as installing street lights at their expense to limit criminal activity. Neighbors also installed a fence at the back of the Eagles lodge to prevent people from driving through their yards to avoid road blocks.

In response to a question from Chairman Cuevas, Mr. May noted that according to a Declaration of Restriction dated April 23, 2001, the original subdivision with 10 lots could not be rezoned for 25 years unless a majority of the homeowners agreed to the subdivision of the property. Mr. May provided copies of the referenced documents for review by the County Attorney and staff.

Rev. Collins stated the restrictions Mr. May mentioned only applied to the four lots which were sold. If the restrictions had applied to the remainder, when those lots were merged the covenant would have been broken, if there had been one, he said.

Attorney Dennis Belcher spoke on behalf of his stepbrother Joe Good, who is one of the adjacent landowners and is opposed to this rezoning. Mr. Good is concerned about how the area may change because it is unknown what type of development will be built. Mr. Belcher cautioned the Board in granting this rezoning request without a developer providing a plan or proffers.

REZ-129 Storemen Specialty, Inc., 4444 Rawley Pike, Harrisonburg, VA to rezone 5.527 acres from A2 (General Agricultural) to B2-C (Rural Business with Conditions) on tax parcels 107-(A)-L18, 107-(A)-L19, and 107-(A)-L21A. The site is located on the north side of Rawley Pike (Route 33), and approximately 800 feet east of Bank Church Road (Route 734), in Election District #4. The Comprehensive Plan designates this area as Agricultural Reserve. Storemen Specialty, Inc., a restaurant equipment repair, service, and sales establishment, is currently located on the property. The applicant has proffered to limit the available uses under B2 zoning.

Ms. Henderson explained that the rezoning request is for all the property except a one-acre portion on which a house is located. This rezoning was requested so the house can be sold and setback requirements for the business can be met.

The Planning Commission recommended approval on a 4-0 vote on March 2, 2010, concurring with staff's recommendation, which stated:

The rezoning site is located along a major road, served by municipal water, and has a septic system permitted to handle the existing commercial uses. The rezoning of this site would bring the existing commercial use into compliance with the zoning ordinance and have a minimum impact to the surrounding area.

Eldon L. Layman, President of Storemen Specialty, Inc., indicated his business has been at this location almost 40 years. This rezoning is requested to sell the house and obtain cash flow for his business.

Supervisor Kyger stated the County previously encouraged Mr. Layman to rezone this property since it is grandfathered as an accepted, non-conforming use. Ms. Stultz noted changes in the State Code would make it difficult for Mr. Layman to expand the business in the A2 district.

No one spoke in opposition to this request.

Chairman Cuevas closed the public hearing and reconvened the regular meeting at 8:44 p.m.

Mr. Propst commented on statements made during the public hearing: He noted there are no “for hire” tags on his trucks. The trucks are used at excavation sites so they only make one trip out and one trip back each day. One dump truck has been sitting at his property three months and the other has been at a job site since Monday. He said noise Mr. Buckner hears may be from tractors with manure spreaders.

Supervisor Floyd stated Mr. Propst’s property is very neat but this is a land use issue and this request appears to be spot zoning. Supervisor Floyd expressed concern that if A2 rezoning is approved on this parcel, it will be difficult to deny future requests in this area.

Supervisor Floyd made a motion to deny request RZ09-11 for Gregory Propst. The motion was seconded by Supervisor Kyger.

Supervisor Kyger confirmed that the request is for 1.475 acres and the property consists of a total of 11 acres.

Supervisor Eberly said citizens who purchase A1 property should plan to farm.

Supervisor Cuevas injected that the Board has evaluated each application since there can be special circumstances where the property is not suitable for farming.

Supervisor Breeden thought he recalled a previous request where a citizen wanted to run a machine shop for farmers in an A1 district and the Board approved that request. He said very little farming can be done on 1.475 acres.

Supervisor Kyger wondered why there is an 11-acre tract in an A1 district as 11 acres would not allow for best management practices in intensive agricultural situations Ms. Henderson noted that there are citizens with five-acre tracts that farm successfully. Ms. Stultz explained that the 11 acres are the result of dividing adjoining property.

