

**Virginia:** The regular meeting of the Smyth County Board of Supervisors was held at the County Office Building on Tuesday, July 8, 2008 at 12:00 noon.

**Board Members**

**Present:** Mr. Charlie Clark Mr. Michael Roberts  
Mr. Wade Blevins Mrs. Darlene R. Neitch  
Mr. Marvin Perry Mrs. Brenda Waddell

**Board Members**

**Absent:** Mr. Todd Dishner

**Staff Members**

**Present:** Mr. Ed Whitmore Mr. Michael Carter  
Mr. Charlie Atkins Mrs. Amber Johnson  
Mr. John H. Tate, Jr.

Chairperson, Neitch called the meeting to order at noon. Mr. Marvin Perry, gave the invocation and Scott Simpson led the pledge of allegiance.

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Upon motion of Mr. Clark, seconded by Mrs. Waddell, and unanimously carried, the agenda was adopted, along with the additional agenda.

Vote: 6 yea  
1 absent (Dishner)

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Upon motion of Mr. Perry, seconded by Mr. Clark, and unanimously carried, the minutes of June 10, 16, and 26, 2008 were approved.

Vote: 6 yea  
1 absent (Dishner)

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Upon motion of Mr. Perry, seconded by Mr. Clark, and unanimously carried, the following appropriations were approved:

General County	\$1,350,000
Department of Social Services (July 9-31, 2008)	\$335,000
(August 1-12, 2008)	\$65,000
Schools	
Operating Fund	\$2,250,000
Textbook Fund	\$15,000
Debt & Capital Outlay	\$900,000

Vote: 6 yea  
1 absent (Dishner)

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Upon motion of Mr. Perry, seconded by Mr. Clark, the Board unanimously approved the accounts payable listing in the amount of \$605,555.88. This accounts payable includes \$17,742.60 to Advanced Wireless Solutions, Inc. for the Radio System Project.

Vote: 6 yea  
1 absent (Dishner)

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**CITIZEN'S TIME**

The following citizens spoke in opposition of the recent policy change placing all water and sewer accounts in the landowner's name:

- |                   |                        |
|-------------------|------------------------|
| Stephen Philips   | Glenn Wheeler          |
| Tonya Bauer       | Jerry Widener          |
| Sonya Smith       | Cherrie Hayton         |
| William Firestone | Mary Katherine Compton |

These citizens brought up various questions and concerns before the Board. They stated their major concerns such as receiving a minimum bill when the property is empty and being responsible for someone else's water bill. Madam Chairman invited those citizens with these same concerns to the next Water and Sewer Committee on Thursday, July 24, at 4:30 p.m.

Billy Bear and B.J. Bear spoke in reference to the festival permit application process. The Bears' are affected (lights, dust, noise) by events held at the Davis Valley Winery and were not approached for adjacent landowners consent. Madam Chairman invited the Bears to the next Ordinance Committee meeting on Tuesday, July 22 at 2:00 p.m. when this will be discussed in greater detail.

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**NEW BUSINESS**

Upon motion of Mr. Clark, seconded by Mr. Perry, the Board unanimously nominated Roy F. Evans, Jr. to the Southwest Virginia Community Corrections Community Criminal Justice Board (CCJB) as the Regional Commonwealth Attorney representative. If reappointed to the CCJB this two (2) year term will expire February 28, 2010.

Vote: 5      yea  
          2      absent (Dishner, *Blevins - out of the room*)

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Upon motion of Mr. Perry, seconded by Mrs. Waddell, and unanimously carried, the Board approved the annual fiscal year Fire Programs Fund Disbursement Agreement as presented (same as previous years).

Vote: 6      yea  
          1      absent (Dishner)

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By recommendation of the Water and Sewer Committee and upon motion of Mr. Perry, seconded by Mr. Clark, and unanimously carried, *BE IT RESOLVED* that the Smyth County Board of Supervisors sets forth the following preliminary rate schedule:

**Smyth County  
Summary of Proposed Rate Structure**

***Water Rates - Residential***

<b>Current Rates</b>		<b>Proposed Rates</b>	
0 – 3,000 gallons	\$20.00 minimum bill	0 – 1,000 gallons	\$15.00 minimum bill
Each additional 1,000 gallons	\$6.00 per 1,000 gallons	1,001 – 6,000 gallons	\$6.50 per 1,000 gallons
		6,001 and over	\$8.00 per 1,000 gallons

***Water Rates - Commercial***

<b>Current Rates</b>		<b>Proposed Rates</b>	
0 – 4,000 gallons	\$25.00 minimum bill	0 – 4,000 gallons	\$35.00 minimum bill
Each additional 1,000 gallons	\$6.00 per 1,000 gallons	Each additional 1,000 gallons	\$8.00 per 1,000 gallons

***Water Rates -Industrial***

<b>Current Rates</b>		<b>Proposed Rates</b>	
0 – 25,000 gallons	\$100.00 minimum bill	0 – 25,000 gallons	\$162.50 minimum bill
Each additional 1,000 gallons	\$6.00 per 1,000 gallons	Each additional 1,000 gallons	\$8.00 per 1,000 gallons

***Sewer Rates - Residential***

<b>Current Rates</b>		<b>Proposed Rates</b>	
0 – 1,000 gallons	\$12.50 minimum bill	0 – 1,000 gallons	\$15.00 minimum bill
Each additional 1,000 gallons	\$6.00 per 1,000 gallons	1,001 – 6,000 gallons	\$6.50 per 1,000 gallons
		6,001 and over	\$8.00 per 1,000 gallons
Residential Flat Rate	\$20.00 per month	Residential Flat Rate	\$28.00 per month

