

**Board of Supervisors Meeting**  
**October 8, 2009**  
**5:00 P.M.**

**NORTHUMBERLAND COUNTY, VA**

The meeting was reconvened for the regular monthly meeting of the Northumberland County Board of Supervisors that was held in the New Courts Building, on Thursday, October 8, 2009

Present:        Ronald L. Jett. – Supervisor  
                  Richard F. Haynie – Supervisor  
                  A. Joseph Self, Sr. – Supervisor  
                  Thomas H. Tomlin – Supervisor  
                  James M. Long – Supervisor

                  W. Leslie Kilduff, Jr. – County Attorney  
                  Kenneth D. Eades – County Administrator  
                  Luttrell Tadlock – Assistant County Administrator

**RE: INVOCATION**

Reverend John Minter, New Friendship Baptist Church, led the invocation.

**RE: PLEDGE OF ALLEGIANCE**

Supervisor Self led in the Pledge of Allegiance.

**RE: APPROVAL OF MINUTES FROM SEPTEMBER 10, 2009**

Upon motion by A. Joseph Self, Jr., duly seconded by James M. Long the Board voted to adopt the September 10, 2009 minutes. The vote on the motion is as follows:

Ronald L. Jett – YEA	A. Joseph Self, Sr. - YEA
James M. Long – YEA	Richard F. Haynie - YEA
Thomas H. Tomlin – YEA	

**RE: APPROVAL OF AGENDA**

Upon motion by A. Joseph Self, Sr., duly seconded by James M. Long the Board voted unanimously to approve the agenda with the following changes: To add Mr. David Fridley from the Three Rivers Health District and also to add a closed meeting to the end of the afternoon session. The vote on the motion was as follows:

Ronald L. Jett – YEA	A. Joseph Self, Sr. - YEA
James M. Long – YEA	Richard F. Haynie - YEA
Thomas H. Tomlin – YEA	

**RE: CLIFTON BALDERSON, ASSISTANT RESIDENCY ADMINISTRATOR, NORTHERN NECK VDOT RESIDENCY**

Mr. Balderson reported that all mowing is done and they are in the process of structuring the snow removal for the year. Supervisor Long stated that Light Street's grass needed to be checked. He also asked if the problem at Paul Jones Car lot has been taken care of. Mr. Todd VanLandingham stated that VDOT had taken care of the matter.

**RE: MR. D. CLINT STABLES, SUPERINTENDENT OF SCHOOLS**

Mr. Stables reported that he has received the projected shortfall that the school system will be receiving from the state and it is down about \$100,000.00.

Mr. Stables then stated that the opening of school went very well overall and everyone has settled in well with a few minor adjustments.

Supervisor Tomlin suggested putting slow down signs on Academic Lane because if people are coming out that road and onto 360 they are not aware that the 25 mph school zone is in effect.

Mr. Stables noted that the school sign is not yet complete but should be soon. He went further to say there was a great crowd at the Homecoming Game this past week and the team is currently 4 - 0. The traffic moved well on after-school functions. He also noted that the Rappahannock Concert Association will be presenting the Chesapeake Brass Ensemble at 3 p.m. this Sunday. Another item was that the bleachers at the field should be in place before the next scheduled home game.

Supervisor Self asked Mr. Stables to look into fixing the U latch on the gate because of the safety issue.

Supervisor Tomlin expressed his concerns with the High School Dropout Rate. He said that a student that drops out of school to enter into a GED program and receives a GED Diploma is considered a dropout. Mr. Stables agreed and said that has been discussed but there still has not been any change. Mr. Tomlin expressed the need for legislation so that these students will not be counted against the school system.

Supervisor Long commented that Mr. Stables' wife should be thanked for her help at the homecoming game with her efforts to collect tickets and help with the crowd.

