

At the recess meeting of the Giles County Board of Supervisors on Thursday, October 20, 2011, at 6:30 PM in the Giles County General District Courtroom, 120 North Main Street, Pearisburg, the following were present:

Eric Gentry	Chairman (Eastern District)
Paul "Chappy" Baker	Vice Chairman (At-Large Supervisor)
Howard Spencer	Western District
Richard McCoy	At-Large Supervisor
Barbara Hobbs	Central District
Chris McKlarney	County Administrator
Susan Kidd	Board Secretary

CALL TO ORDER/INVOCATION

Mr. Gentry called the meeting to order. Mr. Baker had the invocation and led the Pledge of Allegiance to the flag.

APPROVAL OF MINUTES

Mr. McCoy moved to approve the minutes of September 22, 2011. Second by Mr. Baker. Approved unanimously 5-0. Voting YES: Mr. McCoy, Mr. Baker, Mr. Gentry, Mr. Spencer, Ms. Hobbs.

REGIONAL JAIL REPORT – TODD MARTIN

Mr. Martin provided information to the board members from the recent meeting at the Regional Jail. There are currently 772 inmates at the jail. Of that number, 403 are state responsible inmates. The jail will stop charging localities a per diem for the state responsible inmates and is backing that up to July, 2011. This will be reflected in the November billing. The October numbers should be broken down to show how many are state responsible inmates. Mr. Gentry asked if they planned to give back pay to all the localities at once – he questioned if they have operating funds to do that for everyone. Mr. Martin said he was told they did. Mr. McCoy said basically this was getting the money back from the building fund that they were going to disperse to counties and did not. The jail also said the per diem will not increase through the next budget year. Mr. Gentry asked what the contract with the jail says about them being revenue neutral. Mr. McKlarney said he could not answer that without reviewing the contract. He felt sure it was addressed in there in some manner. Mr. Gentry said the jail was making money and their financial records should be an open book. Mr. McCoy asked if the jail carried a reserve. Mr. McKlarney stated the jail is mandated to carry a reserve. They are looking at adopting the same type of policy the board adopted to set a percentage for their fund balance. Mr. Gentry commented that they also have to keep a reserve to cover the loans but he did not know how much that was and if other reserves were dictated by any policies. Mr. McCoy said the state might set a percentage of their operating budget, but the localities do not know what that number is. Mr. Gentry said the board just doesn't know if they are keeping funds beyond that. It just seems they gave up pretty easily on this. There must be a reserve somewhere.

Mr. Martin said the jail did harvest 3,000 pounds of vegetables this year. They did use those at the jail, not selling any. There have been 4 personnel resignations this month – 3 officers and one nurse. That is a total of 16 resignations in 3 months and 40 for the year. Mr. Martin said there definitely seems to be a problem there with so many resignations. He said several of those went to the State Police and a couple to the new jail at Dixie Caverns. Many are just leaving because of the working issues and morale. Mr. Spencer told Mr. Martin to keep asking questions; that seems to be helping. The board agreed and commended Mr. Martin and Mr. McKlarney for the work they were doing to get a handle on things at the regional jail.

PAYMENT OF WARRANTS

Mr. McCoy moved to appropriate funds in the amount of \$459,764.91 for payment of warrants as presented. Second by Mr. Spencer. Approved unanimously 5-0. Voting YES: Mr. McCoy, Mr. Baker, Mr. Gentry, Mr. Spencer, Ms. Hobbs.

SCHOOL BOARD APPROPRIATION

Ms. Hobbs moved to appropriate \$2,239,017.00 for the school board, including \$63,000 in federal jobs money for the month of November, 2011. Second by Mr. McCoy. Approved unanimously 5-0. Voting YES: Mr. McCoy, Mr. Baker, Mr. Gentry, Mr. Spencer, Ms. Hobbs.

SOCIAL SERVICES APPROPRIATIONS

Mr. McCoy moved to appropriate \$150,000 for Social Services and \$120,000 for CSA for the month of November, 2011. Second by Mr. Baker.

