

**BOARD OF SUPERVISORS  
REGULAR MEETING  
SEPTEMBER 14, 2010**

At the regular meeting of the Board of Supervisors of Floyd County, Virginia, held on Tuesday, September 14, 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 Chairman Ingram.

Chairman Ingram led in the Pledge of Allegiance.

The minutes of August 10, 2010 were presented to the Board for review and approval.

On a motion of Supervisor Allen, seconded by Supervisor Gardner, and unanimously carried, it was resolved to approve the minutes of August 10, 2010 as presented.

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

The monthly disbursements were presented to the Board for review and consideration. A list of additional expenses was also presented for the Board's approval. Questions and discussion followed.

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

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

Sheriff Zeman appeared before the Board. He reported: Before I get into your other questions, it seems like there are some questions about the bills and I'd like to clarify them. I have to sort of read between the lines here but I assume you're talking about the purchase order for a transmission we replaced.

Supervisor Gerald – there were a lot of other things also.

Sheriff Zeman – well, I have a fleet of old, worn out vehicles. The wiper situation, the car went there several times. It wasn't the fact that they wouldn't work, they wouldn't stop working. They didn't stay on all the time and it was a computer issue. The transmission, I went with a cheaper version. I could have bought a Jasper that had a warranty on it but it was a lot more money so we went the cheaper route, a remanufactured one. I did get a purchase order for it. Like I said, I have a half fleet of junk. It is either replace some vehicles or look at continuing to maintain them. If there is somewhere else that you want me to take them, I can stand here and tell you some horror stories about some other businesses in this community that I've taken them to. I guess I want to defend the Sheriff's Office and B&S Tire. If you have questions, I'll be glad to answer them.

Supervisor Gerald – are you still having trouble with meth labs in Floyd County?

Sheriff Zeman – meth problems, drug problems, break-ins, one more this weekend. We're continuing to work on them. Have Circuit Court this morning, have some sentencing phases for some very serious crimes, children being molested, raped, so I hope the Judge acts on them.

Supervisor Ingram – calls about the same?

Sheriff Zeman – down just a little bit this month, less than 1100.

Supervisor Gerald – I understand about the bills and I understand what type of equipment you're working with. I just want to make sure that anything that can be done to save the taxpayer money be done. I'm not coming down on the Sheriff's Department, I think you're doing an outstanding job with the equipment and personnel that you have. I think you're doing a wonderful job.

Sheriff Zeman – I want to answer your questions so you understand and the community understands, that's why I come down here every month. I want you to know that the officers don't just take the cars there; they go through the approval process

Agenda Item 7a – Subdivision plats as approved by Agent for August 2010. Ms. Lydeana Martin, Subdivision Agent, reported that a few more lots were created in August than the previous month. The only curious thing about the plat report is the total number of acres divided was over 1200 this year so far, which is in line with last year even though less than one-third was created. That would lead you to think that the lots are larger, which is odd. I do thank you for participating in the community meetings for the Comprehensive Plan. We had a great turnout everywhere and the staff will be compiling the information into a draft and bringing it to the Planning Commission. They will work through it and then bring something to you all. The Parkway celebration, I was not able to attend, since I was at the Harvest Festival, but Chairman Ingram and Ms. Schaeffer did attend. (Chairman Ingram, Vice Chairman Gerald and Mr. Campbell gave brief reports on the celebration).

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

Mr. John Moyer – presented a copy of a letter he had sent to Mr. James Cornwell, County Attorney:

Mr. Cornwell,

For the past two months, my wife and I have been facing a problem with a neighbor's barking dog that on numerous occasions has deprived us of the daytime peacefulness we had grown accustomed to, but more importantly the sleep we require at night. We have tried, unsuccessfully, to solve the problem by working directly with the neighbors, Animal Control, Sheriff's Department and finally the Floyd County Board of Supervisors.

It is my understanding that you have been asked by the County Administrator and the Board of Supervisors to review the Noise Ordinance, which is currently unenforceable, and to provide them with information about why it is so, and how to make the ordinance enforceable. This process, undoubtedly will take time.

In the interim, we would appreciate any assistance you might provide in understanding and applying the Virginia State Public Nuisance Statute, as we are seriously considering bringing suit against our neighbors.

Ms. Alice Moyer – I live in the Burks Fork District of Floyd County. I wanted to extend my thanks to the Board for addressing the problem of the unenforceable Noise Ordinance Law. I wanted to especially thank Supervisor Gardner of the Burks Fork District for his help. To all of you and the County Attorney, Mr. Cornwell, I plead for continued diligence in re-writing the noise ordinance law and its ability to be enforced. During the past week the disruption caused by the dogs incessant barking diminished to the point of tolerance, but has been gradually increasing again. Previous to a week ago there was a marked increase in the level of conflict between the neighbors and us over this issue. I would like to relate two incidents that underscore the importance of finding a solution to what we see as a county-wide problem. Since our last meeting, the dog continued to bellow and bark during the day and into the night, disturbing our sleep several times. On the morning of August 26, I had another contact with the tenant to let her know the dog disrupted my sleep after 11:00 pm the previous night. In no uncertain terms, she related that she couldn't and wouldn't control the dog, it could be worse as they could have 20 coon dogs, and it is going to get worse as this is not her first priority and she is busy and has less time. We called the Sheriff's Office at 11:30 pm that night after suffering a second consecutive night of sleep disruption. The two deputies that responded told us that we hold the distinction of being the only dog-barking complaint they or anyone in the Department has actually come out to investigate to their knowledge. They said they would not feel comfortable approaching the dog owner because (a) they didn't hear the dog barking and even if they did hear him (b) the law was unenforceable. They would have no problem approaching the neighbors if they were having a big party with loud music. They could ask them to turn the music down, but they wouldn't really have to comply because "the noise ordinance is unenforceable". If someone was driving down the road with a loud boom box, they could stop them and ask them to turn it down, but technically they wouldn't have to. Sometimes just an authority figure talking to the offender is all it would take to bring the level of noise down. But, in this case, they would not be comfortable doing that. So, the noise ordinance law is being selectively pursued and we are being denied equal protection under the law. We can expect no support from law enforcement