**RE: MR. DAVID FRIDLEY, THREE RIVERS HEALTH DISTRICT, DISCUSSION ON**

Mr. Fridley thanked the Board for having him and handed out copies of the new regulations for alternate septic systems. He stated that 60,000 bio-mechanic treatment devices have been sold in the state and they are difficult to properly maintain with no real requirements for them currently to be maintained. In 2009 the General Assembly set regulation requirements for maintenance provisions for these systems to be put in place by the end of the year. The regulations will state that an on site licensed operator will be performing maintenance and testing on the system. This will apply to all systems including systems that were installed prior to the new regulations. Laboratory testing will also need to be completed on all future approved systems. These regulations are up for public comment currently from the State Board of Health.

Supervisor Self questioned the designs of the Nurotype System. Mr. Fridley explained the two types of systems.

Supervisor Self then expressed his concern with the systems that were to fail as far as protection of the homeowner. Mr. Fridley stated they would not have anyone to fallback on and then commented that he thought this was not what was intended. He then went on to say there is a lot he doesn't agree with in these changes and this may all be coming back to the county.

Mr. Fridley reiterated that he came today to announce that this is up for public comment and the Board needed to express their concerns.

Supervisor Tomlin questioned the failure rate.

**RE: MR. DICK SAXER, EXECUTIVE DIRECTOR, ECONOMIC DEVELOPMENT COMMISSION**

Mr. Saxer thanked the Board for their continued support in the Economic Development Commission and he was chosen as the new Executive Director. He reported that he wished he had good news about the economic status of the county but the national downturn has hit everyone. He stated the Commission has been working on producing a DVD for Economic Development for the county. He also stated there are three areas to create a healthy economy. The three are Broadband access, sewer and dual laning 360. Mr. Saxer said he attended the Economic Development Partnership to let the state know we are here and ready for business. He asked for any ideas from the Board.

Supervisor Tomlin commented about receiving economic development bonds. Mr. Saxer said they were looking into it but it is not a grant, it is a loan.

**RE: BUILDING PERMIT REPORT**

<b>RE: BUILDING PERMIT REPORT:</b>		
	<b>2009</b>	<b>2008</b>
Total construction cost for the month	\$ 3,956,876.53	\$ 5,331,085.00
Total Bldg. Permit Cost for Month	\$ 7,240.00	\$ 7,425.00
Total Zoning Permit Cost for the Month	\$ 2,410.00	\$ 2,710.00
Total Levy Fee for the Month	\$ 144.80	\$ 130.28
<i>Total Construction cost year to date</i>	<i>\$ 44,947,265.36</i>	<i>\$ 48,237,403.60</i>

**RE: APPROVAL OF CHECK REGISTER**

Upon motion by James M. Long duly seconded by Richard F. Haynie the Board voted unanimously to approve the check register, as submitted. The vote on the motion was as follows:

Ronald L. Jett – YEA                      A. Joseph Self, Sr. - YEA  
 James M. Long – YEA                    Richard F. Haynie - YEA  
 Thomas H. Tomlin – YEA

**RE: JOHN STERRETT, SEWER EXTENSION RT. 360**

Upon motion by Richard F. Haynie, duly seconded by James M. Long, the Board voted to give authority to negotiate to County Administrator Eades on a potential sewer extentsion on Rt. 360 in the Reedville area. The vote on the motion is as follows:

Ronald L. Jett – YEA  
James M. Long – YEA  
Thomas H. Tomlin – YEA

A. Joseph Self, Sr. - YEA  
Richard F. Haynie - YEA

**RE: MR. MANUAL HAYNIE, REAPPOINTMENT TO THE BAY AGING BOARD AS REPRESENTATIVE OF NORTHUMBERLAND COUNTY**

Upon motion by Richard F. Haynie, duly seconded by James M. Long, the Board voted to re-appoint Mr. Manual Haynie of 2362 Fleeton Road, Reedville Virginia as the Northumberland County representative to Bay Aging. The vote on the motion is as follows:

Ronald L. Jett – YEA  
James M. Long – YEA  
Thomas H. Tomlin – YEA

A. Joseph Self, Sr. - YEA  
Richard F. Haynie - YEA

**RE: VACO VOTING DESIGNATION**

Upon motion by Thomas H. Tomlin duly seconded by James M. Long the Board voted to elect Mr. Kenneth D. Eades as the voting member representing Northumberland County at the VACO Annual Meeting. The vote on the motion was as follows:

Ronald L. Jett – YEA  
James M. Long – YEA  
Thomas H. Tomlin – YEA

A. Joseph Self, Sr. - YEA  
Richard F. Haynie - YEA

**RE: THANK YOU LETTER RECEIVED FROM FREE HEALTH CLINIC**

Mr. Eades stated the Board received a thank you note from the Free Health Clinic for their additional contribution last month.

**RE: BOARD OF ZONING APPEALS**

Mr. Eades reported that the Board of Zoning Appeals has requested that the Board of Supervisors consider a change in the zoning ordinance to require a structure to be certified that it meets all the setbacks after the foundation is constructed. The problem is that a homeowner may not know they are too close to a sideline or street until they go to sell the property and then they apply for a variance. If it is measured while the foundation is there it will be less expensive to move the foundation rather than wait and try to move the entire house.

The Board asked if Mr. Eades and staff could draft a policy for their consideration.

**RE: LETTER FROM RICHARD STUART ON LEGISLATIVE ISSUES**

Mr. Eades stated he received a letter from Senator Richard Stuart asking if there was anything he could help with on legislative items to let him know. Supervisor Tomlin suggested bringing up the high school drop out rate.

**RE: LETTER FROM STATE CORPORATION COMMISSION ON VERIZON**

Mr. Eades reported that he had received a response from the SCC on the Board's resolution concerning the lack of services from Verizon. Their response did not change and they say it is a business decision by Verizon and it would not be cost beneficial for them to upgrade.

**RE: BOARD COMMENT PERIOD**

Supervisor Long suggested putting the National Association of Counties Prescription Drug Card ads around in the county.

Supervisor Tomlin commented concerns about the state budget cuts. He said there are some jurisdictions that are cutting offices.

Chairman Jett complimented that the NAPS event which he attended was very well done and recognizing the county rescue squads was a boost to the volunteers.

**RE: RECEIVED YEARLY RENT FOR WCNV TOWER, DONATED MONEY BACK TO COMMONWEALTH BROADCASTING**

Upon motion by Thomas H. Tomlin, duly seconded by James M. Long, the Board voted unanimously to donate the tower rent of \$600.00 back to the Commonwealth Public Broadcasting Corporation. The vote on the motion was as follows:

Ronald L. Jett – YEA	A. Joseph Self, Sr. - YEA
James M. Long – YEA	Richard F. Haynie - YEA
Thomas H. Tomlin – YEA	

Upon motion by Thomas H. Tomlin, duly seconded by James M. Long, the Board voted unanimously to donate the tower rent of \$600.00 automatically back every year to the Commonwealth Public Broadcasting Corporation. The vote on the motion was as follows:

Ronald L. Jett – YEA	A. Joseph Self, Sr. - YEA
James M. Long – YEA	Richard F. Haynie - YEA
Thomas H. Tomlin – YEA	

**RE: CLOSED SESSION**

Upon motion by A. Joseph Self, Sr., duly seconded by James M. Long, the Board voted unanimously to convene into closed meeting to discuss disposition of county property as permitted by Virginia Code Section 2.2-3711 (A) (3). The vote on the motion was as follows:

A. Joseph Self, Sr. – YEA	Ronald L. Jett – YEA
Richard F. Haynie – YEA	James M. Long – YEA
Thomas H. Tomlin – YEA	

**RE: OPEN MEETING**

The Board convened back into open session upon motion by A. Joseph Self, Sr., duly seconded by Richard F. Haynie, the Board voted unanimously that in the closed meeting just concluded, nothing was discussed except the matters lawfully permitted to be so discussed under the provisions of the Virginia Freedom of Information Act cited in the motion. The vote on the motion was as follows:

A. Joseph Self, Sr. – YEA  
Richard F. Haynie – YEA  
Thomas H. Tomlin – YEA

Ronald L. Jett – YEA  
James M. Long – YEA

**RE: MOTION AND CERTIFICATION OF CLOSED MEETING**

A motion was made by A. Joseph Self, Sr., duly seconded by Thomas H. Tomlin, the Board voted unanimously to certify the closed meeting:

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

WHEREAS, 2.1-344.1 of the Code of Virginia requires a certification by this Board that such closed meeting was conducted in conformity with Virginia law;

NOW THEREFORE, BE IT RESOLVED that the board hereby certifies that, to the best of each member’s knowledge, (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 Board specifically disposition of county property.

The vote on the motion was passed by a roll call vote as follows:

Ronald L. Jett – YEA	A. Joseph Self, Sr. - YEA
James M. Long – YEA	Richard F. Haynie - YEA
Thomas H. Tomlin – YEA	

There was no action discussed or taken after the closed meeting.

**PUBLIC HEARINGS**

**RE: REQUEST BY LON CROW AND MARIAM MANI FOR A CONDITIONAL USE PERMIT TO ESTABLISH AN OFFICE BUILDING AT 17635 RICHMOND ROAD JUST WEST OF THE STOP LIGHT IN CALLAO. (tabled from last month)**

Zoning Administrator described the request stating he had not received any comments. He stated if approved these are the suggested conditions:

1. The permit will be valid for one (1) year and will expire on October 8, 2010, if the business has not opened; and,
2. The permit will extend to the applicant only and any change in the management or type of business will require written approval from the Board of Supervisors.

Upon motion by Richard F. Haynie duly seconded by A. Joseph Self, Sr., the Board voted to approve the request with the conditions noted. The vote on the motion is as follows:

Ronald L. Jett – YEA	A. Joseph Self, Sr. - YEA
James M. Long – YEA	Richard F. Haynie - YEA
Thomas H. Tomlin – YEA	

**RE: REQUEST BY EDWARD BERRY, III AND ROBIN BERRY, FOR A CONDITIONAL USE PERMIT TO CONSTRUCT A MULTI-FAMILY, 4 UNIT APARTMENT BUILDING, AT 716 HARRYHOGAN ROAD AT THE CORNER OF HARRYHOGAN AND LODGE ROADS NEAR CALLAO**

Zoning Administrator Shirley described the request. He received 25 comments from this request all in opposition. Mr. Shirley stated this request is recommended by staff to be denied based on the information provided from the applicant. The parcel of land is 1.77 acres and the A-1 zoning requires a lot size of 1 acre for single family dwellings. The overall density of Mr. Berry's project is 0.442775 of an acre per unit. Further, in the Agricultural, A-1 Zoning District the purpose is to keep the density as low as possible as stated in the County Zoning Ordinance in Article III, Section 148-17, and in Chapter 3, Section 3:B, subsection "b", paragraph (4) of the County Comprehensive Plan it states, "Lot sizes should remain as required for A-1 zoning. Protected land for multiple family dwellings and condominiums should be based on the total number of units and the A-1 zoning minimum as if the units were individual houses".

Mr. Berry spoke on his behalf saying he purchased this property with intentions of renovating the old farmhouse. He went on to say that he has talked with respectable real estate agents and they have expressed a need for rental property in the area.

**Public Hearing Open**

Mr. Ray Beasley stated he believes this would be a mistake. He has lived in Callao all of his life and 45 years of that has been on Harryhogan road. Mr. Beasley expressed his concern with the site distance of the location because it is minimal and there has been numerous accidents, 4 being fatal in that area. He said the lot is long but not deep therefore it would be close to the road. He also stated this would create more traffic and with all of this it is not a good mix. He asked the Board to vote no and spoke for the rest of the community which agree that this is not a good idea.

Ms. Margaret Flannigan seconded what Mr. Beasley said and added that a lot of children that ride bikes on that road and it would not be safe.