Discussion: Mr. Spencer asked if this was a projection of expenses or actual. Ms. Hobbs said the request is based on what is anticipated. If funds remain, next month's request is adjusted to reflect that.

Approved unanimously 5-0. Voting YES: Mr. McCoy, Mr. Baker, Mr. Gentry, Mr. Spencer, Ms. Hobbs.

APPOINTMENT

Ms. Hobbs moved to appoint Rodney Wilson to the Building Code Board of Appeals. Second by Mr. Baker. Approved unanimously 5-0. Voting YES: Mr. McCoy, Mr. Baker, Mr. Gentry, Mr. Spencer, Ms. Hobbs.

EXECUTIVE SESSION

Mr. McCoy moved to go into Executive Session as permitted by Virginia Code 2.2-3711 A(30) Contracts. Second by Ms. Hobbs. Approved unanimously (5-0). Voting YES: Ms. Hobbs, Mr. McCoy, Mr. Spencer, Mr. Gentry, Mr. Baker.

Mr. McCoy moved to certify that in the closed session just concluded, the Board discussed nothing except the matters specifically identified in the motion to convene and lawfully permitted to be discussed under the provisions of the Virginia Freedom of Information Act cited in that motion. Second by Ms. Hobbs. Approved unanimously by roll call vote – Voting YES: Mr. Spencer, Mr. Gentry, Ms. Hobbs, Mr. McCoy, Mr. Baker.

INMATE WORK PROGRAM

Mr. McKlarney reported the inmate work program started this week. They worked on Stock Pen Mountain and put in three lines. The staff has things lined up for at least a year of work and they are beginning to get calls from other groups for projects. He felt the thing now that was limiting it would be the number of inmates working. There have been 4-5 this week. Mr. McKlarney said one of the things that may need to be relaxed is that the jail will not allow anyone with over 2 years to serve to be released outside the jail. The judge may be able to change that but Mr. McKlarney said they do not want to push things too hard right now.

REVENUE SHARING WITH VDOT

Mr. Spencer said the VDOT revenue sharing deadline was November 1st. He asked about the status of the cemetery road (Route 764). Mr. McKlarney asked if that group had said what they would be willing to put up to match VDOT. Mr. Spencer said they will commit to \$2,500 for guardrail only. Mr. McKlarney will contact VDOT about that. However, the area they want to cover is about 400-500 feet. The \$5,000 total amount may not get very far on that. Mr. Spencer asked if 400-500 feet of guardrail will be enough. Mr. McKlarney thought it would.

MIDWAY REZONING DISCUSSIONS

Mr. Spencer said several citizens have asked about the status of discussion on rezoning the Midway area. Mr. McKlarney said the Planning Commission will have to take action and bring that to the public. He was not sure where that stood. Mr. Gentry said the Planning Commission has requested more information – they would like to see an aerial map showing the houses and which are connected to public water and/or sewer. They also want to see details of where the commercial businesses are located now. Mr. Whittaker and Mr. Reed are working on that.

PUBLIC HEARINGS

Mr. Gentry noted this was a joint public hearing with the Planning Commission and they did not have a quorum present. The board recessed to allow Mr. Whittaker to contact Planning Commission members and try to get someone else present in order to proceed.

RECESS/RECONVENE AT 7:30 PM

There was a quorum of the Planning Commission present.

REZONING REQUEST – MH1 TO B3 – DOUGLAS VAUGHT/PEMBROKE

Mr. Gentry opened the public hearing. Mr. Whittaker stated that Mr. Vaught lives in Pulaski, but this request concerns property he owns on Route 460W between two existing mobile home parks located near Hilltop Grocery. This is in the Maybrook area of Pembroke. This property contains 4.6 acres. The two existing mobile homes parks are zoned MH1. This property located between those two parks has the same zoning; however, that essentially renders it useless for anything. Under current zoning regulations, it cannot be used in the MH1 zone without public sewer being available. Mr. Vaught has requested to rezone this property from MH1 to B3 to allow the possibility of a single family dwelling or use for possible commercial use. The Health Department has approved septic for this site. Mr. Whittaker noted he has received no comments on this public hearing. There were no comments or question from the public, the Planning Commission or board members. Mr. Gentry closed the public hearing and referred the matter back to the Planning Commission for recommendation.