on this issue. Then, September 2, 2010 the dog had been barking on and off for most of the day. By evening he was incessantly wailing. At 10:40 pm, I called the Sheriff's dispatcher to report a dog causing a public nuisance. I told the Dispatcher that there was no need to send Sheriff's deputies because it was a waste of time as they would not do anything about it. The last deputies who responded told us when the dog's barking bothered us again we should call and report it and ask for an incident number. That way there would be a record of a complaint about the dog's barking. At 11:00 pm, my husband and I drove to the neighbor's house, knocked loudly on the door until they would answer. John heatedly asked, "Do you hear that dog's barking"? The dog's owner repeatedly said, "I don't hear no dog, I don't hear no dog". The dog was carrying on with the same barrage of agitated barking that it had been doing all evening and into the night. Finally, the dog's owner admitted he heard the dog, but it didn't bother him. "He's a dog!" he said. Besides Animal Control had been out and found nothing wrong. There was nothing wrong with the way he was keeping the dog and there was nothing he would do or we could do about his barking. Everyone was shouting, this was not a calm conversation. The dog owner's demeanor was taunting and mocking and it nearly came to physical violence. The female tenant called the property owner, her dad, who told them to call the Sheriff and have us arrested for trespassing. A Sheriff's deputy responded to the disturbance. After his interview with the tenants, he told us we were to leave the property and never come on it again. We are forbidden from even knocking on the door ever. There was nothing he could do about the dog's barking because (stop me if you've heard this before) "no sound level meter". He admitted the law was on their side, but not ours in this incident. We reminded him that there was a Noise Ordinance Law which they were violating but wasn't being enforced by the Sheriff's deputies. He dismissed the tenant's antagonistic behavior with the comment, "These are two 18 year olds and they are pretty upset". We said, "So these 18 year olds and their unruly dog have all the rights and we have none". He shrugged his shoulders and said, "In this incident, yes". Eighteen year olds. I understand the transient nature of youth and that eventually this situation could take care of itself. In the meantime, we are to dismiss our peace with this, yet another excuse. An 18 year old and a barking dog have turned neighbor against neighbor and made enemies out of friends. It struck me that as citizens, these youngsters are learning some lessons that are not good for the community as a whole. You don't have to get along with your neighbors. If others are hurt by your actions, that is their problem. The responsibility for the behavior of your dog stops at the end of his 10-foot chain. The law doesn't work, just ignore and mock it. I have learned that you cannot trust your neighbors to do the right thing and even when the law is on your side, law enforcement is not. Thank you.

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

Agenda Item 7b – Appointment to New River Community Services Board, 1 appointment, to finish a three year unexpired term.

On a motion of Supervisor Allen, seconded by Supervisor Clinger, and carried, it was resolved to appoint Supervisor Gardner to complete the unexpired three year term to the New River Valley Community Services Board, term ending June 30, 2012.

Supervisor Clinger – aye

Supervisor Gardner – abstain

Supervisor Allen – aye  
Supervisor Gerald – aye  
Supervisor Ingram – aye

Agenda Item 7c – Proposed resolution – initiative to regain local VDoT contacts. Mr. Campbell presented a transmittal and resolution as adopted by the Craig County Board of Supervisors encouraging other Counties to support their efforts. They are very upset that they don't have good local contacts with VDoT anymore. It sounds very similar to what we're experiencing here. They note emergency or other time sensitive situations where they have to go to the call center and leave a message.

On a motion of Supervisor Allen, seconded by Supervisor Gerald, and unanimously carried, it was resolved to adopt a resolution encouraging the Virginia Department of Transportation to provide local contacts for all localities in Virginia (Document File Number ).

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

Agenda Item 7d – Addition of position of Family Engagement Coordinator (CSA funded). Mr. Ayers will discuss this item under his report.

Agenda Item 7e – Discussion – Floyd County Volunteer Fire Department, Station #3 – flood insurance. Mr. Campbell provided a copy of an insurance quote from the County's carrier for such insurance. This would not go into effect until such time that repairs are made to the building. After discussion, it was the consensus of the Board to clarify the quote since it indicated that the building did not have a basement. Staff will check with the carrier and report back later in the day.

Ms. Joy Gardner, 1<sup>st</sup> Vice President of the Floyd County Chamber of Commerce, and Derek Wall, 2<sup>nd</sup> Vice President, appeared before the Board. Ms. Gardner commented: The Floyd Chamber of Commerce would like to acknowledge, before the Board of Supervisors, the operational audit as submitted by Betty Lineberry. The Chamber is addressing the warranted concerns in accordance with the bylaws of the Floyd County Chamber of Commerce. We just wanted to let you know that we have acknowledged it and are handling it within the Chamber office. I assume that you all have the report that was presented last month. Thank you.

Mr. Carl Ayers, Social Services Director, next appeared before the Board. He reported:

- Energy Assistance Program – over for this year with 279 participants, up from 257 last year. Nowhere near the increase of 50 people last year, only 22 this year;
- Food Stamp Program – 2019 participants for August, paid out \$246,466 in benefits for the month. This program has leveled off, only 16 people added during the last two months;
- Service Programs – I have met with the Sheriff on this and you will hear more about it as we continue to deal with significant drug issues that impact the cases we are handling.