***Sewer Rates - Commercial***

<b>Current Rates</b>		<b>Proposed Rates</b>	
0 – 3,000 gallons	\$50.00 minimum bill	0 – 4,000 gallons	\$35.00 minimum bill
Each additional 1,000 gallons	\$6.00 per 1,000 gallons	Each additional 1,000 gallons	\$8.00 per 1,000 gallons

***Sewer Rates -Industrial***

<b>Current Rates</b>		<b>Proposed Rates</b>	
0 – 3,000 gallons	\$50.00 minimum bill	0 – 3,000 gallons	\$50.00 minimum bill
Each additional 1,000 gallons	\$6.00 per 1,000 gallons	Each additional 1,000 gallons	\$8.00 per 1,000 gallons

***Sewer Rates -Industrial Enterprise Zone***

<b>Current Rates</b>		<b>Proposed Rates</b>	
0 – 3,000 gallons	\$40.00 minimum bill	Discontinued	Discontinued
Each additional 1,000 gallons	\$4.80 per 1,000 gallons	Discontinued	Discontinued

Vote: 5    yea  
      2    absent (*Dishner, Roberts - out of the room*)

By recommendation of the Water and Sewer Committee, and upon motion of Mr. Perry, seconded by Mr. Clark, and unanimously carried, the Board authorized the advertisement of the above rates and the public hearing. This will be published in the

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Smyth County News and Messenger on July 19 and 26, 2008, both Saturday editions.

Vote: 5      yea  
      2      absent (Dishner, *Roberts - out of the room*)

By recommendation of the Water and Sewer Committee, and upon motion of Mr. Clark, seconded by Mr. Perry, and unanimously carried; the Board set a public hearing date for Tuesday, October 14, 2008 at 2:00 p.m. (regular Board meeting).

Vote: 5      yea  
      2      absent (Dishner, *Roberts - out of the room*)

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With the recommendation of the Water and Sewer Committee, the Board agreed to notify Fire Departments in writing that they should discontinue their service of filling swimming pools. Fire Departments should go to other sources that are not in conservation mode.

Vote: 6      yea  
      1      absent (Dishner)

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Mr. Tate updated the Board on the Food and Beverage Tax by Referendum which was agreed upon by the Board at the June 10 Board meeting. This will require pre-clearance from the Justice Department before petitioning the Circuit Court of Smyth County. Mr. Tate mailed that request in writing to the Justice Department July 2 expressing its urgency.

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Upon motion of Mr. Blevins, seconded by Mrs. Waddell, and unanimously carried, the Board set Thursday, August 24, 2008, at 7:00 p.m. as the date and time to hear an appeal from Melissa L. Crigger. Her appeal is to the decision the Planning Commission determined on Thursday, June 26, 2008, to deny her request for a variance to the Subdivision Ordinance, regarding lots 2 and 3 in Big Horn Estates.

Vote: 6      yea  
      1      absent (Dishner)

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Sally Morgan introduced Owen Perkins who is serving as her summer intern. Mr. Perkins is from Fairfax County, currently attending Virginia Tech. Mr. Perkins touched on the Entrepreneurial Developmental Strategy Project that he has been working on. He distributed a draft of the brochure he has prepared on resources for starting a

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business in Smyth County. He hopes these can be made available around the area where prospective entrepreneurs may look for information. He also handed out an updated version of the Economic Trends for 2008. Owen has been working with the IT Department to update the Economic Development portion of the County's website along with updating information on financial assistance to businesses. He has also created a packet of information of local builders and contractors for the Sheridan Ridge project. Mr. Perkins will give a more detailed presentation at the next Board meeting of his complete project.

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Mr. Roberts briefly mentioned the citizens' concerns that arose at citizens time. He made the motion to reconsider the motion made in April (he voted in the majority). There was not second, the motion failed. He asked that the Water and Sewer Committee explain the changes to the citizens in better terms at the next committee meeting.

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Mr. Tate briefly mentioned to the Board the status of the VML/VACo/APCo Steering Committee and the Contract negotiation. A letter on this issue was included in the information portion of the Board packets.

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Robert Hurt of the Virginia Department of Transportation was present and briefed the Board in the following projects:

- I-81 crossovers will be complete by the end of August.
  - Route 11 bridge on the southern end of Chilhowie will begin construction soon and will last approximately 1-2 years. It will be one lane during construction.
  - Route 786 (a dead end road) speed study as requested by Mr. Perry is under review. Currently it isn't posted; 25 mph is a strong possibility.
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At 3:00 p.m. Chairperson Neitch opened a public hearing to consider the adoption of a Transient Occupancy Tax. Mr. Whitmore read the publication below as advertised in the Smyth County News and Messenger, June 21 and 28, 2008 both Saturday editions. There were no citizens present to speak, therefore, upon motion of Mr. Perry, seconded by Mr. Clark, and unanimously carried; the rules for public hearings were forgone.

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**Public Hearing Notice**

The Smyth County Board of Supervisors will conduct a public hearing at the next regular scheduled meeting on Tuesday, July 8, 2008 at 3:00 P.M., at the Smyth County Office Building, 121 Bagley Circle, Marion, VA.