In response to a question from Supervisor Floyd, Ms. Stultz explained that there were originally three parcels and several adjoining transfers were done between those parcels. This tract was the remainder of one parcel. When Mr. Propst purchased the property in 2007, he requested a permit for a garage, which was an accessory use. The garage needed to be accessory to something but there was no dwelling on the property. Since Mr. Propst could not build a detached garage, he requested a permit for a farm building, Ms. Stultz said.

Supervisor Kyger said this situation points out problems the County has created which limit people with small tracts. If the parcel was zoned A2, Mr. Propst could request a special-use permit rather than a rezoning. When adjacent transfers are reduced to small tracts, it may be better to rezone them to a more suitable zoning, Supervisor Kyger said.

Chairman Cuevas said the time to address inequities is during Comprehensive Plan revisions.

By a vote of 5 to 0, voting recorded as follows: BREEDEN - AYE; CUEVAS - AYE; EBERLY – AYE; FLOYD - AYE; KYGER - AYE; the Board denied RZ09-11, Gregory Propst, 5215 Scholars Road, Mt. Crawford, to rezone 1.475 acres from A1 (Prime Agricultural) to A2-C (General Agricultural with Conditions) on a portion of tax parcel 138-(A)-L123. The site is located north of Scholars Road (Route 988), and approximately .2 mile east of Valley Branch Road (Route 989), in Election District #3.

Supervisor Eberly stated the Comprehensive Plan denotes the property in the Skybox request as residential and the applicant has worked out the water and sewer issues.

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 proffers, the Board approved RZ09-08, Skybox, LLC, 1168 Nelson Drive, Harrisonburg, VA to rezone 14.94 acres from A2 (General Agricultural) to R2-C (Medium-Density Residential with Conditions) on tax parcel 94-(A)-L5C. The site is located on the east side of Harpine Highway (Route 42), and directly across from Willow Run Road (Route 767), in Election District #2.

Proffers:

- 1) Land use shall be restricted to single-family detached and two-unit attached dwellings.
- 2) The Development shall consist of no more than forty (40) residential units. Of these forty (40) units, at least twelve (12) shall be single-family detached units. Only single-family detached units shall be located in the area color coded orange and labeled “D” on the attached layout. Area color coded yellow and labeled “D/A” on the attached layout may be comprised of either allowable housing type.
- 3) Construction of no more than twenty (20) dwelling units shall commence within the same calendar year.

- 4) Area within the Development shall be reserved and designated for recreational use, for the utilization of the development's residents. Said area shall be improved, to a minimum, with walking trails and shall be located within the Development's open space. Open space is shown in approximate location on the attached layout in the area color coded green and labeled "O".
- 5) A Home Owners' Association (HOA) shall be established (upon 75% of lots being sold) and made accountable for the maintenance of Item #4 listed above and Item #11 below, as well as any other non-publicly maintained feature within the development. Prior to the establishment of this HOA, the Developer shall assume all maintenance associated with these items.
- 6) All lots shall be served by public water; the Development's sewer system shall consist of individually owned and maintained pumps and laterals connecting to a publicly owned and maintained force main network. Sewer and water main and lateral installation, necessary for the utilization of the Development, shall be the sole responsibility of the Developer.
- 7) All design, construction and permitting costs associated with the Development's proposed roadways shall be borne by the Developer prior to their public dedication. No improvement to Wits End Way or its associated easement is included as part of this proffered condition.
- 8) Upon construction, the roadway access to Wits End Way shall be signed "Private Property, No Public Access" or similar language.
- 9) Final roadway layout for the proposed Development shall be in substantial conformance to the attached layout.
- 10) An easement shall be reserved within the Development's open space for future right-of-way dedication. This easement shall be located and aligned in such a manner that will allow for the future extension of the cul-de-sac, depicted on the attached layout, to extend to Harpine Highway (Route 42) at a point directly across from the intersection of Willow Run Road (Route 767). Said easement is shown in approximate location on the attached layout.
- 11) A 10' wide easement shall be reserved within the Development, adjacent to the northern and eastern sides of Tax Map Parcel # 94-(A)-L15 (to the extents shown on attached layout), for the purpose of creating and maintaining a landscape buffer. Leyland Cypress trees shall be planted within the said easement at distances of no more than 10 feet apart. Said tree planting shall occur within thirty days of when construction has been completed for the first residential unit placed on a lot adjoining the referenced parcel.

