

**BOARD OF SUPERVISORS
REGULAR MEETING
OCTOBER 12, 2010**

At the regular meeting of the Board of Supervisors of Floyd County, Virginia, held on Tuesday, October 12, 2010 at 8:30 a.m. in the Board Room of the County Administration Building, thereof;

PRESENT: David W. Ingram, Chairman; J. Fred Gerald, Vice Chairman; Virgel H. Allen, Case C. Clinger, William R. Gardner, Jr., Board Members; Daniel J. Campbell, County Administrator; Terri W. Morris, Assistant County Administrator.

The Chairman called the meeting to order at 8:30 a.m. with the reading of the handicapping statement.

The Opening Prayer was led by Vice Chairman Gerald.

Chairman Ingram led in the Pledge of Allegiance.

The minutes of September 14, 2010 were presented to the Board for review and approval.

On a motion of Supervisor Gardner, seconded by Supervisor Clinger, and unanimously carried, it was resolved to approve the minutes of September 14, 2010 as presented.

Supervisor Clinger – aye
Supervisor Gardner – aye
Supervisor Allen – aye
Supervisor Gerald – aye
Supervisor Ingram – aye

Sheriff Shannon Zeman appeared before the Board. He reported:

- You may have already read about this but for some years we've been working toward development of a new police academy. There are 27 departments involved. Last Friday, we finally got the Rural Development loan and a \$200,000 grant. This shouldn't affect our per diem that we're paying per officer. We budgeted a certain amount for debt service so we should be fine. We have a design already in place and will be putting the work out for bid soon.
- We're going to have a meeting at the high school this Thursday at 6:30 p.m. in the auditorium to talk about the meth abuse in Floyd County. We have a 15-minute film to show and we have a 20 minute power point presentation on meth labs that have been found in Floyd County, and will answer questions. We have a speaker from the railroad who is a recovering addict. The Commonwealth's Attorney, myself, Carl Ayers from Social Services, will be letting the community know what we're dealing with and ask for their help. We hope it is the first of many more meetings to come. I'd like to invite you and would love to see you there if you can attend. What we want to try to do is build a partnership with our churches, organizations, the community to problem solve. I don't

have all the answers to this situation. I think we have a great team as far as law enforcement. We have good working relationships with the Commonwealth's Attorney and Social Services and our Task Force. We want to aggressively continue to go after the ones selling narcotics in the County, including meth. The problem is growing beyond that. I have to keep catching them but at the same time, we've got to look at our children and other loved ones, what are we going to do? The scary things are: 1) there is only a 7% recovery rate, what are we going to do with these people? 2) Our crime rate, these break-ins continue every day. The reason that I know they are connected is because we interview these people. If we catch you selling meth, making meth, or stealing, we sit down and have a heart-to-heart talk, a lot of them are honest with us, and every case is meth related. It is so addicting that they steal to pay for it. I think this is just another step. I've already had the fire department interested. For a long time, they were using the red phosphorus process to make meth. Pretty elaborate. But now they are doing what they call "shake and bake". It is made in pop bottles. When they're done making it, they throw the bottle out the window. We have environmental hazards; children can pick up the bottles, because it looks like it has cola in it. It doesn't yield as much. We need to let the public know about that. It is a situation that we have to deal with. I don't have all the answers but if we can get the public involved, we'll work toward something. The next meeting will probably depend on the response we get. If people turn out and ask a lot of questions, if they act interested, I don't even know all the services that are available to people who are addicts. That is something that I need to work on. That could be just one topic, letting people know, hey, this is some services that you can get for your loved one. I'm not expecting people to come in and want to turn everybody in. I do want to catch the ones that are selling it. It is a violation of law to possess or use it. I'll continue to prosecute those. We need to educate these people and the community and get them some help. Change that 7% to something better than that. The Task Force is with Craig, Floyd, Blacksburg, Christiansburg and Montgomery County. In talking with other Sheriffs, different Counties have different problems. Craig County has a tremendous heroin problem; we don't seem to have much here, more meth. From a national standpoint, meth has come all the way across the country. There was an article in the paper recently that most of the labs seem to be west of Roanoke. I don't deal as much with the other localities, I know our area better. The Press has been kind enough to put an article on the front page; we've worked with the Ministerial Association to get the word out. I've talked with Mr. Hollandsworth at the high school to hopefully get the message out on the Honeywell system to all parents.