This hearing will consider the adoption of a transient occupancy tax pursuant to Section 58.1-3819 of the Code of Virginia. The hearing will take public comment on amending Section 34: Finance and Taxation of the Smyth County Code and will consider whether or not to impose a Transient Occupancy Tax. This proposed tax would be equivalent to two percent (2%) of the total amount paid for room rental by or for such transient to any hotel or travel campground, and would provide for a payment to the remitter of the tax to the County. This tax would apply to facilities rented out for fewer than thirty (30) consecutive days.

At the above mentioned day, time, and place, any citizen of Smyth County, subject to the rules of procedure of the Board of Supervisors, may appear to express an opinion on this ordinance amendment. A full copy of the proposed amendment to the Smyth County Code is on file at the above address in the County Administrator's Office and may be reviewed or a copy obtained, Monday – Friday, during normal business hours, 8:00 a.m. - 5:00 p.m.

Done by order of the Smyth County Board of Supervisors  
Edwin B.J. Whitmore, III, County Administrator

Vote: 5      yea  
      2      absent (Dishner, Blevins - out of the room)

This hearing was closed at 3:03 p.m. The Board agreed to take a vote on this issue at the continued meeting on Thursday, July 24, 2008.

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Charlie Harrington, Emergency Coordinator gave a brief update before the Board on the National Incident Management System (NIMS). Mr. Harrington, Ed Whitmore, Mike Carter, Mike Roberts, Shannon Williams and himself have updates to complete by September 30 under the 300 Series. These can be taken on the internet. There is no requirement of the Board members to take these courses. If the Board wishes to take a two hour course, Mr. Harrington can arrange that to be held any time in the Board room.

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**Old Business**

1. Collection of delinquent taxes (8-10-04).
2. Marevine Slep, request for water service on Fox Valley Road (5-11-04).
3. Re-codifying of the Smyth County Code (1-10-2006).
4. Proposed revisions from the Planning Commission to the Subdivision Ordinance. (referred to the Ordinance Committee 6-13-2006).
5. Disposal of former school building at 105 East Strother Street (7-11-2006)
6. Request the Board appropriate \$15,120 to pay Wythe County their portion of taxes collected on air craft at the Smyth Wythe Airport for 2006 (6-12-2007).

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7. Appointments:

- Board of Zoning Appeals (2-12-2008)  
One Alternate - VACANT
- Department of Social Services Board (6-10-2008)  
(4 year term)  
  
Park District  
Kelly M. Blevins (*eligible for another term*)  
Expired 6-30-2008
- Community Policy Management Team (6-10-2008)  
(1 year term)

Private Provider Representative - VACANT

- 8. Request the Board consider a resolution in support of the Tennessee Valley Authority 75th anniversary (**4-8-2008**).
- 9. Recommendation from the Budget Committee to discuss reconciliations with the Treasurer (**5-13-2008**).
- 10. Gas bids (**6-26-2008**).

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Mr. Carter briefly updated the Board on the status of the gas bids. He stated that there are potential providers willing to sell to the County.

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- 11. Radio System Project (**6-26-2008**).

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**CLOSED SESSION**

Upon motion of Mr. Clark, seconded by Mr. Perry, and unanimously carried, at 3:04 p.m., the Board agreed to enter into closed session as allowed by the Code of Virginia, Section 2.2-3711 (A) (7) as described below:

(7) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

Vote: 6     yea  
      1     absent (Dishner)

At 3:29 p.m. the Chairperson ended the closed session.

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Upon motion of Mr. Clark, seconded by Mr. Roberts, BE IT RESOLVED that the Smyth County Board of Supervisors unanimously adopts the following resolution:

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WHEREAS, the Smyth County Board of Supervisors has convened in a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

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

NOW, THEREFORE, BE IT RESOLVED that the Smyth County Board of Supervisors hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Smyth County Board of Supervisors.

Vote: 6      yea  
      1      absent (Dishner)

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**CONTINUE THE MEETING**

At 3:30 p.m. upon motion of Mr. Roberts, and seconded by Mrs. Waddell, the Board continued this meeting until Thursday, July 24, 2008 at 7:00 p.m. for an appeal hearing to be followed by a joint public hearing with the Town of Marion at 7:30 p.m. on a resolution creating the Smyth Crossings Community Development Authority, along with any other issues that may arise.

Vote: 6      yea  
      1      absent (Dishner)

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Mr. Simpson and Mr. Carter will be reviewing engineering term contracts. Mr. Clark agreed to assist in this process as the Board member.

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Darlene Neitch, Chairperson







**Virginia:** Continued meeting of the Smyth County Board of Supervisors held at the County Office Building on Thursday, July 24, 2008, 7:00 p.m.

**Board Members**

**Present:** Darlene Neitch Charlie Clark  
Brenda Waddell Michael Roberts  
Marvin Perry Todd Dishner  
Wade Blevins

**Staff Members**

**Present:** Ed Whitmore Mike Carter  
Charlie Atkins John Tate  
Amber Johnson Sally Morgan  
Clegg Williams Scott Simpson  
Shannon Williams

**Planning Commission**

**Members Present:** Karl Kalber Dennis Blevins  
Graham Davidson

At 7:00 p.m. the Chairperson opened the meeting for an appeal hearing. This appeal was filed by Melissa L. Crigger. She appealed the Planning Commission's denial on June 26, of her variance request to the Subdivision Ordinance. The appeal was in regards to lots 2 and 3 in Big Horn Estates located in Chilhowie. An excerpt of those Planning Commission minutes follows:

**Subdivision Ordinance:** *Melissa Crigger:* Mr. Williams explained Ms. Crigger's request for a variance to Section 4.23(5)(a) of the Subdivision Ordinance. Ms. Crigger recently purchased Lots 2 and 3 of Big Horn Estates, a recreational development and has requested a variance so that she may be allowed to establish a permanent single family dwelling.

