

**VIRGINIA:**

At a regular meeting of the Washington County Board of Supervisors held Tuesday, December 13, 2012 at 6:30 p.m., at the County Administration Building in Abingdon, Virginia the following were present:

**PRESENT:**

Dulcie M. Mumpower, Chair  
Odell Owens, Vice Chair  
Phillip B. McCall  
Nicole M. Price  
Kenneth O. Reynolds (6:32 p.m.)  
Joseph C. Straten  
Thomas G. Taylor

Mark K. Reeter, County Administrator  
Lucy E. Phillips, County Attorney  
Mark W. Seamon, Accounting Manager  
Naoma A. Norris, CAP, Executive Assistant/Recording Clerk

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**1. Call to Order**

The meeting was called to order by Ms. Dulcie M. Mumpower, Chair of the Board, who welcomed everyone in attendance.

Ms. Mumpower recognized the Washington County Leadership class in attendance.

**2. Invocation and Pledge of Allegiance**

Supervisor Joe Straten gave the Invocation and led the Pledge of Allegiance.

**3. Approval of Agenda**

Mr. Reeter explained an amended agenda is presented to the Board for consideration. The amended items include consideration of appointments to the Washington County Disaster Recovery CDBG Project's Housing Rehabilitation Board, consideration of Resolution honoring Dennis Godfrey for his service as Commonwealth's Attorney for Washington County. In addition, County Attorney Lucy Phillips requested a verbal amendment to consider a proposal for a settlement of the pending lawsuit B.C. Liquidation, Inc., v. County of Washington, Virginia.

*On motion of Mr. Owens, second by Mr. Straten, it was resolved to approve the agenda with the following amendments:*

*New Item 7.a.7 – Consideration of Appointments to Washington County Disaster Recovery CDBG Project’s Housing Rehabilitation Board*

*New Item 7.a.8 – Consideration of Resolution Honoring Dennis Godfrey for 24 Years of Service as Commonwealth’s Attorney for Washington County*

*New Item 7.a.9 – Consideration of Proposal for Settlement of Pending Lawsuit B.C. Liquidation, Inc. v. County of Washington, Virginia*

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

#### **4. Special Recognitions & Presentations:**

##### **a. Introduction of Mathew Crum, Assistant County Attorney for Washington County**

County Attorney Lucy Phillips introduced Mr. Matthew Crum, the new Assistant County Attorney as of December 1. Mr. Crum received his undergraduate degree from Virginia Tech and earned his Law Degree from Washington and Lee University. After graduating from Washington and Lee University School of Law in 1991, Mr. Crum went to work as an Associate Attorney with the private law firm Robinson & McElwee in Charleston, West Virginia. Subsequently, he practiced law as a Deputy Attorney in the West Virginia Attorney General’s Office, representing the West Virginia Department of Environmental Protection. He has also served as a trial attorney for the Environment and Natural Resources Division of the U.S. Department of Justice in Washington, D.C. In 2001, making a move back to the Charleston, West Virginia mountains, Mr. Crum was appointed Director of the Division of Mining and Reclamation for the West Virginia Department of Environmental Protection.

Mr. Crum will work 24 hours a week for the County and continue with his private practice.

Ms. Mumpower welcomed Mr. Crum to the County.

Mr. Crum provided a few remarks.

#### **5. Consent Agenda:**

*On motion of Mr. Reynolds, second by Mr. Taylor, the Board acted to approve items a and b of the Consent Agenda as set forth below.*

a. Approval of Minutes:

1. *November 22, 2011 Regular Meeting*
2. *November 28, 2011 Recessed Meeting*

b. Approval of Routine Financial Matters:

1. *Request for Revenue Refunds – Washington County Sheriff's Office – Animal Sterilization Fees*
2. *Supplemental Appropriation – Washington County Sheriff's Office for Recovered Costs*
3. *Payment of Bills – From November 11, 2011 thru November 30, 2011*
4. *Budget Status Report – November 30, 2011*

c. Award of Bids and Approval of Contracts:

*There were no bids or contracts were presented to the Board for consideration.*

d. Authorization of Routine Business Matters:

*There were no routine business matters before the Board.*

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

6. **Public Hearings:**

a. Request(s) for Special Exception Permit:

1. Bob Hogston on behalf of Carlton Davidson, Property Tax Map #070A-6-14: Request for Special Exception Permit to construct a building containing approximately 800 square feet for the purpose of operating a tattoo parlor and body piercing establishment on property at 35031 Brittany Lee Drive, Glade Spring near the intersection of U. S. Route 91 (Maple Street) and Brittany Lee Drive in a B-2 (Business, General) zone, Monroe Magisterial District

County Zoning and Subdivision Official Cathie Freeman provided an overview of the request of Bob Hogston on behalf of Carlton Davidson for a Special Exception Permit to operate a tattoo parlor and body piercing establishment on the property in question. Mr. Davidson leases space from Mr. Hogston, and

has operated at this particular location for the last eight and one-half years. Ms. Freeman explained there were problems with the previous owner allowing the business to operate without the proper permits; however, Mr. Davidson and Mr. Hogston indicated they did not know about the violations.

Ms. Freeman explained the Washington County Planning Commission held a public hearing on this Special Exception Permit request at their November 28, 2011 meeting. There was no one present to speak in favor or against the request. Ms. Freeman noted that she received a call this week from an individual strongly opposing the application. The Planning Commission on a 5-1 vote (Commissioner McCroskey opposed) recommended approval of the application.

Discussions ensued among the Board and Ms. Freeman.

Mr. Taylor questioned if the practice of placing signs on property to notify people the particular property is being considered for rezoning was a requirement or just a practice the County has adopted to make the community aware of what is happening.

Ms. Freeman explained signs are placed on properties for both rezoning and special exception permit requests; however, if signs are not placed it does not invalidate the process. She further explained that Mr. Davidson was asked to place the sign in the place on the property it is currently located. The County practices placing signs on property that is being considered for rezoning or a special exception permit within seven days of the public hearing.

Mr. Taylor asked if there will be other types of businesses operating in the same building.

Ms. Freeman explained any retail use out of the 99 allowed uses would be permissible.

Mr. Taylor asked Ms. Freeman if in the eight years the business was operational before the tornado if she has knowledge of anything improper going on that would require law enforcement to be dispatched.

Ms. Freeman stated she is personally not aware of any time that law enforcement was called out to the business. She explained because of the zoning violations, she visited the property on a frequent basis to get pictures.

Mr. Reynolds explained he has received many calls regarding the application. The people he spoke with talked about issues pertaining to noise, distance of the business from the road, and concerns with the number of people that may congregate at the site.

Mr. Taylor asked if the hours of operation for the business included in the agenda materials was received as a condition of the Planning Commission.

Ms. Freeman explained she asked Mr. Davidson to provide the hours of operation so the Planning Commission and Board of Supervisors could see his plans and use the information in making a decision.

At this time, Ms. Mumpower opened the public hearing and invited comments in support of and in opposition to the Special Exception Permit request.

Mr. Carlton Davidson, owner and operator of the tattoo and body piercing establishment addressed the Board and explained he is licensed to do tattoos and body piercings and has been doing this work for 26

years. He advised the Board that he operated at the location in question for eight and one-half years without incident. He would like to get his business opened and provide a clean place to do his work.

Mr. Bob Hogston, owner of property in question, addressed the Board and explained Mr. Davidson has rented from him since he purchased the property two years ago. Neither of them was aware of the violations. Mr. Hogston stated that Mr. Davidson runs a clean business and there have been no problems.

No one spoke in opposition to the request.

There being no further comments, Ms. Mumpower declared the public hearing closed.