Of 17 kids in foster care this month, 16 are directly related to substance abuse. We're not talking illicit substances, we're talking prescriptions. They are directly in our case load related to substance abuse by their parents. It is all across the board, with illegal/legal drugs. I actually had one lady that passed out on us while we were doing the intervention for the complaint. It is a serious issue. We had 7 children in foster care at this time last year, it has more than doubled. It is directly related to substance abuse. I have started meeting with the Sheriff to see what we can do. It is something that other Southwest Virginia localities had to deal with before we did. People hear so much about meth but that is not what we're seeing with our population, it is prescription drugs. We are seeing a shift in the population that we serve; we did have older children, now we are seeing much younger children and multiple siblings. We want to head off the problem before it gets worse.

- Family Engagement Coordinator (CSA funded) - provided document outlining the position. This is a collaborative effort for a Family Engagement Coordinator. We were required by the State of Virginia to begin offering family engagement services to the families and children of this locality effective July 1. So they gave us until November 1 to get all our processes in place and to begin doing it. In order to do this, we had two options: 1) reassign staff internally in DSS, which we don't have any staff to reassign to it; 2) use CSA funds to fund the position to do the facilitation. We are not given a choice on whether or not to do the facilitation, but the option as to how we do it. I met with the Director of Radford's Department of Social Services and CPMT Chair, and we've come up with a proposal to share the facilitator between the two localities. It would be a 50% position for the City of Radford and 50% for Floyd County. You have the basic proposal for what that person would do, a basic budget. I met with Ms. Morris and Mr. Campbell concerning the employee being housed as a County employee but all the costs would be directly paid through CSA. There would be no cost to the County. It is not supposed to be a DSS employee, so that is why we're asking for the position to be a County position. This is a brand new position and process. We have to provide a facilitator who is supposed to be a non-departmental employee, to facilitate the meetings and go through that whole process. The way we designed this position is that they will not only be facilitating the meetings, they are setting up the meetings, doing the documentation, shifting some of the additional work onto the position. The position would be home based, so we're not looking for any space, especially neither we nor Radford have any extra space. We will have a formal agreement with Radford, the draft is being reviewed and it lays all the issues out. The advertisement went out Sunday and hopefully we can hire someone and have them trained to meet the November 1 deadline. This is required by the Code of Virginia under Social Services but no funding was provided for the positions.

On a motion of Supervisor Allen, seconded by Supervisor Gardner, and carried, it was resolved to approve the request for addition of a Family Engagement Coordinator (CSA Funded).

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

Ms. Terry Smusz, New River Community Action Director, next appeared before the Board. She reported:

- Thanked the Board for their support for many years;
- Want to acknowledge Floyd County's Local Advisory Board, of which Supervisor Gardner is a member, for their outstanding service. They review programs, facilities and perform a lot of fund raising activities.
- Update on the local building – the building was vacated in February due to severe roof damage from rain and snow. Most programs are being housed at the Jacksonville Center with Head Start being housed in a collaborative program with the school system. Ownership of that building has passed from New River Community Action of Floyd, Inc. to New River Community Action in early August. The NRCA Board of Directors has made a commitment to repair that building. Our rough estimate at this point is approximately \$130,000. We plan to put a pitched roof rather than a flat roof on the building, repair the ceiling, ceiling tiles, replace the floors, paint, landscaping, and do some significant work to the building while we have this opportunity. In terms of funding for all of this, we have roughly \$70,000 in insurance money, about \$45,000 Headstart special one-time grant money allocated to this project, and we'll probably find the rest through fund raising or may have to come back to this Board for one-time assistance. We have a bid out now for a contractor for the roof. There will be a contractor, an engineering firm, which handles the whole project from beginning to end in terms of the bids, with the contractor actually doing the work. We hope to award this contract to an engineering firm in early October.
- Services – presented a copy of the Community Impact Statement for the last fiscal year for the Board's review.
- Head Start – we are partnering with the school this year. One of the classrooms at Floyd Elementary is a combination of Head Start and Virginia Preschool Initiative 4-year olds. We also have Headstart home based, which has eight children in that project. The partnership has worked extremely well so far. We're so very grateful for the space that is being provided to us free of charge. We're also collaborating on program matters. The Headstart program has a very strong focus on health and dental. What we're doing is bringing the VPI children that are in the classroom with us, along on all the health and dental efforts that we do. For instance, when we bring in the mobile dental trailer for our Headstart children, it will be open as well to the VPI children. The nurse at the school has been made aware of all the Headstart requirements for health in the event that she has the opportunity to implement those standards with the VPI children. The meals for Headstart children are a little bit different than school meals. The standards for Headstart are higher than USDA so we have to supplement those meals. We're making that project a joint project between Headstart and VPI; we're not separating Headstart meals from VPI meals. We're making the expertise of our dietician available to make sure the meals meet our standards. We're also combining training, such as for parents, to make it available for everyone, both in VPI and Headstart. So far, it is working very well.
- Emergency Assistance – 385 households served, 1007 individuals.
- Every program offered in Floyd County is usually in conjunction with other agencies such as the schools, DSS, etc.

- We encourage our clients to serve on community boards/commissions to give back to the community what they've been given.