The monthly disbursements were presented to the Board for review and consideration. Questions and discussion followed.

On a motion of Supervisor Allen, seconded by Supervisor Gardner, and unanimously carried, it was resolved to approve the monthly disbursements as presented.

Supervisor Clinger – aye
Supervisor Gardner – aye
Supervisor Allen – aye
Supervisor Gerald – aye

Supervisor Ingram – aye

At 9:00 a.m., the Chairman called for the Public Comment Period.

After no comments from the audience, the Chairman declared the Public Comment Period closed.

Agenda Item 8a – Subdivision plats as approved by Agent for September 2010. Mr. Campbell commented that for the 2010 calendar year, 40 lots have been created. The acreage is consistent with the calendar year 2009, even though 122 lots were created. The lots created are down overall for 2010.

Agenda Item 8b – Floyd County Volunteer Fire Department, Station #3 – flood insurance. Mr. Campbell presented a revised quote for flood insurance, indicating an unfinished basement. He commented that there was no water damage from the heavy rains last week and weekend, to the foundation. Mr. Campbell commented that he would like to check with the company again, because the basement is finished with a kitchen and meeting area. The Board deferred the matter for discussion later in the day after contact is made with the insurance company.

Agenda Item 8c – Proposed Resolution – Parental Rights. Mr. Campbell commented that he had done a great deal of research on the issue, it is very complicated. We provided the information from Supervisor Gerald and also some information from a Radford University Professor on the Constitution/Treaties and what that relationship means. Also provided some pro/con arguments from various sources.

On a motion of Supervisor Gerald, seconded by Supervisor Clinger, it was resolved to adopt the Parental Rights Resolution as presented.

Supervisor Clinger – aye
Supervisor Gardner – nay
Supervisor Allen – abstain
Supervisor Gerald – aye
Supervisor Ingram – nay

Motion failed.

Mr. Roger Hollandsworth, Treasurer of the Floyd County Rescue Squad, next appeared before the Board. He commented: We've made a request to the Virginia Rescue Squad Assistance Fund hoping to be able to get funding for two ambulances based on their criteria. We're looking at something that we haven't done in probably 25 years. That is what we refer to as a remount. Basically, you take the box off the vehicle that you're wanting to get rid of, get a new chassis, refurbish the old box and put it on the new chassis. What that does is make a savings of probably \$50,000 per unit. We have some figures for purchase of a new 2011 ambulance of \$142,506.00, these are estimates. To do a remount for one unit is \$92,459.00. By doing this remount, we're looking at hopefully saving around \$50,000 per unit. The grant request that we've made is to do two 2011 Ford Chassis F450's. We have applied for a grant in

the amount of 80/20, 80% coming from the Assistance Act and 20% funding would be what we could come up with on our end. On this spreadsheet, there are several options that the State of Virginia can do. Their hands are not tied; they can do whatever they want to. They could fund the project as we've presented it, which would be two remounts at a cost of \$184,918; the 20% that we would have to come up with would be \$36,983.60. The next column over is if they approve it at 50/50. They have the authority to change whatever you apply for. So, with two units, at 50/50, we would have to come up with a balance of \$92,459. The bottom scenario is if they approve one at 80/20 and one at 50/50. If that's the way they came back and approved it, we would be responsible for \$64,721.30. Another option that is not on this sheet, they could come back and say they will only do one remount. So, that's a situation, if we did one unit at 80/20, we'd have to pay \$18,491.80. The other option they could do is not approve anything at all. They have many different options that they can do; we applied for the two units at the 80/20 rate. We should have their recommendations back after the first of the year. At that time, we'll know if we've been awarded any of this grant money or not. At that time, we would have to come up with the balance needed to do the project based upon their decision. Today is just information for you all together. If we do get funding, we'll probably be looking at a turnaround time of 90 days per unit. The money for our share would probably be needed around April 2011.

Supervisor Gerald – where would that money come from?

Mr. Hollandsworth – we would hope that you all would help us out with that. There is a lot of time to pre-plan before April. We wanted to give you this information early to help in your planning.

Mr. Campbell – I wonder if you can negotiate with them, for example, if they approve both at the 50/50 rate, could you go back and ask for them to do one at the 80/20 rate?

