

VIRGINIA:

At a regular meeting of the Washington County Board of Supervisors held Tuesday, December 14, 2004, at 7:00 p.m., at the County Administration Building in Abingdon, Virginia the following were present:

PRESENT:

John B. Roberts, Sr. Chairman
Phillip B. McCall, Vice Chairman
Bobby D. Ingle
Dulcie M. Mumpower
Odell Owens
Anthony S. Rector
Kenneth O. Reynolds

Mark K. Reeter, County Administrator
Lucy E. Phillips, County Attorney
Mark W. Seamon, Accounting Manager
Naoma A. Mullins, Recording Clerk

1. Call to Order

The meeting was called to order by Mr. John Roberts, Chairman of the Board, who welcomed everyone in attendance.

2. Invocation and Pledge of Allegiance

Supervisor Tony Rector gave the Invocation and led the Pledge of Allegiance.

3. Approval of Agenda

On motion of Mr. Ingle, second by Mr. Owens, it was resolved to approve the agenda as presented.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

4. **Approval of Minutes**

On motion of Mr. Rector, second by Mr. Reynolds, it was resolved to approve the minutes of the November 23, 2004, Regular Meeting as presented.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

5. **Public Hearings**

a. **Requests for Special Exception Permit:**

(1). James Bowman on behalf of ALLTEL Communications, Inc., Property Tax Map #105-7-7B: Request for Special Exception Permit to construct a 199' telecommunication tower and associated equipment shelter on property located on the south side of Commerce Drive and adjacent to the Corporate Limits of the Town of Abingdon in a B-2 (Business, General) zone, Madison Magisterial District.

Mr. Roberts opened the public hearing to receive comments both in support of and in opposition to the application of James Bowman on behalf of ALLTEL Communications, Inc., for a Special Exception Permit.

Mr. Pete Caramanis with the law firm of Tremblay and Smith addressed the Board on behalf of ALLTEL Communications. Mr. Caramanis explained that ALLTEL would like to construct a 199' monopole communications tower on a vacant lot that runs parallel with Interstate 81. The proposed tower would provide wireless telecommunications services to ALLTEL's customers within Washington County and Abingdon. The tower that ALLTEL is currently utilizing to provide wireless services will soon reach capacity; therefore, dictating the need for a new tower. A site selection process was conducted and the proposed site was chosen because it is zoned for business and surrounded primarily by business uses. The proposed tower would have a galvanized steel finish to reduce glare and visibility. Because of the proposed 199' height, the tower should not require lighting under the FAA guidelines.

Mr. Mark Mitchell addressed the Board inquiring as to whether ALLTEL had explored the option of placing their wireless service on another tower.

Mr. Caramanis explained to the Board that as part of the site selection process, ALLTEL sought an existing tower to locate their antennas. An existing tower was not identified, therefore, necessitating that a new tower be constructed.

There being no further comments, Mr. Roberts declared the public hearing closed.

Discussion ensued among the Board.

Responding to inquiries from the Board, Mr. Caramanis explained that the height of 199' for the proposed tower is a standard size for cell towers. He further explained that the proposed tower would have the capability of allowing other wireless carriers to share the tower.

On motion of Mr. Reynolds, second by Mrs. Mumpower, it was resolved to follow the recommendation of the Washington County Planning Commission and approve the application of James Bowman on behalf of ALLTEL Communications, Inc. for a Special Exception Permit to construct a 199' telecommunication tower and associated equipment shelter on property located on the south side of Commerce Drive and adjacent to the Corporate Limits of the Town of Abingdon in a B-2 (Business, General) zone, Madison Magisterial District.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

(2). Bryan Cameron Williams, Property Tax Map #087A-A-1: Request for a Special Exception Permit to expand a small business in general, more specifically, a lawn mower repair service on property located on the north side of State Route 735 near the intersection of State Route 11/Route 735 in an A-2 (Agricultural, General) zone, Monroe Magisterial District

Mr. Roberts opened the public hearing to receive comments both in support of and in opposition to the application of Bryan Cameron Williams for a Special Exception Permit.

Mr. Bryan Williams addressed the Board explaining that he would like to construct an addition to his lawn mower repair business that would be used to store parts that are currently being stored in the shop area. Mr. Williams stated that if he were permitted to construct the addition for parts storage, it would reduce his liability.

There being no further comments, Mr. Roberts declared the public hearing closed.

Discussion ensued among the Board.