***On motion of Mr. Taylor, with condition that hours of operation that Mr. Davidson submitted as his intent be made condition of special exception permit second by Mr. McCall, the Board acted to follow the recommendation of the Washington County Planning Commission and approve the request of Bob Hogston on behalf of Carlton Davidson for a Special Exception Permit to construct a building containing approximately 800 square feet for the purpose of operating a tattoo parlor and body piercing establishment on property at 35031 Brittany Lee Drive, Glade Spring near the intersection of U. S. Route 91 (Maple Street) and Brittany Lee Drive in a B-2 (Business, General) zone, Monroe Magisterial District with the following condition:***

***Hours of Operation are restricted to the hours provided by Carlton Davidson as follows: Tuesday – Saturday, 2:00 p.m. – 10:00 p.m.***

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

<b><i>Mr. McCall</i></b>	<b><i>Aye</i></b>
<b><i>Ms. Mumpower</i></b>	<b><i>Aye</i></b>
<b><i>Mr. Owens</i></b>	<b><i>Aye</i></b>
<b><i>Ms. Price</i></b>	<b><i>Aye</i></b>
<b><i>Mr. Reynolds</i></b>	<b><i>Aye</i></b>
<b><i>Mr. Straten</i></b>	<b><i>Aye</i></b>
<b><i>Mr. Taylor</i></b>	<b><i>Aye</i></b>

- b. Public Hearing and Consideration of Adoption of an Ordinance to Repeal Article II of Chapter 30 of the Code of the County of Washington and Replace with Revised Ordinance to Regulate Noise

County Attorney Lucy Phillips provided introductory remarks. Ms. Phillips began by introducing members of the Noise Ordinance Committee: Supervisors Kenneth Reynolds and Nicole Price, Mike Overstreet, Media Mitchell, and Phil Blevins. In addition to the committee members, the following local government officials were involved in the Committee's work: Commonwealth Attorney Dennis Godfrey, Sheriff Fred Newman, Sheriff's Sergeant Greg Hogston. General public members who consistently attended and participated in committee discussions were Roxanne Holloway and Jeff Johnson. The committee met six times over the six month period since its creation and, in the course of those meetings, studied noise regulation models from other localities and states; field-tested the use of a sound level meter; thoroughly discussed the issues and ramifications associated with noise regulation; and ultimately agreed to recommend to the Board the proposed draft noise ordinance. Ms. Phillips provided a detailed review of the proposed ordinance. With limited exception, the proposed ordinance relies on the objective standard of sound level meter readings to judge the difference between permissible sound and prohibited noise. The ordinance also identifies a limited number of specific sound sources for which objective

standards other than sound level meter readings would apply. These exceptions are offered for circumstances with which the County has a history of complaints and that lend themselves to objective thresholds other than use of a sound level meter. The sound level meter reading would be the preferred method to identify violation, but the committee recognized that a sound level meter may not always be available when a situation rises. Finally, the ordinance lists specific activities, such as agricultural operations, that would be exempt.

Discussions ensued among the Board and Ms. Phillips.

At this time, a demonstration using the sound level meter was conducted for the Board's consideration.

Ms. Mumpower opened the public hearing and invited comments in support of and in opposition to the proposed ordinance.

The following individuals spoke in favor of the proposed ordinance:

- Mr. Jeff Johnson
- Ms. Media Mitchell
- Ms. Roxanne Holloway

The following individuals spoke in opposition to the proposed ordinance:

- Mr. Vernon Smith spoke in opposition to the proposed noise ordinance because of the with decibel limits it will establish.

There being no further comments, Ms. Mumpower declared the public hearing closed.

*On motion of Ms. Price, second by Mr. Taylor, the Board acted to adopt the following ordinance:*

Further lengthy discussions ensued among the Board.

Mr. Straten explained he understands the committee researched the proposed Noise Ordinance extensively for months. However, he has a problem with the decibel limits set forth in the ordinance.

***AN ORDINANCE  
TO REPEAL AND REPLACE ARTICLE II OF CHAPTER 30 OF THE CODE OF THE  
COUNTY OF WASHINGTON, VIRGINIA, TO REGULATE NOISE***

***WHEREAS, the Board of Supervisors of the County of Washington, Virginia, is aware of the decision of the Supreme Court of the Commonwealth of Virginia in the matter of Tanner v. City of Virginia Beach, 277 Va. 432 (2009), which effectively invalidated noise ordinances that relied upon a "reasonable person" standard to define when a sound was sufficiently excessive to constitute a criminal offense;***

***WHEREAS, the noise ordinance for the County of Washington, Virginia, relied upon such reasonable person standard(s) and was, therefore, unenforceable after issuance of the Tanner judicial opinion;***

*WHEREAS, the Board of Supervisors finds excessively loud sounds are a serious hazard detrimental to the public health, safety, and welfare and that the public interest requires regulation of certain types of noise by exercise of the County's police powers, in order to preserve the quality of life of residents and visitors; and*

*WHEREAS the Board of Supervisors finds that ordinance set out herein is written to establish objective, enforceable standards for determination of when a sound becomes excessive such that it should be subject to civil or criminal penalty;*

*NOW, THEREFORE, ON THE BASIS OF THE FOREGOING; finding it in the best interests of the public health, welfare, and safety; and having held a public hearing for consideration of these matters, the Board of Supervisors of the County of Washington, Virginia (Board), hereby ordains the following:*

- 1. That this ordinance shall become effective immediately;*
- 2. That this ordinance shall repeal Article II of Chapter 30 of the Code of the County of Washington, Virginia;*
- 3. That the text set out herein shall replace the repealed language of the above-referenced Article and Chapter;*
- 4. 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 Washington County Code; and*
- 5. That Article II of Chapter 30 of the Code of the County of Washington, Virginia, shall include the following provisions:*

*[Ordinance Continues on Following Page]*

*CODE OF THE COUNTY OF WASHINGTON, VIRGINIA (2002, as amended)*

*Chapter 30 – Environment*

*Article II. Noise*

*State law references: Authority to regulate noise, Code of Virginia § 15.2-1700, 15.2-1425, 15.2-1429.*

*Sec. 1. - Short title.*

*This chapter may be referred to as the "noise ordinance" of the county.*

*Sec. 2. - Declaration of policy and purpose.*

*Inadequately controlled sound adversely affects the health, safety and welfare of people, the value of property, and the quality of the environment. It is hereby declared to be the public policy of the county to promote an environment for its residents free from sounds that, for the majority of residents, are excessive, unnecessary, and a degradation of the quality of life. The purpose of this subdivision is to establish threshold, objective standards to determine sounds that, due to intensity, time of occurrence, and/or place of occurrence are punishable as prohibited noise.*

*Sec. 3. - Definitions.*

*The following words and phrases, when used in this chapter, shall have the meaning assigned to them in this section:*

*'Agricultural products' shall mean crops, livestock and livestock products; but not the retail merchandising of such crops, livestock or livestock products; which shall include, but not be limited to, the following:*

- (1) Field crops, including corn, wheat, oats, rye, barley, hay, tobacco, peanuts, potatoes and dry beans;*
- (2) Fruits, including apples, peaches, grapes, cherries and berries;*
- (3) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets and onions;*
- (4) Horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees and flowers;*
- (5) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, fur-bearing animals, milk, eggs and furs; and*
- (6) Small scale conversion of biomass to alternative fuel, as provided in Virginia Code section 15.2-2288.01.*

*'A-weighted sound pressure' level shall mean the sound pressure level as measured on a sound level meter using the A-weighted scale and programmed to slow response to approximate the frequency response of the human auditory system. The level so read may be proscribed dB(A) or dBA.*

*'Decibel' is a unit of measurement of intensity of sound pressure, which may be expressed in an adjusted format such as Decibels Adjusted or dBA.*

*'Decibels Adjusted or dBA' shall mean the A-weighted sound pressure level, which is the sound pressure level as measured on a sound level meter using the A-weighted scale and programmed to*

slow response to approximate the frequency response of the human auditory system. The level so read may be proscribed dB(A) or dBA. Decibels Adjusted is an expression of the relative loudness of sounds in air as perceived by the human ear.

'Device' shall mean anything that is intended to or which actually produces sound, including without limitation, any equipment, on or off road motor vehicle, facility, fixed or movable, or animal capable of producing sound audible beyond the property boundary of the property on which the equipment is used or animal is located.

'Emergency work' shall mean work made necessary to restore property to a safe condition following a public calamity, or work required to protect persons or property from immediate exposure to danger, including work performed by public service companies when emergency inspection, repair of facilities or restoration of services is required for the immediate health, safety or welfare of the community.