Mr. Hollandsworth – I understand that their decisions are final. I believe they have to have their decision to us by January 15.

Mr. Campbell – they would also have to know pretty quickly if we're going to accept the award, so they could go to the next one if we decline it.

Mr. Hollandsworth – one thing that you can count on, if they award you money and you don't accept it, don't bother applying for anything else for many years. It is hard to award something to someone and then they say they don't want it.

Mr. Campbell – this is a very competitive program State-wide. I think the fact that you all are looking at refurbishments, that may be unique.

Mr. Hollandsworth – they were very intrigued by it because we had to question whether remounts were even eligible. They said it was not something that they get very often, but they were very intrigued. To save \$50,000 per unit made it very attractive to us. We did this about 25 years ago, and it worked well, we just had never gotten back to that. So hopefully I can be back at your January meeting to relay the action they did or did not take.

Agenda Item 8d – Maintenance on discontinued roads. Mr. Campbell commented that this item was a follow-up from last month to ascertain the Board’s interest in involvement of maintenance of discontinued roads. I did share the State Code section with you. We do have requests and questions several times a year from residents on these roads where they desire to perform various types of maintenance. I would assume that a written request would be received from the petitioner indicating the road and type of maintenance that they would like to do. We could have a committee of a Board member from the district, staff member, or others to visit the site. We would need to notify the property owners affected by the maintenance, especially so they will not block the ingress/egress of the neighbors. The Board needs to decide if they want the County involved.

On a motion of Supervisor Gardner, seconded by Supervisor Allen, and carried, it was resolved to authorize the County Administrator to draft a policy for the Board’s discussion, for review of maintenance requests on discontinued roads.

Supervisor Clinger – aye
Supervisor Gardner – aye
Supervisor Allen – aye
Supervisor Gerald – nay
Supervisor Ingram – aye

Agenda Item 8e – VACo voting credentials. Mr. Campbell commented that since no Board members or staff are attending the VACo annual meeting, that a proxy can be designated if the Board so desires.

On a motion of Supervisor Gerald, seconded by Supervisor Gardner, and unanimously carried, it was resolved to appoint Ms. Mary Biggs, Montgomery County Supervisor, as Floyd County’s voting proxy at the Virginia Association of Counties Annual Meeting.

Supervisor Clinger – aye
Supervisor Gardner – aye
Supervisor Allen – aye
Supervisor Gerald – aye
Supervisor Ingram - aye

Agenda Item 8f – VACo Board of Directors, Region 10 – consideration of continued representation.

On a motion of Supervisor Gardner, seconded by Supervisor Allen, and unanimously carried, it was resolved to authorize the County Administrator to write a letter requesting the continued representation of Mr. Hugh T. Pendleton on the VACo Board of Directors for Region 10.

Supervisor Clinger – aye
Supervisor Gardner – aye
Supervisor Allen – aye
Supervisor Gerald – aye
Supervisor Ingram - aye

Agenda Item 8g – Resolution – Fire/Rescue Cost Allocation Plan – 2009. Mr. Campbell commented that this yearly transfer from the Fire/Rescue Fund to the General Fund allows the allocation of indirect costs for emergency services credit back to its proper place.

On a motion of Supervisor Allen, seconded by Supervisor Gardner, and unanimously carried, it was resolved to approve the resolution as presented for the 2009 Fire/Rescue Cost Allocation in the amount of \$155,139.00 (Document File Number).

Supervisor Clinger – aye
Supervisor Gardner – aye
Supervisor Allen – aye
Supervisor Gerald – aye
Supervisor Ingram – aye

Agenda Item 8h – DCR request for committee to look at land issues. Mr. Campbell commented that this item was also carried over from the September meeting to ascertain the Board’s interest in establishing a committee to discuss these issues.

After discussion, it was the consensus of the Board to invite Mr. Gall back to the Board’s next meeting with a prioritized, more compact list and also a better definition of what the committee would be doing.

Agenda Item 8i – Legislative recommendations. Mr. Campbell presented a copy of the Board’s list from last year for review. After some discussion, it was the consensus of the Board to discuss the matter further at their November meeting, with the hope that VACo’s list would also be available at that time.

Agenda Item 8j – Proclamation for GED and Career Pathways Awareness Week. Mr. Campbell presented a draft proclamation for the Board’s review.