On motion of Mr. Rector, second by Mr. Owens, it was resolved to follow the recommendation of the Washington County Planning Commission and approve the application of Bryan Cameron Williams for a Special Exception Permit to expand a small business in general, more specifically, a lawn mower repair service on property located on the north side of State Route 735 near the intersection of State Route 11/Route 735 in an A-2 (Agricultural, General) zone, Monroe Magisterial District.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

b. Consideration of Adoption of Ordinances:

(1). Public Hearing and Consideration of Adoption of An Ordinance To Amend Sections Numbered 66-473(25) And 66-498(6) Of Chapter Sixty-Six, Article V, Divisions Twelve And Thirteen of The Code of The County of Washington, Virginia (2002), Relating To Regulation By Special Exception of The Location Of Substance Abuse Treatment Facilities Or Any Facility, Use or Activity Subject To Regulation And Licensure Pursuant To Section 37.1-179.1 of The Code of Virginia (1950, As Amended)

County Attorney Lucy Phillips addressed the Board explaining that the proposed ordinance would exclude from the County Zoning Ordinance restrictions on the location of facilities subject to regulation and licensure pursuant to Section 37.1-179.1 of the Virginia Code, other than substance abuse treatment centers, and delay establishment of location regulations by zoning district of such facilities until after further deliberation by the Board of Supervisors. The current County Zoning Ordinance provisions adopted in March of this year that established location restrictions by zoning district for substance abuse treatment center would continue to apply. Ms. Phillips further explained that under the proposed ordinance, facilities that would no longer have established zoning district limitations would include facilities that offer services to one or a combination of three disability groups: persons with mental illness, persons with mental retardation, and persons with related conditions.

Mr. Roberts opened the public hearing to receive comments both in support of and in opposition to the proposed ordinance.

Mr. Patrick Mannix addressed the Board questioning the legality of the advertisement for the public hearing on the proposed ordinance.

Mr. Lewis Loflin addressed the Board in opposition to the proposed ordinance. Mr. Loflin explained that methadone treatment facilities are needed in Washington County because of the severe drug problems in the County.

Mr. Lacy Love addressed the Board in opposition to the proposed ordinance.

There being no further comments, Mr. Roberts declared the public hearing closed.

Discussion ensued among the Board.

On motion of Mr. Ingle second by Mrs. Mumpower it was resolved to following the recommendation of the Washington County Planning Commission and adopts the following ordinance:

ORDINANCE 2004-09

AN ORDINANCE TO AMEND SECTIONS NUMBERED 66-473(25) AND 66-498(6) OF CHAPTER SIXTY-SIX, ARTICLE V, DIVISIONS TWELVE AND THIRTEEN OF THE CODE OF THE COUNTY OF WASHINGTON, VIRGINIA (2002) RELATING TO REGULATION BY SPECIAL EXCEPTION OF THE LOCATION OF SUBSTANCE ABUSE TREATMENT FACILITIES OR ANY FACILITY, USE OR ACTIVITY SUBJECT TO REGULATION AND LICENSURE PURSUANT TO SECTION 37.1-179.1 OF THE CODE OF VIRGINIA (1950, AS AMENDED).

WHEREAS, by Ordinance 2004-03 adopted by the Board of Supervisors of the County of Washington, Virginia, on March 15, 2004, the Board of Supervisors identified under the zoning regulations for the county parameters for location of substance abuse treatment facilities and any facility, use, or activity subject to regulation and licensure pursuant to section 37.1-179.1 of the Code of Virginia (1950, as amended; hereinafter, Va. Code); and

WHEREAS, after adoption of Ordinance 2004-03, the Director of the Highlands Community Services Board and other public officials involved in the management of faculties, uses, and activities subject to regulation and licensure pursuant to section 37.1-179.1 submitted to members of the Board of Supervisors their concerns that the ordinance inappropriately limited the location of certain facilities subject to regulation and licensure under Va. Code § 37.1-179.1 to areas unsuitable for such facilities; and

WHEREAS, the Board of Supervisors finds that the characteristics of substance abuse treatment centers, however, are well-suited to the locations described in Ordinance 2004-03 for the reasons stated in Ordinance 2004-03; and

WHEREAS, the Board of Supervisors finds that additional consideration is required to designate appropriate locations for facilities subject to regulation and licensure under Va. Code § 37.1-179.1, other than substance abuse treatment centers, because of the unique considerations applicable to the variety of facilities to which the statutory provisions apply; and

WHEREAS, the Board of Supervisors finds it in the best interests of the public health, safety, and welfare to revise the restrictions described in Ordinance 2004-03 to regulate the location of substance abuse treatment centers subject to regulation and licensure under Va. Code § 37.1-179.1 but not to include other facilities, uses, or activities subject to regulation and licensure under Va. Code § 37.1-179.1 in the scope of those restrictions;

NOW, THEREFORE, BE IT ORDAINED by the Board of Supervisors of Washington County, Virginia:

1. That the Code of the County of Washington, Virginia (2002) is amended by revision to sections numbered 66-473(25) and 66-498(6), as follows:

Sec. 66-473. Special exception uses.