Ms. Marty Holliday, Workforce Investment Board, next appeared before the Board. She reported:

- 13 jurisdictions are covered by the New River/Mount Rogers Workforce Investment Board of which Floyd County is included.
- Three programs are covered by Workforce Investment: 1) dislocated workers – either those who have been laid off by plant closure or laid off, or it could be a displaced homemaker who needs to go back to work; no income requirements; 2) adult clients – predominantly income eligibility is the first requirement; 3) youth programs both in-school and out-of-school. The program is income based and they must have one other barrier to employment such as being an ex-offender, pregnant teen, teen parent, below grade level of basic skills. A case manager is assigned to each County to handle the cases.
- Do not have a permanent home in Floyd County which has caused some difficulties in people being able to locate the office. Temporary home is the New River Community College Learning Center site. We have this problem in other smaller localities also.
- Have received two significant grants in the recent past: 1) Stimulus funds grant for green operations. Very limited program for training and equipment, but \$3.8 million was received. This grant is also for technology to develop a curriculum for community colleges, which Virginia Tech is doing. The grant ends January 14, 2012. 2) Heit Award grant received for electronic recordkeeping in the health industry, 3 year grant for \$4.6 million. This technology could be used by RN's, LPN's, pharmacy techs, etc. that use health records. This is a very broad program.

Ms. Megan Hess, Goodwill Industries Case Manager in Floyd County, next appeared before the Board. She reported:

- Case manager for youth and adult workers in Floyd County through the Workforce Investment Board;
- Services provided – assessment testing, career assessment (both for abilities and what folks like to do), counseling, leadership classes, occupational skills training (such as CDL, CNA), support services (training, gas for vehicles, clothes);
- Currently serving 48 individuals – 16 in-school, 6 out-of-school youth, 12 adults, 14 dislocated workers. Receive referrals from DSS and New River Valley Community Services and other agencies;
- Housed temporarily at the New River Community College Learning Center. Usually in the office from 8:30 – 3 on Fridays, by appointment.

Agenda Item 7f – Discussion – Fire Department/Rescue Squad vehicle replacement schedule. Mr. Campbell presented the replacement schedules as requested by the Board from last meeting.

Supervisor Allen – my main concern is if we keep up with this schedule, Floyd County will be in debt until the end of eternity. Our schedule needs to be “as needed” not “as wanted” basis. Feel we should give the schedules some serious consideration.

After discussion, it was the consensus of the Board to establish a working committee of 1-2 Board members, County Administrator, one member from either Fire or Rescue (depending on the request for the year) to review equipment needs each year to determine what should be requested during the budget process. The review should take place one year in advance of the requested replacement.

Mr. Dean Gall, Department of Conservation and Recreation, next appeared before the Board. He presented a synopsis of notes from the Common Ground Meeting recently held. He commented that 32 invitations were issued to land owners and non-profit organizations representatives and 26 people attended. There were 3 Board members present. This was a very special meeting, there was great respect shown for individual opinions, you could hear a pin drop when someone was speaking, it was a joy to attend the meeting. What we did is we threw out some questions to get folks started in the discussion. We asked each individual or organization to reflect upon what your past accomplishments have been, what are recent trends in what you're interested in, what are your biggest challenges as a farmer or an organization, what do you see as the future? I took the list of all the comments, left them written as best I could the way they were given to us, did combine similar responses. There were reoccurring themes that came up. These are proud folks in this County, they are proud of what their agricultural/forestry has been. The rural character is obviously very important. They take a lot of pride in the voluntary actions of people coming and working together. When we got to the recent trends in the County, you could see where the beef and dairy industries are decreasing or finding it more difficult to be profitable each year. The land is rapidly changing. More people are commuting out of the County. One comment was that there is a lot of rhetorical talk without meaningful change. This is a huge issue. The number of topics discussed that have an impact on the County is tremendous. We touched on what the future of the County should look like. After lunch, we asked a couple of questions and focused mainly on 1) What are Floyd County's land options and 2) How do ag and forestry remain viable land use options? You'll see that on this list that there are a lot of suggestions that only the Board of Supervisors can address whether it is land use tax for ag and forestry, ag and forestry districts, etc. Some of the topics that came up play out to potentially a larger group. For example, funding tools, and other grant opportunities that could be brought together to collect information to help the Board of Supervisors look at what some of the options are. Are there ordinances that could be considered? Is there information that the Board of Supervisors could make decisions as to how that future could be directed if they have that information. There is no way that anyone on the Board could be knowledgeable on all these areas. We recognize that. One of the things that we did not have time to do is prioritize the items on the list. How would the County look at these items in the future? How would the County use the Comprehensive Plan in the future to address some of these issues? Where do you go and how do you address it? A lot of folks have discussed and expressed an interest in the

Board putting together a committee for looking at some of these topics, to help the Board in their decision making process. If a committee was put together of appropriate land owners with appropriate commodity groups, other government agencies, etc. to keep it neutral so the Board could receive honest information to help get grants written or help in decision making of the Board. In talking with Lydeana about the Comprehensive Plan meetings, the open land issues were really important to the citizens. We're at a point in the County where we could address some of these things. Existing County staff just does not have the time to address all these issues and provide the information.

Agenda Item 7g – Resolution for Constitution Week – September 17-23, 2010.

On a motion of Supervisor Clinger, seconded by Supervisor Gerald, and unanimously carried, it was resolved to adopt a resolution recognizing September 17-23, 2010 as Constitution Week (Document File Number \_\_\_\_\_).

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

Agenda Item 7h – Parental Rights Resolution. Mr. Campbell presented a brief received on the topic from Supervisor Gerald.

Supervisor Gerald – I had staff send you a brief on parental rights resolution briefs. In 1989, the UN convention passed the parental rights treaty which was ratified by 193 countries. The only two that did not ratify this treaty was the United States, which is the richest country in the world, and the poorest country in the world, which is Somalia. As you read the brief, what it boils down to, if the United States ratifies this children's rights treaty, it will turn the parental rights over to the international community. In other words, the laws that are passed will have to be adhered to by whatever the UN treaty says. Our law would be of no effect if this becomes a law. We'd have to go by what the UN and the treaty says if we ratify it. I'd like to have this resolution sent to our Congressman and also to our Virginia legislators so they will accept this resolution.