*Ms. Crigger and her fiancé, Brian Sharpe, was present and addressed the Commission. Ms. Crigger stated that they have already established water, installed a septic system, and have electricity. She stated that she was informed that the property is assessed as Class II, Suburban Residential by the Courthouse. She stated that Lots 4 & 5 and a lot across the street are zoned Residential. They purchased the property from the owner of one of those lots.*

*Mr. Williams clarified that the entire Big Horn Estates is zoned A/R and this matter is essentially a deed restriction placed on these lots by the developer. He then reviewed the history of prior variance requests made for Big Horn Estates lots.*

*Each commissioner stated their view on the request. Mr. Kalber explained to Ms. Crigger that she would have the right to appeal should her application be denied by the Planning Commission.*

*No one else spoke on this application. Upon motion of Mr. Blevins, seconded by Mr. Sparks, and unanimously carried, the Commission denied Ms. Crigger's request.*

First to speak was Mr. Chip Barker, legal representation on behalf of the appellant. He outlined a legal argument and a common sense argument. Mr. Barker mentioned that the Crigger's purchased lots 2 and 3 from Jessi and Betty Thomas. Mr. Barker argued that the County does not have the staff to monitor those living in this subdivision as to their length of stay each year. He ultimately stated that all lots in the Big Horn Estates should be changed to permanent resident status to bring an end to these appeals.

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Next, Mr. Karl Kalber spoke on behalf of the Planning Commission. He distributed a hand out explaining the Planning Commission's reasoning for their decision to deny the request. He stated that the Planning Commission felt they were bound by the decree ordered by the Circuit Court and the deed restrictions. He quoted from the court decree, "The Court further finds and directs that the decision in this proceeding has no precedential value except to each of the Plaintiffs who are a parties to this action, and only to the lots for which variances were sought as reflected in the proceedings herein." Mr. Kalber also affirmed that the plat clearly states that lots are approved for vacation and seasonal use only. As the Chairman of the Planning Commission, he assured the Board that the Commission would abide and follow the Board's lead.

Both Mr. Barker and Mr. Kalber were allowed time to rebut one another's comments. They both restated their positions.

Earl McClure was allowed to briefly comment. He reiterated comments previously expressed at hearings regarding variances and encouraged the Board to grant the appeal.

Following this appeal hearing, the Board of Supervisors has thirty (30) days to render its decision.

The appeal hearing was closed at 7:15 p.m.

The Board conversed, made comments, and asked questions of Mr. Barker and Mr. Kalber.

Upon motion of Mr. Blevins, seconded by Mrs. Waddell, and duly carried, the Board over turned the Planning Commission's decision to deny Mrs. Crigger's variance request to the Subdivision Ordinance. Mrs. Crigger's request for a variance to Section 4.23(5)(a) of the Subdivision Ordinance is hereby granted. Mrs. Crigger recently purchased Lots 2 and 3 of Big Horn Estates and the prohibition imposed by the Planning Commission is terminated as to Lots 2 and 3.

Vote: 5	yea (Roberts, Dishner, Waddell, Neitch, Blevins)
2	nay (Clark, Perry)

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At approximately 7:30 p.m. a joint public hearing with Town of Marion was called to order by Madam Chairman and Mayor Helms of the Town of Marion. The following

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were present:

**Board Members**

<b>Present:</b>	Darlene Neitch Brenda Waddell Marvin Perry Wade Blevins	Charlie Clark Michael Roberts Todd Dishner
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**Staff Members**

<b>Present:</b>	Ed Whitmore Charlie Atkins Amber Johnson Scott Simpson	Mike Carter John Tate Sally Morgan
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**Marion Town Council**

<b>Members Present:</b>	Susie Jennings Jane Hale Ken Heath	Mel Leaman Mark Warren Bill Weaver
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**Marion Town Council**

<b>Members Absent:</b>	Jim Gates
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**Town of Marion Staff**

<b>Members Present:</b>	Mark Fenyk - Attorney John Clark - Manager	Dixie Sheets - Clerk David Helms - Mayor
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Mr. Whitmore read the following advertisement as published in the Smyth County News and Messenger June 21, 28 and July 5. He also read the rules for public hearings. Approximately 13 citizens were present including general public, staff, and representatives of the development.

***NOTICE OF JOINT PUBLIC HEARING ON PROPOSED  
RESOLUTION CREATING THE  
SMYTH CROSSINGS COMMUNITY  
DEVELOPMENT AUTHORITY***

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*Notice is hereby given that the Board of Supervisors of Smyth County, Virginia, and the Council of the Town of Marion, Virginia, will hold a joint public hearing in accordance with Section 15.2-5156 of the Code of Virginia of 1950, as amended, on a resolution (the "Resolution") creating the Smyth Crossings Community Development Authority (the "CDA"). The Resolution authorizes the creation of the CDA for the purpose of financing various infrastructure improvements and services in connection with the development of Smyth Crossings, a retail power center and establishes certain other details with respect to the CDA. A complete copy of the Resolution and a copy of the Petition to create the CDA are on file in the County Administrator's office at the address shown below. The public hearing, which may be continued or adjourned, will be held at 7:30 o'clock p.m. or as soon thereafter as the matter may be heard on July 24, 2008 in the Board Room at the Smyth County Office Building, 121 Bagley Circle, Marion, Virginia.*

Jeff Mitchell, legal counsel for the developer, opened up the hearing by summarizing the creation of a Community Development Authority (CDA) process. A preceding public hearing was held by both localities adopting an ordinance to allow the acceptance of the petition submitted by involved land owners. The adoption of the presented resolution allows the creation of the CDA. The CDA is a means to allow

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development to move forward and pay for itself. Mr. John Politis, developer of the proposed project reviewed the proposed development plan with the Board and Council.

