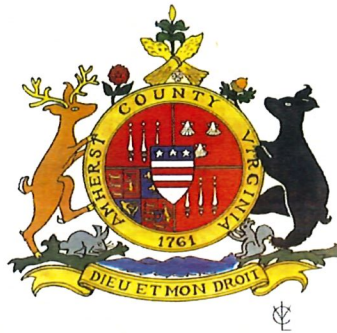


Board of Supervisors

Claudia D. Tucker, Chair
District 2
L. J. Ayers III, Vice-Chair
District 3
David W. Pugh, Jr., Supervisor
District 4
Kenneth M. Campbell, Supervisor
District 1
Jennifer R. Moore, Supervisor
District 5



County Administrator
Dean C. Rodgers

County Attorney
Michael W. S. Lockaby

AMHERST COUNTY BOARD OF SUPERVISORS

MINUTES

AGENDA

June 19, 2018
Administration Building - 153 Washington Street - Public Meeting Room
Amherst, Virginia 24521
Meeting Convened - 7:00 p.m.

- I. Call to Order**
- II. Approval of Agenda**
- III. Invocation and Pledge of Allegiance**
- IV. Citizen Comment**
- V. Public Hearing**
 - A. Ordinance 2018-0002, adding Section 9-4 of the Amherst County Code for assessment for electronic summons system
- VI. Consent Agenda**
 - A. Minutes – May 15, 2018
 - B. FY2019 Amherst County Wage Structure
 - C. Appropriation of Revenue - Commonwealth Attorney
 - D. Appropriation for Learning Lane
 - E. Appropriation of Revenue – Sheriff's Office
 - F. Appropriation of Revenue - EMS
 - G. Water Professionals Appreciation Day Resolution
- VII. County Administrator's Report**
 - A. Projects Status Report
 - B. Business Friendliness Workshop
- VIII. County Attorney's Report**
 - A. Wireless Communication Facilities Legislation presentation

- IX. Departmental Reports**
 - A. Project Management Services
- X. Citizen Comment**
- XI. Matters from Members of Board of Supervisors**
- XII. Adjournment**

MINUTES

At a Regular Meeting of the Amherst County Board of Supervisors and held at the Amherst County Administration building, Amherst, Virginia, thereof on Tuesday, the 19th day of June, 2018, at 7:00 p.m., the following members were present:

BOARD OF SUPERVISORS:

PRESENT: Claudia D. Tucker, Chair ABSENT: None
 L. J. Ayers, III, Vice-Chair
 David W. Pugh, Jr., Supervisor
 Kenneth M. Campbell, Supervisor
 Jennifer R. Moore, Supervisor

STAFF PRESENT: County Administrator Dean C. Rodgers, Deputy County Administrator
David R. Proffitt; County Attorney Michael W. S. Lockaby; and Executive
Assistant Regina M. Rice

OTHERS PRESENT: Captain John Grieser, Amherst County Sheriff's Office

I. Call to Order

Chair Tucker called the meeting to order at 7:00 pm

II. Approval of Agenda

By motion of Vice-Chair Ayers and with the following vote, the Board approved the Agenda for June 19, 2018.

AYE: Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell and Ms. Moore
NAY: None
ABSTAIN: None

III. Invocation and Pledge of Allegiance

Supervisor Campbell led the Invocation and Pledge of Allegiance.

IV. Citizen Comment

Mr. Alan Wood of Madison Heights, Virginia, addressed the Board concerning Amherst County's financial position and the current rate of spending. Mr. Wood stated that the County's rate of spending is not sustainable and alarming, and will quickly drain the County's savings account. Mr. Wood explained his reasons in making the Board aware of his concerns.

Mr. John A. Marks, Jr. of Madison Heights, Virginia, addressed the Board regarding the Phelps Road School property and certain conditions not in the performance agreement. He provided a written copy of his statement. (See Attachment 1)

The public comment session was closed.

V. Public Hearing

A. Ordinance 2018-0002, adding Section 9-4 of the Amherst County Code for assessment for electronic summons system.

Captain John Grieser presented his report to the Board regarding a \$5.00 assessment fee approved by the General Assembly. The \$5.00 fee would be assessed to every criminal and traffic summons charge that comes through district courts (J&DR, General and Circuit courts) in Amherst County. This fee will be placed in a special fund and appropriated to the Sheriff's Office by the Board of Supervisors for items used to maintain the electronic summons system such as modems, laptops, and software.

The Public Hearing was opened.

Proponents: None

Opponents: None

The Public Hearing was closed.

By motion of Vice-Chair Ayers and with the following vote, the Board adopted Ordinance 2018-0002 as proposed.