Supervisor Gardner – I did some research on this. A treaty that is done by UN does not supersede the Constitution. A treaty with another nation has a lot more bearing than this. This speaks to rights, it speaks nothing to responsibilities. I have a real problem with this resolution.

Supervisor Gerald – I way I understand it, if the United States ratifies this, laws under the Constitution will be overridden by the UN.

Supervisor Gardner – I checked that out, it wouldn't happen that way.

Supervisor Gerald – that was my concern, we are to pass the laws concerning the rights of our children and parents. The UN, 90% of the countries are hostile to the United States. In my opinion, we don't want the United States to ratify this treaty, which they haven't so far. But

there are only two, the United States and Somalia that have not ratified it so far, 193 other countries have ratified it. What I'm concerned about is taking parental rights away from the United States and our laws to be overridden by the United Nations.

Supervisor Gardner – that's what I'm saying, the United Nations cannot override the actions of the United States Constitution. I just know, I've checked with authorities on history and government, and they said that this cannot override the United States Constitution. The United Nations is not a separate nation, it is made up of all nations, but it is not a separate nation.

Supervisor Gerald – the way I read it, if the United States ratifies this treaty, it will override the laws of our land as far as parental rights.

Supervisor Gardner – that's not right.

Supervisor Gerald – what authorities did you check with?

Supervisor Gardner – I checked with government and history teachers in our schools, and I can do more. Plus I have history and government Bachelors and Masters degrees.

Supervisor Gerald – well that may be true but if you go on the internet and look under the rights of the child, crcunconvention, rights of the child, you can find out. The way I read the internet and the way I read this brief, the laws of our land would be overridden by the United Nations and our rights taken away to up bring and educate our children, which is a fundamental right for all of us. I'd like to see the laws of the United States be the ones we use to raise our children and how we take care of our children, I don't think the United Nations should be involved in that.

Supervisor Allen – does this have to be done today?

Supervisor Gerald – I don't see why it can't be. A lot of other Counties have passed this resolution also. That's where I became aware of it, the other Counties got in touch with me to present it to our Board.

On a motion of Supervisor Clinger, seconded by Supervisor Gerald, it was resolved to adopt the parental rights resolution as presented.

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

Motion failed.

Consensus of the Board was for staff to obtain more information on the matter and bring back to the Board next month as to how the laws would apply.

Dr. Terry Arbogast, School Superintendent, next appeared before the Board. He reported:

- Presented copy of School Board meeting highlights from September 13, 2010;
- Presented a letter request for a supplemental appropriation in the amount of \$491,317.00 for additional Federal stimulus funds received. We did not know the amount of funds that would be received so it was not included in the budget. These funds will be used to employ five additional teachers, one at each elementary school and one at the high school. These funds can be used over a two year period. Six positions from last year were not filled because of the economic situation. We would like to move forward with hiring people for these positions, because of our large class sizes. We would need the Board to make the appropriation to us so we can spend the money. The School Board approved the request last night to hire additional staff. The funds cannot be used for anything else besides personnel, not equipment, supplies, materials, facilities, debt service, repairs; it all has to be personnel related. The School Board approved the hiring of five additional staff positions to fill positions at each elementary school to help with class sizes and one position at the high school for one program area. We can continue this for another year, using half the funds this year and half next year which would fund salaries and benefits for five teachers. We have been proactive and prepared ourselves for this possibility, by already interviewing people and have people lined up that we believe are good people, so we could try to get ahead of the other school systems when you give the green light and appropriate the money. If you want to hear a sad statistic, we called in 31 people for interviews and only got 11 people that were available. Our applicant pool is very, very low. I'm sure we'll get some other individuals when we advertise, but we want to move as quickly as we can, as other systems will be doing the same thing. It will be competitive. (Considerable discussion followed on how the revenue will be shown in the budget process this year and next year with Dr. Arbogast explaining how the process works).
- Presented copy of school enrollment report indicating 2071 students. Budget was based on 2090 students, school began with 2017.

On a motion of Supervisor Gerald, seconded by Supervisor Gardner, and unanimously carried, it was resolved to approve a supplemental appropriation in the amount of \$491,317.00 to the FY11 school budget for additional Federal stimulus funds received.

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

- Presented copy of synopsis of 2010-11 School Improvement Plans. Will provide copies of complete reports for individual schools if Board members desire.
- Presented copy of complete document of SOL scores of each school. All Floyd County schools made Federal AYP. The division as a whole did not made Federal AYP because of the way the disabled/graduation rate process is calculated. Only 11 of 134 divisions in the State made the division AYP.

The Board recessed for lunch.

Mr. Dan Huff and Mr. David Clark, VDoT, next appeared before the Board. They reported:

- Route 860 – 1.8 mile is in the 6-year plan at an estimated cost of \$1.8 million near the Franklin County line. With the future of allocations looking bleak, with nothing forecasted for the next several years, if we do as planned and do the \$1.8, it will only improve 2-3 curves. If we improve just 2-3 curves, you could increase the speed in those sections of road which might cause more accidents. There have been no accidents on that road since 2002. We're looking at the possibility of perhaps moving these funds to another area in the County. That would only happen if we could move the funds without being penalized as in paying some of those funds back. So just in case that we can move to another part of the County, I took the liberty of preparing a map showing where the money could be applied, which is on major collector routes. It is the roads in purple on the map. I'll pull together some accident data on the various roads so we can show you where the accidents have occurred on these roads to help you pinpoint the problem areas. It may not be a possibility to move the funds. We can always stay there and improve several of the curves.
- Future County allocations – the same formulas are still there but the amount of money that is being routed through those formulas has been significantly reduced. The Commonwealth Transportation Board does have the right to move funds anywhere they want in the State.
- The Willis area headquarters have been doing skin patching and hot mix patching on Routes 619,751,757,727,772,696,799,735,813 and 604; pipes cleaned on Routes 729 and 624; replacement of pipe on 761 and 624; ditching on Route 782; sight distance improvement on Route 750; machining on various routes; gravel on various routes. The Check area headquarters have been doing similar activities they just did not specify the routes.
- Will be hiring four people for the Check headquarters to replace retirees. Usually takes about 60 days for the entire process with advertisements, interviews, background checks, etc.