Supervisor Eberly stated that there are questions to be answered related to the Virginia Free Will Baptist Church request.

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; the Board tabled REZ-123, Virginia State Free Will Baptist Church, 794 Gailcrist Drive, Harrisonburg, VA to rezone 2.411 acres from A2 (General Agricultural) to R3-C (General Residential with Conditions) on tax parcel 109A-(1)-L45. The site is located on the east side of Vine Street (City Street), and approximately 400 feet north of Longview Drive (City Street), in Election District #2.

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 proffers, the Board approved REZ-129, Storemen Specialty, Inc., 4444 Rawley Pike, Harrisonburg, VA to rezone 5.527 acres from A2 (General Agricultural) to B2-C (Rural Business with Conditions) on tax parcels 107-(A)-L18, 107-(A)-L19, and 107-(A)-L21A. The site is located on the north side of Rawley Pike (Route 33), and approximately 800 feet east of Bank Church Road (Route 734), in Election District #4.

Proffers:

Storemen Specialties, Inc. offers, as a condition of rezoning, that certain uses permitted under B2 Rural Business District, as described in Rockingham County Code, Section 17-96, will be permitted on the above-referenced property. In designating the uses under Section 17-96 that are proffered herein as uses that are permitted, the numbering found in section 17-96 is used. The following uses, which are permitted uses pursuant to Section 17-96, will be permitted uses on the subject property as outlined above:

- (a) Specialty shops as follows:
 - (1) Florist,
 - (2) Art supply or framing shop,
 - (3) Antique shop,
 - (4) Pawn shop,
 - (5) Swap shop,
 - (6) Gift shop,
 - (7) Ceramic shop,
 - (8) Crafts shop;
- (b) Bakery;
- (d) Seed or feed store;
- (e) Retail business generally recognized for supply of commodities to residents of adjacent rural areas;
- (f) Catalog sales;
- (h) Horticultural or agricultural uses as follows:
 - (1) Nursery operation, excepted from enclosure,

- (2) Greenhouse,
- (3) Farmers market, excepted from enclosure,
- (4) Fruit packing plant;
- (i) Community and recreational uses as follows:
 - (1) Community center,
 - (2) Club,
 - (3) Park or playground, excepted from enclosure,
 - (4) Library, art gallery, museum;
- (j) Schools as follows:
 - (1) Business or commercial,
 - (2) Trade;
- (k) Service enterprises as follows:
 - (2) Beauty or barber shop,
 - (3) Cabinet, furniture, woodworking, or upholstery shop,
 - (4) Carpet or rug cleaning service,
 - (5) Laundromat, dry cleaners, laundry,
 - (6) Machine, welding, or blacksmith shop,
 - (7) Public garage,
 - (8) Clinic service,
 - (9) Funeral home,
 - (10) Machinery sales or service,
 - (11) Photography studio;
- (m) Offices as follows:
 - (1) Medically oriented office,
 - (2) Business or other professional office,
 - (3) General or trade contractor's office;
- (n) Laboratory operations:
 - (1) Medical,
 - (2) Dental,
 - (3) Pharmaceutical,
 - (4) Research or developmental;
- (o) Governmental, administrative, or service building;
- (p) Public utilities (not including telephone exchange cabinets) unless special use permit required in this district.
- (q) Signs as provided in article VII;
- (r) Church or other house of worship;
- (s) Water filling station, natural source;
- (t) Water hauling;
- (u) Telephone exchange cabinet with above-ground dimension no greater than one hundred ninety-two (192) cubic feet; provided, however, prior to issuance of final zoning approval for a building permit, a landscaping and maintenance plan for the cabinet site shall be approved by the community development department, and the site shall be landscaped and maintained pursuant to such plan (or amended plan, as approved by the community development department).