Mr. Mitchell and Mr. Politis answered various questions of the Board and the Council. Mr. Mitchell explained that this unique vehicle (the CDA) that the General Assembly has given to localities for creation; it intends to allow development of a quality and caliber of life desired for its citizens and that a CDA also produces the revenues that a locality seeks.

Earl McClure was the first of two citizens to speak. He referred to the bonds involved in the creation of the CDA. He requested that the resolution be revised to state that these bonds will not be repaid by general obligation bonds.

Joe Ellis was the second citizen to speak. He asked for a better understanding of the financial projections of the development.

Both citizens stated their support for the development but hoped the financial aspect would be handled in the proper manner to help the County citizens.

Jeff Mitchell and other members of staff and the Board addressed their concerns. Further discussion was held on the content of the resolution, economic projections, and the proposed members of the Authority. Mr. Mitchell explained that the property owners intend to waive, in writing, the thirty (30) days to review and comment on the resolution. This will allow the Board and Council to act sooner.

The hearing was closed at 8:34 p.m.

Upon motion of Mr. Perry, seconded by Mr. Clark, and unanimously carried, the Board would continue this meeting until Wednesday, July 30 at 6:00 p.m. to consider this resolution creating the CDA. (The Council likewise, continued their meeting until August 4.)

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#### OTHER BUSINESS

Upon motion of Mr. Perry, seconded by Mr. Clark, and along with the Budget Committee's recommendation, the Board unanimously approved a Job Change Order in the amount of \$12,850 for the Walker Mountain Shelter. This is covered in the contingency portion of this project and will go to Advanced Wireless Solutions.

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Upon motion of Mr. Clark, seconded by Mr. Blevins, and along with the Budget Committee's recommendation, the Board unanimously appropriated \$47,244.28 (from account #501-085040-0160, Town of Marion-Wastewater) to make the August 2008 payment to the Town of Marion as outlined in the Wastewater Treatment Plant Agreement. These payments are made semi-annually, February and August.

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Upon motion of Mr. Perry, seconded by Mr. Roberts, and unanimously carried, the scheduled closed session for legal briefing, as continued until the meeting on Wednesday, July 30.

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NOTED ON THE AGENDA

**Information available in the office if interested:**

- Information regarding the Mount Rogers Community Mental Health & Mental Retardation Services Board meeting on July 28, 2008.
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At 8:45 p.m., Chairperson Neitch continued the meeting until Wednesday, July 30, 2008 for the consideration of the CDA Resolution and any other issues that may come up.

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Darlene Neitch, Chairperson

**Virginia:** Continued meeting of the Smyth County Board of Supervisors held at the County Office Building on Wednesday, July 30, 2008, 6:00 p.m.

**Board Members**

**Present:** Darlene Neitch Marvin Perry  
Wade Blevins Brenda Waddell

**Board Members**

**Absent:** Michael Roberts Charlie Clark  
Todd Dishner

**Staff Members**

**Present:** Ed Whitmore Mike Carter  
Charlie Atkins John Tate  
Amber Johnson Scott Simpson

First item of business was the issue of the contract with the Radio Consultant. Staff, along with Mr. Tate has been working with Federal Engineering under the emergency procurement to replace the previous consultant who resigned unexpectedly. Their agreement was approved by the Board June 26, pending legal review. Mr. Tate and Mr. Williams explained that to date, this agreement has not been settled. Discussion was held on the aspects of the contract that are not agreeable. Mr. Tate assured the Board that he will not allow the agreement to move forward unless in the County's best interest.

Upon motion of Mr. Blevins, seconded by Mrs. Waddell, and unanimously carried, the Board authorized the suspension of negotiations with Federal Engineering, in the event they are not agreed upon by Monday, August 4. At that time staff is allowed to move to the second choice consultant (RCC Consultant, Inc. of Richmond) as chosen in the interview process.

Vote: 4 yea  
3 absent (Roberts, Dishner, Clark)

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The resolution below was presented to the Board and Marion Town Council at the continued meeting (joint public hearing) on Thursday, July 24. This meeting is a continuation of that meeting so that this resolution can be voted on. Much discussion was held on this resolution, its contents and the creation of the Community Development Authority (CDA).

Upon motion of Mr. Perry, seconded by Mr. Blevins, and unanimously carried, the Board amended Section 6 (d) of the resolution to say, "..that each member shall receive compensation in the amount of \$100 per meeting, not to exceed \$300 per calendar month, unless authorized by concurrent resolution of the Board and the Town

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Council." This amendment is contingent on the Marion Town Council's consideration of this amendment.