'Forestal products' shall include, but are not limited to, lumber, pulpwood, posts, firewood, and other wood products for sale or for farm use, but not the retail merchandising of such products.

'Horticultural products' shall include commercial flowers, nursery stock, ornamental shrubs, ornamental trees and Christmas trees, but not the retail merchandising of such product.

'Noise' shall mean sound that exceeds the decibel levels permitted within this article.

'Off Highway Motor Vehicle' shall mean any motor vehicle, as defined by Va. Code § 46.2-100, in use or operation off of a public right of way regardless of whether such motor vehicle is specifically designed for such use.

'Person' shall mean any individual, corporation, partnership, association, governmental body, state, or other entity whatsoever.

'Property boundary' shall mean the point at ground surface that separates the real property owned, rented, or leased by one or more persons, from that owned, rented, or leased by one or more other persons, and its vertical extension.

'Public right of way' shall mean any street or highway that is owned or maintained by a public governmental entity.

'Receiving property' shall mean a parcel of real property as identified by a county tax parcel identification number upon which a sound may be heard.

'Sound' shall mean a temporal and spatial oscillation in pressure, or other physical quantity, in a medium with internal forces that causes compression and rarefaction of that medium, and which propagates at finite speed to distant points.

'Sound level meter' shall mean an instrument to measure sound pressure levels which shall meet or exceed performance standards for a "type two" meter as specified by the American National Standards Institute.

‘Sound pressure’ shall mean the instantaneous difference between the actual pressure and the average or barometric pressure at a given point in space.

‘Source property’ shall mean a parcel of real property as identified by a county tax parcel identification number upon which a measurable sound is created.

‘Zoning category’ shall mean the grouping of zoning districts as “residential,” “commercial,” or “industrial” as set forth in this article.

‘Zoning district’ refers to the scheme of land use classification contained in the Washington County Zoning Ordinance.

(State law references: Code of Virginia 15.2-2288.01 for small scale conversion of biomass to alternative fuel.)

Sec. 4. - Prohibited noise generally.

- (a) It shall be unlawful for any person to operate, or permit to be operated, any device in such a manner that it emits a sound pressure level that exceeds the limits set forth below when measured on property other than that on which the device is located. A single reading on a sound level meter in excess of the limits set forth herein shall be sufficient to prove exceedance. The category of applicable sound pressure limits shall be determined by the zoning district classification of the property on which the sound is measured and the property on which the sound is produced.

<u>Sound Pressure Limits</u> <u>(using A-weighted sound pressure scale, dBA )</u>			
<u>Zoning Category of Receiving Property</u> →	<u>Residential</u>	<u>Commercial</u>	<u>Industrial</u>
<u>Zoning Category of Source Property</u> ↓			
<u>Residential</u>	<u>55</u>	<u>60</u>	<u>62</u>
<u>Commercial</u>	<u>60</u>	<u>65</u>	<u>70</u>
<u>Industrial</u>	<u>62</u>	<u>70</u>	<u>77</u>

- (b) Zoning category. For purposes of this subdivision, the following zoning district groupings shall apply as “zoning categories”:
  - a. “Industrial” shall include Manufacturing-General, Manufacturing-Limited, and Airport Zoning District.
  - b. “Residential” shall include the following zoning districts: Residential-Limited, Residential-General, Shoreland Recreation, Highlands Recreation, Conservation and Recreation, Village, and Konnarock.

- c. “Commercial” shall include: Agricultural-Limited, Agricultural-General, Business-Limited, and Business-General.
- (c) Federal or state law or regulation shall supersede the limits stated in this article when such provisions (i) established sound level restrictions more stringent than those stated in this article or (ii) specifically require less stringent standards.

Sec. 5. – Sound level measurement.

- (a) Sound level measurement shall be assessed in dBA with a sound level meter with the point of measurement being at any physical point within the receiving property.
- (b) Sound level measurement shall be performed by the use of a sound level meter. Such measurements shall be accepted as prima facie evidence of the level of sound at issue in any court or legal proceeding to enforce the provisions of this article.
- (c) The accuracy of the sound level meter may be tested by a calibrator. Any sworn report of the results of any test of the calibrator for the accuracy of a sound level meter shall be admissible in court in any criminal or civil proceedings, as evidence of the facts therein stated.
- (d) An individual operating a sound level meter pursuant to the provisions of this chapter shall issue a certificate to indicate:
1. The name of the operator;
  2. Certification of the operator’s training to use the sound level meter;
  3. That the sound level meter used to take the decibel level reading was operated in accordance with the manufacturer’s specifications;
  4. That the Sheriff’s Office has on file a sworn report that states that the sound level meter has been tested within the past twelve months and has been found to be accurate;
  5. The name of the accused;
  6. The location of the source property and of the receiving property;
  7. The date, time, and place that the reading was made;
  8. The decibel level reading;
  9. A description of surrounding weather conditions or other ambient factors that may affect the sound level reading, and
  10. A general description of the source of the sound.
- (e) Such certificate, when attested by the operator taking the decibel level reading, shall be admissible in court in any criminal or civil proceeding as evidence of the facts therein stated and of the decibel level reading.
- (f) A copy of the certificate shall be delivered to the accused upon request.

Sec. 6. - Enforcement of chapter.

- (a) Enforcement of this article shall be undertaken only upon receipt of a complaint made by a person who resides, owns property, or is employed in the area affected by the sound complained of, except for parks, recreational areas, and wildlife sanctuaries.
- (b) Enforcement for complaints alleging prohibited noise being made or received in parks, recreational areas, and wildlife sanctuaries may be initiated by persons using such property for permissible purposes.
- (c) No person shall be charged with a violation of this chapter unless that person has:
1. Within the six (6) months prior to a complaint, received verbal, electronic or written notice from any law enforcement officer or designated official of the county that he is violating or has violated the provisions of this section;

2. Has had an opportunity to abate the noise disturbance being complained of; and
  3. Has subsequently allowed or caused additional prohibited noise.
- (d) For enforcement purposes, each day, defined as the 24-hour period beginning at 12:01 a.m., in which violation of the noise restrictions occurs, shall constitute a separate violation.
- (e) Public nuisance. In addition to the provisions provided for in this chapter, citizens of the county believing that sound constitutes a public nuisance may utilize the procedure set forth in Code of Virginia § 48-1, et seq., as amended, or any other legal civil or criminal remedies that may be available to them.

Sec. 7. -- Civil and criminal penalties.

- (a) Civil penalties. The provisions of this chapter may be enforced by any law enforcement official through the issuance of civil summonses assessing civil penalties that shall not exceed two hundred fifty dollars (\$250.00) for each first offense and five hundred dollars (\$500.00) for each subsequent offense within a twelve (12) month period following prior offense(s), each day of violation constituting a separate offense. This provision shall not apply to noise generated in connection with business being performed on industrial property or to railroads.
- (b) Criminal penalties. A deputy sheriff may issue and any person may request that the magistrate issue a criminal summons to any person for violation of the provisions of this section, subject to the following schedule of penalties:
1. A first offense shall be punishable as a Class Three misdemeanor subject to a penalty not to exceed \$500.00;
  2. A second offense within twelve months of the first offense shall be punishable as a Class Two misdemeanor subject to a penalty of no less than \$500.00 and not to exceed \$1,000.00;
  3. Third and additional offenses within a twelve (12) month period that includes prior offense(s) shall be punishable as a Class One misdemeanor subject to a penalty of no less than \$1000.00 not to exceed \$2,500.00 for each subsequent offense. To avoid an offense classification as a "third offense," an accused must not be convicted of any more violations of this article for at least twelve months after conviction of a second offense.
- (c) Responsible person. The person operating or controlling the noise source shall be guilty of any violation caused by that noise source. If that person cannot be determined, any owner, tenant, resident or manager physically present on the property where the violation is occurring, or the owner if none of the foregoing are present on the property, shall be guilty of any violation caused by that noise source. It shall be unlawful for a property owner knowingly to allow other persons to create noise prohibited by this chapter within the boundaries of his or her property.
- (d) Abatement of violation. If the violation is uncorrected at the time of a finding of liability on a civil summons or conviction on a criminal summons, the court shall order the violator to abate or remedy the violation in compliance with this article within a time period established by the court. Failure to remove or abate a violation within the specified time period shall constitute separate offenses, and any additional failure following the specified time period shall constitute a subsequent offense subject to additional penalties for each day of violation as well as punishment for contempt of court.