In the B-2 district, the following uses or structures may be permitted only if approved for the issuance of a special exception as provided in this chapter:

- (1) *Electrical power substations, electrical power transmission towers, telecommunication switching facilities and telecommunication towers and antennas.*
- (2) *Fire department offices and facilities, emergency medical rescue squad offices and facilities, and law enforcement offices and facilities.*
- (3) *Golf courses.*
- (4) *Hotels, motels, tourist courts, and bed-and-breakfast establishments, including restaurants and recreational facilities incidental thereto, with 200 or more guest rooms or with on-site meeting rooms or conference facilities, which in the aggregate seat 500 or more persons.*
- (5) *Indoor movie theaters; drive-in theaters.*
- (6) *Lumber and brick yards and building materials and equipment sales, rental, repair and services.*
- (7) *Manufactured homes for use by a security guard on a business and subject to the provisions of article XI of this chapter.*
- (8) *Multiple-family dwelling units, such as apartments, townhouses, and condominiums and subject to other provisions of this chapter. Public water and sewer are required where ten or more dwelling units are proposed.*
- (9) *Nursing and personal care facilities with any on-site residency, single- or multiple-family dwelling units. Public water and sewer required where ten or more dwelling units are proposed.*
- (10) *Off-site uses related to airport safety as defined in section 66-610.*
- (11) *On-site material and equipment storage.*
- (12) *On-site storage above or below ground of 50,000 gallons or more liquefied petroleum or other fuel oil.*
- (13) *Privately-owned schools, colleges, junior colleges, universities, technical institutes and vocational schools.*
- (14) *Public and private hospitals.*
- (15) *Public skating rinks, bowling alleys, dance halls, pool halls, night clubs, lounges, video game arcade and similar forms of public amusement.*
- (16) *Radio and television stations, studios and offices with special exception.*
- (17) *Recreational facilities, including but not limited to tennis and basketball courts, baseball and softball fields, parks, swimming pools and gymnasiums.*
- (18) *Telecommunications-related industries.*
- (19) *Tobacco warehouses, storage warehouses and bulk petroleum plants.*
- (20) *Tractor-truck and trailer sales, rental, repair and services.*
- (21) *Truck stops and truck terminals.*
- (22) *Veterinary hospital or clinic.*
- (23) *Water and wastewater treatment plants.*
- (24) *Wholesale, distribution and processing operations.*
- (25) *Substance abuse treatment facilities ~~or any facility, use or activity~~ subject to regulation and licensure pursuant to § 37.1-179.1 of the 1950 Code of Virginia, as amended, subject to the following restrictions as well as conditions or restrictions imposed by the legislative body as part of the special exception permit. No such facility shall be located within one-half (0.5) mile of any public or private K-12 school, public or private licensed day care center, church, synagogue or other place of worship, residentially zoned district (R-1 and R-2), nor within one thousand (1,000) feet of a residential dwelling.*

Sec. 66-498. Special exception uses.

In the M-1 district, the following uses or structures may be permitted only if approved for the issuance of a special exception as provided in this chapter:

- (1) *Airports.*
- (2) *Day care center.*
- (3) *Fire department offices and facilities, emergency medical rescue squad offices and facilities, law enforcement offices and facilities and other governmental offices and facilities.*
- (4) *Off-site uses related to airport safety as defined in section 66-610.*
- (5) *Water and wastewater treatment plants.*
- (6) *Substance abuse treatment facilities ~~or any facility, use or activity~~ subject to regulation and licensure pursuant to § 37.1-179.1 of the 1950 Code of Virginia, as amended, subject to the following restrictions as well as conditions or restrictions imposed by the legislative body as part of the special exception permit. No such facility shall be located within one-half (0.5) mile of any public or private K-12 school, public or private licensed day care center, church, synagogue or other place of worship, residentially zoned district (R-1 and R-2), nor within one thousand (1,000) feet of a residential dwelling.*

2. *That should any section or provision of this ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this ordinance or of the Code of the County of Washington, Virginia.*

3. *That this ordinance shall become effective immediately upon its enactment.*

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

(2). Public Hearing and Consideration of Adoption of An Ordinance To Repeal Chapter 54 Of The Code Of The County Of Washington, Virginia (2002), Titled "Subdivisions," And To Adopt A New Chapter 52 To Govern The Division And Subdivision Of Land

Mr. Roberts opened the public hearing to receive comments both in support of and in opposition to the proposed ordinance.

County Planner Wally Horton addressed the Board. Mr. Horton explained that should the Board make the decision to remand the proposed ordinance back to the Joint Land Use Steering Committee the following areas of concern expressed during the November 29 meeting of the Washington County Planning Commission and subsequently discussed by the Joint Land Use Steering Committee, the follow issues would be addressed:

- 1. *Wording Changes and the Handbook – There was concern that the Handbook language was overly regulatory. References to the Handbook from the proposed ordinance, except for the*

definition would be stricken. There will be a better separation of plats/plans from sketches in relation to fees. There will be a reflection in the definitions that no fee is to be charged for a sketch. In Section 52.700. Land Must be Suitable, Natural Features Preserved – Reword (a) to read as follows:

“The subdivision agent shall not approve the division or subdivision of property if, from adequate investigations conducted by all officials and agencies concerned, the agent determines that in the best interest of the public the site is not suitable for platting and development purposes of the kind proposed.”

