

**BOARD OF SUPERVISORS
REGULAR MEETING
FEBRUARY 8, 2011**

At the regular meeting of the Board of Supervisors of Floyd County, Virginia, held on Tuesday, February 8, 2011 at 8:30 a.m. in the Board Room of the County Administration Building, thereof;

PRESENT: David W. Ingram, Chairman (entered the meeting at 8:45 a.m.); 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 Vice 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.

Supervisor Gardner led in the Pledge of Allegiance.

The minutes of January 11, 2011 were presented to the Board for review and consideration.

On a motion of Supervisor Allen, seconded by Supervisor Gardner, and carried, it was resolved to approve the minutes of January 11, 2011 as presented.

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

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

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

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

Agenda Item 7a – Subdivision plats as approved by Agent for January 2011. Ms. Lydeana Martin, Subdivision Agent, appeared before the Board. She reported that divisions are

slow for this time of year. There was a mistake in the number of surveys signed; plats of record were included by mistake, so the number should be 3 instead of 11.

In other news, Ms. Martin reported on a number of community workshops coming up in the near future in conjunction with the Chamber, Jacksonville Center, Virginia Tourism Corporation and the Virginia Department of Business Assistance: Becoming Small Business Counselor or Mentor, March 1 at 6:00 p.m.; Superior Customer Service Workshop for Managers/Small Business Owners, March 9 at 10:00 am at JAX Center; Superior Customer Service Workshop for Employees, March 21 at 2 and 5 pm at the JAX Center; Managing Multiple Generations, March 11, time and date to be determined. Also, the follow-up meeting for Common Ground will be February 24, 10 am-noon at the County Administration Building; Land's Sake – Floyd's Journey Ahead will be April 16 at the High School from 9:30 am – 2:30 pm; Floyd Artisan Tour, June 10-14, which is a promotion for visitors to go to various artisan studios.

Agenda Item 7b – Proposed proclamation for MS Awareness Week, March 14-20, 2011. Mr. Campbell presented a draft proclamation for the Board's review.

On a motion of Supervisor Allen, seconded by Supervisor Clinger, and carried, it was resolved to adopt the proclamation recognizing March 14-20, 2011 as MS Awareness Week, as presented (Document File Number).

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

Chairman Ingram entered the meeting at 8:45 a.m.

Vice Chair Gerald turned the chair over to Chairman Ingram.

There were no Constitutional Officers' reports for the month.

Agenda Item 7c – New River Regional Water Supply Plan Resolution. Mr. Campbell reminded the Board of the presentation by DEQ and the Planning District Commission staff on the plan. Comments were submitted to them from Lydeana and himself. The Board also held a public hearing at your last meeting. The plan itself is required by the State Water Control Board, but it was done with no cost to the County.

On a motion of Supervisor Gerald, seconded by Supervisor Gardner, and carried, it was resolved to adopt the resolution, as presented, approving the New River Regional Water Supply Plan (Document File Number).

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

Agenda Item 7d – Schedule FY12 budget work sessions – defer for discussion later in the day.

Supervisors Allen and Ingram and Mr. Campbell reported on their recent meetings and tour with VDoT personnel. They felt the time was well spent, with improved communication on the County's needs, especially on unimproved roads.

Mr. Campbell also presented a letter from VDoT concerning three bridges that are scheduled for replacement on Routes 630, 641 and 660. Can discuss this later with Mr. Huff.

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

The Chairman called for comments from the audience.

Ms. Reba Goff – here today representing the Floyd County Education Association. Just some information, I traveled to Richmond with other teachers from around the State on January 24. Darlene Alderman also went with me. We went to see Senator Roscoe Reynolds and Delegate Charles Poindexter. One of the main things that we're focusing on, of course, is the proposed 2% salary increase that the House of Delegates is proposing and we're trying to fight against the 5% employee contribution to VRS. The Governor is trying to get the locals to get the 3% to the teachers to outweigh the 5% that they're trying to have them pay into the retirement system which in essence is a negative 2. You take the money away from the teachers and they've been going the last two years without a salary increase to start with. So we're up there trying to help you, both locally as well as the teachers. I just wanted to give you the information that we're out there working and trying to restore the previous loss of funds.

