

BOTETOURT COUNTY BOARD OF SUPERVISORS
MINUTES OF FEBRUARY 28, 2023

The regular meeting of the Botetourt County Board of Supervisors was held on February 28, 2023, at the Botetourt County Administration Center, 57 S. Center Drive, Daleville, Virginia, beginning at 12:30 p.m.

PRESENT: Dr. Donald M. Scothorn, Chair (arrived at 12:40 p.m.)
Mrs. Amy S. White, Vice Chair
Dr. Richard G. Bailey
Mr. Steve Clinton
Mr. Billy W. Martin, Sr.

OTHERS PRESENT: Mr. Mike Lockaby, County Attorney
Mr. Gary Larrowe, County Administrator
Mr. David Moorman, Deputy County Administrator
Mr. Jonathan Lanford, Assistant County Administrator
Mrs. Lorie Bess, Deputy Clerk to the Board

Mrs. White called the meeting to order at 12:30 p.m.

CONSIDER APPROVAL FOR BOARD MEMBER TO ELECTRONICALLY PARTICIPATE IN MEETING

Mrs. White informed the Board that she had received written notification from Dr. Scothorn that he would be unable to attend the 6:00 p.m. meeting in person due to a medical procedure and requested approval to attend remotely from home. Mrs. White explained the by-laws require a vote to approve a Board member's remote attendance.

MOTION: That the Board approve Donald M. Scothorn to attend the 6:00 p.m. meeting remotely from home.

MOTION: Mr. Martin

SECOND: Dr. Bailey

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Mrs. White

ABSENT: Dr. Scothorn (arrived at 12:40, immediately following the vote)

RESOLUTION #23-02-01

On motion by Mr. Martin, seconded by Dr. Bailey, the Board went into Closed Session pursuant to the Code of Virginia, 1950, as amended, to discuss the following:

- Section 2.2-3711.A.3 - Acquisition or disposition of real property for economic development purposes where discussion in open session would adversely affect the County's bargaining position or negotiating strategy namely concerning the Amsterdam (Greenfield), Blue Ridge, Buchanan, Fincastle, and Valley districts.
- Section 2.2-3711.A.5 - Discussion on prospective businesses or industries or the expansion of existing businesses or industries where no previous announcement has been made of their interest in locating or expanding facilities in the community in the Amsterdam (Greenfield), and Blue Ridge (Jack Smith Park), and Fincastle Districts.

- Section 2.2-3711.A.7 - Consultation with legal counsel pertaining to actual or potential litigation, where such consultation or briefing in an open meeting would adversely affect the negotiating/litigating posture of the County regarding the case Condon et al. v. Botetourt County Board of Supervisors, et al., pending in the Botetourt County Circuit Court.
- Section 2.2-3711.A.8 - Consultation with legal counsel regarding specific legal advice related to Orchard Lake impound maintenance in the Amsterdam District.

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White
RESOLUTION #23-02-02

Dr. Scothorn called the meeting back to order at 2:00 p.m.

On motion by Dr. Bailey, seconded by Mr. Martin, that the Board return to regular session from Closed Session and adopted the following resolution by roll-call vote.

BE IT RESOLVED, that to the best of the Board members' knowledge only public business matters lawfully exempt from open meeting requirements and only such matters as were identified in the motion to go into Closed Session were heard, discussed or considered during the Closed Session.

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White
RESOLUTION #23-02-03

Those in attendance recited the Pledge of Allegiance. Dr. Scothorn led a moment of silence asking that everyone remember our local and national leaders.

INTRODUCTION

Sean Nester was introduced as the new Erosion and Sediment/Stormwater Management Program Administrator.

RECOGNITIONS

Major Boone and Fire Chief Jason Ferguson offered a presentation highlighting the recent training of the Rescue Task Force. Major Boone and Chief Ferguson recognized Rescue Task Force Members Steven Honaker, Kevin Smusz, Jeff Powell, Jonathan Rodgers, Nathan Shields, and Kayla Jones.

Girls' Fire Camp Award Recognition

Chief Ferguson reported we recently received the Girls Fire Camp 2022 Summit Award and he attended the awards ceremony a few weeks back. He noted the folks that evaluated for the awards and the criteria were from California. The Chief reviewed a PowerPoint presentation highlighting the Camp. He noted the Girls' Fire Camp will be featured in the March 2023 Cooperative Living Magazine.

Girls' Fire Camp attendees included: Kayla Jones, Caitlin Mitchell, Brendan Majors, Jacob Gibbs, Garry Fisher, Laura Kate Jennings-Brink, Matthew Scott, LeAta Jackson, Christina Blankenship, Donnie Blankenship, Aaron Whitney, Brandon Golla, Annah Bernier, Cari Abner, Lilly Carrillo, Carol Bernier, Kourtnie Orth, Jonathan Rodgers, Nathan Shields, Elizabeth Leffel, Brigid Hickey, Catherine Amos, Hunter Smith, Sarah Pugh, Jenna Pugh, Ben Meadows, Daniel Murray, Adam Smith, Michael Simpson, Justin Schmidt, Aaron Altice, Brendan Kiser, Dylan

Setliff, Kirk Taylor, Kyle Sperber, Melissa Ferguson, Jason Ferguson, Jeff Powell, Claire Powell, Grace Carroll, and Ottilia Lewis

The Chief informed everyone the 2023 Fire Camp registration opens on April 3 and is open for 1st – 10th graders with 60 spots available for the June 24 Camp.