Supervisor Clinger – Route 615 has a lot of potholes; Harvestwood Road has had some potholes patched, but they were not done very well, the patching is about 2" higher than the road.

Supervisor Gardner – lots of problems with potholes and wash boarding, I don't have specific routes.

Supervisor Allen – have already relayed my concerns earlier.

Supervisor Gerald – the main safety hazards in Floyd County are dodging deer and dodging potholes. Floyd County is not even on the contact list to know who to call.

Mr. Huff – that was a mistake on the list, it has been corrected.

Supervisor Gerald – what puzzles me and upsets my constituents is that when you come from Montgomery County, all the potholes are filled, then you get to Floyd County, none of the potholes are patched. Then you go through Floyd County to Route 622, Indian Valley Post Office Road, then to the Carroll County line. VDoT went through there and built up the corners with plant mix and then they come back with tar/gravel to do the whole section to Route 221. I don't understand why Floyd County is on the bottom of the list as far as potholes and everything else. It is frustrating when your constituents call you and ask why this is. Then we get the maintenance list and Floyd County is not even on it. There are some bad potholes on Route 622, they are in the right-hand driving lane, and people get on the left side or get in the ditch to miss them, it is a real safety hazard. In my opinion, we'd like to be included with the rest to get things done. There are bad potholes on Indian Valley Post Office Road and Indian Valley Road. We'd like to have a level playing field when it comes to patching potholes with Montgomery and Carroll Counties. We want to be up there with the rest of them.

Mr. Huff – we're not trying to play favorites.

Supervisor Gerald – it is hard when you see things done in other Counties, seeing all these things undone in our County and pass over into another County and see a nice road with the sides built up with plant mix and paved all the way through.

Mr. Huff – every County is on a different paving schedule. But we will look into it.

Supervisor Ingram – my concerns are the same as the others. The gravel roads need machining when the weather allows and I understand that you need the moisture to do that. But we have secondary hard top roads that if they don't get some attention before we have weather again; it is going to be really bad when spring comes. I don't have a list but most of them need attention.

Mr. Huff commented that he had reviewed Roger Road, Route 683, at the Board's request. Six year funds cannot be used for improvements, but might be able to use some maintenance funds. Will check further on it.

The Board requested that a VDoT representative attend every Board meeting or at least every other month to relay concerns/questions. Mr. Clark commented that they would have to check with their supervisors to see what could be done. With all the changes made, things are still being worked out.

Agenda Item 7i – EMS response “dividing line”. Mr. Campbell presented a copy of a draft map for the Board's review. From time to time, we get questions about where the cut-off line is in terms of transport to either Roanoke Memorial Hospital vs. Carilion New River Valley. I will say that the sort of understood dividing line and one that has been used here in the past has been at or around Kings Store Road. I had our GIS staff plot some points and look at the dividing line a bit more officially than perhaps has been done in a while. I gave you a map today that shows more accurately, where that dividing line could be. I provide that to you as information. I think that is as accurate a depiction as we're going to get. You can see the dividing line, so to speak if there is one, and there are other factors that come into play here, I

think we've heard discussions on that in the past, is at or around Daniel's Run. It follows Hummingbird Lane out to the Parkway, that little re-routing that takes place along Conner Road is pretty clear, you can break out the distance on both sides even there. You can see the stretch that is a straight line which does not follow a road, but the distance from those points is a good approximation. I have not shared this with EMS staff or the Rescue Squad; I just felt the Board needed to review it. I am providing this as information for your review and discussion.

Agenda Item 7j – Maintenance on discontinued roadways. This item also comes up from time to time and involves maintenance items on discontinued roads. We found, with Mr. Huff's help, a Code section fairly recently, that does allow the local governing body to have some administrative role in determining whether or not private landowners, property owners, users of that discontinued road, can perform maintenance activities on it. If you look at that code section, 55-50.3, it is remarkably short, but lays out what you could do. Even right now, we have several cases where this has been a relevant question. What this would require of a property owner would be a submittal of a request to the Board to perform certain maintenance activities on that roadway. The Board would be responsible to notify, by mail, the adjoining property owners and describe the repair/maintenance/improvements that are proposed and by whom. At that stage, it would be at the Board's discretion to determine whether or not the requestor could do the work on the road. We do not have such a formal process in place now but wanted to make you aware of it, to be discussed at a future meeting. Consensus of the Board was to bring the matter back for discussion at the October meeting.

Agenda Item 7k – Pine Creek bridge replacement. Mr. Campbell reported that an advertisement has been placed for public comment on the preliminary engineering plans. This will be handled by VDoT's bridge replacement unit. The public comment period is open to see if a public hearing is wanted by the public or local government. Summer 2011 is for receipt of bids with construction beginning at the end of 2011. VDoT will make determination as to whether a public hearing is warranted.

Mr. James E. Cornwell, County Attorney, next appeared before the Board.