2. Plat Review – There was concern over the requirements that all divisions and subdivisions shall be platted. Partitions of land by court order and instances where there is no graphic depiction of land being transferred by an instrument were mentioned. The proposed ordinance allows for both of those situations.
 - a. The Committee agreed that all divisions and subdivisions should be platted and all plats be signed off by the agent with the exceptions of partitions of land resulting from a court order and instruments.
 - b. The Committee also agreed that a note should be added in the ordinance explaining that lots created by these means are not exempt from zoning and building permit requirements.
3. Critical Slopes – There was concern over the definition of critical slope as being a slope of over 20%. It was pointed out at the Committee meeting that health department requirements already effectively prevent development in areas of critical slopes. It was also pointed out that a 20% slope is not necessarily a critical or extreme slope.

Mr. Horton stated that the Committee acknowledged the definition in the Comprehensive Plan was language used in the draft presented to the Planning Commission at their November 29 meeting. He further stated that there would be a proposed change to the definition that reads as follows:

Slope, Critical. A slope whose contour relief is so severe as not to allow for the installation of septic systems and/or sound building construction.

4. Appeals – The Committee reviewed procedures for appeals. The current proposed ordinance provides for appeals to circuit court.

Mr. Horton explained that the State Code sets forth procedures for appeals. He further explained that state law treats subdivision appeals and zoning appeals, differently. Mr. Horton stated that other localities would be examined to see how they handle such appeals.

5. Family Divisions and Subdivisions – Largest area of concern at the November 29 public hearing.
 - a. The Family Member definition is satisfactory. There was concern that clarification was needed that great grandparents or grandchildren are included. The definition reads:
Family Member. Any person who is a natural or legally defined offspring, spouse, sibling, grandchild, grandparent, or parent of the owner.
 - b. The one split per year will be deleted from the proposed new ordinance.

- c. The two year holding limit is satisfactory, provided that a process for determining hardship is included in the ordinance.
- d. Concerns about limiting more than one split at a time – The subdivision of a lot of land into more than one lot at a time will be permitted in the new draft of the proposed ordinance. In cases where there is no lot frontage on a public street, family subdivisions would not necessitate the construction of a public street, but would require a 40’ right of way (family withheld street) be designated on the plat to provide access to each of the created lots. The right-of-way would not have to meet any additional standards.

In the case of interior or “landlocked” lots, a family withheld street may access off of a previously withheld street or right-of-way that has been publicly dedicated.

6. Other Concerns

- a. Public water and sewer required where it is available. The County is not in a position to dictate when and where public water and sewer is available. The subdivision ordinance is not the appropriate document to prescribe the availability of public utilities. That determination is up to the service provider.
- b. Stormwater drainage. Surveyors are licensed in the State Code to do on-site drainage calculations. The proposed new ordinance will reflect this fact.
- c. Revise the requirements (Sec. 52-733) for professional engineer certification requirements to pertain to cases where private streets built to public street standards and other improvements not subject to regulatory review, are involved. Otherwise, a letter from the agency responsible for the review of improvement plans and design stating that improvements are in accordance with all applicable requirements and plans approved shall be received by the agent before the final plat is signed.

Prior to receiving public comment, the Board discussed at length the comments provided by Mr. Horton.

The following people spoke in opposition to the proposed ordinance:

Mr. Joseph Hobbs addressed the Board stating that landowners should have the right to control their property as they see fit.

Mr. Patrick Mannix addressed the Board with concerns regarding the language in the proposed ordinance that related to hardships, the appointment of a subdivision agent and that roads are built to state standards.

Mr. Ray Duncan addressed the Board expressing concerns that the government is attempting to take more freedom from the people. Mr. Duncan urged the County to use caution in making a decision concerning the proposed ordinance.

Mr. Lewis Loflin addressed the Board stating that property owner should have the right to do with their property as they wish just as long as they were not causing damage to the environment.

Mr. Preston Brown addressed the Board expressing his gratitude for the opportunity to serve on the Joint Land Use Steering Committee. Mr. Brown explained that he recommends the proposed ordinance be remanded back to the Land Use Steering Committee for further work. His primary concern with the current proposed ordinance is the language dealing with family subdivisions and the designation of a

subdivision agent. He urged the Board to remember all residents of Washington County while planning for growth.

Mr. Ken Johnson addressed the Board explaining that his concerns with the proposed ordinance as currently written were with the slope requirements, definition of family subdivisions and that the definition should include language that would allow a division to a close friend, the holding period, appeals process and that a building permit should not be disallowed because a road does not meet state standards.

Mr. John Brown addressed the Board expressing his concerns with the proposed ordinance and the additional restrictions being proposed against the landowners. Mr. Brown stated that he is against any restrictions on property owners.

Ms. Karen Moore addressed the Board explaining that she is a property owner in Washington County and is concerned about expanding the definition of family to include close friends. This may allow large developers to find a loophole in the law.