Vote: 4      yea  
3      absent (Roberts, Dishner, Clark)

The resolution is as follows:

**RESOLUTION - CREATING THE SMYTH CROSSINGS  
COMMUNITY DEVELOPMENT AUTHORITY**

*WHEREAS, the Board of Supervisors (the "Board") of Smyth County, Virginia (the "County"), has received a petition (the "Petition") from the petitioners named therein (the "Landowners") for the creation of the Smyth Crossings Community Development Authority (the "CDA"), and the Landowners have represented that they own all of the land within the proposed CDA District, as defined below; and*

*WHEREAS, a joint public hearing has been held on July 24, 2008, by the Board and the Council (the "Town Council") of the Town of Marion, Virginia, on the adoption of this Resolution and notice has been duly provided as set forth in §§ 15.2-5104 and 15.2-5156 of the Virginia Water and Waste Authorities Act, Chapter 51, Title 15.2, Code of Virginia of 1950, as amended (the "Act"); and*

*WHEREAS, the Board and the Town Council propose to create the CDA in order to provide the public improvements and services described in the Petition;*

*WHEREAS, the creation of the CDA to assist in financing certain improvements in connection with the proposed development within the CDA District (the "Project") will benefit the citizens of the County by promoting increased employment opportunities, a strengthened economic base and increased tax revenues and will meet the increased demands placed upon the County as a result of development within the CDA District; and*

*WHEREAS, the Landowners have waived in writing the right to withdraw their signatures from the Petition in accordance with § 15.2-5156 of the Act.*

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF SMYTH COUNTY, VIRGINIA:**

1. Creation of Authority. *The Smyth Crossings Community Development Authority is hereby created as a body corporate and politic and political subdivision of the Commonwealth of Virginia in accordance with the applicable provisions of the Act. The CDA shall have the powers set forth in the Act.*

2. Boundaries of CDA. *The CDA district shall consist of the real property listed on Exhibit A attached hereto and incorporated herein by this reference (the "CDA District"). In accordance with § 15.2-5157 of the Act, a copy of this resolution shall be recorded in the land records of the Circuit Court of Smyth County for each tax map parcel in the CDA District as such CDA District exists at the time of issuance of the CDA's bonds (the "Bonds") and the CDA District shall be noted on the land records of the County. The CDA board may release or exclude from the CDA District at any time before or after the issuance of the Bonds certain de minimis portions of land not to exceed approximately one acre. In addition, the CDA board may release and exclude from the CDA District parcels of land with respect to which all special assessments have been paid or prepaid.*

3. Facilities and Services. *The CDA is created for the purpose of exercising the powers set forth in the Act, including financing, constructing and developing, and owning and maintaining, if necessary, certain improvements in connection with the development of Smyth Crossings, a mixed-use development of office, retail and hotel spaces as described in the Petition and the Articles of Incorporation. The CDA shall have all the powers provided by the Act. The CDA shall not provide services which are provided by, or obligated to be provided by, any authority already in existence pursuant to the Act unless such authority provides the certification required by § 15.2-5155 of the Act.*

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4. Articles of Incorporation. Attached as Exhibit B are the proposed Articles of Incorporation of the CDA. The County Administrator and the Town Manager are authorized and directed to execute and file such Articles of Incorporation on behalf of the Board and the Town Council with the State Corporation Commission in substantially the form attached as Exhibit B with such changes, including insubstantial changes to the boundary description of the CDA District described therein and the names of the members of the CDA and their respective terms, as the County Administrator and the Town Manager may approve.

5. Capital Cost Estimates. The Board hereby finds, in accordance with § 15.2-5103(B) of the Act, that it is impracticable to include capital cost estimates, project proposals and project service rates, except as summarized in the Petition.

6. Membership of the Authority.

(a) The powers of the CDA shall be exercised by an authority board consisting of five (5) members.

(b) All members of the CDA board shall be appointed by the Board and the Town Council in accordance with the provisions of § 15.2-5113 of the Act.

(c) The initial members of the CDA board shall be as set forth in the Articles of Incorporation for the terms set forth herein.

(d) Each CDA board member shall receive such compensation for his or her services as a CDA board member as may be authorized from time to time by resolution of the CDA board, provided that no member shall receive compensation in excess of \$300 per meeting attended unless authorized by concurrent resolution of the Board and the Town Council.

7. Plan of Finance; Issuance of Bonds.

(a) The improvements, services and operations to be undertaken by the CDA as described herein and in the Petition shall be funded from all or some of the following sources: (i) bonds to be issued by the CDA; (ii) special assessments to be levied pursuant to § 15.2-5158(A)(5) of the Act and (iii) any other source of funding available to the CDA including rates, fees and charges to be levied by the CDA for the services and facilities provided or funded by the CDA and revenues provided under a revenue sharing agreement between the County and the Town that includes a tax increment contribution plan based on increased tax revenues generated by the development of the property within the CDA District.

(b) The Bonds to be issued by the CDA will be in the maximum aggregate principal amount of \$11,000,000, and will be used to pay the costs of certain infrastructure as described herein and in the Petition, the costs of issuing the Bonds and any required reserves, and interest on the Bonds prior to and during construction and for a period up to one year after completion.

(c) Any bonds issued by the CDA or any other financing arrangements entered into by the CDA will be debt of the CDA, will not be a debt or other obligation of the County and the Town and will not constitute a pledge of the faith and credit of either the County or the Town.

8. Effective Date. This Resolution shall take effect immediately.

The undersigned Clerk of the Board of Supervisors of Smyth County, Virginia, certifies that the foregoing constitutes a true, complete and correct copy of a Resolution adopted at a joint meeting of the Board of Supervisors of Smyth County, Virginia, and the Town Council of the Town of Marion, Virginia, held on July 24, 2008, by the roll call vote referenced below.