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

Mr. Lance Terpenney, Town Manager, next appeared before the Board. He commented: Mainly, I just wanted to come introduce myself as the new Town Manager. Also, the Town Council was interested to see if you all had any interest in a joint work session to review the Tourism Plan that is being considered now. They've had a couple of meetings with Lydeana and wondered if you all had an interest in meeting and discussing tourism initiatives in the future. They certainly wanted to entertain that idea if you thought anything good would come of it. If not, they fully understand. They wanted to get together and talk about tourism, to see how the Town fits into that whole plan. That's really all I had, just to introduce myself and extend the invitation for the joint meeting. If you can let Dan know of your wishes and he can relay them to me and we'll move forward from there.

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

- At end of December 2010, we received the new Federal poverty numbers. Floyd County's rate of 15% of population at or below poverty level is much higher than the State's 10.6% rate. Pulaski is 14.2% and Giles is 13.1%. The level is rated on a family of four at an income of \$22,000/year.

- Do not have new SNAP recipient numbers yet, still at 2076 participants with payout of \$250,000/month. Comparison to December 2007, we had 1203 on food stamps at \$104,000/month.
- Medicaid – served 2197 for 2010 as of December 31, 2010, another 372 served through the CHIP program (Children’s Health Improvement Program). In the same time frame of 2009, we served 1957 through Medicaid and 380 in the CHIP program.
- Average 2600 people served each month through all programs.
- Legislation – Social Work Title Protection Act – legislation has been approved by the House and is sitting in the Senate, assigned to the Education and Health Committee, which meets on Thursday morning. We have provided significant information and input to them. There is no grandfathering of current employees so as of July 1, 2013, all employees would have to have a social work degree. I have four social worker positions, and only one has a social work degree. This is a national movement to professionalize social work.
- Budget amendment – Senate did include returning the 5% administrative cut to our budget and the CSA cuts were picked up. The House did not include either. On CSA, there is language that anything that Medicaid is paying for would be paid by CSA, administratively. I have no idea how it will be administered since the \$12,000 does not cover what we have to do now.
- Agency employees were not included in the 3% bonuses that State employees received in December. I ask that you approve passing on that bonus to our employees at the end of the year if funds are remaining in our budget. The bonus was not given to State supported employees. The Code states that the Board has to approve bonuses by Section 15.2-1508.

On a motion of Supervisor Clinger, seconded by Supervisor Gardner, it was resolved to authorize 3% bonuses to DSS staff at year end if funds are available.

Motion was withdrawn after discussion as to whether a public hearing would need to be held since this is done by ordinance. Board will discuss with legal staff later in the day.

Mr. Ayers also reported that the Agency has led the region in the last six months in processing applications and also performed for a year with no mistakes in the applications. The vacant eligibility position has been filled.

Ms. Terry Smusz, New River Community Action Director and Mr. John McEnhill, Board Member, appeared before the Board.

Mr. McEnhill – appointed in 2002 as Floyd County’s representative on the New River Community Action Board of Directors and also serve as Chair of the Local Advisory Board. Office is still being housed at Jacksonville Center until the roof is repaired. Ownership of building was transferred to NRCA from a private organization this summer. The Agency provides case management services, homeless intervention, emergency assistance in the form of food, shelter and medical assistance. We use the approach of a “hand up not hand out”. There is a potential of unprecedented cuts coming from the Federal and State government and especially

with the elimination of the stimulus funds that filled the gaps. There is a very real possibility of additional cuts. NRCA has been creative in absorbing the cuts but there is no fat left. We ask that you consider our level funding request.