Mr. Walter Flannigan agreed with both statements.

Ms. Roxanne Sheets said the Callao Apartments are right up the road and that hasn't been doing too well. She is not thrilled with this idea.

Mr. Ron Herring said it sounds like this idea is not ideal for this location but another piece of property may work better.

**Public Hearing Closed**

Supervisor Self stated he was advised that this is not a conflict of interest but he has decided to abstain in the vote.

Upon motion by Richard F. Haynie, duly seconded by Mr. James M. Long, the Board voted to deny the request according to staff recommendations.

The vote on the motion is as follows:

Ronald L. Jett – YEA

A. Joseph Self, Sr. - ABSTAIN

James M. Long – YEA

Richard F. Haynie - YEA

Thomas H. Tomlin – YEA

**RE: ABANDONMENT OF A 20 FOOT RIGHT OF WAY BETWEEN LOTS 6 & 7 OFF POTOMAC VIEW DRIVE IN POTOMAC VIEW BEACH SUBDIVISION.**

The abandonment request was described by County Administrator, Kenneth D. Eades. He stated that it was legal council's opinion as well as his opinion that the property was deeded to the county in the early 1960's. He added that a letter was sent to Mr. Rawleigh Simmons to express this opinion and that it wasn't a good idea to pursue abandonment when people express their want to continue to use the easement. Mr. Eades said he received 1 petition, 5 letters; four in which asking to deny the request.

Chairman Jett asked County Attorney, Les Kilduff, Jr. if this would be taking of the property rights from everyone in the subdivision. Supervisor Tomlin questioned if the county owns the easement. Mr. Les Kilduff responded, the abandonment would override the rights of the people that have a legal right to use the property and he believes the County does own the property. Supervisor Tomlin then questioned the advertised code section, 33.1-151 of the Code of Virginia and whether this was the properly done. Mr. Kilduff responded that the interest in the real estate was properly advertised.

***\*Mr. Rawleigh Simmons, of Dunton, Simmons and Dunton, L.L.P was present as the attorney for the adjoining waterfront landowners and Mr. Mattson C. Terry, II of Hubbard, Terry and Britt Law Offices were present representing the group that owns non-waterfront property in the subdivision.***

*Public Hearing Open*

Mr. Rawleigh Simmons gave the opening statement for his clients. He stated that this was deeded as a public access road and agrees with Mr. Kilduff on ownership. A survey was done and the current boundaries were established along with the water line and access to the beach. Once deeded, to the County, it became open to the public. But it is not decent access and unsafe to get to the water over the rip rap. He went on to say this was an unnoticed issue until the pier request went to the Northumberland County Board of Zoning Appeals last spring. Over the years erosion has set in and the land owners (his clients) were forced to put in rip rap. He stated his clients have never tried to keep anyone away from the access. He then said that if the county deeds this back, they are not cutting off access, they are just trying to keep property together and maintained. He requests this be deeded back to the landowners.

Mr. Matt Terry stated he is representing the non-waterfront property owners in this matter. He started off by referencing the rip rap which was put on the property and stated the waterfront property owners asked permission from the non-waterfront property owners to construct the revetment. They all agreed because they needed to save the land. In Virginia code section 15.2-2274, it states that when property is abandoned the title goes to the adjoining property owners and is free and clear of other rights. If this is abandoned it will take away all waterfront rights of the non-waterfront property owners. Mr. Terry then referenced a 1990 case in Virginia Beach involving public use of a piece of land. He then asked for this piece of land to stay as it is and not be abandoned.

Ms. Edie Burnier explained that she was aware of the proposed pier to be built that was approved by the Board of Zoning Appeals and at the time she could not find an attorney to represent them and asked for the decision of this pier be delayed. After assuming the request would be delayed until the June 2009

meeting, she found out a decision was made in May. She said she feels like she has been blocked from the beginning.

Mr. Rich Castleberry stated his family is looking to public safety if the pier is going to be built.

Marian Locke stated she doesn't live there but came to support the abandonment.