On a motion of Supervisor Gardner, seconded by Supervisor Gerald, and unanimously carried, it was resolved to adopt the Proclamation as presented for GED and Career Pathways Awareness Week (Document File Number).

Supervisor Clinger – aye
Supervisor Gardner – aye
Supervisor Allen – aye
Supervisor Gerald – aye
Supervisor Ingram - aye

The Board recessed for a tour of the New River Valley Regional Jail in Dublin and lunch.

Mr. Steve Durbin, Sands, Anderson, Marks and Miller, next appeared before the Board.

Agenda Item 6e(i) – Reconfiguration of the Floyd – Floyd County Planning Commission. Mr. Durbin presented a draft resolution and draft by-laws for the Board’s review. I would recommend that the Board adopt the resolution as it is drafted. The Commission was originally

established by resolution of the Board of Supervisors and ordinance of the Town Council. Since the Board originally adopted the creation by resolution, the dissolution can also be done by resolution, without a public hearing. The resolution will repeal the old commission and establish a new commission. The term lengths of the members are set at one, two, three and four years so they will be staggered to meet the required rotation.

On a motion of Supervisor Gardner, seconded by Supervisor Allen, and unanimously carried, it was resolved to adopt the resolution entitled “Reconstituting the Planning Commission of Floyd County” as presented (Document File Number _____).

Supervisor Clinger – aye
Supervisor Gardner – aye
Supervisor Allen – aye
Supervisor Gerald – aye
Supervisor Ingram - aye

Agenda Item 6e(ii) – Mutual Aid Agreement with Franklin County. Mr. Durbin commented that he had a few suggested revisions but overall it is a well drafted agreement. Mr. Wirt clarified some of the concerns that I had through discussion with him. On page 1, the first whereas clause, I think the Boards of Supervisors of both Franklin and Floyd Counties should both be listed, not just Franklin County. Another issue would be in paragraph 2, which addresses the assistance in non-designated areas. It is my understanding that Franklin County has certain designated areas on their County map where assistance would be requested. Floyd does not have such a map and would request assistance on more of an ad hoc basis. Again, I would suggest adding some language saying, “nothing herein should be deemed to require either party to provide mutual aid when, in the sole discretion of the party to whom the request for aid is made, the requested personnel and equipment cannot be safely spared”. I think that is implied in the agreement but it would be my recommendation to more explicitly say that. Basically, Floyd County is not going to be liable, if in our opinion, that the personnel or equipment just cannot be spared, given a particular situation. I would also call the Board’s attention to paragraph 8. It specifically addresses indemnification, save harmless and liability issues and does specifically call for the party receiving aid to indemnify the County providing aid in the case of third party claims against the County that is providing the assistance. Normally, Counties are prevented by law from agreeing ahead of time to indemnify anybody, something that we always stand our ground very strongly on, especially in construction contracts and cases like that. In this case, there is a specific statutory provision that would allow the County to agree to indemnify, in cases of emergency. I think this is something that Floyd County can agree to, but I wanted you to be aware of it. It is not something that we usually put into mutual aid agreements, but it is specifically statutory. It does go both ways, because if Floyd County is providing aid to Franklin County, and someone brings a lawsuit against Floyd County, we would be entitled to request indemnification from Franklin County. Because it is an unusual situation, I wanted to bring it to your attention. Also, on the last page, County Attorneys from both Counties need to approve the agreement as to form.

Consensus of the Board was for the County Attorney to provide the suggested changes to Franklin County for their review.

At 3:00 p.m., the Chairman called for the Public Hearing on the Repeal of Sections 26-31, 26-32 and 26-33 of the Floyd County Code, Noise Ordinance.

The County Administrator read the call for the Public Hearing.

Chairman Ingram commented that this public hearing today is about taking comments on the repeal of the noise ordinance that is in place today in Floyd County and that's all that we'll take comments on today. If there is a need for a noise ordinance and the Board wishes to come up with a new ordinance, there will certainly be discussion and a public hearing held at a later date concerning that. So comments today need to be directed toward repeal of the current ordinance.

The Chairman opened the public hearing for comments from the audience.