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Present:  
Absent:  
Aye:  
Nay:

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Clerk, Board of Supervisors  
Smyth County, Virginia

Exhibits:

- A - List of Tax Parcels constituting the CDA District
- B - Proposed Articles of Incorporation

**Exhibit A**

**Description of Initial Authority District**

Tax Map Parcel Numbers and Acreage

<u>Parcel No.</u>	<u>Acres</u>
47-A-67 B	36.644
Portion of 47-A-64	27.464
Portion of 47-A-72	1.760
47-A-64 A	9.875
<b>Total CDA Acreage:</b>	<b>75.743</b>

**Exhibit B**

**ARTICLES OF INCORPORATION  
OF  
SMYTH CROSSINGS COMMUNITY DEVELOPMENT AUTHORITY**

The undersigned, pursuant to Chapter 51, Title 15.2 of the Code of Virginia, adopts the following Articles of Incorporation for the Smyth Crossings Community Development Authority and states as follows:

**ARTICLE I  
NAME**

The name of this Authority is SMYTH CROSSINGS COMMUNITY DEVELOPMENT AUTHORITY (the "Authority").

**ARTICLE II  
ORGANIZATION**

Pursuant to concurrent resolutions adopted by the Board of Supervisors of Smyth County, Virginia (the "Board of Supervisors") and the Council of the Town of Marion, Virginia (the "Town Council"), the Authority shall be organized by Smyth County, Virginia and the Town of Marion, Virginia, under the Virginia Water and Waste Authorities Act (Chapter 51, Title 15.2 of the Code of Virginia of 1950, as amended) (the "Act"), as a public body politic and corporate and political subdivision governed by the laws of the Commonwealth of Virginia.

**ARTICLE III  
MEMBERS**

The affairs of the Authority shall be conducted by an authority board of five members ("CDA Board"). The initial CDA Board members are as set forth in Exhibit A attached hereto and incorporated by reference. All members shall be appointed by the Board of Supervisors and the Town Council. Each member shall serve a four-year term, except the initial members who shall serve the terms of office set forth in Exhibit A hereto. The election of officers of the Authority shall be as set forth in the By-Laws of the Authority.

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*Qualifications and appointment of members of the CDA Board shall be consistent with the requirements of the Act.*

*The CDA Board shall have the powers and duties set forth in the Act and in these Articles of Incorporation and the By-Laws, to the extent that such powers and duties are not inconsistent with the Act.*

**ARTICLE IV**  
**PRINCIPAL OFFICE**

*The Authority's principal office shall be c/o \_\_\_\_\_ . The Authority may conduct its business and maintain offices for such purposes at such other places within or without Smyth County, Virginia, as may from time to time be deemed advisable by the CDA Board, and not in conflict with the requirements of the Act.*

**ARTICLE V**  
**AUTHORITY DISTRICT**

*The land initially encompassed within the Authority is set forth in Exhibit B attached hereto (the "Initial Authority District") provided that the CDA Board may release and exclude from the Authority District before or after the issuance of the Authority's bonds certain de minimis portions of land not to exceed approximately one acre. In addition, the CDA Board may release and exclude from the Authority District portions of land with respect to which all special assessments have been paid or prepaid.*

**ARTICLE VI**  
**PURPOSES AND POWERS**

*The Authority is organized for the purpose of exercising all powers granted by the Act, including financing, funding, planning, establishing, acquiring, constructing or reconstructing, enlarging, extending, equipping, operating and maintaining infrastructure improvements generally described in the Petition to create the Authority. The Authority shall have all powers granted to a "community development authority" under the Act.*

**ARTICLE VII**  
**NOT-FOR PROFIT**

*The Authority shall not be organized or operated for pecuniary gain or profit. No part of the net earnings of the Authority shall inure to the benefit of, or be distributable to any member, director, officer, or any other private person, except that the Authority shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments in furtherance of the purposes set forth in Article VI.*

**ARTICLE VIII**  
**AMENDMENT TO ARTICLES**

*These Articles of Incorporation may be amended at any time and from time to time by the Board of Supervisors and the Town Council as now or hereafter prescribed by the Act.*

**ARTICLE IX**  
**REGISTERED OFFICE AND REGISTERED AGENT**

*The address of the initial registered office of the Authority is \_\_\_\_\_. The initial Registered Agent of the Authority is \_\_\_\_\_, whose business address is identical to that of the initial registered office and who is a resident of Virginia and a member of the Virginia State Bar.*

**ARTICLE X**  
**INITIAL MEMBERS**

*The names and addresses of the initial members of the CDA Board are as set forth on the attached and incorporated in Exhibit A.*

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**ARTICLE XI**  
**INDEMNIFICATION**

(a) For purposes of this Article XI, the following definitions shall apply:

(i) "expenses" include counsel fees, expert witness fees, and costs of investigation, litigation and appeal, as well as any amounts expended in asserting a claim for indemnification;

(ii) "liability" means the obligations to pay a judgment, settlement, penalty, fine or other such obligation;

(iii) "legal entity" means a corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise; and

(iv) "proceeding" means any threatened, pending, or completed action, suit proceeding or appeal whether civil, criminal, administrative or investigative and whether formal or informal.

(b) In every instance in which the Virginia Nonstock Corporation Act, as it exists on the date hereof or may hereafter be amended, permits the limitation or elimination of liability of directors or officers of a corporation to the corporation, the members, directors and officers of the Authority shall not be liable to the Authority.