CITIZEN COMMENT PERIOD

Ann Condon, 5520 McKinney Hollow Road, read the following statement: “Good afternoon, Supervisors: As you are aware, the Federal Aviation Administration requires any structure 200 feet and over must file Form 7460 (application) for each structure to determine if that structure is a hazard or no hazard to air navigation. It must be factual with no mistakes. If there are any mistakes, the FAA is required to terminate those applications on Form 7460 regardless of falsification of information whether intentional or unintentional. Since 2015, there have been three times Rocky Forge LLC has filed forms 7460 which become known as Aeronautical Studies. The current study is 2022-WTE-243-OE representing 13 structures 655 feet above ground level. The FAA investigative process also requires an Open Comment Period or Notices to be sent for anyone to submit a comment between March 24 and April 30, 2022. The Notice is a 5 inch by 6-inch green postcard which by law, Botetourt County, VA must receive a Notice too; otherwise, the Open Comment Period must be redone as it happened previously in 2020 delaying a decision by the FAA since Botetourt County did not receive Notice on the second set of applications. Each page is numbered 1-7 at the bottom. Please note the following:

1. Page 1, Form 7460, 2019 naming Charlie Johnson highlighted in yellow
2. Please note City as Eagle Rock highlighted in yellow
3. Please note Adjoining County as Botetourt County, VA highlighted in yellow
4. The information is correct.

1. Page 2, Form 7460, 2022 naming Karlis Povisils highlighted in yellow
2. Please note City as Clifton Forge highlighted in yellow
3. Please note adjoining County as Botetourt County, VA highlighted in yellow

Clifton Forge is self-governing which is encircled by Alleghany County not Botetourt County. By federal law, this is a mistake which on three occasions were reported to the FAA without any action taken on their part. Regarding the Required Notices to Botetourt County, two were sent by the FAA on March 24, 2022.”

Dave Condon, 5520 McKinney Hollow Road, read the following statement:

“They have violated federal law. They needed to file new applications. The FFA does nothing about it. Two federal laws have been broken.

1. Page 3 shows a Covington address which is the Alleghany County Administrator’s Office. Big Mistake!
2. Page 5 shows the correct address for Botetourt County, VA
3. Page 7 is a letter from Mr. Gary Larrowe dated June 2, 2022 states, “This letter serves to confirm that as of the date of the letter, Botetourt County has not received a Notice for Public Comment for the above referenced project.” This is referenced to FAA Aeronautical Study 2022-WTE-243-OE and Rocky Forge LLC. This was obtained under the Freedom of Information Act.

I reported this to the FAA several times advising a new Open Comment Period needed to be redone. The FAA kept saying it was sent out insinuating I was a liar. Does this mean Mr. Larowe's letter is a LIE by the FAA? Prior to 2019, I had confidence in the FAA, since the, I have no confident in the FAA. Without a reasonable cause, the issuance of NOTAMS grounded all aircraft on January 11, 2023. In addition, there have been near misses of aircraft landing or takeoff due to the incompetence of FAA controllers as reported by the media recently! Dave Condon, Member, Virginians for Responsible Energy, LLC"

Eric Claunch, 2817 Mount Moriah Road read the following statement: "Good afternoon, Supervisors. I'm speaking today on the lack of adequate county response to a citizen complaint related to the Rocky Forge Wind project. On 10 January, someone working for the Timmons' Group Engineering firm on the Rocky Forge project made an off-hand comment that he was staking roads to be widened, and that the roads were being widened wider than he was marking them. That sounds like construction to me! Staking roads is not something performed for timbering operations, and timbering operations is the only county activity currently permitted at the Rocky Forge site. Due to this comment, a citizen complaint was filed with the Permitting office shortly after, requesting a site visit to obtain "ground truth". When no county response occurred after more than 10 days, the citizen asked for status and the response on 7 January was basically "No site visit yet...we're waiting for the new Soil & Erosion hire". Finally, on 14 February, over two weeks later, the county responded that a site visit was conducted and "no violations or issues were observed". This response contained no supporting evidence, no substantiation, no photos, no description of areas observed, and no site visit report. And today, two weeks later, still no site visit report has been shared with the citizen who complained. This is wholly unsatisfactory. A citizen complaint was lodged for what appears to be construction activity without a county permit. The significant time delay (over three weeks between the complaint and the site plan visit) could easily have allowed the activity to be doctored, minimized, or otherwise covered up. And the absence of a formal report to this citizen complaint, specifically stating the areas observed and what was seen, is an astounding lack of necessary oversight. It is as if the county permitting office is attempting to turn a blind eye to the ongoing activity there and trying to keep the public from knowing about it. When a citizen submits a complaint of possible violation, county action should occur much faster than happened here, and a formal report, supporting the overall assessment, should always be written, provided to the complainant, and become part of the county record. I respectfully request the Board of Supervisors immediately rectify this lack of oversight and accountability. A formal report of the Rocky Forge site visit should be made public within the week, including all roads observed and not observed, and including photos substantiating the conclusion of "no evidence of violations or issues observed". Thank you for your time and attention to this extremely important issue."

Danny Goad, 4766 Read Mountain Road Mr. Goad asked what has been done to clean up the accountability between the Board, the Economic Development Authority, and the Roanoke Valley Broadband Authority. He stated last June a settlement was agreed to for misappropriation of \$200,000 in funds. He asked what additional measures have been put in place for this and where would these funds be held.

Steve Lovell, 4773 Read Mountain Road Mr. Lovell stated he had been a resident of Botetourt for 59 years. He reported there was an area in Cloverdale that could use a sewer connection because Mr. Patel would like to do some development there and also Clayton Homes is interested, but there are sewer issues. He reported his neighbor, Roberta Rogers, needs her road paved if possible and asked the Board to have VDOT take a look at it. He stated a friend,

Tommy Gibson on Gibson Lane, would like to see if County Waste could move the dumpster from Cloverdale to Route 11 for recycling. He also reported Boyd Paitsel is interested in remote control planes and space for that. He stated the development of Robert Young is a good one. He offered a special thanks to Dr. Scothorn and the Board for how well they have represented everyone.