Ms. Smusz – as John noted we have made some cuts in response to funding cuts. For example, we no longer have area office managers in any of our jurisdictions. We no longer have a regional emergency assistance program coordinator; we have not replaced that position. Now our emergency assistance staff throughout the New River Valley is supervised by our community services program director, Glenda Vest, who also supervises our CHIP and Homeless Intervention Program. To bring you up-to-date on a few program changes, our SHARE program closed in September. SHARE's business model was a self-supporting program, no government subsidies, food purchased on the open market, participants paid \$22 plus serving two hours of community service for approximately \$44 worth of food. When we closed, we were one of the few remaining SHARE programs left; most had closed their doors over the past ten years. For example, in 1999 we provided 110,000 packages throughout our service delivery region. In 2010 that had been reduced down to 44,000. Participants' revenue coming into the program was just not supporting the program. We were able to give two weeks notice to our participants and vendors, by the time the program was shut down, the Agency had lost \$70,000 out of our General Fund. Backpack program, we are currently providing this program at all elementary schools, serving 55 children in Floyd County. Have over \$3000 in a restricted fund for this program. We also have restricted funds in our food pantry account which we can use for this purpose. Headstart Program is serving 28 children in Floyd, 20 in center based and 8 in home based. The center based children are combined with the Virginia Preschool Initiative children at Floyd Elementary School. We are very fortunate to have partnered with Floyd Elementary to continue our Headstart program in consideration of our roof problems that we had at our building. I will mention that in our Headstart program, we are seeing more behavioral and emotional problems with that population so we are contracting with NRV Community Services to help us in that regard, both with the children and parents. School behavioral issues affect school readiness down the road. We're very lucky that in our partnership with the Virginia Preschool Initiative, we're able to provide their staff training and our staff benefit from their training, so we feel this is a very creative solution to our problems. Both parties are benefitting from the partnership. We continue to offer the CHIP program, Homeless Intervention Program, Responsible Rides, RSVP with 255 volunteers, Virginia Cares, volunteer income tax assistance. We have a new regional program called "To Our House" which is serving homeless single men. Last year we served 1480 unduplicated citizens in Floyd County. We project a drop in the next fiscal year, anywhere from 200-300 participants. We think there are two reasons for this, one being the end of the SHARE program and because of staff changes to our emergency assistance program, we think there has been some confusion in the community in the provisions of that program. In response to funding cuts, we applied to the Virginia Tech College of Business for NRCA to be a client in their applied small business consulting class. We asked if we could be a client to have a cost reduction study done for us. Our application was accepted and we'll be participating in that study during the winter and spring. We hope to see some expertise brought to the table that will help us in that regard, hopefully without reducing services to our clients. With respect to our roof, we contacted with HDH Engineering/Architects, they are providing oversight for plans for the project. Bids are out now for the repair work, we hope to begin in early March.

Ms. Lee Chichester, Development Director at the Jacksonville Center, next appeared before the Board. She commented: On behalf of the 12 volunteer board members who lead the organization as well as 14 staff members, I want to thank the Board for the support that you've given us in the past for our community outreach. Today there are three achievements that I want to highlight that indicate Floyd County residents' support for our activities and facility. There's no getting around how difficult the economy has been on us. Still, as the only public facility that is open to visitors on a regular schedule that includes weekends, year-round, we really didn't want to have to shut down for any length of time during the winter. That was one of the options that we were considering as we were trying to figure out how to thrive in the current economy. Contrary to some rumors, we never thought about completely shutting our doors. Instead, we hosted very well attended public input meetings and brainstorming sessions that developed new ideas for continuing to maintain sustainability. We have also recently completed a survey with a 5% return of data, including ideas from new income streams. I believe in your packet you have a brief encapsulation of the results of that survey. During 2010, we launched two financial support campaigns that turned out to be very successful and nearly all local. First was the partnership that we developed with Floyd Elementary School to collaborate on their at-risk tutoring after school program. To make that happen, we had to raise the money very quickly. The community responded with \$4600 in pledges restricted to that program. The remarkable aspect of the story is that within three weeks, we were able to plan and budget the program, find instructors to participate, and raise the semester's worth of financial needs by the start of school in September. Principal Deborah West's excitement about the project is reflected in the PTA newsletter that you have a copy of. The program continues this semester and we're looking into grant funding to support it for next year. The third major achievement that shows local support for our involvement in the community was our year-end challenge. A seven-member team of ardent supporters promised to pool \$20,000 if we could raise a like amount by December 31. The challenge was publicly advertised in mid-November and we met the challenge before the New Years Eve ball was dropped in Times Square. All of the \$20,000 came from dollars and cents given by our local audience, none of it was grant money, none of it was State money, none of it was Federal money, all of it came from the pockets of Floyd and New River Valley residents, as well as from our members in distant locations like Greensboro, Roanoke, Charlottesville, and Lynchburg. We count that as a resounding vote of confidence from our community. The success from that campaign just gave us a buffer, we're not out of the woods, even though we're much more optimistic that 2011 will be less financially stressful than 2010, already requests for our added services and scholarships are high. Our operating costs continue to rise, just like everybody. While we're blessed with, and could not survive without, volunteer support to the tune of about 14,000 annual hours donated by our community, our need for financial support remains. I'm here to again to request the County's participation in the Virginia Commission for the Arts Local Government matching grant program on behalf of the Jacksonville Center and the Crooked Road in amount of \$5000, \$2500 for each program to obtain \$5000 from the State. We have prepared the application and it is ready to submit with the Board's blessing.