There being no further comment, Mr. Roberts declared the public hearing closed.

Chairman John Roberts thanked the people who spoke during the public hearing and expressed the Board's appreciation for their comments. Mr. Roberts stated that it is not the Board's intent to take rights away from the citizens of Washington County. He explained that zoning in Washington County first occurred in 1967 and had not been revisited until 2000. There has been a lot of growth in the County during this period of time; therefore, the County felt the need to revise its zoning ordinances.

Supervisor Kenneth Reynolds echoed the remarks of Chairman Roberts. Mr. Reynolds stated that orderly growth in the County is necessary and feels revisions need to be made to the zoning ordinances from time to time. He stated that the Board would do their best to take all the comments into consideration.

Supervisor Dulcie Mumpower addressed the Board commending the Joint Land Use Steering Committee and County staff involved with putting together the proposed ordinance. Mrs. Mumpower stated that the ordinance was written with good intent; however, the purpose of the ordinance is to accommodate Washington County and its citizens. The Board needs to be open and receptive to the thoughts and comments of the citizens because they are the ones that must live with the rules put in place by the Board. She stated that one issue in the proposed ordinance that has not been addressed is the Handbook and further that all reference to the Handbook in the ordinance should be stricken. The ordinance needs to be remanded back to the Joint Land Use Steering Committee for changes that would be acceptable to the citizens of Washington County.

Supervisor Phillip McCall addressed the Board stating that he served on the Joint Land Use Steering Committee and that the Committee devoted considerable time to drafting a new subdivision ordinance. They specifically were concerned with the slope requirements, family divisions, holding period and subdivisions that do not have access to a public road. Mr. McCall stated that he would support sending the proposed ordinance back to the Committee for further work.

On motion of Mrs. Mumpower, second by Mr. Rector, it was resolved to follow the recommendation of the Washington County Planning Commission and remand the proposed ordinance to the Joint Land-Use Steering Committee for additional work and then sent back before the Planning Commission. Specific areas to be addressed are: divisions, appeals, slope, waiting periods for family divisions and a

review of road requirements, definition of family division, estate division should not be a major division, all reference to handbook in the proposed ordinance should be left out with the understanding that a revised proposed ordinance may be re-advertised for pubic hearing with the consent of the Committee.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

8. Recess

On motion of Mr. McCall, second by Mr. Rector, it was resolved to take a ten-minute recess.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

5. Public Hearings (continued)

(3). Public Hearing and Consideration of Adoption of An Ordinance To Amend Sections 66-1 And 66-5 Of The Code Of The County Of Washington, Virginia (2002), To Add A Definition For “Gated Residential Subdivision” And To Make A Finding Of Zoning Compliance Contingent Upon Compliance With Other Applicable Law

Mr. Roberts opened the public hearing to receive comments both in support of and in opposition to the proposed ordinance.

County Planner Wally Horton addressed the Board providing a review of the proposed ordinance. Mr. Horton explained that it was consensus of the Joint Land Use Steering Committee to eliminate zoning district and water and sewer restrictions. The Special Exception Permit requirement will remain for the following reasons:

1. To ensure the subdivider has the intention and wherewithal to meet requirements for gated residential subdivisions.
2. To ensure that the subdivision will be “high-ended” or elite in nature.

- 3. To provide the County with plans pertaining to the private street built to public standards, the security gate and the plan of enclosure.

Mr. Patrick Mannix addressed the Board with concerns about the legality of the notice of publication for the public hearings.

There being no further comments, Mr. Roberts declared the public hearing closed.

Discussion ensued among the Board.

On motion of Mr. Ingle, second by Mr. Owens, the Board acted to follow the recommendation of the Washington County Planning Commission and remand the proposed ordinance to the Joint Land-Use Steering Committee for additional work, with the understanding that a revised proposed ordinance may be re-advertised for public hearing with the consent of the Committee.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

6. Consideration of Resolution Appointing Subdivision Agent Pursuant to County Code Chapter 52 (if Ordinance is Adopted)

The proposed Subdivision Ordinance was not adopted; therefore, no action was taken on this item.

7. Consideration of Resolution Establishing Fees Pursuant to County Code Chapter 52 (if Ordinance is Adopted)

The proposed Subdivision Ordinance was not adopted; therefore, no action was taken on this item.

9. Consideration of Proposed Settlement in the Matter of Hilt v. Washington County Board of Supervisors

County Attorney Lucy Phillips addressed the Board explaining that this matter first came before the Board in August of 2002 after the Washington County Planning Commission acted to deny the request of the Hilt to withhold from dedication for public use a 50' right-of-way (Hilt Drive) beginning at the intersection of Garden Path Drive and running in a southerly direction 3,153 linear feet through a proposed new subdivision. The Hilt appealed this denial to the Board of Supervisors. At the August 2002 meeting, the Board considered the appeal and upheld the denial of the Planning Commission. The Hilt filed a lawsuit in Circuit Court against the Planning Commission and Board that alleged the denial of their application was arbitrary and capricious. The County filed a demurrer to the appeal, on which the

argument was heard in December 2002. The court denied the demurrer and asked legal counsel for the Hilt to prepare an order for the court's entry. Counsel for the Hilt has not provided a proposed order on the court's decision. There have been no further proceedings in the lawsuit.