AMENDMENT TO REZONE PROPERTY FROM R1 TO RRA1 – SINKING CREEK AREA

Mr. Gentry opened the public hearing. Mr. Whittaker noted that this public hearing and the next one (rezoning in the same area but from R1 to R2) are closely related. He will make comments in this hearing that also refer to the proposed zoning amendment in the next hearing. Mr. Whittaker shared a map of the area being considered and had the existing and proposed zoning highlighted. This area was considered for rezoning several years ago. It did go to public hearing and back to the Planning Commission and then the board heard nothing after that. The Planning Commission discussed it and noted there were no specific applicants at that time and no time limit to act. The issue was left with no recommendation back to the board.

Since that time, there have been issues which developed in that area. In recent months, a property owner applied to rezone a portion of his property for a use that was not allowed in this restrictive R1 zone. Mr. Whittaker has also received inquiries from property owners to utilize their property in terms of agriculture – construction of a barn or other similar improvements. Mr. Whittaker's office has also received complaints against another property owner in that area who is currently using his property for agriculture and has expanded the use since 1992. With all of these things coming up, Mr. Whittaker met with legal counsel to get his opinion on several issues.

R1 is a very restrictive zoning district. It allows stick-built homes, modular homes, double-wides on a permanent foundation, churches, schools, and that is about it. Uses are very limited. Agriculture is not listed in that zone as a permitted use. Mr. Whittaker said when they looked into this, all of the uses could continue as non-conforming uses. However, the way the zoning ordinance is worded a property owner cannot expand a non-conforming use. Legal counsel's opinion of expansion in the case of agriculture is that any structure built after 1992 for the purposes of agricultural use would be considered an expansion of an agricultural operation and would not be permitted. That means anything attached to the ground including fences. Mr. Gentry asked if that

was for agricultural use or dwelling use. Mr. Whittaker said that is for structures. Agricultural use gets into the use of the property versus just the structure. The use of a piece of property for grazing animals could continue -- it would not matter if it was used for horses one year, cows the next and pigs the next. The land was used for grazing animals and can continue to be used for that. However, if a structure (which would include a new fence) had to be constructed to contain a different type of animal or to hold them in an area they were not in before, then that by definition would be considered an expansion and a violation of zoning. Mr. Baker asked what about repairing a fence. Mr. Whittaker said there was no problem with repairing or even replacing an existing fence as long as it stays to the original "footprint" of that original fence.

Mr. Whittaker said the area under consideration that is currently zoned R1 and does not have access to the public sewer line is approximately 200 acres in size. Of that, about 175 acres is open land, open space, agriculture, grazing land, hay fields, timber production, woods, trees, etc. All of that is not listed as a permitted use in that zone. A cross-section of the lot sizes in the area proposed for RRA1 zoning (the area behind and surrounding this area) shows the smallest at 6.5 acres and the largest at 42 acres. There is one land owner with 36 acres, one with 26, one with 20, then 14, 12, 10, 7, and 6.5. These are large open boundaries. There are also smaller parcels within that area, especially along Sinking Creek Road and a few smaller lots at the lower end of Hollow Road. The reason they are included in this area is location and the fact that there is no access to public sewer. Currently, the R1 zoning allows a property owner to potentially develop with a smaller lot size in an R1 zone, but only if the property has access to public sewer and water. These areas being proposed for RRA1 do not have access to public water and sewer.

In looking at this, Mr. Whittaker said the Planning Commission considered the characteristics of the land, the history of use and the adjacent surrounding areas. The Planning Commission feels RRA1 would be a much better zoning designation for this area as far as land use and future land use.