On a motion of Supervisor Gardner, seconded by Supervisor Allen, and carried, it was resolved to authorize the submittal of a matching grant application to the Virginia Commission on the Arts for \$5000, to be shared by the Jacksonville Center for the Arts and the Crooked Road program.

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

Dr. Mike Rush, People, Inc., next appeared before the Board concerning the Pine Ridge Apartments renovation project. He commented: In the material that you have, the revitalization project is described. A resolution from the Board to Virginia Housing Development Authority in support of the project would be a great help. A zoning certification is also needed. The project doesn't have to be in a proposed revitalization area, a certain census tract, or particular area, you have the latitude to consider revitalization in a number of areas. You have the authority to authorize Mr. Campbell to submit the form letter and your desire to commit to supporting our endeavor. I also seek the locality support letter. The other thing that I ask the Board to consider is a real estate tax abatement on the increase in the value of development, not the building itself, the difference in the increase in value. We wish that you wouldn't tax us until we finish the project. I hope that you hear me asking for something that you can give to any citizen. It would rise to help VHDA give our project the points that we need. I'm asking that the real estate tax be abated until we actually accomplish the project. The Code allows you to do this in Section 58.1-3220. (Read Code section to Board). It would be the same for any citizen building a garage, for example. You wouldn't expect to be taxed on that addition until you were finished building it. We're not asking to avoid taxes, just to delay them until completion. We have a two year time frame to complete the renovation. The time frame starts March 11, 2011, our application date, and ends two years later. We'll apply in March, thirty-five applications will be approved, by May points will be assigned and an announcement will be made in June, letters sent out in July of intentions, November the credits will be reserved, December the actual credits will be submitted and then we start the bank applications and then we start the work. We really have about a year to do the actual work. We'll use an empty unit to move folks in/out of with all their belongings so their unit can be worked on for 8-10 days and then move them back into their unit. The structure is over 15 years old. We will be making energy related improvements such as heat pumps, roof repairs, new appliances, new cabinets, floor coverings, washer/dryer combinations in some units. We plan to spend about \$25,000/unit.

On a motion of Supervisor Gardner, seconded by Supervisor Allen, and carried, it was resolved to authorize the County Administrator to submit to the Virginia Housing Development Authority, the Revitalization Area Certification letter and Tax Abatement letter on behalf of People, Inc. for the Pine Ridge Apartments project.

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

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

- Social studies scores of tests recently completed;

- January 2011 enrollment showing 2039 students, a decrease of 8 from last month;
- Information on the Virginia Healthy Youth Day recently held at Floyd Elementary, outlining healthy eating habits for children;
- Have missed 14 days so far due to weather, 9 days were built into the schedule, banked time is still available.