Ms. Phillips further explained that the Hilt have approached the County with revisions to their initial proposal that were modeled after the request of J. C. Enterprises, LLC that was approved by the Board of Supervisors. She provided a review of the approved request from J. C. Enterprises, LLC and the revisions being proposed by the Hilt. Ms. Phillips explained that a significant difference remains between the Hilt subdivision proposal and that of J.C. Enterprises. The difference is that J.C. Enterprises could not build a road that the Virginia Department of Transportation (VDOT) would accept into the state system of secondary highways because J. C. Enterprises owned an insufficient amount of land at the entrance to the subdivision to allow reservation of a right of way for the roadway to meet the width specifications required by VDOT. There are no such insurmountable restrictions applicable to the Hilt subdivision. Mr. Hilt has indicated that he will build the road in his proposed subdivision to meet state specifications, but he wishes it to be a gated community, which would prevent VDOT maintenance.

Ms. Jill Harrison with the law firm of Penn Stuart addressed the Board on behalf of the Hilt and Matneys. Ms. Harrison explained that included in the materials presented to the Board there is mention of a gated community. She clarified that the Hilt do not want a gated community. She explained that County staff had recommended that the Hilt consider making the subdivision a gated community. In fact, the Hilt would prefer that they be allowed to put a cattle guard across the road because the property they wish to subdivide is adjacent to farmland used for cattle grazing. Ms. Harrison provided the Board with a brief history of the Hilt's situation. She explained that Mr. Hilt is the third generation to live on his land. - For personal financial reasons, Mr. Hilt wishes to sell a portion of his farmland to be able to keep the rest of their land. In order to sell the land the Hilt have worked with the Matneys to raise funds to build the infrastructure and roads necessary to construct a subdivision.

Ms. Harrison explained that the original proposal included 22 lots; the revised proposal now includes a nine-lot subdivision. A copy of the plat has been provided to the Board. The Hilt's and Matneys' offer the following conditions for approval of the subdivision and application for withholding of the road from public dedication:

1. The roads shown on the plat in the subdivision would be constructed to meet VDOT standards for secondary highways.
2. Lots one and two, are larger in size than the other lots because the Hilt anticipate further divisions of lot one for the purpose of conveyances to family members and the Matneys anticipate further divisions of lot two for conveyances to family members.

County staff has expressed concern regarding the number of lots that lots one and two could be divided into. To appease this concern, the Hilt offered to set a maximum of three subdivisions for lot one and for lot two, each, to create a maximum of four lots out of each one of the two lots. The zoning laws in place by Washington County would govern the size of the lots.

County staff has also expressed concerns that in the future landowners of the proposed subdivision may request that the County be requested to ask VDOT to bring the road into the state system of secondary highways. In the proposed homeowner association regulations a mechanism would be incorporated that would follow local and state regulations for bringing roads into the state system.

Supervisor Bobby Ingle inquired about the portion of road crossing Garden Path Drive that is privately owned and whether this portion of road would be built to state standard.

Ms. Harrison explained that the section of road Mr. Ingle is referring to is a private 50' right of way that has been granted across third party property expressly for the development of the Hilt and Matney Subdivision and it would not be constructed to state secondary highway standards.

Mr. Ingle stated that his primary concern is with the road coming into Garden Path then crossing private property and then building a road to state standards. The problem is the section of private road that the VDOT cannot come across that would prevent public school buses and mail service from being provided to prospective landowners in the proposed subdivision.

The Board devoted considerable discussion to the roads in the proposed subdivision. Specifically, the Board expressed concerns regarding maintenance of the road.

Ms. Harrison explained that with regard to maintenance of the roads within the proposed subdivision there would be the creation of a homeowners association that would specifically provide for maintenance of the roads. She further explained that with regards to the easement that has been granted for access into the subdivision that the easement owner has the right to maintain if they so desire. Ms. Harrison stated that the fact that there would not be public bus or mail service to the proposed subdivision would be a matter of public record so that if someone purchased land in the proposed subdivision it would be public notice that they did not live on a public road and they would knowingly purchase the property subject to these caveats.

Supervisor Tony Rector asked whether the subdivision plat could include language to notify purchasers of lots that the portion of road running between the subdivision and the state road is a private right of way that is not maintained by Virginia Department of Transportation. Ms. Harrison agreed, on behalf of her clients, that such language could be included. She commented that the Property Owners Association Agreement would include provisions to explain the mechanism for maintenance of the private roads and for the possibility of improvement of the roads for acceptance into the state system of secondary highways.