Ms. Alice Moyer, Burks Fork District – Two months ago my husband and I came to you with a problem of an unenforceable Noise Ordinance Law. At that time I asked “Now that law enforcement has failed us, how do you propose we get our neighbor’s dog to stop his continuous, sometimes incessant episodes of barking all the times of the day and night especially during the hours of 11 pm and 7 am which disturbs our sleep?” You answer by repealing the law. I have a couple of other questions. Why does this dog, who doesn’t vote or pay taxes, have more rights than I do? Why am I not allowed to trespass on my neighbor’s property to tell them their dog woke me up but they have the right to trespass on mine anytime of the day or night with impunity? By repealing this Noise Ordinance Law and not replacing it with a workable, reasonable, equitable alternative, you turn your backs on your duties and my rights.

Mr. John Moyer, Burks Fork District – Listed among the powers and duties given the Board of Supervisors is the authority to adopt ordinances and see that they are enforced. An ordinance dealing with disturbing noises currently exists. All we have asked and continue to ask is that the ordinance be enforced. You elect to abolish the laws dealing with disturbing noises; you will leave Floyd County residents with few choices in resolving problem situations. We have the means and inclination to pursue a lawful resolution with the help of an attorney and application of the Virginia State Public Nuisance statute. Others, I fear, will be left with taking the law into their own hands.

Ms. Phyllis Beall – I’ve lived in the County for 39 years. I don’t know exactly what your ordinance says, does or controls or applies to, but I do think that something needs to be done in the County. You can get rid of that ordinance if you want to. But something needs to be done. I know of other people in different instances, I will give you some of them. I can be sitting in my home in the evening or night, 1-2 am, and the scanner comes on. Tells one of the deputies, go down to Grays Trailer Park and settle that Mexican down, he’s run out of beer. Now he has bothered someone, because somebody called the law on this. We need something in this County to control. If somebody tells them that they are not complying and having a big bash, there has to be some kind of rule or law that they are breaking. If we could enforce the laws and make them pay a little bit, maybe they’d quit this. There are all kinds of laws that they could charge them with, ignorance in public or violating the Hog Act, or whatever. These people shouldn’t be able to bother other people. And this doesn’t go with just Mexicans, that goes with everything. I

don't know if you have a problem with music in the County, I haven't seen it; I've been enjoying it uptown here for 25 years. I haven't seen them bother anybody with being drunk and wild. I have music at my house occasionally at nighttime, sit around and sing, have a hot dog; I don't see anything wrong with it. None of the neighbors have complained. I do know by listening by to the scanner, I've heard people call in and complain about noisy Mexicans, out on the roads, just a gang of them. I think that should be considered and see if we can't take care of that situation. I don't know what kind of ordinance that you need, but the ones out here doing that are not taxpayers and we are taxpayers and I think we should be taken into consideration and shouldn't be bothered. When someone calls and complains, I'd like to see a deputy do more than go down there and say, you all pipe down, turns around and goes back up the road, while we're paying for his gas and time, and they go right back at it. Thank you very much.

Mr. Lauren Yoder, Locust Grove District – I have not been following the ordinance as closely as I should have, the whole controversy, but what has been rolling around in my head are several things. There has been a lot of talk about animals making noises and problems that they are causing. I think if you all are considering doing something with the noise ordinance in regard to that, I have several concerns. Several things came to mind when I was talking to my father-in-law, neighbors and different people. One of them is, how that would affect farming in this County. There are a lot of situations, such as weaning calves off, there is a lot of noise with cows bellowing, calves crying, and no way to control that. We would have to have some type of ordinance that wouldn't affect farmers. When the coyotes are howling out behind my house at night, my beagles put up a pretty healthy racket also, and there's nothing really I can do about that. I just encourage you to consider those of us who live out in the County, living normal lives, there may be noise that we can't control or is part of country living. Please consider that if you do write a new ordinance. Thank you.

Mr. Jim Brennan – I live on Barberry Road. The only noise I'm concerned about is the Mexican camps with the blasting radios. I live right across from Radford Auto Sales, there are three trailers there, they open up all the trailer doors and windows, and they blast the radios full volume, all of them. That goes on quite often. They are also whooping and hollering and having beer parties. The owners don't do anything about it. I contacted the owners and they don't want to know anything. It got so bad back in November, teachers were complaining that my son was falling asleep in school, because they had stuff going on all night long and he couldn't sleep. I have my windows closed and the house is well insulated, but the sound comes straight in. If you could do something about noise like that, it would be great, when you have to listen to blasting radios all night. Thank you.