(State law references: Code of Virginia §15.2-980, §15.2-1429, and §15.2-1432 for penalty and injunctive authority.)

Sec. 8. - Specific acts as prohibited noise.

Notwithstanding the specific decibel limitations described in this section, the sound produced from any of the following acts is declared to be prohibited noise in violation of this chapter regardless of whether decibel evidence is present. Enforcement for these specific acts shall be in accordance with the enforcement proceedings set forth in this article.

- (a.) The operation of any device after 10 p.m. and before 7 a.m. in a way to be plainly audible beyond the property boundary on which the device is located.
- (b.) The simultaneous operation within 300 feet of any residence on any other property of more than four off-highway motor vehicles in a manner that the sound from such operation is plainly audible beyond the property boundary on which such operation is occurring.
- (c.) Off-highway motor vehicle operation such that the sound from such operation is plainly audible beyond the property boundary on which such operation is occurring and when such operation is in excess of the following restrictions on number of vehicles in simultaneous operation. The table below identifies the maximum number of off-highway vehicles that may be in operation at any one time on a single parcel.

<u>Parcel Size</u>	<u>Maximum number of OHV's to be in Operation at Any One Time</u>
<u>Up to 20 acres</u>	<u>4</u>
<u>More than 20 acres</u>	<u>6</u>

Sec. 9. - Exceptions from chapter.

The provisions of this chapter shall not apply to the following activities:

- (a) Sounds created by motor vehicles when regulated by the motor vehicle laws of the Commonwealth of Virginia and when the operation of such motor vehicles that produces the sound is occurring on a public right of way;
- (b) The emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work;
- (c) Sound caused by or arising out of activities related to repair, maintenance, replacement or alteration of public utility systems or parts thereof, public drainage systems or parts thereof, or streets and highways or parts thereof, and appurtenances thereto, where such activity is reasonably necessary to further a public safety interest and/or to minimize disruption in the provision of public services, e.g., water and sewer service;
- (d) Noise from electrical substations and existing stationary equipment used in the conveyance of water, waste water, and natural gas by a utility;
- (e) The production of agricultural, horticultural and forestal products, including sawmill operations;
- (f) Parades permitted by the county, any of the towns within the county, or the Virginia Department of Transportation and events, functions or activities at places of public assembly that are allowed by government-issued permit;
- (g) Sound emanating from any area permitted by the Virginia Department of Mines, Minerals and Energy for the use that is producing the sound;
- (h) Sounds originating from aircraft in flight and sounds that originate at airports, which are directly related to flight operations;

- (i) Sounds originating from residential property relating to temporary projects for the maintenance, repair, or construction of homes, grounds, and appurtenances, between the hours of 7 a.m. and 10 p.m.;
- (j) Sounds created by permitted blasting or permitted construction projects between the hours of 7 a.m. and 10 p.m.;
- (k) Sounds created by the discharge of firearms on sport shooting ranges as specified in section 15.2-917 of the Code of Virginia and allowed by special exception permit issued by the County or otherwise allowed pursuant to the County zoning ordinance;
- (l) Sounds created by the discharge of firearms in the course of the pursuit and killing of wild animals or fowl; and
- (m) Sounds caused by natural phenomena.

(State law references: Code of Virginia §15.2-917 for applicability of local noise ordinances to certain sport shooting ranges.)

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Nay</i>
<i>Mr. Taylor</i>	<i>Aye</i>

- c. Public Hearing and Consideration of Adoption of an Ordinance to Amend Chapter 58, Section 58-85 of the Code of the County of Washington, Virginia, to Update Financial Eligibility Criteria for the Partial Exemption from Taxation of Qualifying Elderly and Handicapped Persons

Ms. Phillips explained the proposed ordinance would amend the Washington County Code that establishes criteria to provide a partial exemption from taxation for people who qualify based on age or disability. The rate is determined by the Consumer Price Index and Social Security Cost of Living Adjustment increase of 3.6% on real property, and where applicable, manufactured homes.

Ms. Mumpower opened the public hearing and invited comments in support of and in opposition to the proposed ordinance.

There being further comments, Ms. Mumpower declared the public hearing closed.

***On motion of Mr. McCall, second by Mr. Owens, the Board acted to adopt the following ordinance:***

**AN ORDINANCE  
TO AMEND CHAPTER 58, SECTION 58-85 OF THE  
CODE OF THE COUNTY OF WASHINGTON, VIRGINIA, TO UPDATE FINANCIAL  
ELIGIBILITY CRITERIA FOR THE PARTIAL EXEMPTION FROM TAXATION OF  
QUALIFYING ELDERLY AND HANDICAPPED PERSONS**

*WHEREAS, section 58.1-3210 of the Code of Virginia (1950, as amended) allows the local governing body, by ordinance, to provide for exemption from taxation of real estate and manufactured homes in such amount as provided by the ordinance;*

*WHEREAS, the Washington County Code (2002, as amended) provides for such exemption, for which eligibility is determined based on specified financial criteria; and*

*WHEREAS, such financial criteria requires amendment from time to time to adjust for inflation, and the Commissioner of Revenue has recommended adjustment based on current economic conditions;*

*NOW, THEREFORE, BE IT ORDAINED, by the Board of Supervisors of Washington County, Virginia, after notice and public hearing, as required by law, and finding it in the best interest of the public health, safety, and welfare, the Code of the County of Washington (2002) shall be amended as set forth below subject to the following terms and conditions:*

- 1. 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 the Washington County Code.*
- 2. That this ordinance shall become effective immediately upon its enactment.*
- 3. Chapter 58, Subsection 58-85 is amended, as set forth below; underline and italic indicates language to be added; strikethrough indicates language to be deleted:*

*[Ordinance Continues on Following Page]*

**CHAPTER 58 Taxation**  
**Article II. Ad Valorem**  
**Division 3. Real Property**  
**Subdivision II. Exemption from Taxation of Certain Elderly and Handicapped Persons**

**Sec. 58-85. Amount of exemption.**

*The person qualifying for and claiming exemption shall be relieved of that portion of the real estate tax levied on the qualifying dwelling and land, not exceeding ~~one acre~~ five acres, in the amount calculated in accordance with the following schedule:*

**TABLE INSET:**

<i><u>If income is:</u></i>	<i><u>and net worth is:</u></i>	<i><u>the percentage is:</u></i>
<i><u>\$-0- to \$9,611</u></i>	<i><u>\$-0- to \$33,000</u></i>	<i><u>80%</u></i>
	<i><u>\$33,001 to \$66,000</u></i>	<i><u>64%</u></i>
	<i><u>\$66,001 to \$100,000</u></i>	<i><u>56%</u></i>
<i><u>\$9,612 to \$14,260</u></i>	<i><u>\$-0- to \$33,000</u></i>	<i><u>60%</u></i>
	<i><u>\$33,001 to \$66,000</u></i>	<i><u>48%</u></i>
	<i><u>\$66,001 to \$100,000</u></i>	<i><u>42%</u></i>
<i><u>\$14,261 to \$19,063</u></i>	<i><u>\$-0- to \$33,000</u></i>	<i><u>40%</u></i>
	<i><u>\$33,001 to \$66,000</u></i>	<i><u>32%</u></i>
	<i><u>\$66,001 to \$100,000</u></i>	<i><u>28%</u></i>
<i><u>\$19,064 to \$23,867</u></i>	<i><u>\$-0- to \$33,000</u></i>	<i><u>20%</u></i>
	<i><u>\$33,001 to \$66,000</u></i>	<i><u>16%</u></i>
	<i><u>\$66,001 to \$100,000</u></i>	<i><u>14%</u></i>