On motion of Mr. Reynolds, second by Mrs. Mumpower, the Board acted to approve the Hilt settlement proposal, and directed the County Attorney to prepare the appropriate settlement documents, to include the following conditions:

- 1. That the Hiltts have agreed that the road in the subdivision will be improved to meet state standards for subdivision streets in the secondary system of state highways.***
- 2. That a Property Owners' Association Agreement will be recorded and referenced in a notation on the subdivision plat.***
- 3. That the subdivision plat shall include a notation that the road in the subdivision is privately maintained in accordance with the Property Owners' Agreement;***
- 4. That the subdivision plat shall include a notation that the lots shall not be divided, with the exception of Lots One and Two. The plat shall specify the following: Solely for the purpose of conveyances to family members of the Hiltts, as such term, "family member," is defined by County ordinance, Lot One may be further divided to a maximum of three divisions to create a maximum total of four lots out of Lot One. Solely for the purpose of conveyances to family members of the Matneys, as such term, "family member," is defined by County ordinance, Lot***

Two may be further divided to a maximum of three divisions to create a maximum total of four lots out of Lot Two.

- 5. *That the subdivision plat shall include a notation that the access between State Route 676 and the subdivision is a private right of way, not maintained by the Virginia Department of Transportation, and that it cannot be improved for acceptance into the state system of secondary highways unless the owner of the underlying property agrees to such improvement and maintenance by VDOT and, further, that such improvement would be a privately funded project. The notation shall state that the road in the subdivision cannot be accepted into the state system of secondary highways unless the intervening right of way is also improved and accepted by VDOT for maintenance.*
- 6. *The plat shall include a notation that the right-of-way designated at the eastern boundary line of Lot Two shall be utilized to access that tract currently designated as Tax Map and Parcel Number 147-3-8 on the tax maps for Washington County, Virginia. This right-of-way shall remain in existence and be permitted to access said tract only for so long as said tract remains a single undivided tract of land. If, at any point in the future, said tract is subdivided, the right-of-way designated at the eastern boundary line of Lot Two shall automatically be extinguished.*

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

10. Consideration of Approval of Proposed Six-Year Secondary Road Improvements Plan

Mr. Stephen Buston, Resident Engineer with the Virginia Department of Transportation-Abingdon Residency, addressed the Board requesting approval of the six-year plan for Secondary Road Improvements for 2005-06 through 2010-11. Mr. Buston explained that due to a decrease in funding for the secondary road program there were no new projects added. However, three projects were taken from the storage list and placed back on the six-year plan.

Discussion ensued among the Board.

On motion of Mr. Mumpower, second by Mr. McCall, it was resolved to adopt the following resolution:

**RESOLUTION 2004-31
APPROVAL OF SIX-YEAR SECONDARY ROAD PLAN FOR FY 2005-2011**

BE IT HEREBY RESOLVED, the Washington County, Virginia Board of Supervisors does hereby approve the FY 2005-06 to 2010-11 Virginia Department of Transportation Secondary System Six Year Plan for Washington County, Virginia and,

BE IT FURTHER RESOLVED, that the Washington County, Virginia Board of Supervisors approves the first year of the plan titled, Details of Washington County, Virginia Secondary Construction Budget for July 1, 2005 through June 30, 2006.

DONE this 14th day of December 2004.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

Scrivener’s Note: The Six Year Plan document may be found in Minutes Exhibit 2004-12-14A.

11. Presentation Concerning Regional Hazard Mitigation Plan Process

Mr. Tom Taylor provided the Board with a presentation concerning the Regional Hazard Mitigation Plan. Mr. Taylor explained that the Federal Emergency Management Agency is requiring that localities have such a plan in place before they would consider funding of damages from a natural disaster.

County Administrator Mark Reeter addressed Board explaining that the Hazard Mitigation Plan would provide an avenue to obtain grant funds to study flood plain mapping and to aid in the creation of more adequate maps.

Discussion ensued among the Board.

In another matter, the Board presented Mr. Taylor with a plaque recognizing him for his service to the localities and citizens of the Mount Rogers Planning District Commission.

12. Consideration of Resolution Requesting Incorporation of Grey Heron Court into State System of Secondary Highways, Heron Pointe Subdivision

On motion of Mr. Reynolds, second by Mr. Rector, it was resolved to adopt the following resolution:

***RESOLUTION 2004-32
ADDITION OF 248 LINEAR FEET OF GREY HERON COURT TO
SECONDARY SYSTEM OF STATE HIGHWAYS
HERON POINTE SUBDIVISION***

WHEREAS, the street(s) described on the attached Additions Form SR-5A, fully incorporated herein by reference, are shown on the plats recorded in the Clerk’s Office of the Circuit Court of Washington County, and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised this Board the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation;

NOW, THEREFORE, BE IT RESOLVED this Board requests the Virginia Department of Transportation to add the street(s) described on the attached Additions Form SR-5A to the secondary system of state highways, pursuant to Section 33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements, and

BE IT FURTHER RESOLVED this Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easement for cuts, fills and drainage, and

BE IT FURTHER RESOLVED that a certified copy of this Resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

Scrivener's Note: Additions Form SR-5A referenced above is included as Minutes Exhibits Item 2004-12-14B.