The Board recessed for lunch.

Mr. Dan Huff, Mr. Tim Dowdy, Mr. David Clark and Mr. Stacy Keith, Virginia Department of Transportation, appeared before the Board.

Mr. Huff outlined the plans for three bridge replacement projects that will begin June 14, 2011 with a November 2012 completion date. The projects are on Routes 630, 641, and 660. The structures will be replaced and the approaches reworked. A five day closure of each respective road is planned. VDoT will handle the advertisement of same in the local newspaper. Some type of acknowledgment from the Board is needed that you are aware of the projects.

On a motion of Supervisor Clinger, seconded by Supervisor Gardner, and unanimously carried, it was resolved to authorize the County Administrator to provide written acknowledgement of the Board's knowledge of bridge improvement projects on State Secondary Routes 630, 641 and 660.

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

Discussion followed on the 6 year secondary road project for Route 860. The project is 1.62 mile from the Franklin County line to 1.10 mile from Franklin County line. Accident data was provided to the Board last month. Route 860 shows 193 vehicles per day with only one accident in the last five years. \$39,000 has been spent to-date on the project for preliminary engineering, with \$1.22 million remaining in the project account. After considerable discussion, it was the consensus of the Board to schedule a public hearing on April 12 at 3:00 p.m. for the proposed 6-year plan indicating projects 1) Route 750 from Route 739 to Route 735; 2) Route 615 from Route 686 to Route 699; 3) Route 615 from Route 705 to the Montgomery County line.

Mr. Clark reported that crews in January had worked on snow removal, machining, brush cutting, pothole repair. Reported that the meeting and tour of roads with Supervisors Ingram and Allen, Mr. Campbell, himself and VDoT's District Administrator was time well spent.

Supervisor Gerald – Watch Children sign has been knocked over by snow plow on Sutphin Road. Appreciate all the work you have been doing.

Supervisor Allen – all dirt roads in Little River District need attention, hardtop breaking up on a lot of roads.

Supervisor Gardner – ditto for Burks Fork District. Old Furnace Road, Springdale Road and Spring Valley Road are in especially bad shape.

Supervisor Clinger – general pothole repair is needed everywhere; some cold patch would be good until spring thaw. The bridge at Rays Restaurant still needs attention; the large pothole throws you over into the other lane.

Supervisor Ingram – I have the same concerns in the Locust Grove District, secondary unimproved roads need machining and gravel when weather permits. Route 639 off of Route 640 is coming apart very badly.

Supervisor Gerald – need a few loads of gravel on Sumpter Road, the mud is very thick.

Supervisor Allen – Bethlehem Church Road and Sunny Ridge Road also need attention.

Mr. Micky Hatcher, representing Floyd County Historical Preservation Trust, next appeared before the Board. He commented: We are a 501©3 organization here in the County. Our mission is to save and preserve historical properties. We currently own the old Ridgemont Hospital which now houses the Historical Museum; the Oxford Academy which has been renovated outside and we're in the middle of a fundraiser for inside renovations; the Ridgemont we completely renovated so the Museum could occupy that building; the Phlegar Farm which is on the other side of the Industrial Park which contains one of the oldest structures in Floyd. Our mission for that is to preserve the original structure and get it sound; we have a fundraiser going for that. We're either almost ready or have acquired the old Pine Creek Church and cemetery. It is a historical building but the cemetery contains some really old graves. We're in the process of acquiring it to protect them from anything happening. The reason I'm here today is probably the reason 90% of the people come before you, asking for money or something like that. It is our understanding that State Law now allows you to exempt certain real estate from real estate taxes. We'd like to request that you consider our group and our properties for that exemption.

Consensus of the Board was to seek legal advice on the procedure for such a request and have staff contact Mr. Hatcher and the Floyd County Historical Preservation Trust group with details.