CONSENT AGENDA

- a. Approval of Minutes of regular meeting held on January 24, 2023
- b. Refund of taxes for Heavenly Haven
- c. Refund of taxes for Cindy Bane
- d. Consideration of MOU with Roanoke County regarding joint signage

MOTION: That the Board approve the consent agenda items, as presented.

MOTION: Mr. Martin

SECOND: Mrs. White

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White

RESOLUTION #23-02-04

APPROVAL OF TRANSFERS AND ADDITIONAL APPROPRIATIONS

TRANSFERS - Tony Zerrilla, Director of Finance, stated for the month of February, there were two transfer requests, one being a recurring quarterly item, and the other being a transfer of budgeted funds from a generic salary adjustment account to respective department accounts to cover mid-fiscal year compensation adjustments.

The following transfers were requested for the reasons indicated.

1. Transfer \$893.23 to Sheriff's Department – Vehicle & Power Equipment Supplies, 100-4031200-31200-6009, from various departments as follows for vehicle repairs at the County Garage:
 - \$127.76 Animal Cont.–Veh. & Power Equip Supp., 100-4035100-35100-6009-000
 - \$ 70.89 Comm. Devel.– Rep. & Maint. Veh. 100-4081200-81200-3312-000
 - \$533.80 Purchasing – Rep. & Maint. Vehicles, 100-4012530-12530-3312-000
 - \$ 24.14 Library – Rep. & Maint. – Veh. 100-4073100-73100-3312-000
 - \$119.68 Maint. – Rep. & Maint. Veh. 100-4043000-43000-3312-000
 - \$ 16.96 Van Program – Rep. & Maint. Vehicles, 100-4071500-71500-3312-000
2. Budget transfer in the amount of \$39,221.00 from Salary Adjustments, 100-4091000-92500-0000-000 to Various Departments, 100 Fund. These are salary adjustments effective January 2023.

PASS-THRU APPROPRIATIONS – The pass-thru appropriations represent expenditure reimbursements, insurance funds, donations, contributions, miscellaneous receipts, opioid settlement funds, and state grant funds, most notably \$806,331.24 from a Virginia telecommunications initiative for their portion of grant funds to date for the Lumos Broadband Project #1. These are the remaining portion of State funds which will be passed along to Lumos from the Economic Development Authority.

There were ten pass-through items and one regular appropriation, as follows:

1. Additional appropriation in the amount of \$586.75 to Library – Capital Outlay – All Other Capital, 100-4073100-73100-8012-000. These are donated funds (\$500.00)

- received from Kristina Patterson for Buchanan Library renovations and a reimbursement (\$86.75) of printing fees.
2. Additional appropriation in the amount of \$2,000.00 to Fire & EMS – Other Operating Supplies, 100-4035500-35500-6014. This is for contributions made BY Steel Traders Shipping directly to Botetourt Fire & EMS.
 3. Additional appropriation in the amount of \$2,874.32 to Fire & EMS – Other Operating Supplies, 100-4035500-35500-6014. This is a check received from World Triathlon Corporation.
 4. Additional appropriation in the amount of \$500.00 to Fire & EMS – Repair & Maintenance – Vehicles, 100-4035500-35500-3312. This is an insurance reimbursement.
 5. Additional appropriation in the amount of \$75.00 to Fire & EMS – Buchanan Fire & Rescue – Volunteer Incentives, 100-4035500-35530-5922. These are contributions made directly to Buchanan Fire Department.
 6. Additional appropriation in the amount of \$2,727.99 to General District Court – Professional Services – 100-4021200-21200-3100. These are year-to-date funds representing partial reimbursement of court-appointed attorney costs.
 7. Additional appropriation in the amount of \$89,121.83 to Opioid Abatement Settlement – Fund 256 – General Expenditures, 256-5003308-00000-0000-000. These are funds received to date through opioid settlement litigation, and the settlement agreement addresses the uses and limitations of the funds received.
 8. Additional appropriation in an amount not to exceed \$806,331.24 to Transfer to EDA, 100-4091800-91800-3800. This is for the balance remaining of VATI State grant funds for the Lumos # 1 Broadband Project. These funds will be passed through per the Agreement from the State to the County and then to the EDA, which will disburse the funds to Lumos.
 9. Additional appropriation in the amount of \$3,278.00 to the following Sheriff's Department accounts: \$600.00 to Other Operating Supplies, 100-4031200-31200-6014, \$8.00 to Office Supplies, 100-4031200-31200-6001, \$696.47 to Vehicle Supplies, 100-4031200-31200-6009 and \$1,973.53 to Subsistence & Lodging, 100-4031200-31200-5530. These are funds received for contract payments, FOIA expenses, and extradition expenses.
 10. Additional appropriation in the amount of \$2,921.00 to the following Correction & Detention accounts: \$2,584.28 to Medical and Lab Supplies, 100-4033100-33100-6004, and \$336.72 to Uniforms, 100-4033100-33100-6011. The first item is for medical reimbursements from co-pays and Craig County regarding inmate medical care, and the second is for contract payments.

REGULAR APPROPRIATIONS

11. Additional appropriation in the amount of \$139,650.60 to CIP – Circuit Courthouse Renovation, 100-4094000-21600-8012-415. These funds will be used to cover the continuation of pre-construction services for the project.

MOTION: That the Board approve the transfers and additional appropriations, as presented.