Additionally certain uses permitted with a special use permit will be permitted on the above mentioned property. In designating the uses under Section 17-97 that are proffered herein as uses on the subject property as outlined above:

- (a) Business uses listed as permitted uses in this district which require servicing, storage, or processing outside a completely enclosed building, other than uses with specified exceptions. In addition, may include:
 - (1) Auto sales lot,
 - (2) Car wash,
 - (3) Auction sale,
 - (4) Livestock sales pavilion;
- (b) Community and recreational use unless otherwise permitted for this district and other than uses with specified exceptions. May include the following:
 - (1) Assembly hall,
 - (2) Circus, carnival, fair sideshow, music festival, tent meeting of a temporary nature, or flea market,
 - (5) Recreation or amusement enterprise, inside a building, for profit,
 - (6) Recreation or amusement enterprise, outside a building, for profit,
 - (7) Theater production, outdoor,
 - (8) Cemetery;
- (c) Taxidermy;
- (d) Retail shop or store, unless otherwise permitted for this district;
- (e) Telecommunications facility as provided by Article VII, Division 6A of this chapter.
- (f) Telephone exchanges cabinet with above-ground dimension exceeding one hundred ninety-two (192) cubic feet; telephone exchange building; pumping station or tower; energy products transmission lines, or public utility transformer station; not including service or storage yard. As a part of the special use permit application, a landscaping and maintenance plan for the site shall be included, and the site shall be landscaped and maintained pursuant to such plan (or amended plan as approved by the board of supervisors as a part of the special use permit process except that requests for energy transmission lines shall be exempt from the landscaping and maintenance plan).
- (g) Relief center;
- (h) Signs as provided in article VII;
- (i) Water filling station, confined source;
- (j) Small contractor's business;
- (k) Animal hospital;
- (l) Heritage center;
- (m) Antique shop, with outside display;
- (n) Craft shop, with outside display;
- (o) Sale of lawn ornaments with outside display;
- (p) Produce auction.
- (q) One dwelling unit associated with a permitted use.

In addition, the following are proffered as part of this rezoning request:

1. City water and septic tank will serve this property.
2. Downward lighting for less neighbor interference.

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At 9:04 p.m. Chairman Cuevas recessed the meeting.

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PUBLIC HEARING – ORDINANCES.

At 9:09 p.m. Chairman Cuevas opened the public hearing to receive comments on the following ordinance:

An ordinance to exempt from local taxation pursuant to Virginia Code Section 58.1-3651 the real and personal property of Heartland Health Clinic. Real property owned by Heartland Health Clinic is assessed at \$660,100.00, resulting in annual tax revenue of \$3,960.60. Personal property is currently unassessed.

Leroy Rhodes stated that the Heartland Health Clinic requested and was granted tax exempt status as a 501 C 3 corporation by the Internal Revenue Service in April 2009.

There were no public comments regarding this amendment.

Chairman Cuevas closed the public hearing and reconvened the regular meeting at 9:11 p.m.

Administrator Paxton asked Mr. Rhodes if Heartland Health Clinic paid taxes in 2009 so the County can determine the effective date of tax exemption. Mr. Rhodes responded that the clinic opened in August 2009 and no taxes were paid for 2009. Administrator Paxton noted that since real estate is assessed as of January 1st, the tax exemption should be effective January 1, 2009.

Since Heartland Health Clinic is a not-for-profit medical facility recognized by the Federal Internal Revenue Service as a 501 (c) (3) organization, Supervisor Kyger moved to approve the ordinance to exempt Heartland Health Clinic from local taxation (real and personal property) pursuant to Virginia Code Section 58.1-3651.

The motion was 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 ordinance effective January 1, 2009:

**ORDINANCE ENACTING
SECTION 7 – 76.4
OF THE CODE OF ORDINANCES
OF
ROCKINGHAM COUNTY, VIRGINIA**

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

That Section 7 – 76.4 be enacted as follows:

Section 7-76.4. The property, real and personal, of the Heartland Health Clinic shall be exempt from taxation as property used for the benevolent purpose of establishing and operating a healthcare clinic, which clinic does not handle any health insurance, to serve basic health needs of families and individuals who are members of any one of the “Plain” churches in Rockingham and Augusta Counties and surrounding areas that are associated with the Clinic and who subscribe to the Clinic. This exemption shall continue contingent upon the continued use of the property as set forth in this ordinance and in the Clinic’s organizational documents and its IRS Form 1023, Application for Recognition of Exemption. Heartland Health Clinic shall notify the Board of Supervisors of any change to the use of the property, to its organizational documents, or changes that would require modification to any response in its Form 1023.

This ordinance shall be effective from the 1st day of January 2009.