Ms. Kristen Brennan - I live next to Winter Sun in Town. I've been putting up with the Contras that they have on Sunday nights and Wednesday nights, until 2:00 in the morning. If you have to get up and go to work the next morning, you can't sleep. The Mexicans in the Mexican restaurant will stay until 1:00 in the morning with their music, it has gotten too much. I've been there almost four years and you can't even sleep at night with the music going. I've called the Sheriff's Office, and they'll go by but don't do anything about it.

After no further comments from the audience, the Chairman declared the Public Hearing closed.

On a motion of Supervisor Clinger, seconded by Supervisor Allen, and carried, it was resolved to repeal Sections 26-31, 26-32 and 26-33 of the Floyd County Code, Noise Ordinance.

Supervisor Clinger – aye
Supervisor Gardner – aye
Supervisor Allen – aye
Supervisor Gerald – abstain
Supervisor Ingram - aye

Agenda Item 6e(iii) – Contract – Floyd County Volunteer Fire Department/Floyd County. Mr. Durbin commented that a draft contract was presented by the Fire Department for County review. The proposed contract does not generate any new obligations on the part of the County. It is really an attempt by the department to try to take permissible advantage of statutory provision that says if there is a contract between the locality and the volunteer fire department, that they would be entitled to immunity. I'm not weighing in on the effectiveness of that. It is really the department's attorney's place to determine if that contract is going to accomplish that goal of getting some additional immunity or protection to the fire department. I don't see many issues that would prevent the County from entering into that agreement although I would take issue on the next to last paragraph on the second page, the last sentence provides that, "the parties agree that the level and quality of such service shall depend upon the level of volunteer participation, financial and other support provided by the County and other sources, and the critical part is, therefore the Fire Department shall not be liable to the County or any third parties for any claims based upon the level or quality of service provided". That language is pretty open ended on the level and quality of service provided. I think an argument could be made that the fire department wouldn't be immunizing themselves from acts of gross negligence in damaging County property, for instance. I don't think that this is the intention of the department, to immunize themselves from Tort liability, but I think that this language is broad enough that it could be a possibility. I've spoken with Harrison Schroeder, Counsel for the Department, and I think we can work out some language that will accomplish what he's trying to accomplish, and basically he doesn't want the department to be held liable under this contract for things that are beyond the budget and the volunteer capacity of the department. I think that's reasonable. I do think the language is drafted a little over-broad. I've had discussions with Mr. Schroeder about that and I think we can come to a reasonable compromise on that language. At this time, I would not recommend that the Board approve the contract. I don't think it is a time sensitive issue, I think things can be worked out with something that everybody can be happy with by the next Board meeting.

Consensus of the Board was for Mr. Durbin to work further with the fire department's counsel and report back next month to the Board.

Agenda Item 8b – Flood insurance for Station #3 Fire Department. The Board deferred the matter for further information from the insurance company.

Ms. Morris provided information received from VDoT officials who visited the office earlier in the day:

- Presented more detailed map of connector routes in the County indicating accident data on each;
- If the Board decides to move construction funding from Route 860 to another route, there will be no penalty fee;
- Presented copy of maintenance items performed the last month in the Willis headquarters area, no report received from the Check area headquarters;
- Funds supposedly found in the VDoT audit were mostly for projects already scheduled but postponed due to lack of State funding; a review will be done by VDoT within the next 45 days with a report to the Board after that time.

Supervisor Allen questioned the progress of moving/eliminating green boxes. Mr. Campbell commented that he was awaiting the comprehensive review of the County's solid waste program from the New River Valley Planning Commission. Hope to have the report by the time the Board begins budget deliberations.

Supervisor Clinger questioned a recent vehicle accident involving the County's recycling vehicle and a personal vehicle. Mr. Campbell commented that he would review the matter with Supervisor Clinger after the meeting.

On a motion of Supervisor Gerald, seconded by Supervisor Allen, and unanimously carried, it was resolved to adjourn.

Supervisor Clinger – aye
 Supervisor Gardner – aye
 Supervisor Allen – aye
 Supervisor Gerald – aye
 Supervisor Ingram - aye

Daniel J. Campbell, County Administrator

David W. Ingram, Chairman, Board of Supervisors