MOTION: Dr. Bailey

SECOND: Dr. Scothorn

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White

RESOLUTION #23-02-05

APPROVAL OF ACCOUNTS PAYABLE AND RATIFICATION OF THE SHORT ACCOUNTS PAYABLE LIST

Total expenditures being requested for approval for February for the General Fund including debt service and all other funds was a combined total of \$1,253,652.67. Payable disbursements of note for the month are as follows:

CIP – CCH Renovation \$188,440 paid to Architectural Partners for project services through December 2022.

MOTION: That the Board approve the accounts payable and short accounts payable list for February, as presented.

MOTION: Dr. Scothorn

SECOND: Mr. Martin

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White

RESOLUTION #23-02-06

CONSIDER RESOLUTION APPROVING PARTICIPATION IN PROPOSED SETTLEMENT OF OPIOID-RELATED CLAIMS

The resolution designates Botetourt County’s participation in the proposed settlement of opioid-related claims against Teva, Allergan, Walmart, CVS, and their related corporate entities, and directs the County Attorney, or outside counsel, to execute the documents necessary to effectuate the County’s participation in the settlements.

RESOLUTION

A RESOLUTION OF THE BOTETOURT BOARD OF SUPERVISORS APPROVING OF THE COUNTY’S PARTICIPATION IN THE PROPOSED SETTLEMENT OF OPIOID-RELATED CLAIMS AGAINST TEVA, ALLERGAN, WALMART, WALGREENS, CVS, AND THEIR RELATED CORPORATE ENTITIES, AND DIRECTING THE COUNTY ATTORNEY AND/OR THE COUNTY’S OUTSIDE COUNSEL TO EXECUTE THE DOCUMENTS NECESSARY TO EFFECTUATE THE COUNTY’S PARTICIPATION IN THE SETTLEMENTS

WHEREAS, the opioid epidemic that has cost thousands of human lives across the country also impacts Botetourt County by adversely impacting the delivery of emergency medical, law enforcement, criminal justice, mental health and substance abuse services, and other services by Botetourt County’s various departments and agencies; and

WHEREAS, Botetourt County has been required and will continue to be required to allocate substantial taxpayer dollars, resources, staff energy and time to address the damage the opioid epidemic has caused and continues to cause the citizens of Botetourt County; and

WHEREAS, Botetourt County has filed suit against Teva, Allergan, Walmart, Walgreens, CVS, and certain of their related corporate entities for their role in the distribution, manufacture, and sale of the pharmaceutical opioid products that have fueled the opioid epidemic that has harmed Botetourt County; and

WHEREAS, the County’s suit seeks recovery of the public funds previously expended and to be expended in the future to abate the consequences and harms of the opioid epidemic; and

WHEREAS, settlement proposals have been negotiated that will cause Teva, Allergan, Walmart, Walgreens, and CVS to pay billions of dollars nationwide to resolve opioid-related claims against them; and

WHEREAS, the County has approved and adopted the Virginia Opioid Abatement Fund and Settlement Allocation Memorandum of Understanding (the "Virginia MOU"), and affirms that these pending settlements with Teva, Allergan, Walmart, CVS, and Walgreens shall be considered "Settlements" that are subject to the Virginia MOU, and shall be administered and allocated in the same manner as the opioid settlements entered into previously with the Distributors and Janssen; and

WHEREAS, the County's outside opioid litigation counsel has recommended that the County participate in the settlements in order to recover its share of the funds that the settlement would provide; and

WHEREAS, the County Attorney has reviewed the available information about the proposed settlements and concurs with the recommendation of outside counsel.

NOW THEREFORE BE IT RESOLVED that the Botetourt County Board of Supervisors, this 28th day of February 2023, approves of the County's participation in the proposed settlement of opioid-related claims against Teva, Allergan, Walmart, Walgreens, CVS, and their related corporate entities, and directs the County Attorney and/or the County's outside counsel to execute the documents necessary to effectuate the County's participation in the settlements, including the required release of claims against settling entities.

MOTION: That the Board approve a resolution participating in the proposed settlement of opioid-related claims and directs the County Attorney and/or County's outside counsel to execute documents necessary to effectuate this participation, as presented.

MOTION: Dr. Bailey

SECOND: Mr. Martin

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White

RESOLUTION #23-02-07

OLD COUNTY JAIL LEASE AGREEMENT

Mr. Jon Lanford provided an update to the Board on the status and progress of the lease agreement between CarDon Development and Botetourt County related to the Old Jail in Fincastle. A copy of the draft lease agreement and plat were provided to the Board.

Mr. Clinton stated there were some things that he felt still needed attention with the agreement. He acknowledged his suggestions were a lot to consider and some may or may not be valid.

Mr. Clinton offered the following for consideration:

- Some type of dispute resolution.
- Phase 3 funding sources are not identified. No wording to designate funding source(s).
- A Business Plan is mentioned but not defined.
- There is no overall timeline. No designation of when each phase should be completed.
- Clarification for grounds/landscaping/future modifications on the buildings on the property.

Mr. Lockaby asked if the Board was comfortable with a non-binding resolution clause. No one was opposed.

Mrs. White asked if the Town of Fincastle is supportive of this. Mayor Mary Bess Smith was in the audience and she replied the Town is in support of this project.

MOTION: That the lease agreement with CarDon Development be approved contingent upon the County Administrator and County Attorney reviewing these comments and taking action as they deem necessary.

MOTION: Mr. Clinton

SECOND: Dr. Scothorn

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White

RESOLUTION #23-02-08

VDOT MONTHLY UPDATE

Brian Blevins, resident engineer, reviewed the following report:

Construction Project Updates

- 0220-011-786 (UPC 105543) Route 220 Safety Improvements – South of Route 43 to South of Iron Gate
 - Project has been completed. Expect occasional erosion and sediment control maintenance activities.