<i><u>If income is:</u></i>	<i><u>and net worth is:</u></i>	<i><u>the percentage is:</u></i>
<i><u>\$0.00 to \$9,277</u></i>	<i><u>\$0 to \$33,000</u></i>	<i><u>80%</u></i>
	<i><u>\$33,001 to \$66,000</u></i>	<i><u>64%</u></i>
	<i><u>\$66,001 to \$100,000</u></i>	<i><u>56%</u></i>
<i><u>\$9,278 to \$13,764</u></i>	<i><u>\$0 to \$33,000</u></i>	<i><u>60%</u></i>
	<i><u>\$33,001 to \$66,000</u></i>	<i><u>48%</u></i>
	<i><u>\$66,001 to \$100,000</u></i>	<i><u>42%</u></i>
<i><u>\$13,765 to \$18,401</u></i>	<i><u>\$0 to \$33,000</u></i>	<i><u>40%</u></i>
	<i><u>\$33,001 to \$66,000</u></i>	<i><u>32%</u></i>
	<i><u>\$66,001 to \$100,000</u></i>	<i><u>28%</u></i>
<i><u>\$18,402 to \$23,038</u></i>	<i><u>\$0 to \$33,000</u></i>	<i><u>20%</u></i>
	<i><u>\$33,001 to \$66,000</u></i>	<i><u>16%</u></i>
	<i><u>\$66,001 to \$100,000</u></i>	<i><u>14%</u></i>

*Scrivener’s Note: The deletion of one acre and insertion of five acres where marked, above, was adopted by Ordinance 2010-001, but was inadvertently omitted from the revision to the codified version of Section 58-85. It is noted herein only to correct the codified version and does not reflect a revision of local legislation.*

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

**7. General Business:**

**a. Actionable Items:**

**1. Consideration of Procedure for Interim Appointment of Member of Board of Supervisors Representing B-11 “Jefferson” Election District**

Ms. Phillips provided a review of the proposed procedure for interim appointment of a Board of Supervisor member representing the B-11 “Jefferson” Election District. Virginia law provides that the remaining members of the Board have the opportunity to appoint an individual to fill the vacancy on an interim basis that will be created when Nicole Price becomes Commonwealth’s Attorney until a special election is held. However, Virginia law does not mandate a particular procedure for the Board to follow in making the interim appointment. She further explained the proposed set of procedures is consistent with those outlined at the November 22 regular Board meeting. The recommendations provided in the agenda materials are based on procedures used by other localities in Virginia that have gone through a similar experience.

Ms. Phillips outlined the proposed procedures as follows:

1. Any resident of the B-11 ‘Jefferson’ Election District meeting the edibility criteria set forth in the Code of Virginia (residency in the Commonwealth for at least one year; current residency in the B-11 Election District; and a registered qualified voter) must submit to the County Administrator by a specified deadline date the following information:
  - a. Their qualifications for the position of Interim Supervisor, on forms to be provided by the county for the following:
    - i. A written statement under oath, on the form prescribed by the State Board of Elections, that the person is qualified to vote for and hold the interim appointment; and
    - ii. A written statement of economic interests as specified in Virginia Code §2.2-3117;
  - b. A description of their background and experience that will benefit their role as a member of the Board of Supervisors, which may be presented in form of a resume;

- c. A narrative Position Statement including, but not limited to, the following information:
    - i. Their vision for Washington County, including present County strengths and weaknesses;
    - ii. Short-range and long-range objectives for the County; and
    - iii. Methods for implementing those objectives.
  - d. If a complete application with all the foregoing materials is not received by the submittal deadline, the application will not be considered.
2. Every applicant's Position Statement shall be posted on the County's website, and all application materials submitted shall be available for public review in the Office of the County Administrator.
  3. All present Board members shall receive copies of submissions from all applications for review purposes.
  4. The Board shall designate a meeting date(s) for discussion of applicants, interviews and/or opportunity for applicants to make presentations to the Board. Board deliberations may be conducted in Closed Meeting pursuant to Virginia Code §2.2-3711(A)(1); however, the ultimate action to name the interim appointee shall be done in open meeting on a date identified in advance by the Board.

#### Notice to Public

5. Notice of the procedure for filling the interim appointment may be distributed, as follows:
  - a. Letter to chairperson of each local, organized political party (i.e., Democrat and Republican);
  - b. Press release to local newspapers;
  - c. Publication of a legal advertisement that provides deadlines for submittals and refers interested persons to check County website and/or call the County for more information;
  - d. Post the procedure on the County website and in the County Administration Building.

#### Recommended Schedule

6. The schedule proposed for the interim appointment procedure is:
  - a. **Friday, December 16:** Mailing of press release and notice of procedure to political parties.
  - b. Legal advertisement publication:
    - i. Tuesdays, December 20 and 27 in the Bristol Herald Courier; and
    - ii. Wednesday, December 28 in the Washington County News.
  - c. **4:30 p.m., Wednesday, January 4:** Deadline for County receipt of application materials.

- d. **Monday, January 9:** Candidate information to be posted on County website and available for public review in the Office of the County Administrator.
- e. **5:00 p.m., Recessed Board Meeting, Tuesday, January 10:** Opportunity for candidate oral, public statements to Board, subject to time limitation based on number of applications received.
- f. **Tuesday, January 24:** Board Agenda Item for selection of interim appointee.

Ms. Phillips explained the method recommended would give the public opportunity to review the candidates' qualifications. The proposed procedures are staff recommendations and, there is no mandate on how the interim appointment process is to be done.

Discussions ensued among the Board and Ms. Phillips about the proposed procedures, length of the interim appointment, and the special election.

Ms. Mumpower asked Board of Supervisors-Election Bill Gibson and Wayne Stevens if the proposed procedures were acceptable to them. They both stated yes.

*On motion of Mr. Owens, second by Mr. Straten, the Board acted to follow the procedures for interim appointment of member of Board of Supervisors representing the B-11 'Jefferson' Election District as outlined by the County Attorney.*

*The vote on this motion was as follows: (6-0-1)*

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Abstained</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

## **2. Consideration of Approval of Contract for Construction of Washington County Government Center Project and Notice of Termination of Lease of Current County Administration Building**

Mr. Reeter explained the contract for construction of the renovations to the Washington County Government Center has been prepared between the County and Quesenberry's, Inc. in the amount of \$943,900.00 as awarded by the Board at its November 28 recessed meeting is presented for Board approval. The contract provides 154 calendar days for completion of renovations upon issuance of a Notice to Proceed to the contractor by the County, which is anticipated in February 2012.

Mr. Reeter next explained it would be appropriate for the County to serve formal notice to the Washington County School Board and Board of Trustees of the William King Museum of its intent to terminate the 1982 Lease Agreement of the current County Administration Building. Based on the schedule for completion of renovations, it is believed the current County Administration Building would be vacated on or before October 1, 2012.

*On motion of Mr. Straten, second by Mr. Owens, the Board acted to approve entry into contract with Quesenberry's, Inc. for renovations to County Government Center Building and approval of letter to Washington County School Board and William King Museum Board of Trustees serving notice of termination of Lease Agreement for current County Administration Building.*

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Nay</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

### **3. Consideration of Holiday Stipends for County Employees**

Mr. Reeter explained last year at this time the Board of Supervisors approved a 'holiday stipend' of \$750.00 for full-time employees and a sliding scale stipend to part-time employees. Should the Board wish to consider such stipends again this year, the County Department of Budget & Finance has recommended certain eligibility criteria, which are set out in the agenda materials. He provided a review of the criteria. The total amount needed to provide stipends is \$166,500.00.

Mr. Reeter next explained as was the case last year, funding for these stipends may be taken from funds available in the County Opportunity Account within the Economic Development Fund. The County Opportunity Account presently has a balance of \$408,540.21, all of which is presently unencumbered funding for economic development incentives, some of which was carried over from FY 2010-11 to current fiscal year and some was new money budgeted in FY2011-12. He further explained as a separate agenda item, the Board will also need to appropriate \$600,000.00 to the IDA on K-VA-T Corporate Headquarters Project, which would use the remaining \$242,000.00 balance and take the rest needed (approximately \$358,000.00) from the County's undesignated reserves. At the time bonds for King College Medical School Project are issued, the County may reimburse the County Opportunity Account either the whole \$408,540.00 or such amount as the Board may determine at that time.

Ms. Mumpower explained the County Personnel Committee has not discussed the issue of a holiday stipend.