Mr. James E. Cornwell, County Attorney, next appeared before the Board. He reported: We've been advised by the Treasurer that she'll be sending us sixteen new parcels for sale; we have four that are still hanging, so we'll combine them and have a sale in October. It takes us about six months to do the research and prepare paperwork. The sixteen that she's sending us, I understand, have payment plans that they have not met.

On a motion of Supervisor Gardner, seconded by Supervisor Allen, and unanimously carried, it was resolved to go into closed session under Section 2.2-3711, Paragraph A.1 of the Code of Virginia, 1950 as amended, discussion, consideration or interviews of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of any public body.

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

On a motion of Supervisor Gerald, seconded by Supervisor Gardner, and unanimously carried, it was resolved to come out of closed session.

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

On a motion of Supervisor Allen, seconded by Supervisor Gerald, and unanimously carried, it was resolved to adopt the following certification resolution:

**CERTIFICATION RESOLUTION
CLOSED SESSION**

WHEREAS, this Board convened in a closed meeting on this date pursuant to an affirmative recorded vote on the motion to close the meeting to discuss personnel in accordance with Section 2.2-3711, Paragraph A.1 of the Virginia Freedom of Information Act;

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby certifies that, to the best of each member's knowledge (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act were heard, discussed or considered in the closed meeting to which this certification applies; and (2) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting to which this certification applies.

Before a vote is taken on this resolution, is there any member who believes that there was a departure from the requirements of number (1) or number (2)? If so, identify yourself and state the substance of the matter and why in your judgment it was a departure.

Hearing no statement I call the question.

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

This Certification Resolution was adopted.

On a motion of Supervisor Gardner, seconded by Supervisor Gerald, and unanimously carried, it was resolved to appoint the County Administrator as interim Coordinator of Emergency Management.

Supervisor Clinger – aye

Supervisor Gardner – aye

Supervisor Allen – aye

Supervisor Gerald – aye

Supervisor Ingram – aye

Mr. Daniel G. Campbell and Ms. Joan Healy next appeared before the Board concerning an appeal of the Planning Commission's decision to deny their family subdivision request.

Mr. Campbell – I thank you again for allowing us time on your agenda to hear our appeal on the Planning Commission's decision to disapprove our family subdivision plat. I hope that you've had a chance to read the letter we submitted. In recapping, we do want to execute a family subdivision plat upon 50 acres that my wife currently owns to proceed with building of a home. Previously, we'd been before you requesting a variance of that exception. At that point in time, it looked like we weren't going to get approval from any of the neighbors that own property along the road that we currently use to give us the 20' easement that the ordinance requires. So, consequently our request for variance was disapproved by the Board because of the width of the right-of-way that we currently have. I just wanted to remind the Board that we currently have a right-of-way on an existing 12' road that we have used ever since we've had the property. Five other houses also use that road for their primary and sole access to their property. We have gone through the whole process of getting house plans, we have a well drilled, we have a septic system permit, the site is cleared and a number of improvements have been made in the hope of getting our home built. We do currently have a 911 address for the road that we currently use which is Raindance Road. We have gotten a letter from VDoT approving the entrance of that road onto the state road, Roger Road. So now, I guess the question is, we didn't meet the letter of the ordinance previously when we requested the variance. We feel like now we have met the letter of the ordinance because we've obtained permission for a 20' easement from one of our neighbors, Mr. Luke Staengl and this would involve coming in from the other direction and crossing the Little River with that easement. Read letter from Mr. Staengl:

Dear Board Members,

This letter confirms that I have granted a 20 foot easement to Daniel G. Campbell and Joan M. Healy, which runs through my property on Dobbins Farm Road to their property. With this easement it would appear that they have fulfilled all of the requirements of the Floyd County Subdivision Ordinance so that they can build their home on the 50 or so acres they own adjoining our property.

I have know them for many years, they are very good people, and I am in full support of their Family Subdivision plat and home building project. I have a keen interest in helping provide more access to their property so that people can cross easily from our side to theirs. Of course, we would proceed with such plans only after obtaining any needed permits from the various agencies involved.