Yearly Resurfacing Contracts

- Prep Work:
 - Prep work for paving on the secondaries and primaries has wrapped up and will resume in the spring.

Traffic Engineering Work Orders

- A TE work order was submitted requesting recommendations for potential sight distance improvements at the intersection of Route 687, Elburnell Drive, and Route 726, Lapsley Run Road.
- A TE work order was submitted requesting evaluation of Route 634, Cedar Lane, for potential installation of safety and advisory signs.

Land Development Projects & Land Use Permits

- **Site Plan Reviews:**
 - APEX Wind Farm Plans (on-site plans)
 - 3rd submittal received on January 23, 2023.
 - Plans are currently under review.
 - APEX Wind Farm Dagger Spring Road Plans (off-site plans)
 - 3rd submittal received on January 23, 2023.
 - Plans are currently under review.
 - Daleville Town Center Phase 5 Subdivision
 - 2nd review comments sent to Botetourt County on January 30, 2023.
 - Waiting on plan resubmittal.
 - Daleville Town Center Hampton Inn
 - 2nd submittal received on February 10, 2023.
 - Plans are currently under review.
 - Roanoke Apartments
 - 1st review comments sent to Botetourt County on December 19, 2022.
 - Waiting on plan resubmittal.

- WVWA Sanderson Drive WL Replacement
2nd submittal received on February 3, 2023.
Plans are currently under review.
- WVWA Iron Gate WL Replacement
1st review comments sent to Botetourt County on January 31, 2023.
Waiting on plan resubmittal.
- Caldwell Mountain Estates
1st submittal received on January 23, 2023.
Plans are currently under review.
- The Jackson at Ashley
3rd submittal received on January 30, 2023.
Plans are currently under review.
- Dollar General (19311 Lee Highway)
1st review comments sent to Botetourt County on February 13, 2023.
Waiting on plan resubmittal.
- **Permits Issued:**
 - Permits issued between 01/12/2023 –02/13/2023:
 - 5 Utility Permits
 - 2 Private Entrances
 - 1 Maintenance of Traffic

Residency Projects

- **Highland Drive**
 - Project is complete other than paving and that is scheduled for the week of 2/20/23. There may be some additional E&S work but everything else should be completed.

Area Headquarters In-House Projects

- **Planned Routine Maintenance Work:**
 - Blue Ridge Area:
Grading various gravel roads, adding stone where needed and dust control where necessary.
Mowing/trimming on primaries and some secondary roads.
PMSS 2022 Routes Completed.
Starting on PMSS 2023 Routes.
 - Buchanan Area:
Grading various gravel roads, adding stone where needed and dust control where necessary.
PMSS 2023: patching on Route 628, Prease Road.
Ditching along various routes:
 - Route 628, Prease Road.
Mowing/trimming on secondary roads:
 - Hand cutting on Route 635, Timber Ridge Road.
 - Hand cutting on Route 641, Oak Ridge Road.
 - Mow trimming on Route F054, Frontage Road.
 - Eagle Rock Area:
Grading various gravel roads, adding stone where needed and dust control where necessary. Grading will continue when conditions allow.
Mow trimming will resume when our machine is repaired.
 - Fincastle Area:

Grading various gravel roads, adding stone where needed and dust control where necessary.

Mow trimming on primaries and some secondary roads.

o Troutville Area:

Grading various gravel roads, adding stone where needed and dust control where necessary.

Ditching, patching various work orders throughout the Troutville area.

Mow trimming on primary routes and some secondary roads.

Machine shoulders on Route 11 (Lee Highway) and Route 220 (Roanoke Road).

Shoulder work along Route 11 (Lee Highway) and Alt-220 (Cloverdale Road).

Pipe replacement on Route 600 (Breckinridge Mill Road) and Route 606 (Grove Hill Road) intersection.

Slide removal on Route 605, Sanderson Drive.

Ditching on Route 657, Rainbow Forest Drive. Then cutting brush per PMSS 2023.

Pipe replacement on Route 805, Hastings Lane.

Mow trimming on Route 665, Country Club Road.

Pipe replacement on Route 1413, Knollwood Drive.

Pipe replacement Route 1431, Heather Lane.

Tree trimming and patching in the Stratford Subdivision.

Mr. Blevins also noted the speed limit sign would be moved to the opposite side on Lowe Street.

Mr. Martin requested Mr. Blevins check on the road that was mentioned by a citizen earlier in the meeting, for possible paving. (Rogers Lane, beside the post office in Cloverdale).

Mr. Clinton asked if they had looked at the truck traffic on Catawba Road. Mr. Blevins replied there was a citizen that had concerns about the truck traffic, but it would be nearly impossible to restrict truck traffic on that road and local law enforcement would agree. He stated there really isn't anything they could do for this concern.

Mrs. White asked if Mr. Blevins would attend an upcoming Buchanan Town Council meeting to report the speed limit would not be changing on Route 11. He replied he would.

Mrs. White asked about the timeline for the Six-Year Plan. Mr. Blevins replied the process would begin in March and/or April.

Dr. Scothorn recognized Delegate Terry Austin had joined the meeting and asked him to offer a report from the General Assembly. Delegate Austin stated he was a little disappointed to have left Richmond without a budget but they could not do anything without determining tax revenues. He stated he wasn't sure if a budget would be adopted before they reconvene the session on April 12. He reported they did pass 1,600 out of 2,600 bills, including eliminating uninsured vehicle insurance and having tighter restrictions on farm use tags through the DMV. He stated a lot of good legislation had been passed and he thanked the Board for the work they do.