Administrator Paxton reiterated for the record that the real property owned by Heartland Health Clinic is currently assessed at \$660,100.00, resulting in annual tax revenue of \$3,960.60 at the current rate. The personal property is currently unassessed.

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At 9:14 p.m. Chairman Cuevas reconvened the public hearing to receive comments on the following ordinance amendments:

Ms. Henderson reviewed the ordinance amendment for the addition of 22.2 acres to the Keezletown North Agricultural-Forestal District. The property is owned

by Janet Whetzel. The new total in the forestal district will be 1,952 acres with this addition.

OA-05, An amendment to Chapter 17, Zoning Ordinance, Article XI, Division 1, Section 17-228, Keezletown North Agricultural and Forestal District, to add 19.127 acres of tax parcel 96-(A)-L53, pursuant to Code of Virginia, Section 15.2-4310. This tax parcel is currently owned by the Judy A. Paris Revocable Trust.

No one spoke regarding this request.

Ms. Stultz reviewed the following ordinance amendment:

OA-30, An amendment to repeal Section 17-113.1. Foundation Surveys, and to re-enact Section 17-113.1. Foundation Surveys, changing when foundation surveys shall be required.

Ms. Stultz noted that a foundation survey ordinance was adopted in October 2003 and became effective January 2004 requiring all new construction or additions to have a foundation survey. A 2005 amendment, effective March 2006, added a requirement that in any manufactured home park developed prior to 1995, a measurement be taken before a mobile home be approved by the County. In October 2008, an amendment further clarified for any manufactured home parks created after 1995, that any additions to the mobile home of greater than the 3' x 3' landings required by law will require surveys. At that time, storage buildings of less than 256 square feet, not on a permanent foundation, were exempt and decks, stoops and porches without roofs, except in manufactured home parks, were also exempt.

Ms. Stultz stated in the last several years, the County has found most of the problems where structures encroach over the setback requirement are on small lots or in subdivisions. The ordinance is requiring property owners with large parcels, to incur a significant cost for foundation surveys for buildings in the middle of their property. Therefore, staff is recommending that foundation surveys be required for new construction or additions to dwellings and businesses on any parcel an acre or smaller.

Ms. Stultz reviewed the proposed ordinance amendment in detail.

In response to a question from Supervisor Eberly, Ms. Stultz stated farm buildings need to meet setback requirements but are exempt from any building permits and surveys. No inspections are made on farm buildings as the State exempts them from building permit requirements. There are greater setback requirements for poultry

houses, and the ordinance requires surveys to assure those greater setback distances, she said.

Chairman Cuevas said he hopes this amendment allows for flexibility so citizens do not incur unnecessary expense. Ms. Stultz stated the amendment addresses subdivisions and lots of an acre or less as there are few problems on larger parcels.

There were no public comments regarding this amendment.

Chairman Cuevas closed the public hearing and reconvened the regular meeting at 9:25 p.m.

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 approved the following ordinance amendment:

**ORDINANCE REPEALING
AND
RE-ENACTING
SECTION 17-228
OF THE CODE OF ORDINANCES OF
ROCKINGHAM COUNTY, VIRGINIA**

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

That Section 17 - 228. "Description of district" be and hereby is repealed and re-enacted as follows:

Section 17 – 228. Description of district.

The Keezletown North Agricultural-Forestal District shall consist of the following land: 1,952 acres, more or less, generally located north of the intersection of Indian Trail Road (Route 620) and Caverns Drive (Route 685), east of the intersection of Indian Trail Road (Route 717) and Minnie Ball Lane (Route 718), south of the intersection of Armentrout Path (Route 722) and Airey Lane (Route 868), and west of Lairds Knob, which includes the parcels shown on Rockingham County Real Estate Maps, as of the effective date of this district, numbered as 96(A)36A, 96(A)50, 96(A)53A, 97(A)38, 97(A)41, 97(A)46, 97(A)47, 97(A)54, 97(A)57, 97(A)57A, 97(A)57A1, 97(A)61, 97(A)62, 97(A)62A, 97(A)62B, 97(A)62C, 97(A)62D, 97(A)63, 110(A)124, 110(A)124, 110(A)125A, 111(A)3, 111(A)13, 111(A)33, 111(A)35, 111(A)36, 111(A)37, 111(A)42, 111(A)43, 111(A)48, 111(A)49, 111(A)49A,

111(A)49B, 111(A)49B1, 111(A)57B, 111(A)71, 111(A)71A, 111(A)72, 111(A)72B, 111(A)87D, 111(A)87E, 111(A)88, 111(A)90, 111(A)97, 111(A)98, 111(A)100, 111(A)100A, 111(A)101, 111(A)101C, 111(A)101D, 111(4)1E, 111(4)1F, 112(A)1, 126(A)174, 126(A)177, and 126(A)177A.