Mr. Whittaker proceeded to discuss the property being considered for rezoning in the next public hearing. He noted that the remaining areas being considered (in yellow on his map) have access to public sewer to the best of his knowledge. These have been developed or divided or it has been communicated that was a future desire of the property owner. These are currently zoned R1. In discussing how rigid the R1 zone was, the Planning Commission discussed if anything could be done to allow the land owners there a bit more flexibility. That is how they arrived at the plan to rezone to R2. The only difference in R1 and R2 is that R2 does allow for construction of multi-family duplex homes – not apartments buildings. Also, it reduces the lot size further and would not require as much property to divide it into lots. Mr. Whittaker said there are a few parcels with acreage in this area that could potentially be developed and do have utilities available. Ms. Hobbs asked how this ever got to be zoned R1 when it doesn't fit the area to begin with. Mr. Whittaker said he has tried to figure that out. The Planning Commission has discussed it as well. R1 offers some protections but when looking at the vision and language for R1 it just does not fit. This was done in 1992. Ms. Hobbs said it just seems strange because there has been farming and agriculture in that area as long as she could remember. In the R1 zone that is not even allowed so they had to grandfather in everything there. She said if people have the "get up and go" to stay in the agriculture business in this day and age, she would hate to put restrictions on them. Mr. Whittaker said the reason this issue did not come up before is because the Planning Commission had not received an actual application and had not gotten as deeply into the issue. Now they have an inquiry and have looked into it and gotten a legal opinion on it. Possibly, if some people realized that a few years ago, their view on the rezoning then may have been different. Mr. Whittaker said despite individual feelings or land owner relationships over there, if you look at the map, the boundaries and the future land use and utility locations, there is nothing there to characterize it as R1 – it is more Rural Residential with some areas Agriculture. Ms. Hobbs asked why they were considering two different zonings in that area. Mr. Whittaker said that is because of where public utilities are located and to encourage growth in the area where the infrastructure is already present.

Mr. McCoy asked if all of the areas proposed as R2 currently has public sewer. Mr. Whittaker said it can be served by the current sewer system and some of the larger pieces can expand service by gravity. Mr. Whittaker said he received one letter from Dr. Steve Nack opposing the rezoning to R1 in the Croft Road area. He also received a phone call from Ross Martin asking to relay his opinion – he understands both sides of this but would like to see it left as is. He felt the R1 zoning would provide protection from what could locate near him. Mr. Gentry opened the floor for public comments.

Donald Dirico: Mr. Dirico said he was here about a year ago trying to get his small business moved to his home. During this time, Mrs. Williams got all the neighbors to sign petitions to get his request turned down. His request was turned down only after he had one board member lie to his face during a visit to his property. The member told him he had no problem and then voted against him that night. Another board member would not visit his property stating he had been up and down that road a thousand times and did not need to see it. Mr. Dirico stated that now the tables are turned and there is a problem in the neighborhood. He has pigs behind his house and sometimes cannot even sit outside because the smell is so horrible. He said Mrs. Williams' concerns last year were how nice the community looked. However, as soon as you turn onto Sinking Creek Road and look to the left, there is nothing but piles of fence wire and other things. He said they need to fix these problems before they decide to make a change to the zoning. Mr. Dirico said if they change the zoning now, all they will be doing is covering up things that Mr. and Mrs. Williams have done wrong over the previous years. After all that has happened, Mr. Dirico said he did not care if the zoning changes or not. He asked the board to step up and do the right thing because he did not need to smell the stink in his backyard.