13. Consideration of Request for Supplemental Appropriation, Damascus Volunteer Rescue Squad

On motion of Mr. Rector, second by Mr. Ingle, it was resolved to appropriate \$3,475.00 from Reserve for Contingencies to match grant funds for the purchase of new pagers for the Damascus Volunteer Rescue Squad.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

14. County Administrator Reports

a. Draft Board By-laws, General Policies and Operating Procedures for Calendar Year 2004

County Administrator Mark Reeter provided the Board with a second draft of the By-laws, General Policies and Operating Procedures for Calendar Year 2005 and asked the Board for comments prior to the Board’s organizational meeting on January 11, 2005.

b. Board of Supervisors Committees and Advisory Boards for Calendar Year 2004 and 2005

Mr. Rector reviewed the proposed Committees and Advisory Boards for CY 2005. Mr. Reeter explained that he recommends the Historic Preservation Advisory Board be dissolved. He further proposed that a County Charter Study Committee be established.

c. Appointments to Boards and Commissions Scheduled for January 11, 2005 Organizational Meeting

Mr. Reeter reviewed a list of appointments that will be placed on the Agenda for the January 11, 2005 Organizational meeting.

d. Proposed Cancellation of December 28 Regular Board Meeting

On motion of Mr. Rector, second by Mr. Reynolds, the Board acted to cancel the December 28, 2004, Regular Board Meeting.

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

15. County Attorney Reports

County Attorney Lucy Phillips provided the Board with a status report on the condemnation proceedings involving the Martin Rosenbaum property. Ms. Phillips explained that Attorney John Tate prepared the pleadings necessary to initiate the condemnation proceedings, but just before the pleadings were filed in court, a question was raised if the property was necessary for construction of the right-of-way into the Highlands Business Park; because of the possibility that sufficient property may exist within the VDOT right-of-way for construction of the turn lanes. Therefore, the proceedings have been delayed to allow further investigation of this possibility.

In another matter, Ms. Phillips reviewed materials regarding a proposed rate increase from American Electric Power. She asked the Board to advise her as to whether or not they wish for her to prepare a response on behalf of the County.

16. Board Information

Mr. Reeter reviewed information contained in the Board Information section of the Agenda. Particularly, the grant application narrative for the Rural Wireless Community VISION Program, the State Street Farmer’s Market Report, correspondence from the Virginia Economic Bridge and correspondence from Mr. Jim Yates requesting an amendment to the HR Zoning District Regulations.

Mr. Reeter explained that Mr. Jim Yates has submitted a request or proposal to operate a small restaurant in an HR zoning district. The zoning district prohibits this type of operation unless it is part of a ski lodge. Therefore, Mr. Yates is requesting an amendment to the HR Zoning District Regulations so that he would be permitted to operate a small restaurant within his Country Store.

Discussion ensued.

On motion of Mr. McCall, second by Mr. Reynolds, it was resolved to submit a request to the Washington County Planning Commission to consider expanding definition of Country Store or to allow a restaurant in the Highlands Recreation District.

The vote on this motion was as follows: (6-1)

<i>Mr. Ingle</i>	<i>Nay</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

17. Consent Agenda

On motion of Mr. Rector, second by Mr. Reynolds, it was resolved to approve the following Consent Agenda items:

- a. Payment of Bills – November 2004*
- b. Revenue Refunds – Animal Sterilization Fee*
- c. Supplemental Appropriations – Sheriff’s Office for Donations Received*
- d. Supplemental Appropriations – Sheriff’s FASP Funds*
- e. Budget Status Reports for November of 2004*

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>

Mr. Roberts Aye

18. Board Member Reports

Supervisor Bobby Ingle reported that a ribbon cutting ceremony for the Virginia Highlands Small Business Incubator would be held on December 28, 2004, at 10:00 AM.

Supervisor Kenneth Reynolds reported that the Mount Rogers Planning District Commission has made him aware that the income levels for families in Washington County have been increased; therefore, Washington County is now eligible to apply for sewer grants from the Rural Agency.

19. Recess to 5:00 PM December 20, 2004, Joint Recessed Worksession Meeting with Washington County Service Authority, Conference Room 1, County Administration Building

On motion of Mr. Rector, second by Mr. Owens, it was resolved to recess the meeting to 5:00 PM December 20, 2004, for a Joint recessed worksession meeting with the Washington County Services Authority, Conference Room 1, County Administration Building

The vote on this motion was as follows: (7-0)

<i>Mr. Ingle</i>	<i>Aye</i>
<i>Mr. McCall</i>	<i>Aye</i>
<i>Mrs. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Mr. Rector</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Roberts</i>	<i>Aye</i>

Prepared by:

Naoma A. Mullins, Recording Clerk

Approved by the Washington County Board of Supervisors:

John B. Roberts, Sr., Chairman