This ordinance shall be effective from the 24th day of March, 2010.

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 ordinance amendment:

**ORDINANCE REPEALING
AND
RE-ENACTING
SECTION 17-113.1
OF THE CODE OF ORDINANCES OF
ROCKINGHAM COUNTY, VIRGINIA**

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

That Section 17 113.1. Foundation surveys be and hereby is repealed and re-enacted as follows:

Sec. 17-113.1. Foundation surveys.

The foundation survey is a requirement of the construction process to ensure that structures outlined herein are located to meet all setbacks.

- (a) The foundation survey shall be prepared by a certified land surveyor licensed to practice in the Commonwealth of Virginia.
- (b) The foundation survey shall be prepared after the footer or foundation has been inspected and approved by the building inspector.
- (c) The foundation survey shall document the location of the foundation, slab, or piers relative to property lines to confirm that the construction complies with setback regulations.
- (d) Construction above the foundation, slab, or pier shall not commence until the survey has been approved.

- (e) In the event the survey reveals the construction does not meet setback regulations and the adjoining property is also owned by the applicant, the construction may proceed pending the submission and approval of a deed vacating or altering the subject property line.
- (f) The final inspection of the construction shall be withheld until the deed has been approved and recorded.
- (g) Foundation survey shall be obtained for the following structures:
 - 1. Parcels one acre or smaller
 - i. New dwellings, businesses, or other main structures.
 - ii. Enclosed additions to main structures, remodeling to enclose open portions of dwellings, businesses, or other main structures.
 - iii. New accessory structures larger than 580 square feet
 - iv. Enclosed additions to accessory buildings that would result in final building size of more than 580 square feet.
 - 2. Manufactured home parks established after 1995 when the requirement for platted lots was adopted.
 - i. Manufactured homes.
 - ii. Decks larger than three (3) feet by three (3) feet.
 - iii. Additions larger than three (3) feet by three (3) feet.
- (h) Exceptions. The following exceptions do not require a foundation survey:
 - 1. Valid survey.
 - i. For a new structure or an addition to an existing structure on a tract of land that has a valid survey and a certified land surveyor confirms by letter that the construction is more than sixty (60) feet from all property lines.
 - 2. Landowner Confirmation.
 - i. For additions to existing structures, or enclosure of unenclosed porches, decks, etc, the survey requirement may be waived if the applicant can demonstrate compliance with setbacks and open yard area requirements by a previous survey or other means deemed reasonable and satisfactory by County.

- (i) Exemptions. The following is exempted from these requirements.
1. Additions or enlargement of unenclosed decks, stoops, or porches, except as required in pre-1995 manufactured home parks.
 2. Open-sided structures not on a permanent foundation (i.e. metal carports).
 3. Legally non-conforming manufactured home parks established prior to 1995 without platted lots.

This ordinance shall be effective from the 24th day of March, 2010.

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OTHER BUSINESS.

Ana Maria Mendez-Ritchie requested clarification regarding how the Board differentiates and moves between public hearings and a regular meeting.

Administrator Paxton explained that all public hearings are advertised in accordance with state law. The type of hearing determines the length of time and number of times an advertisement is required to be published.

Administrator Paxton further explained that it is common practice in local government for a Board of Supervisors, Town Council or City Council meeting to have public hearings and regular sessions within their meetings. The distinction is that the Board or Council cannot take an official vote in a public hearing.

In response to Ms. Mendez-Ritchie's request for clarification in writing, Administrator Paxton stated this information is available in the Virginia State Code and she may obtain a copy from the Administration Office.

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ADJOURNMENT.

Chairman Cuevas adjourned the meeting at 9:29 p.m.

Chairman