Dianna Dirico: Ms. Dirico said in a recent letter Mr. Dirico sent to Mr. Whittaker, he asked for the present zoning violations by Mr. Williams to be looked into because of the hog smell. When the land in question was rezoned years ago, Mr. Williams' farm was grandfathered in allowing what livestock and outbuildings he had to stay the same. Over the years, he has been allowed to increase his livestock by adding sheep and hogs and a number of cows. He has built new barns and other outbuildings and has also moved the hog pen from behind his house and closer to Mr. and Mrs. Dirico. Clearly, his farm has not stayed the same. Ms. Dirico said her question was did board members feel it was fair to go forward with rezoning now without addressing these zoning violations. She wondered whose (profanity) they were trying to cover. Ms. Dirico said she didn't really care. She did not want it rezoned, but the main thing she wanted was the hogs and smell to go. It is a shame they cannot spend time outside in their own yard or open their windows without smelling pig (profanity).

Gail Williams: Ms. Williams noted she lived on Sinking Creek Road. Her family has farmed this land for more than 45 years and is the fourth generation to do so. They are good stewards of the land and depend on the farm for much of their food. In the matter of the proposed rezoning to RRA1, Ms. Williams said she could only speak for her family and herself regarding the allowance of agriculture to continue. They respectfully request that favorable action be taken regarding their farmland allowing them to make additions and improvements in order to carry out their day-to-day operations and to continue farming in a peaceful and enjoyable environment.

Barbara Dunbar: Ms. Dunbar was present to speak for her mother, Oma Vance who could not attend due to medical reasons. Ms. Vance lives on Sinking Creek Road. Ms. Dunbar said her mother does not want the rezoning to happen because she would like for the area to stay like it is. She is concerned about what businesses might come in and interrupt her way of life. Ms. Dunbar said her mother has no problem with the way the land is now. Ms. Dunbar said she sees that farms are not allowed, but that does not make sense because it is a rural area. Ms. Vance just does not want to see a lot of businesses come in and interrupt her in her final years of life.

Jeanine Gentry: Ms. Gentry stated that she and Mr. Gentry own property on Sinking Creek Road and are against this rezoning. Last year, when Mr. Dirico requested a special exception, a lot of the property owners came out and said "this is a residential area and they did not want any business or any non-residential use" in this area. They were "fearful their property values would decrease" and did not want the "noise, increased traffic, or fumes" from multiple vehicles that could possibly be brought from this business. Now they are asking for an even more lenient zoning. She asked if they had read what they could have in this zone. Stock yards could be put in – ridiculous in a residential area. Ms. Gentry felt the current zoning should be enforced by Mr. Whittaker. If not, then why even have a zoning code at this point. If a few people are excepted from it, then everyone should just be able to do what they want with their property. The rezoning should be put down and the zoning left as is.

Debbie Atkins: Ms. Atkins said she was against the rezoning. She and her brother own property on Croft Road which adjoins Sinking Creek Road. She is mainly against this because of what can be allowed to happen besides expanded agriculture. She is not really against expanding agriculture but is against what else it would do. They have a nice area there and she does not want to Montgomery Giles. If the area wants to have a sewer system hook-up, Ms. Atkins said she was totally against that because she still has sewer problems.

There were no other comments from the public, the Planning Commission or the board members. Mr. Gentry closed this public hearing on rezoning to RRA1. The matter is referred back to the Planning Commission for recommendation.

AMENDMENT TO REZONE PROPERTY FROM R1 TO R2 – SINKING CREEK AREA

Mr. Gentry opened this public hearing as a matter of record. Comments from the Zoning Administrator relevant to this rezoning were contained in the previous public hearing. There were no further comments concerning this specific rezoning. Comments made in the previous hearing pertained to both proposed amendments. Mr. Gentry closed the public hearing and referred this matter back to the Planning Commission for recommendation.

Mr. Gentry announced that the Planning Commission would meet on October 25th at 5 PM at the County Administration Building.

No further business was introduced. Mr. Gentry adjourned the meeting. The next meeting is scheduled for Wednesday, November 2, 2011, at 10 AM in the General District Courtroom, 120 North Main Street, Pearisburg, Virginia.

APPROVED:

Chairperson

ATTEST:

Clerk