YMCA PRESENTATION BY ROB LOUGH

Rob Lough, Executive Director of YMCA, offered a presentation showcasing the programs and activities the YMCA offers the community. He explained about 10 years ago there was a significant financial donor to build the YMCA, but it required a local County match, and Botetourt County stepped up. He offered his thanks to the Board for their support. He stated there is clearly a need for childcare in this area and last year the YMCA opened the Early Learning Center. The daycare provides a curriculum to prepare these children for their education, he noted. He stated the YMCA is the largest provider of childcare in the County and over 100 children participate in after-school programs.

He discussed the Y Splash swimming program. With this program, YMCA staff go to each elementary school and spend time with them discussing water safety, beach safety, etc. Then the kids go to the YMCA to get in the pool and they get to practice the things they have learned. At the end of the week-long program, kids get an evaluation. For kids that do not pass their week evaluation, the YMCA provides two months of free swimming lessons.

He stated the YMCA would hold their Youth Extravaganza Open House on April 15 and invited everyone to attend.

He noted there are also programs for older youth and senior citizens, such as, Lunch and Learn field trips and Pickle Ball is offered seven times per week. The YMCA is making our community stronger by investing in the lives of our citizens, he said.

He reported 19,000 people visited the YMCA last month to exercise. He shared a story of a lady who joined the YMCA when she turned 40 because she felt unhealthy due to her weight. She began to exercise and lost 110 pounds.

He stated the YMCA is the largest employer for individuals under age 18 in the USA and they take that responsibility very seriously.

In closing, Mr. Lough noted the YMCA offers financial assistance to those who qualify. He acknowledged the YMCA makes a positive difference in the community and he thanked his Board of Directors, Chief Operating Officer, and all YMCA staff. He also thanked the Botetourt County community for their support.

CONSIDER RESOLUTION OF SUPPORT FOR FREE AND OPEN PUBLIC WATERS

Mike Lockaby, County Attorney, reported that citizens had raised concerns about a lawsuit pending in Craig County, *Briar Oak Properties, LLC and Briar Oak Farms, LLC v. Virginia Marine Resources Commission and the Commonwealth of Virginia*, Civil Action No. CL-2244.

Mr. Lockaby explained with this case a landowner with land on both sides of Craigs Creek has challenged the Commonwealth's ownership of the streambed on the basis of the Virginia land office grant (not a King's Grant).

Mr. Lockaby further explained that one of the bases of the claim is that the Creek is not navigable. The owner has claimed in his pleadings that he has the right to exclude people from using the Creek. Citizens are concerned that the case would close the Creek, which is used by many people for travel and recreational purposes, as well as having the possibility of setting a precedent that would result in the effective closure of hundreds of miles of streams, creeks and rivers that have been used for various purposes throughout the Commonwealth for hundreds of years, including in Botetourt County.

**A RESOLUTION EXPRESSING SUPPORT FOR FREE AND
OPEN PUBLIC WATERS**

WHEREAS, the waterway known as Craigs Creek (the “Creek”) connects the town of New Castle, the seat of Craig County, to the unincorporated community of Eagle Rock in Botetourt County, and has been used between these communities for the purposes of trade, commerce and travel for centuries, and is navigable in fact; and

WHEREAS, the case of *Briar Oak Properties, LLC and Briar Oak Farms, LLC v. Virginia Marine Resources Commission and the Commonwealth of Virginia*, Civil Action No. CL-2244 (the “Case”), has been filed in the Circuit Court of Craig County; and

WHEREAS, in the Case, the Plaintiff has claimed, among other things, the right to “exclude others” from the Creek and the use of the same, thereby claiming the right to control passage and use of a navigable thoroughfare and damage the commerce and trade of Botetourt County (the “County”) and of the Commonwealth, and has claimed to persons using the Creek that they possess the same; and

WHEREAS, the common law of the Commonwealth preserves the right of the public to use and enjoy any stream which is being used or is susceptible of being used, in its natural and ordinary condition, as a highway for commerce, on which trade and travel are or may be conducted, and a change to such common law may have deleterious effects commerce, trade and passage on both Craig’s Creek and other navigable waters; and

WHEREAS, the tourism industry, including by use of waters for recreational activity and travel, is a significant industry in the County, and is recognized as such in the Comprehensive Plan for the County.

NOW THEREFORE, the Botetourt County Board of Supervisors hereby resolves:

1. Closure of Craigs Creek would damage the commerce, travel and trade of the County and the Commonwealth of Virginia, and the health, safety and general welfare of the inhabitants of the County and the Commonwealth, and the Board opposes any legal ruling that may result in such closure; and

2. The County deploras littering and illegal activity, whether carried out on private property or in or on navigable streams, and calls for prosecution of the same; and

3. The County Administrator is hereby authorized and directed to forward a true copy of this resolution to the County’s General Assembly delegation, and to such other persons as he determines may be able to assist in defending the interests of the Board and the rights of the public in the Case or the Creek; and

4. The County Attorney is hereby authorized and directed, in consultation with the Board and the County Administrator, to file such pleadings, including motions or briefs *amicus curiae* in the Case or in any appeal therefrom, as may be advisable to defend the interests of the Board and the rights of the public in the Case or the Creek; and

5. This resolution is effective upon adoption.

MOTION: That the Board approve the resolution, as presented.