I urge you to consider this appeal favorably and please vote to grant them the needed permission so that they can proceed with the construction of their home. They have been waiting for a long time to do this.

Yours Truly,
Luke Staengl

Mr. Campbell – we do have permission to get a legal deeded easement from his property across the Little River to our property where our property lines join. In order to alleviate any concerns about crossing Little River and obtaining necessary permits for this crossing, we brought along Mr. Thom Leedom who is a consultant who has previous experience in developing permits for people crossing rivers and such. I'd like for him to have an opportunity to speak on our behalf. I guess the bottom line is, previously we didn't meet the letter of the ordinance. We feel like we have done everything we can do now to meet the letter and intent of the ordinance and we ask for your approval of our Family Subdivision and based upon the fact that we do now have a 20' easement. I appreciate your time and urge you to vote yes and overturn the decision of the Planning Commission.

Mr. Thom Leedom, consultant, next appeared before the Board. He read the following letter: I live in the Indian Valley section of Floyd County. After 33 years working as an ecologist for the Army Corps of Engineers, I retired from Federal Services in February 2008. The last 22 of those years I spent operating their Regulatory Field Office in Christiansburg, Virginia. I was responsible for all permitting and enforcement activities within Floyd County as well as the surrounding 12 counties. I subsequently started a private consulting business, Blue Ridge EcoLogical Services, LLC, and am offering my expertise in all facets of the permitting issues, as they may relate to the easement project, for Danny Campbell and Juniper Healy. I have comprehensive knowledge of the Corps and DEQ regulations and will provide technical evaluations and coordination with all Federal/State agencies to obtain comments and any and all permits, if needed, prior to the commencement of their project within the Little River. Projects involving the crossing of streams are routinely approved by the Federal/State agencies for the construction of road crossings across waterways (creeks and rivers). I have personally overseen numerous stream crossing projects that have been approved in Floyd County by these agencies. Several examples of various crossings include: Mr. Chester Janney was permitted a culverted crossing to access his farm; Mr. Earl Frith was permitted a multi-span bridge across the Little River to access an additional parcel of land; Mr. Terry Thompson was permitted two culverted crossings to access his subdivision off Route 615 (adjacent to the Little River); and just downstream of the Campbell/Healy project Mr. Steve Wagner has a culverted crossing of the Little River to access his parcel of land through an easement across the property of Jonathan Rogers (Mr. Wagner is currently in the process of obtaining a permit to replace the existing crossing). In addition, there are numerous individuals (property owners, farmers, recreational users, etc) that have created fords through the waterways to access properties, in lieu of constructed crossings; and are not required to obtain any Federal/State permits, if for personal use. I hope this information can assist in your decision making process. You may contact me by phone or e-mail if additional information is required (numbers provided).
Sincerely,
Thom Leedom

At the Planning Commission meeting, two points of conversation came up. One of them was the use of fords and whether they required permits or not. After the meeting, I contacted the local DEQ representative and he verified that if you are using it for personal use and not construction access, you would not be required to get a permit. Farmers are also included under this. There are numerous places in the County where property is accessed by fords. The two laws that are applied in this are the Rivers and Harbors Act of 1899 as well as Section 4 of the Clean Water Act which was enacted in 1975. Both of these laws are congressional, and have been in place for quite a while.

Mr. Campbell – I'd also like to point out that this revised plat that we have, in developing that plat, our surveyor John Lewis, was working very closely with Ms. Martin in making sure that everything was in place the way it should be on that plat for your approval. I guess the red flag that came up was that the Little River needed to be crossed, so hopefully Thom's comments will alleviate some of your concerns about that. I would point out also, at this point in time, we don't have the funds, desire or means to develop this easement into a roadway, we currently have a road that we use that is quite acceptable for our use and maintained for emergency vehicles and such. Unfortunately it is 12', not 20', or else we wouldn't be here today.