*On motion of Mr. Taylor, second by Mr. Reynolds, the Board acted to approve holiday stipends in the amount of \$750.00 for eligible full-time County employees and \$250.00 for eligible part-time employees per the criteria suggested by the County Department of Budget & Finance.*

Lengthy discussions ensued among the Board.

Mr. Taylor questioned when County staff last received a salary adjustment.

Mr. Seamon explained Administrative Division and Library staff last received a raise effective July 1, 2008, and Constitutional Officers staff in December 2007.

Mr. Taylor explained the County has the funding to provide the stipends with no major impact. He said we have all been blessed this year knowing what an effective staff the County has in terms of how they related to emergency and tough conditions, and how they handled the citizens of the County.

Ms. Price discussed her issues with providing the stipend to County employees. The County does not truly have the funding to provide the stipends; the proposal is to use the County Opportunity Account with the plan to restore the funding with borrowed money. Essentially the County would be funding the stipend with borrowed funds. It seems to her that while the employees are deserving of receiving a stipend, the County is in no better position to do this than in the past. Ms. Price explained that Delegate Joe Johnson has said an additional \$1,000,000,000 to \$1,500,000,000 in state funding cuts. Also, the County has lost jobs at Gates Corporation and Bristol Compressors. She said most employees are happy to have jobs - there have been no layoffs or furloughs.

Mr. Reynolds explained the County has a dedicated staff and deserve the Boards consideration of granting the stipend. Agency and department heads have told him how much the stipend would mean to the employees and would boost employee morale.

Mr. Owens explained this is an opportunity for the Board to thank employees for a job well done during the past year. Employees responded in an outstanding manner when the tornado struck the County and helped the citizens. He is proud of the County staff.

Mr. McCall stated the stipend helps employees on the lower end of the salary scale as opposed to providing a percentage salary increase.

Ms. Mumpower commented that County staff has moved to the front and worked hard during the past year. When the tornado struck the County, she realized just what an excellent staff that Washington County is blessed with. The stipend is needed and is a gesture to show employees they are appreciated for the extra hours they worked. She also believes granting the stipends would be a tremendous boost to staff morale.

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Nay</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

#### **4. Consideration of Appropriation to Washington County Industrial Development Authority for K-VA-T Corporate Headquarters Project**

Mr. Reeter explained the Board and IDA have agreed to a \$600,000/\$400,000 split with respect to the \$1,000,000 local cash contribution to the K-VA-T Corporate Headquarters Project within the Town of Abingdon involving the construction of a new corporate office building by K-VA-T on the site of the former Johnston Memorial Hospital Complex. The County and IDA reserve the right to reimburse themselves respectively as part of a future eligible bond issuance, with the Board further pledging to reimburse the IDA its \$400,000 contribution over a not-to-exceed three (3) County fiscal year period

beginning in FY 2013-14 should reimbursement via future bond issuance not be undertaken prior to June 30, 2013.

Mr. Reeter further explained there are two Resolutions presented to the Board for consideration. One Resolution authorizes appropriation of the County's \$600,000 share to the IDA, reserving the right to reimburse this amount via a future bond issuance and pledging reimbursement of the IDA's \$400,000 share beginning in FY 2013-14. A second Resolution would authorize the County to reimburse itself its contribution to the IDA toward the Project as part of a future eligible bond issuance within the next three years.

*On motion of Mr. Straten, second by Mr. Reynolds, the Board acted to adopt the following Resolutions:*

**RESOLUTION 2011-46**

*WHEREAS, the Board of Supervisors of Washington County, Virginia (the County) and the Industrial Development Authority of Washington County, Virginia (the IDA) have agreed to contribute \$1.0 million in local funds to the K-VA-T Food Stores, Inc. (K-VA-T) Corporate Headquarters Project, and*

*WHEREAS, this contribution is part of a larger package of funds and other incentives totaling \$6.0 million, consisting of a \$3.0 million contribution from the Virginia Tobacco Indemnification and Revitalization Commission and a combined \$3.0 million in total local contributions from the Town of Abingdon, the County and IDA, and*

*WHEREAS, the County's and IDA's portion of the combined \$3 million in total local contributions consists of the \$1.0 million cash contribution plus redevelopment tax incentives valued at \$650,000.00 over the next 15 years, and*

*WHEREAS, under the terms of a Performance Agreement to be executed between K-VA-T and IDA, K-VA-T shall make a minimum capital investment of \$20,433,000.00 in a new corporate headquarters office building to be constructed within the Town of Abingdon in Washington County and continue to employ at least 375 persons with a quarterly aggregate payroll of at least \$4,012,500.00, subject to specific terms and conditions set out in the Performance Agreement, and*

*WHEREAS, the County and IDA have agreed to initially share the cost of the \$1.0 million local funds contribution on the basis of 60% County/40% IDA;*

*NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Washington County, Virginia that the Board hereby appropriates to the IDA \$600,000.00 as its share of the \$1.0 million contribution by the IDA to the K-VA-T Food Stores, Inc. Corporate Headquarters Project, as follows:*

*From Line-Item 95161-9500, County Opportunity Account – Reserve-Undesignated - \$242,040.00*  
*From County General Fund Reserves – Undesignated Reserves -*  
*\$357,960.00*  
*Total Appropriation -*  
*\$600,000.00*

*BE IT FURTHER RESOLVED that the Board pledges subject to annual appropriation to reimburse the IDA its \$400,000.00 share of the \$1 million contribution over a not-to-exceed three (3) consecutive fiscal year period beginning July 1, 2013 should reimbursement via a future eligible bond issuance not occur prior to that date.*

\*\*\*\*\*

**RESOLUTION 2011-47 OF THE BOARD OF SUPERVISORS OF THE COUNTY OF WASHINGTON, VIRGINIA DECLARING ITS INTENTION TO REIMBURSE ITSELF FROM THE PROCEEDS OF ONE OR MORE TAX-EXEMPT FINANCINGS FOR CERTAIN EXPENDITURES MADE AND/OR TO BE MADE IN CONNECTION WITH A CERTAIN ECONOMIC DEVELOPMENT PROJECT FOR THE COUNTY**

*WHEREAS, the County of Washington, Virginia (the "County") is a political subdivision organized and existing under the laws of the Commonwealth of Virginia; and*

*WHEREAS, the County has paid, beginning no earlier than (60 days prior to adoption of this Resolution), or will pay, on and after the date hereof, certain expenditures (the "Expenditures") in connection with a certain economic development project for the County, listed on the attached Schedule A (the "Project"); and*

*WHEREAS, the Board of Supervisors of the County (the "Board") has determined that those moneys previously advanced no more than 60 days prior to the date hereof and to be advanced on and after the date hereof to pay the Expenditures are available only for a temporary period and it is necessary to reimburse the County for the Expenditures from the proceeds of one or more issues of tax-exempt bonds (the "Bonds"); and*

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF WASHINGTON, VIRGINIA, AS FOLLOWS:**

*Section 1. The Board hereby declares, in accordance with U.S. Treasury Regulation Section 1.150-2, as amended from time to time, the County's intent to reimburse the County with the proceeds of the Bonds for Expenditures with respect to the Project made on and after the date which is no more than 60 days prior to the date hereof. The County reasonably expects on the date hereof that it will reimburse itself for the Expenditures with the proceeds of the Bonds.*

*Section 2. Each Expenditure was and will be either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of the Expenditures), (b) a cost of issuance with respect to the Bonds, (c) a nonrecurring item that is not customarily payable from current revenues, or (d) a grant to a party that is not related to or an agent of the County so long as such grant does not impose any obligation or condition (directly or indirectly) to repay any amount to or for the benefit of the County.*

*Section 3. The maximum principal amount of the Bonds expected to be issued for the Project is set forth on Schedule A.*

*Section 4. The County will make a reimbursement allocation, which is a written allocation by the County that evidences the County's use of proceeds of the Bonds to reimburse an Expenditure, no later than 18 months after the later of the date on which the Expenditure is paid or the Project is placed in service or abandoned, but in no event more than three years after the date on*

*which the Expenditure is paid. The County recognizes that exceptions are available for certain "preliminary expenditures," costs of issuance, certain de minimis amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure) and expenditures for construction projects of at least 5 years.*

**Section 5. This Resolution shall take effect immediately upon its passage.**

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

#### **5. Consideration of Adoption of Washington County Emergency Operations Plan**

County Director of Emergency Management Pokey Harris explained the Washington County Emergency Operations Plan (EOP) has been revised and presented to the Board for adoption.