Agenda Item 6k(1) – Reconfiguration of Floyd – Floyd County Planning Commission. The Town of Floyd intends to institute their own Planning Commission so we were researching how to disentangle the joint Planning Commission. I had suggested and I think Dan had passed it on and the Town was agreeable. Probably the simplest way to do this is for the Planning Commission members to resign and then for the County to set up its own Planning Commission and re-appoint, if the Board wishes, the present members. You can have between 5-15 members; right now you have 5 members. We also have to rearrange the terms to make sure they are staggered, which can be done all at once. The first step is for us, have we received formal notification from the Town?

Mr. Campbell – I have received an e-mail correspondence from the Town Manager that they were in the process, with their time line around October to begin. They have been working on this for several months.

Mr. Cornwell – I don't want to have a vacuum, to have a time where we don't have a Planning Commission. So, until they actually set their Planning Commission and the members resign, I don't think we need to do anything. Once that happens, the Board of Supervisors needs to adopt a resolution uncreating the joint Planning Commission and then recreating the new one, which would be the Floyd County Planning Commission.

Mr. Campbell – do the five County members need to resign also?

Mr. Cornwell – that's really up to the Board. The five members can resign, and then be appointed, or the Board can re-appoint them.

Supervisor Gardner – what's the purpose of this?

Mr. Cornwell – the Town wants to do their own planning commission.

Supervisor Gardner – why?

Mr. Cornwell – I don't know. The Town and the County have to come to an agreement creating the joint commission, which they did. The County has to do it by resolution, and it did. The Town has to do it by ordinance and we assume that it did. But it has been in effect since 1971. If the Town wants to withdraw, it can. But until the Town acts, my suggestion is to leave it in limbo because we don't want a period where there is no planning commission. Two actions have to occur. The Town has to formally adopt something resolving the joint commission and the members will have to resign. After that happens, we can act by adopting a resolution to reconfigure the Floyd County Planning Commission. Then the Planning Commission can re-adopt their bylaws. The first step is still up to the Town. The Code requires each locality to have a planning commission; some extra hoops are required for a joint commission, which looks to have been done properly.

Agenda Item 6k(2) – Appeal of Planning Commission decision – Campbell/Healy. There was a request for a variance or exception for the 20' easement width required in the Subdivision Ordinance. The Planning Commission voted to deny that request so the appeal was made to you on their decision. You heard this at your last meeting.

Supervisor Gardner – were any Board members able to look at the site? I was not able to go.

Supervisor Ingram – there are geographical barriers on one side of the proposed right-of-way that would cause a road not to be able to be built.

Mr. Campbell – there is about 2600' feet of additional easement that appears to be needed. It couldn't be built on but it could perhaps be afforded on paper if the property owners were willing. We don't have any bearing on whether it is built or not. The additional requirement for the right-of-way can be provided on paper. It would be prohibitive to ever build it.

Supervisor Clinger – you’re saying it is cost prohibitive to actually build but doable on paper. So they could go back and re-do it and submit it again, and it would probably pass.

Mr. Campbell – if they could get the additional easement.

Mr. Cornwell – Lydeana and I talked about that. Our ordinance requires the 20’ easement but there is no requirement that it be built.

Mr. Campbell – there were property owners that supported this action but they didn’t concur with the transfer of any type of additional easement unless it was on paper. Because of the slope and branch, it would be prohibitive to ever build on the entire right-of-way.

Mr. Cornwell – the decision of the Board is whether to uphold the Planning Commission decision or to reverse the Planning Commission decision and grant the variance.

On a motion of Supervisor Gardner, it was resolved to grant a variance as requested for the Campbell/Healy appeal.

Motion died due to lack of second.

On a motion of Supervisor Gerald, seconded by Supervisor Allen, and carried, it was resolved to deny the appeal request in the Campbell/Healy matter based on the Floyd – Floyd County Planning Commission’s determination that the applicants failed to meet the criteria for a variance.

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

Agenda Item 6k(3) – Proposed abandonment of State Secondary Route 688 from VA Route 615 East and North along Little River. Again, you had a public hearing on this at your last meeting and heard the positions from the different parties that were here. Four of the five Board members commented that they had visited the site.

Supervisor Clinger questioned Mr. Earl Frith, who was in the audience, since he was unable to attend the public hearing last month, to verify if the road is abandoned, that he would be landlocked.

Mrs. Jackie Frith replied – Earl and I own the subject property together. If he was to predecease me, I would be bounded on three sides by Mr. Thompson and the other side by the river. I don’t know any way to get out other than to put my canoe in the water and go back and forth.

On a motion of Supervisor Allen, seconded by Supervisor Gardner, and unanimously carried, it was resolved to deny the request for abandonment of State Secondary Route 688 from VA Route 615 East and North along Little River.

Supervisor Clinger – aye

Supervisor Gardner – aye

Supervisor Allen – aye

Supervisor Gerald – aye

Supervisor Ingram – aye

Agenda Item 6k(4) – County Noise Ordinance. The County does have a noise ordinance. It talks about it being unlawful to create an unreasonably loud, disturbing or unnecessary noise. It also enumerates certain acts which are prohibited. I understand the complaint relates to barking dogs and one of the issues prohibited is barking dogs and other noises in such a manner, volume, or hour of the day/night in order to annoy/disturb the quiet of any persons in any dwelling. The problem with our noise ordinance is fairly simple in that the Supreme Court of Virginia on April 17, 2009, made a decision on a case in Virginia Beach in which the language, which is essentially the same as ours, was declared to be improper and not enforceable and the ordinance was set aside. Consequently, many of the jurisdictions in Virginia that are attempting to control noise are going to the new decibel meters and putting in their ordinances, decibel levels. And we do, in fact, have that in our ordinance already in Section 3 of our ordinance it says “between the hours of 11 pm and 7 am, sounds from any source which when measured from a distance of 50 feet, has a sound level in excess of 70 dba’s”. Do our deputies have a sound meter?