Mr. James Shortt, Attorney – I have been asked by the Campbells to provide legal representation to them in the event that this Board sees fit to approve the easement, I will be drafting the easements for them, legal paperwork, loan closing, etc. They anticipate placing a \$300,000 structure on this property, obviously that would have some side benefits to the County as far as the tax base goes. They plan on using local contractors which should have some bearing on the Board's decision. I was asked to come today because there were certain legal matters brought up at the Planning Commission meeting that Mr. Campbell and Ms. Healy thought should be addressed here today. There are certain rules of interpretation of statutes and ordinances and I'll just highlight those. One is that laws need to be open to interpretation where it is susceptible to two or more interpretations or where reasonable minds could differ as to its interpretation. That is a premise that I ask the Board to keep in mind. Also, a rule of law is that whenever a statute or ordinance is capable to interpretation, one resulting in an injustice and the other resulting in justice being carried out, the interpretation resulting in justice should be followed. Perhaps a better way of putting that and I quote is "statutes imposing a burden on the public where there is an ambiguity should be construed strictly and in their favor", in other words in favor of the public. I had a law school professor who was a Virginia Supreme Court justice who would summarize this type of thing in baseball terms; he would say if there is a tie, the tie goes to the runner. That's basically what we're looking for here today. Your ordinance defines an access easement as a means of private access to a family division or agricultural subdivision resulting from the right of the use of a portion of that property. The ordinance doesn't say that the landowner shall use that road, just that they have a right to use the road. The Campbells don't anticipate using this road, quite frankly. They have a 911 address in from another way. But the ordinance itself says "shall have a right of use of the road". I would argue to you that this has been satisfied because Mr. Staengl has indicated that he would give a right to use of his property. 4-2-3-B says an access easement shall be 20' in width and "any drive or road within it shall be maintained in a condition passable in all weather by emergency vehicle". It doesn't say that you have to build a roadway to it. It says that once you make the step of building that roadway, it has to be emergency accessible. It doesn't say it shall be built, it just

says if you build. Mr. Cornwell and I use a legal encyclopedia called Michie's Jurisprudence in Section 60 on statutes it specifically says the word "any" is an indefinite word. Again, an indefinite word and the tie should go to the runner and that this Board should interpret it as if any road is built, then they build it to standards. 5-4-18 Family Subdivisions access, may be in the form of an access easement. We discussed what an access easement is; it is the right to use the property which is what they have here. It is our position that we have met the ordinance. Certainly there is ambiguity there, I could see where an argument could be made that well perhaps you should have to build a road because you're talking about access easements, but the ordinance itself doesn't say that and we hope that you'll be umpires in favor of Mr. Campbell and Ms. Healy.

Mr. Campbell – with all that being said, we're just trying to meet the intent of the ordinance and that's what we've been trying to do all along. I sort of hate to admit it, but your decision to turn our variance down was probably a good one because obviously we had another option which we found and put it into effect. We just didn't see it that way at first. We hope you will approve our family subdivision plat. We thank you for your time.

On a motion of Supervisor Allen, seconded by Supervisor Clinger, and carried, it was resolved to approve the appeal of Daniel G. Campbell and Joan Healy as related to the decision of the Floyd Planning Commission on their family subdivision.

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

In reference to the Board's question from the Floyd County Historical Preservation Trust on tax exemption, Mr. Cornwell commented that there is a statute covering what information needs to be provided to the County to consider whether or not to exempt taxes and the requirement for the public hearing. There are eight questions listed in the Code section that the organization needs to answer and provide information on same.

It was the consensus of the Board for the County Attorney to develop a draft application form for the Board's review next month for their consideration on whether to hold a public hearing on the request.

In discussion of the invitation from the Town Council on a joint meeting to discuss the tourism plan, it was the consensus of the Board to receive the Council's comments on the plan first and then discuss again.

Agenda Item 7d – Schedule of work sessions on FY12 budget – consensus of the Board was to hold the first session on February 23 at 7:00 p.m.

On a motion of Supervisor Allen, seconded by Supervisor Gerald, and unanimously carried, it was resolved to adjourn to Wednesday, February 23, 2011 at 7:00 p.m.

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