AYE: Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell, and Ms. Moore
NAY: None
ABSTAIN: None

VI. Consent Agenda

A. Minutes – May 15, 2018

By motion of Vice-Chair Ayers and with the following vote, the Board approved the Minutes for May 15, 2018.

AYE: Mrs. Tucker, Mr. Ayers, Mr. Pugh, and Mr. Campbell
NAY: None
ABSTAIN: Ms. Moore

B. FY2019 Amherst County Wage Structure
C. Appropriation of Revenue - Commonwealth Attorney
D. Appropriation for Learning Lane
E. Appropriation of Revenue – Sheriff's Office
F. Appropriation of Revenue - EMS
G. Water Professionals Appreciation Day Resolution

By motion of Vice-Chair Ayers and with the following vote, the Board approved Items B-G on the Consent Agenda for June 19, 2018.

AYE: Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell, and Ms. Moore
NAY: None
ABSTAIN: None

VII. County Administrator's Report

A. Projects Status Report

County Administrator Rodgers advised the Boxwood Farm Road property owner is willing to accept the County's offer. He said the County Attorney is working with real estate counsel to complete that transfer.

Mr. Rodgers advised the Phelps Road School agreement will be amended to address the concerns made by Mr. John Marks at the June 5th meeting. Mr. Rodgers advised the agreement would be brought back to the Board at the July 2018 meeting.

County Attorney Lockaby stated he is working on clarifying the language of the windows facing the road. He said he was not aware of the grass issue and will address that matter with the owner.

Supervisor Pugh commented that multiple shrubs and bushes have grown up at the back of the building. He said it was his understanding that area was also part of the agreement and requested clarification.

Mr. Lockaby advised he would look into the matter.

B. Business Friendliness Workshop

County Administrator Rodgers advised that the EDA is ready to present its findings regarding the business friendliness tasking of August 2017. The EDA has proposed a joint workshop with the Board of Supervisors.

Mr. Rodgers said a facilitator is proposed for the Board's Strategic Planning Workshop in August 2018. He advised the workshop will be held all day and proposed several dates.

The Board directed staff to schedule a joint workshop with the EDA Board of Directors on July 12, 2018 at 7:00 p.m.

The Board directed staff to schedule a Strategic Planning Workshop on August 10, 2018 from 9:00 a.m. to 4:00 p.m. The location has not been determined.

VIII. County Attorney's Report

A. Wireless Communication Facilities Legislation presentation

County Attorney Lockaby provided a PowerPoint presentation to the Board regarding changes to the wireless legislation, effective July 1, 2018.

Mr. Lockaby advised the County has a wireless ordinance that was adopted in 2012. He said now that new rules have been passed by the General Assembly, the County's current ordinance will need to be rewritten.

Chair Tucker remarked it appeared there are many legal implications of what the County can and cannot do. She suggested that staff look at the options and then bring those options to the Planning Commission. Those options would then be sent to the Board of Supervisors.

Supervisor Pugh expressed confusion about this law and how it will affect Amherst County.

Mr. Lockaby said he is part of a state-wide committee working on this new law and advised there will be some model ordinance language forthcoming to share. The County will also be working with VDOT on the process.

IX. Departmental Reports

A. Project Management Services

For the Board's information.

X. Citizen Comment

There was no public comment.

XI. Matters from Members of Board of Supervisors

Supervisor Moore had no matter to discuss.

Supervisor Campbell had no matter to discuss.

Supervisor Pugh had no matter to discuss.

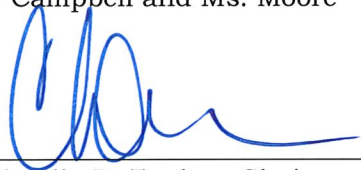
Vice-Chair Ayers requested that the high grass, weeds and lack of mowing at the County Administration Building needed to be addressed. Supervisor Ayers asked the County Administrator take care of this matter as soon as possible.

Chair Tucker commented she received a call from a citizen concerning the closing of the County's open-container dumpster sites. This citizen said he would now have to drive into the landfill and he requested placing a container at the entrance of the landfill.

XII. Adjournment

By motion of Supervisor Pugh and with the following vote, the Board adjourned at 7:51 p.m.

AYE:	Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell and Ms. Moore
NAY:	None
ABSENT	None



Claudia D. Tucker, Chair
Amherst County Board of Supervisors



Dean C. Rodgers, Clerk

June 19th, 2018 Presentation to BOS
Regarding Phelps Road School

Good evening Board Members and Staff. My name is John A. Marks, Jr. and I reside at 225 Clark Street in Madison Heights, VA.