Discussions ensued among the Board and Ms. Harris.

Ms. Mumpower and Mr. McCall (members of the County Emergency Services Committee members) commended Ms. Harris for the outstanding job that she and Deputy Director Theresa Kingsley did with revising the EOP.

***On motion of Mr. McCall, second by Mr. Owens, the Board acted to adopt the following Resolution:***

#### ***RESOLUTION 2011-48***

#### ***ADOPTION OF WASHINGTON COUNTY, VIRGINIA EMERGENCY OPERATIONS PLAN***

***WHEREAS the Board of Supervisors of Washington County, Virginia recognizes the need to prepare for, respond to, and recover from natural and manmade disasters; and***

***WHEREAS Washington County has a responsibility to provide for the safety and well being of its citizens and visitors; and***

***WHEREAS Washington County has established and appointed a Director and Coordinator of Emergency Management.***

***NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Washington County, Virginia, this Emergency Operations Plan as revised is officially adopted.***

***IT IS FUTHER RESOLVED that the Washington County Director of Emergency Management, or his/her designee, are tasked and authorized to maintain and revise as necessary this document over the next four (4) year period or until such time be ordered to come before this Board.***

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

<b><i>Mr. McCall</i></b>	<b><i>Aye</i></b>
<b><i>Ms. Mumpower</i></b>	<b><i>Aye</i></b>
<b><i>Mr. Owens</i></b>	<b><i>Aye</i></b>
<b><i>Ms. Price</i></b>	<b><i>Aye</i></b>
<b><i>Mr. Reynolds</i></b>	<b><i>Aye</i></b>
<b><i>Mr. Straten</i></b>	<b><i>Aye</i></b>
<b><i>Mr. Taylor</i></b>	<b><i>Aye</i></b>

At this time, Ms. Harris provided brief remarks about the transition of the new PSAP – E-911 Center to the Washington County Public Safety Building.

**6. Consideration of Plans for Natural Gas Extraction Panel Presentation Scheduled for January 2012**

Ms. Phillips provided a summary of the proposed plans for the Natural Gas Extraction Presentation scheduled for January, 2012 for Board consideration. The proposed dates for the presentation are January 19 or 23 at the John Battle High School auditorium. It is recommended a budget of \$900 per person for expenses (airfare and hotel room) for presenters traveling more than 100 miles be established. The Board is also asked to make a decision about how to handle questions and answers. Ms. Phillips stated her recommendation is no questions be permitted until after all speakers have completed their presentations. Questions may be presented in writing to the facilitator, who will read the questions to speakers, as time allows.

Ms. Phillips explained the question and answer format has been discussed with the Planning Commission. Their recommendation is once the presentations conclude that an abbreviated amount of time to respond to other speakers be allotted. In terms of questions, the Planning Commission encouraged that questions be allowed in written format from the Board of Supervisors and Planning Commission. If time permits, the audience could ask questions in written format. Materials would be available for the audience to write questions.

Discussions ensued among the Board.

It was census of the Board to schedule the presentation on January 23, 2012 at John Battle High School.

The Board directed the County attorney to proceed with the format for question/answers as proposed.

***On motion of Mr. Straten, second by Mr. Owens, the Board authorized a supplemental appropriation from Reserve for Contingencies for travel reimbursement funds recommended by the County Attorney.***

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

<b><i>Mr. McCall</i></b>	<b><i>Aye</i></b>
<b><i>Ms. Mumpower</i></b>	<b><i>Aye</i></b>

*Mr. Owens*                    *Aye*  
*Ms. Price*                    *Aye*  
*Mr. Reynolds*                *Aye*  
*Mr. Straten*                  *Aye*  
*Mr. Taylor*                   *Aye*

**7. Consideration of Appointments to Washington County Disaster Recovery CDBG Project's Housing Rehabilitation Board**

*On motion of Mr. Taylor second by Mr. Reynolds, the Board acted to appoint the following individuals to the Washington County Disaster Recovery CDBG Project's Housing Rehabilitation Board:*

*Wayne Stevens*  
*Mark Reeter*  
*David Kidd*  
*Steve Rowland*  
*Chris Rakes (ex-officio)*  
*Greg Vannoy (ex-officio)*

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

*Mr. McCall*                    *Aye*  
*Ms. Mumpower*               *Aye*  
*Mr. Owens*                    *Aye*  
*Ms. Price*                    *Aye*  
*Mr. Reynolds*                *Aye*  
*Mr. Straten*                  *Aye*  
*Mr. Taylor*                   *Aye*

**8. Consideration of Resolution Honoring Dennis Godfrey for 24 years of Service as Commonwealth's Attorney for Washington County**

*On motion of Ms. Price, second by Mr. Taylor, the Board acted to adopt the following Resolution:*

**RESOLUTION 2011-49  
HONORING DENNIS L. GODFREY FOR HIS TWENTY-FOUR YEARS OF SERVICE AS  
COMMONWEALTH'S ATTORNEY FOR WASHINGTON COUNTY**

*WHEREAS, the Honorable Dennis L. Godfrey, Esq. has served as Commonwealth's Attorney for the County of Washington, Virginia for twenty-four years, having been first elected to this Office in 1984, and*

*WHEREAS, between 1984 and 1999, he ably served in this capacity for four consecutive terms, and*

*WHEREAS, he returned to public service in Washington County in 2004, serving an additional two (2) consecutive terms as Commonwealth's Attorney, and*

**WHEREAS, Mr. Godfrey attended Western Kentucky University graduating in 1971 and obtained his law degree from the University of Tennessee in 1974, and**

**WHEREAS, Dennis's many accomplishments include membership in the Virginia and Florida State Bars, President of Washington County Bar Association, Board member of Virginia Association of Commonwealth's Attorneys, 9<sup>th</sup> District 2011 & 2012 Honorary Washington County Chair of the March of Dimes Campaign, Cabinet Member of The United Way of Russell & Washington Counties, President-Elect and long-time member of Kiwanis Club of Abingdon, President of Abingdon Midget League Football and Vice-President of Abingdon Little League, as well as being a loving husband to his wife Susan of forty-two years, his four children and six grandchildren, and**

**WHEREAS, Mr. Godfrey's commitment to the law and its fair, equitable and consistent enforcement as Washington County's chief prosecutor has won him the respect and admiration of many within this community;**

**NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Washington County, Virginia that it bestows its highest praise, respect and commendation for the life and career of the Honorable Dennis L. Godfrey for his twenty-four years of public service as Commonwealth's Attorney for Washington County, Virginia.**

**BE IT FURTHER RESOLVED that the Board of Supervisors declares December 31, 2011, his last official day as Commonwealth's Attorney as "Dennis L. Godfrey Day" throughout Washington County.**

**BE IT FURTHER RESOLVED that this Resolution be spread across the Minutes of the Board of Supervisors and presented to Dennis L. Godfrey.**

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

<b>Mr. McCall</b>	<b>Aye</b>
<b>Ms. Mumpower</b>	<b>Aye</b>
<b>Mr. Owens</b>	<b>Aye</b>
<b>Ms. Price</b>	<b>Aye</b>
<b>Mr. Reynolds</b>	<b>Aye</b>
<b>Mr. Straten</b>	<b>Aye</b>
<b>Mr. Taylor</b>	<b>Aye</b>

**9. Consideration of Proposal for Settlement of Pending Lawsuit B.C. Liquidation, Inc. v. County of Washington, Virginia**

Ms. Phillips explained a lawsuit filed by B.C. Liquidations, Inc. against the County demanded reimbursement of machinery and tools taxes paid for years 2004 and 2005 in the amount of \$467,762.00 plus interest, which continued to accrue at the rate of ten percent (10%) per annum. In addition to the amount claimed for in the lawsuit, the Company had also filed with the County Commissioner of Revenue a claim for reimbursement of machinery and tools taxes for the years 2006 and 2007 in an amount that exceeded \$100,000,000, plus interest. A lawsuit has not been filed for the 2006, 2007 claim, but it was anticipated that the Company would do so. Ms. Phillips further explained she and Commissioner of Revenue David Henry worked at great length and detail analyzing the Company's

claim, and the County retained the services of private legal counsel whose practice is only in the area of local government tax law to assist with review and litigation defense. In the interest of avoiding litigation expenses, the Company and the representatives of the County have discussed the possibility of settlement of all claims in accordance with the proposed motion set out in agenda materials provided to the Board.