Mr. Campbell – yes, but I don’t think it is capable of judicial challenge.

Mr. Cornwell – it can’t be certified?

Mr. Campbell – right.

Mr. Cornwell – so basically, as I said in my memo, the County has two choices: 1) it can repeal the current ordinance and have no noise ordinance in Floyd County; or 2) it can revise the ordinance and adopt an ordinance which would withstand the challenge as in the case before the Supreme Court, which in my opinion, the simplest way to do that is to have an actual decibel meter which can be certified and have someone(s) trained to use that.

Supervisor Gerald – it would have to be a deputy, right?

Mr. Cornwell – different jurisdictions do different things. Most of them are having deputies use them, some use administrative officers. It is almost like a breathalyzer situation, the officers would have to be trained and the machine certified.

Supervisor Gardner – we wouldn’t necessarily have to change the ordinance, it sounds like we need a certifiable instrument.

Mr. Cornwell – that’s correct, we’d just have to strike out the old Code sections and re-write the other sections, to make it an offense to have that noise or decibel level at whatever distance we want. That way it won’t matter what noise it is, whether a barking dog or a party, or a lawnmower, if it is 70 decibels 50’ away, or whatever distance. The other jurisdictions have been doing it so far from a property line to the source. We can write an ordinance which would be enforceable provided we have someone trained to use a decibel meter and come to court to testify. Just like with a radar gun, saying I clocked them doing so many mph, and the gun was certified before and after the incident. The same thing with a sound meter, the deputy would testify that he put the decibel meter on it, it registered properly, it showed a decibel reading of whatever, and certifies that the meter was checked before and after.

Supervisor Allen – what about the farmer who wants to cut corn half the night?

Mr. Cornwell – what I’m talking about is a noise level, not an activity restriction. If the noise rose to that level, it would apply. If he was cutting corn on a two acre parcel in the middle of a subdivision, he might have a problem. If registered 50’ or 100’ from the property line, there’s probably no problem. But again, if he’s running a harvester with no muffler, he might have a problem. If you’re going to have a standard, you have a standard, whether it is 70 dba’s or 80 dba’s, or whatever standard you pick at whatever distance you pick from the property line. If it is a loud party, barking dog, a guy cutting corn, guy running a jackhammer, it applies. You could also put times in there, so the guy could cut corn all he wants until 11pm at night. To make it enforceable, you’ll need a standard and a police officer or someone, who can testify to the certifiability. Otherwise, the ordinance is useless.

Mr. Campbell – is there anything that the property owner who is aggrieved in this case, can pursue, outside the County?

Mr. Cornwell – a civil suit can be brought to have them declared a nuisance.

Supervisor Allen – do you think a Judge would convict in a rural County like this?

Mr. Cornwell – I’ve gotten convictions in Craig County on their noise ordinance, it is about as rural as you can get.

Supervisor Ingram – we’ve passed two noise ordinances since I’ve been on the Board, I voted no both times because I don’t think we need one. That’s my personal opinion. It is going to get so complicated that you can’t deal with it. Don’t get me wrong, there are situations out here that are nuisances and they need to be dealt with. I’m not saying that. I’m just not sure the noise ordinance is the way to solve them. My opinion.

Mr. Cornwell – I was asked two questions: 1) is the current County noise ordinance enforceable, I said no; 2) is it possible to write an enforceable ordinance – my answer is yes.

Supervisor Allen – what is the civil proceeding you were talking about?

Mr. Cornwell – you can bring a civil proceeding against anybody for creating a nuisance. You can ask the Court to adjoin the nuisance, it could be conduct, noise, whatever, any nuisance, the definition is very broad. If you're doing something in your yard that causes a cloud of gas and fumes to come across my property, I can go to court and ask them to make you stop that.

On a motion of Supervisor Clinger, seconded by Supervisor Allen, and unanimously carried, it was resolved to authorize the County Administrator to advertise for a public hearing on Tuesday, October 12, 2010 at 3:00 p.m. in the Board Room of the County Administration Building, for repeal of 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 – aye  
Supervisor Ingram – aye

Consensus of the Board was to obtain further information before a new draft noise ordinance is prepared.

Agenda Item 7l – Sheriff's Department vehicle purchases. Mr. Campbell offered the suggestion of acquiring two police cruisers for the Sheriff's Department utilizing funds that were borrowed earlier for solid waste and fire equipment. Estimated costs and specifications were in the Board's packets, at an estimated cost of \$23,000/each. This would greatly assist in getting the Department back on their replacement schedule. Due to earlier action, the Board may want to review the vehicles to be replaced. The Department has also presented a grant application for vehicle purchases through Rural Development. It will probably be mid-year next year before anything would happen on that front.

On a motion of Supervisor Allen, seconded by Supervisor Gardner, and unanimously carried, it was resolved to authorize the County Administrator to purchase two vehicles for the Sheriff's Department from Crossmotors of Virginia from remaining loan funds.

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

Agenda Item 7m – VACo's 2010 Annual Conference, November 7-9, 2010. Mr. Campbell commented that registration would need to be submitted if any Board members are interested in attending.

Agenda Item 7n – VACo Annual Meeting voting credentials. The Board deferred this appointment until such time as a determination is made as to which Board members will be attending.

On a motion of Supervisor Allen, it was resolved to appoint Supervisor Gerald as voting delegate to the VACo Annual Meeting.

Supervisor Allen withdrew the motion after Supervisor Gerald indicated that he may not attend due to budget constraints.

Mr. Campbell presented an invitation from Mr. Ford Wirt for a tour of the Regional Jail if any Board members are interested.

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

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Daniel J. Campbell  
County Administrator

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David W. Ingram, Chairman  
Board of Supervisors