On May 15th, 2018 I addressed this Board concerning the situation at Phelps Road School, and the fact that I did not believe some of the conditions set forth in the Performance Agreement were being satisfied. The two issues addressed at that time were: (1) the grass had not been cut as required by the Performance Agreement and (2) the windows inside of the U formed by the two buildings had not been covered with construction fabric as required by the Performance Agreement.

Regarding the first item the grass in front of the building and on the Center Street side has been mowed. However, the grass between the two buildings, in the U, the grass in the back of the building, and the grass on the side of the building adjacent to the Service Authority Building has not been mowed and is about knee high. I would like to remind the Board that over the years the Phelps Road residents and neighbors have expressed concern, not only about how the property looked, but the fact that the uncut grass provided a place for all sorts of vermin. If nothing else the place violates the County's own weed and grass ordinance dealing with the Abatement of Refuse and Weeds. It would be somewhat ironic if the EDA, who technically own the property, would be cited for violating this ordinance. Once again the Phelps Road residents and neighbors have been told one thing but received something else. Is it any wonder that these folks have not welcomed this project with open arms.

Concerning the second item dealing with the coverage of the windows in the U with the construction fabric. When I inquired again about why the windows were not covered I was informed that these particular windows were not required to be covered. When I requested the identification of the specific section of the Performance Agreement that provided this exception I was not provided this information, instead was informed the windows were not required to be covered because there was a negotiated agreement between

this Board, the EDA and Waukeshaw that these windows were not required to be covered. If this is so, this is a concern to me, because this means there is an agreement that has been made by this Board, and others, that is outside of the approved Performance Agreement and is not transparent to the citizens of Amherst County. I believe the Performance Agreement, approved by this Board, should contain all of the stipulations/requirements associated with this project, and as a citizen I should be able to read the Performance Agreement and not be concerned about any other negotiated agreements not contained there in. This leads to the next obvious question, are there other agreements regarding this project that are not transparent?

If someone can provide me the specific sections of the Performance Agreement that allows the items I just addressed to be acceptable with this property, then I will withdraw my comments, however, pending that identification I would expect this Board would want to review this situation and take the necessary corrective action. The residents of Phelps Road deserve to have some action taken and these very obvious violations of the Performance Agreement need to be addressed.

Thank you.



New Wireless Communications Rules

Amherst County Board of Supervisors

June 19, 2018



Telecommunications History—Up to June 30, 2018

- ▶ Telecommunications Act of 1996 (TCA) Section 704—designed to deal with cellular towers that connect to switched telephone network. Extended to cover wireless internet towers (wireless internet, TV, and VoIP) by FCC in 2015 as part of the Net Neutrality ruling.
- ▶ What it requires for SEPs:
 - ▶ May not unreasonably discriminate. *Virginia law already required this.*
 - ▶ May not prohibit provision of service—this has been interpreted to require that we must not deny applications if that results in significant “holes” in coverage. *We have implemented this by ordinance.*
 - ▶ BOS must act within 150 days—rather than background Virginia requirement of 12 months. *We have implemented this by ordinance.*
 - ▶ All matters the BOS considers must be part of a written record. Background Virginia law usually assumes that BOS members may have private reasons for voting for or against a measure and does not require this. *We have implemented this.*
 - ▶ The BOS must state its reasons for a decision in writing as part of the resolution. Background Virginia law does not require this. *We have implemented this.*



Additional Rules in 2012 (MCTRA)

- Introduced as a rider on the Middle-Class Taxpayer Relief Act of 2012 (MCTRA), part of the government's efforts in the Great Recession. Sometimes called the Spectrum Act.
- Requires us to use an administrative process (zoning permit or site plan) for:
 - Collocations and relatively small increases in size, which must be approved even for nonconforming uses. *This extends background law of nonconforming uses.*
 - Towers outside the public right of way only.
 - Must act within 60 days. *Same as site plan.*
- *We have partially implemented this by ordinance.*



New Technologies, New Politics, New Rules

- ▶ New technologies, such as 5G, require more, smaller wireless units. The most practical place for these is often the public right of way, on telephone poles and electrical poles.
- ▶ VoIP has almost completely replaced connection to the switched telephone network for cellular phone calls.
- ▶ Fixed-user wireless in rural areas (such as most of Amherst) has become increasingly prevalent.
- ▶ FCC repeal of Net Neutrality went into effect on July 11, 2018. Most wireless towers will no longer fall under the TCA, but instead only under background Virginia state zoning law.
- ▶ Wireless carriers pushed for greater flexibility in the General Assembly in 2017 and 2018, both in zoning and right of way locations. They achieved their goal with partial prohibitions on local authority at the state level.