*On motion of Mr. Straten, second by Mr. Reynolds the Board took the following actions:*

1. *To authorize the County Administrator to sign the legal instruments necessary to effectuate a settlement in the matter of the lawsuit, B.C. Liquidations, Inc. v. County of Washington, Virginia that includes the following components:*
  - a. *Reimbursement to B.C. Liquidations, Inc. in the amount of \$650,000.00 to be paid in two equal installments, with the first payment to be made in the current fiscal year ending June 30, 2012 within thirty (30) days of entry by the Court of an order of dismissal with prejudice based on agreement of the parties, and payment of the second half in full on or before July 31, 2012; and*
  - b. *The payment would secure full and complete settlement of all pending and threatened litigation regarding machinery and tools tax payments made for 2004, 2005, 2006, and 2007 from any and all entities involved with ownership and/or operation of the Bristol Compressors facility.*
2. *To appropriate and authorize the County Administrator to transfer funds from the County General Fund Undesignated Reserves for purposes of the first installment to be paid in the current fiscal year; and*
3. *To direct the County Administrator to include in the proposed budget for FY 2013, funds for payment of the second installment, as noted in this motion.*

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

**b. Information Items:**

**1. Update on April 27-28 Storm Disaster Recovery Efforts**

Ms. Harris provided a status report on the April 27-28 storm disaster recovery efforts.

## 2. **Review of Final Draft of Board of Supervisors By-Laws, General Policies and Operating Procedures for Calendar Year 2012**

Mr. Reeter provided a final review of amendments to the draft of Board of Supervisors By-Laws, General Policies and Operating Procedures for Calendar Year 2012 as follows:

Proposed By-laws Amendments:

- Proposed revisions to Articles 6.1 & 6.3 pertaining to meetings of the Board
- Proposed new Article 7.7 pertaining to Invocations at Board meetings
- Proposed revisions to Articles 8.3 & 8.4 pertaining to conduct of Board meetings
- Proposed revisions to Articles 10.5 regarding appointments of the Board
- Proposed revisions to Articles 11.5 & 11.7 pertaining to Board Committees and Advisory Boards
- Proposed revisions to Article 12.4 pertaining to the Office of the County Administrator
- Proposed revision to Article 7.2.2 providing Public Comment at all regular Board meetings
- Proposed revision to Article 7.6 requiring Board Meeting Agendas and supporting materials for recessed and called special meetings of the Board be posted to the County website 24 hours prior to the meeting when practical (presently only regular Board meeting agendas/materials are posted on-line prior to the meeting).

Proposed General Policies Amendments:

- A proposed new Section 6.7 pertaining to budget authority for the Director of Emergency Management
- Proposed revisions and additions to Section 6.11 pertaining to the County's fiscal policies in compliance with the requirements of Governmental Accounting Standards Board (GASB) Bulletin No. 54.
- A proposed new Article 10.7 pertaining to the procedure by which the Board shall review draft ordinances to amend the County Code

Proposed Operating Procedures Amendments:

- The proposed operating procedures for Calendar year 2012 have now been updated to reflect the schedule holidays and budget meetings for the coming year.

Mr. Reeter explained with respect to changes to Section 6.11 to comply with GASB Bulletin No. 54 requirements, the County's auditors (Robinson Farmer Cox) are asking that the Board go ahead and adopt these retroactive to July 1, 2011 in order for the County's FY 2010-2011 audit to indicate compliance with GASB 54.

Mr. Reeter submitted to the Board for their consideration a list of Board of Supervisor-Elect Bill Gibson's suggested changes to the proposed Board By-laws.

***On motion of Mr. Owens, second by Ms. Price, the Board acted to adopt Section 6.11 of the Board General Policies to comply with GASB Bulletin No. 54 requirements as recommended by the County's auditors (Robinson Farmer Cox, and to make the policy retroactive to July 1, 2011 in order for the County's FY 2010-2011 audit to indicate compliance with GASB 54.***

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

*On motion of Mr. Straten, second by Mr. McCall the Board acted to accept the proposed Board By-laws, General Policies and Operating Procedures for Calendar Year 2012 as currently amended and hold for further review at the January 10, 2012 organizational meeting.*

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

### **3. Review of January 10, 2012 Board Annual Meeting for Calendar Year 2012**

Mr. Reeter provided a review of the January 10, 2012 Board Annual Meeting for Calendar Year 2012.

### **8. Board Member Reports**

Mr. Reynolds provided remarks about his term concluding on the Board of Supervisors, and the County's accomplishments during his time on the Board. He said it has been a pleasure serving with all the Board and IDA members. Mr. Reynolds stated he hopes work will continue to make Washington County a progressive county.

Ms. Price explained it has been an honor and privilege to serve the people in the Jefferson District and to serve with members of the Board. She knows the Board will approach the interim appointment of a member of the Board of Supervisors representing the Jefferson District mindful of the people in her district and do what is in the best interest for these citizens.

Mr. Taylor explained it has been a pleasure to serve on the Board for the last four years. He believes actions taken have been positive for the county. The County is growing; the Board and citizens need to work together for the good of the County.

Mr. Straten stated it has been a pleasure and honor to serve with Ms. Price, Mr. Reynolds and Mr. Taylor.

Mr. Straten explained that 2011 has been a year with many ups and downs. We experienced the tornado and lay-offs at Bristol Compressors. County staff does not often get the recognition and honor they

deserve. Some members of staff could not attend tonight's Board meeting because they are working with Bristol Compressors employees to talk with them about opportunities for job training and other job opportunities. For the most part, people in the County do not understand what staff does on a daily basis. The funding for the stipends seems like a large amount; however, most County staff work more than 40 hours a week. Mr. Straten stated that staff is owed a great deal of gratitude and it is a privilege to work with them.

Mr. McCall made remarks to Ms. Price, Mr. Reynolds and Mr. Taylor. He enjoyed working with each of them.

Mr. Owens stated he enjoyed working with Ms. Price, Mr. Reynolds and Mr. Taylor and that he learned from each of them. He wished them the best.

Ms. Mumpower echoed the remarks that have been made to Ms. Price, Mr. Reynolds and Mr. Taylor. It has been an honor to serve with each of them and stated they will be missed.

Ms. Mumpower thanked the Board for the opportunity to serve as Chair. It has been an honor and privilege. Serving as Chair has given her a lot of opportunities and has at times been a challenge. She has been able to work more close with staff and realizes the County has the best employees. The tornado taught her a lot about the staff. They worked together as a team and demonstrated love compassion, caring and giving to help those in need. Ms. Mumpower thanked Executive Assistant Naoma Norris for providing assistance to her during her term as Chair.

## **9. Board Information and Reminders**

Mr. Reeter reviewed Board reminders and information.

Mr. Reeter and Ms. Phillips expressed their sincere appreciation to Ms. Price, Mr. Reynolds and Mr. Taylor.

## **10. Adjourn or Recess**

*On motion of Mr. Straten, second by Ms. Price, to recess to 5:00 p.m. on January 10, 2012.*

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

<i>Mr. McCall</i>	<i>Aye</i>
<i>Ms. Mumpower</i>	<i>Aye</i>
<i>Mr. Owens</i>	<i>Aye</i>
<i>Ms. Price</i>	<i>Aye</i>
<i>Mr. Reynolds</i>	<i>Aye</i>
<i>Mr. Straten</i>	<i>Aye</i>
<i>Mr. Taylor</i>	<i>Aye</i>

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12-13-11

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**Prepared by:**

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Naoma A. Norris, Recording Clerk

**Approved by the Washington County Board of Supervisors:**

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Dulcie M. Mumpower, Chairman