(c) The Authority shall indemnify any individual who is, was or is threatened to be made a party to a proceeding (including a proceeding by or in the right of the Authority) because such individual is or was a member, director or officer of the Authority or because such individual is or was serving the Authority or any other legal entity in any capacity at the request of the Authority while a member, director or officer of the Authority, against all liabilities and reasonable expenses incurred in the proceeding except such liabilities and expenses as are incurred because of such individual's willful misconduct or knowing violation of the criminal law. Service as a member, director or officer of a legal entity controlled by the Authority shall be deemed service at the request of the Authority. The determination that indemnification under this paragraph (c) is permissible and the evaluation as to the reasonableness of expenses in a specific case shall be made, in the case of a member or director, as provided by law, and in the case of an officer, as provided in paragraph (d) of this Article; provided, however, that if a majority of the members of the Authority has changed after the date of the alleged conduct giving rise to a claim for indemnification, such determination and evaluation shall, at the option of the person claiming indemnification, be made by special legal counsel agreed upon by the CDA Board and such person. Unless a determination has been made that indemnification is not permissible, the Authority shall make advances and reimbursements for expenses incurred by a member, director or officer in a proceeding upon receipt of an undertaking from such member, director or officer to repay the same if it is ultimately determined that such member, director or officer is not entitled to indemnification. Such undertaking shall be an unlimited, unsecured general obligation of the member, director or officer and shall be accepted without reference to such member's, director's or officer's ability to make repayment. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not of itself create a presumption that a member, director or officer acted in such a manner as to make such member, director or officer ineligible for indemnification. The Authority is authorized to contract in advance to indemnify and make advances and reimbursements for expenses to any of its members, directors or officers to the same extent provided in this paragraph (c).

(d) The Authority may, to a lesser extent or to the same extent that it is required to provide indemnification and make advances and reimbursements for expenses to its members, directors and officers pursuant to paragraph (c) of this Article, provide indemnification and make advances and reimbursements for expenses to its employees and agents, the members, directors, officers, employees and agents of its subsidiaries and predecessor entities, and any person serving any other legal entity in any capacity at the request of the Authority, and may contract in advance to do so. The determination that indemnification under this paragraph (d) is permissible, the authorization of such indemnification and the evaluation as to the reasonableness of

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expenses in a specific case shall be made as authorized from time to time by general or specific action of the Board, which action may be taken before or after a claim for indemnification is made, or as otherwise provided by law. No person's rights under paragraph (c) of this Article shall be limited by the provisions of this paragraph (d).

(e) The rights of each person entitled to indemnification under this Article shall inure to the benefit of such person's heirs, executors and administrators. Special legal counsel selected to make determinations under this Article may be counsel for the Authority. Indemnification pursuant to this Article shall not be exclusive of any other right of indemnification to which any person may be entitled, including indemnification pursuant to a valid contract, indemnification by legal entities other than the Authority and indemnification under policies of insurance purchased and maintained by the Authority or others. However, no person shall be entitled to indemnification by the Authority to the extent such person is indemnified by another, including an insurer. The Authority is authorized to purchase and maintain insurance against any liability it may have under this Article or to protect any of the persons named above against any liability arising from their service to the Authority or any other legal entity at the request of the Authority regardless of the Authority's power to indemnify against such liability. The provisions of this Article shall not be deemed to preclude the Authority from entering into contracts otherwise permitted by law with any individuals or legal entities, including those named above. If any provision of this Article or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions or applications of this Article, and to this end the provisions of this Article are severable.

(f) No amendment, modification or repeal of this Article shall diminish the rights provided hereunder to any person arising from conduct or events occurring before the adoption of such amendment, modification or repeal.

IN WITNESS WHEREOF, the undersigned have executed these Articles of Incorporation as of the \_\_\_ day of \_\_\_\_\_, 2008, as duly authorized by concurrent resolutions adopted by the Board of Supervisors of Smyth County, Virginia and the Council of the Town of Marion, Virginia, on July 24, 2008.

By: \_\_\_\_\_ County Administrator, Smyth County, Virginia

By: \_\_\_\_\_ Town Manager, Town of Marion, Virginia

**Exhibit A**

**Names and Addresses of Initial Members**

Term of Office  
Commences                      Expires

**Exhibit B**

**Description of Initial Authority District**  
Tax Map Parcel Numbers and Acreage

<u>Parcel No.</u>	<u>Acres</u>
47-A-67 B	36.644
Portion of 47-A-64	27.464
Portion of 47-A-72	1.760
47-A-64 A	9.875
<b>Total CDA Acreage:</b>	<b>75.743</b>

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Upon motion of Mr. Perry, seconded by Mr. Blevins, and unanimously carried, at 6:51 p.m., the Board agreed to enter into closed session as allowed by the Code of Virginia, Section 2.2-3711 (A) (7) as described below:

(7) Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

Vote: 4     yea  
      3     absent (Roberts, Dishner, Clark)

At 7:20 p.m. the Chairperson ended the closed session.

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Upon motion of Mr. Blevins, seconded by Mrs. Waddell, BE IT RESOLVED that the Smyth County Board of Supervisors unanimously adopts the following resolution:

WHEREAS, the Smyth County Board of Supervisors has convened in a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

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

NOW, THEREFORE, BE IT RESOLVED that the Smyth County Board of Supervisors hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Smyth County Board of Supervisors.

Vote: 4     yea  
      3     absent (Roberts, Dishner, Clark)

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At 7:20 p.m., upon motion of Mr. Perry, seconded by Mr. Blevins, and unanimously carried, the meeting was adjourned.

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Darlene Neitch, Chairperson