MOTION: Mr. Clinton

SECOND: Mrs. White

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White

RESOLUTION #23-02-09

COUNTYWIDE APARTMENT MARKET ANALYSIS, PRESENTED VIRTUALLY BY ARIEL GOLDRING

Mr. Ariel Goldring, President of S. Patz and Associates, Inc., gave a presentation titled "Countywide Apartment Market Analysis, February 2023". His presentation included the cover letter shown below:

February 16, 2023

*Gary Larrowe
County Administrator
57 S Center Drive
Daleville, Virginia 24083*

Gary:

To follow is our summary market analysis to assess the current and projected demand for new apartment units and to provide relevant market, demographic, and economic data for evaluating apartment market demand in the County. Although the focus of this report is Botetourt County, the apartment market is regional and thus data is provided for the entire to rental market area, not only Botetourt County.

The report shows a strong apartment market in the Roanoke Region and in Botetourt County in particular, with a low vacancy rate of 2.0 percent, when apartments in lease-up are excluded. The newer, most competitive area apartment complexes continue to maintain a low vacancy rate, with only 21 vacant units for the competitive market of nearly 4,920 apartment units, also excluding lease-ups. This low vacancy rate is despite the fact that District Vue recently delivered 108 apartment units, the Aspen recently delivered 42 apartment units and the View at Blue Ridge Commons recently delivered 60 apartment units. These new apartments had no negative impacts on the competitive rental market. The two Botetourt County Apartments, Daleville Town Center and Reserve at Daleville, are routinely at fully occupancy with rents at the top of the market.

Of note is that the Roanoke Region is expected to generate continued job growth, with 2,500 new, non-retail jobs to be created over the next few years. This is likely an undercount as it only includes publicly announced expansions. It is, however, an increase over past trends that will support added apartment unit demand. Many of these new jobs will be located in Botetourt County.

Based on the above, and other factors, market research shows a sizable pent-up demand for new apartment units. The attached report provides a considerable amount of data and analysis that should guide County officials in their efforts to provide adequate housing for new employees.

*Sincerely,
Ariel Goldring
President*

Mrs. White thanked Mr. Goldring for his presentation and stated she had a few questions about the information he shared. Her questions were as follows:

1. The report shows some of our Industries where our people are working. Does this include telework and if so, how many of our residents telework? Mr. Goldring replied his

report only shows past history and there is no good data available on that right now. The data in the report only shows where they live, where they work, and their wage.

2. This Study indicates that our area needs additional housing. Are you seeing that across other areas where housing is *not* a good fit right now? Mr. Goldring replied not every community requires the same type of housing. Some communities want rentals, and some want affordable housing.

Mr. Clinton expressed concern there may be some misunderstandings in the report. He stated in his opinion the premise that we need to have multifamily housing was a bit inaccurate. He noted some people actually like to commute, meaning they do not have to live in the same region where they are employed. He also stated the report noted there is a rich market for rentals, which gives the Board an opportunity to insist on high standards for our area by letting our potential developers know that we are not going to let just any kind of building in here. He stated the report concluded that we need to build, but that may not necessarily be the case.

Mr. Goldring thanked Mr. Clinton for his comments and replied that he was not encouraging the County to build or not to build, he was simply presenting the available data.

Dr. Scothorn thanked Mr. Goldring for his time and report.

PUBLIC HEARING – AMENDMENT TO THE FY2022-2023 BOTETOURT COUNTY BUDGET RELATING TO THE SCHOOL CAPITAL RESERVE FUND

As per the provisions of Section 15.2-2507 of the Code of Virginia, any proposed amendment which exceeds one percent of the total expenditures of the adopted budget must be advertised and have a public meeting held on the proposed budget amendment. This public hearing was advertised in the Fincastle Herald on February 15, 2023.

Tony Zerrilla, director of finance, stated the purpose was to reconcile the School Operational results versus the budget for FY22 ended June 30, 2022 and reviewed by the County's auditors during the year-end audit process.

He explained a request was made on January 5 in a letter from School Superintendent Dr. Jonathan Russ to the County Administrator detailing revenue and expenditure figures for FY22. School Expenditures savings totaled \$1,847,213.57, while revenues and final audit adjustments contained a shortfall of \$826,050.64. This yielded a net savings of \$1,021,162.93. These savings would be transferred to the School System. As for the related appropriation, the combination of the adopted budget appropriation and available funds to date provides for the need for an appropriation in the amount of \$936,775.31.

Mr. Zerrilla recommended a transfer in the amount of \$1,021,162.93 from the County Undesignated General Fund Balance to the School Division Capital Reserve Fund 301.

Mr. Zerrilla further recommended an appropriation totaling \$936,775.31 for Fund 301, noting when combined with the current available appropriation, this appropriation provides full coverage for both the current balance in the Reserve Fund and the requested transfer.

Dr. Scothorn opened the public hearing at 4:00 p.m.

The following public comment was received via email prior to the hearing:

Emily Williams, 1899 Trinity Road – *“I support the proposed budget amendment to appropriate surplus to the school’s Capital Reserve Fund. Some of the school buildings are in disrepair and many have critical needs. The letter (item13.1) from the school outlines how the money will be used to begin to address those needs. I look forward to the repairs and improvements that will be made with these public funds.”*

There were no citizens wishing to speak, therefore, Dr. Scothorn closed the public hearing.

MOTION: That the Board approve a transfer from the County Undesignated General Fund Balance in the amount of \$1,021,162.93 to be transferred to the School Division Capital Reserve Fund, as requested.

MOTION: Dr. Bailey

SECOND: Mrs. White

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White

RESOLUTION #23-02-10

MOTION: That the Board approve an appropriation in the amount of \$936,775.31 for Fund 301, which will provide for full coverage for the above transfer and the current balance in the School Division Capital Reserve Fund.