Mr. Jimmy Locke said there is a liability problem with the pier.

County Administrator reiterated that the Board is considering the abandonment in this request and not a pier. Since the county owns this, it is not the intent of the Board to put a pier on the property

Mrs. Joyce Melvin questioned the easement of this property and when and how it was deeded to the County?

County Attorney Kilduff stated the developer deeded this to the county but reserved the lot to the owners. He then explained there were not any problems until now because no one has been denied the access.

Mr. Michael Armrind asked if the county (BZA) was aware of the property being owned by the county, and how did the variance get approved? Mr. Eades said the Board of zoning appeals was not aware of the situation. Mr. Eades said the action by the Board of Zoning Appeals, on the pier, will be considered null and void since the request did not come from the property owner.

Ms. Mary Beth Morgan stated she had talked to Mr. Shirley and told him she would like to get professional advice on this and asked for the Board of Zoning Appeals to postpone the request. She received a call that it would be held in June and then she finds out the request was granted in May and feels she was railroaded from the get go. She continued to say they have spent \$45,000 in the property along with maintenance and grass cutting. She questioned why are we here?

Ms. Ilene Edwards said that we are all friends here and that is what makes it so sad. She said this is not a place for a pier.

Ms. Betty Hall spoke up and stated to the Board that we are not addressing the dock/pier issues.

Mr. Rawleigh Simmons stated he was not aware of the statue and his clients want them to have their rights. He suggested the county deed it back. Their intentions are not to cut off the access. He then described how the 20 foot road easement is very narrow and there is no parking. He asked the Board not to turn this down because of the property rights issue because this can be worked out.

Mr. Matt Terry stated that under the statue it is clear and believes it is a denial of due process. He asked why change this? It is doing fine and if this is abandoned then the rights are taken away.

Public Hearing is Closed

Upon motion by Richard F. Haynie, duly seconded by James M. Long the Board voted to deny the request to abandon the right of way. The vote on the motion is as follows:

Ronald L. Jett – YEA  
James M. Long – YEA

A. Joseph Self, Sr. - YEA  
Richard F. Haynie - YEA

Thomas H. Tomlin – YEA

Supervisor Tomlin stated he personally thinks this was advertised under the wrong code section but still feels that this would abandon the rights of the people.

**RE: ABANDONMENT OF A 20 FOOT RIGHT OF WAY BETWEEN LOTS 10& 11 OFF POTOMAC VIEW DRIVE IN POTOMAC VIEW BEACH SUBDIVISION**

Mr. Eades described the request as before with this being between lots 10 and 11.

Public Hearing Open

Mr. Jeffery Moore stated it all started 15 months ago when he had to remove 4 trees from this property in which he had to get permission under the Chesapeake Bay Act and all the trees were on County property. He felt accustomed to take care of the matter without getting any money from the county. It cost him \$2200.00 to get the trees removed (one tree was on his property and 3 were on the easement).

Attorney Terry stated again this is a statute of limitation.

Ms. Ilene Edwards stated the road is not public, it is a private road and the family has lived there for over 50 years.

Public Hearing Open

Upon motion by Richard F. Haynie, duly seconded by Thomas H. Tomlin the Board voted to deny the requested abandonment for the same reasons given in the previous hearing. The vote on the motion is as follows:

Ronald L. Jett – YEA	A. Joseph Self, Sr. - YEA
James M. Long – YEA	Richard F. Haynie - YEA
Thomas H. Tomlin – YEA	

**RE: PUBLIC COMMENT PERIOD**

Ms. Mary Beth Morgan spoke up and said that she was given potential language in an abandonment process and was told by county staff this was an “easy process”.

**RE: ADJOURNMENT**

Upon motion by Richard F. Haynie, the Board voted unanimously to carry-over the meeting. The vote on the motion was:

Ronald L. Jett – YEA	Thomas H. Tomlin – YEA
A. Joseph Self, Sr. – YEA	Richard F. Haynie – YEA
James M. Long – YEA	