MOTION: Dr. Bailey

SECOND: Dr. Scothorn

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn, Mrs. White

RESOLUTION #23-02-11

BRIEF RECESS

Dr. Scothorn called for a brief recess at 4:06 p.m. Dr. Scothorn departed the meeting. Mrs. White reconvened the meeting at 4:20 p.m.

UPDATE ON APEX ROCKY FORGE PROJECT

Nicole Pendleton, Director of Community Development, reported staff conducted a comprehensive assessment on February 10 and there was no evidence of zoning violations or anything to be concerned with. She noted that day, APEX made her team aware that they would be cutting trees through the end of March; however, her office does not regulate tree cuttings and as long as there is no ground disturbance, her office would not get involved. Mrs. White asked about the timeline for investigating a complaint and who attended the site visit. Mrs. Pendleton replied state code allows 30 days to investigate, and this complaint came in on February 10. She reminded the Board her office was currently in the process of hiring a new Erosion and Sediment Manager. She noted she sent the entire team to this site visit, which is very unusual.

Drew Pearson, Zoning Administrator, added that he also attended the site visit on February 10 and that was his second trip to the site. He noted the team visited the Tower 1 site and reminded the Board that this is 7,000+ acres of land. He stated the Complainant did take several pictures, which he purposely checked out, but he did not see any areas that caused concern with zoning. He explained it is very customary with the development of a construction site for there to be surveying equipment, but he did not observe any improvements that would be associated with a project and from his perspective, there were no violations. He stated his office takes all complaints very seriously and responds as soon as possible, while adhering to state guidelines. He noted the office is currently managing 161 active violation cases and are quite busy.

Mrs. White asked if the department normally writes reports on site visits. Mr. Pearson replied if there is a violation they do, but in a case like this where there is nothing observed, there would be no time spent on writing any type of report.

Mrs. White asked if a plan is under review. Mr. Pearson replied a site plan review is actively being worked on. Mrs. Pendleton added there are two sets of independent reviewers and her office continues to be engaged with all parties involved.

PERMIT FEE WAIVER REQUEST FOR SIX FORTY GROUP AT OLD COLONIAL ELEMENTARY SCHOOL

Jon Lanford, Assistant County Administrator, updated the Board on the status and progress related to Economic Development Authority action to transfer Old Colonial Elementary School to Six Forty Group and request a permit fee waiver for all County only related permit fees. He explained the fee waiver would be applicable for up to two submittals and must be actioned within 12 months of property transfer of Old Colonial Elementary School to Six Forty Group.

MOTION: That the Board approve the permit fee waiver request, as presented.

MOTION: Mr. Martin

SECOND: Dr. Bailey

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Mrs. White

ABSENT: Dr. Scothorn

RESOLUTION #23-02-12

BOARD MEMBER COMMENTS

Mr. Clinton offered updates on the following:

- a. Greenfield Historical Council is moving along. The group participated in a storytelling session in Fincastle in honor of Black History Month, which was a great event.
- b. BBBC (Botetourt County Citizen Commission for Preservation of Historical Properties) is off to a good start and going well. The group is trying to identify some properties. The group was considering hiring a part-time employee; however, Julie Phillips, Library Director, identified staff she already has who could potentially help with this. We are fortunate to have excellent staff to do this work, he said.

Mrs. White reported the "Quality of Life Survey" is currently live on the website and the purpose of the survey is to inform the Library and Parks and Recreation departments of community needs. Mrs. White applauded them for reaching out to see what benefits the community and stated this is a good way to see the big picture. She stated there are a lot of fiber projects going on in the County and they are getting service in Buchanan now. She stated she realizes there are still some areas that need service but they are working on that.

Mrs. White recessed the meeting at 4:45 p.m. The meeting reconvened at 6:00 p.m.

Mrs. White announced that Dr. Scothorn was approved by the Board to participate in the 6:00 p.m. meeting remotely from home due to a medical procedure. Dr. Scothorn participated in the meeting remotely.

6:00 P.M. PUBLIC HEARING

Amsterdam District: Whisper Hill LLC and Invest Properties LLC (TPB Enterprises LLC, contractual purchaser) requests a Special Exception Permit, with possible conditions, to increase the number of multi-family dwelling units allowed per acre and a Special Exception Permit, with possible conditions, to increase the maximum building height above 45 feet in accordance with Chapter 25, Article III. Overlay Districts, Division 2.- Gateway Crossing Overlay District, and Sec 25-583 of the Botetourt County Code. This request includes five contiguous parcels totaling 21.446 acres, with frontage along Roanoke Road (US Route 220), College Drive (SR 656) and Old Estates Lane and are identified on the Real Property Identification Maps of Botetourt County as Section 101, Parcels 38, 38B, 40, (4)A and (4)B.

Mrs. White announced that public hearing would be deferred because the County was notified that morning that the applicant wished to postpone the public hearing until the March 28, 2023 board meeting. The developer requested to use the extra time to thoroughly address the comments the applicant received during and after the February Planning Commission Meeting. Virginia Law permits the Board of Supervisors to allow applicants to defer.

Mr. Pearson added the developer had requested to defer this to the March meeting because they heard the comments from the Planning Commission meeting and wanted to take another month to consider those comments and suggestions. He noted the Board would need to vote to continue the public hearing to March.

MOTION: That the Board continue the public hearing to the March 28 meeting.

MOTION: Mr. Clinton

SECOND: Dr. Bailey

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn (remote), Mrs. White

RESOLUTION #23-02-13

ADJOURNMENT

MOTION: That the meeting be adjourned.

MOTION: Mr. Martin

SECOND: Mr. Clinton

AYES: Dr. Bailey, Mr. Clinton, Mr. Martin, Dr. Scothorn (remote), Mrs. White

TIME: 6:05 p.m.

RESOLUTION #23-02-14