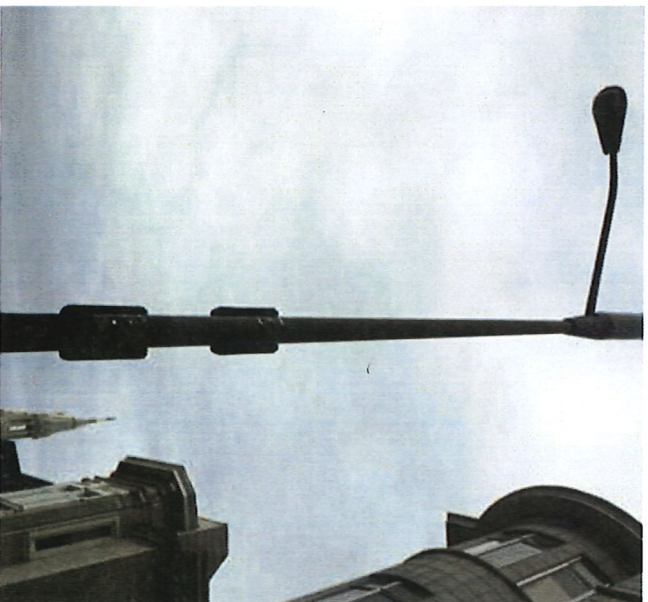
2017 General Assembly—New Rules for Attachments to Existing Structures

- For “small cell” facilities, may only require administrative approval.
- Carrier may submit up to 35 sites in a single application. Fee is capped at \$100 for up to five sites in a single application, \$50 for each additional facility in application.
- Must act within 60 days which zoning administrator may extend to 90 days, deemed approved *if no action*.
- May deny only for:
 - Interference with pre-existing or public safety radio.
 - Public safety.
 - Conflict with local, state, or federal historic district.
 - For installation on government property only, aesthetic reasons.
- We have not implemented this by ordinance yet because no one is interested in putting 5G wireless in Amherst (yet).

What Does a Small Cell Look Like? Less obtrusive...



A Verizon small cell atop a city owned steel light pole.



Each small cell in this deployment consists of one antenna and two micro remote radio units

Source: Verizon Wireless



Phillips/Ericsson "ZeroSite" | Composite Pole with panel antennas inside and equipment in base | Considered too large for most small-scale SF streets

To More Obtrusive.





A Fly in the Ointment—Repeal of Net Neutrality

- Under Net Neutrality, wireless was considered “Telecommunications.” Could get a certificate from the State Corporation Commission and VDOT to use rights of way just like a telephone company.
- After repeal of Net Neutrality, wireless internet is considered “information services.” These are private services that stand on the same footing as private parties (like you and me) as regards the public right of way. Certificates are not available. What’s their right to locate permanent structures on land dedicated to “public use”?
- This is still being sorted out. The General Assembly set VDOT right of way use fees for wireless this year. There are nuisance, encroachment, and inverse condemnation issues that still need to be resolved.



2018 General Assembly—New Rules for New Construction

- Replaces old TCA requirements that the repeal of Net Neutrality repeals with new, more strenuous state law requirements.
- Divides tower construction into two types:
 - “Administrative-review eligible projects”: (1) Any tower not more than 50’ in height, and not more than 10’ higher than the highest structure within 500’. This means poles not more than 10’-15’ higher than a typical telephone pole; and (2) collocations on any existing structure that is not a small cell.
 - “Standard process projects”: Projects that fall within our historical SEP process.



General Rules for Administrative Process & Standard Process Projects

- May use administrative process (zoning administrator) or a full SEP (Planning Commission and BOS review)
- Fee for administrative process project must not exceed \$500, and for standard process project must be actual cost. May not pass through any engineering fees. *The actual cost requirement is existing law.*
- Must approve or disapprove within 150 days for a new permit or 90 for a collocation. *This is the same as under TCA.*
- Failure to act results in “deemed approved.” *This was already the case for site plans, but is a problem for SEPs. How can an ordinance be “deemed” passed? Probable constitutional problem.*




Specific Rules—What's New, What's Not, And Significant Questions

- Must give written reasons for disapproval in a resolution. *Was already required under TCA.*
- Must give applicant changes to application that would result in approval. *Was already the case for site plans. For SEPs, this is difficult to implement because the BOS members may have different reasons, or may subsequently change their minds in discussions with constituents.*
- May not unreasonably discriminate. *This was already the law, both under Virginia law and the TCA.*
- Decision must be supported by substantial written evidence. *Already required by TCA.*
- Written record must be released within 30 days of disapproval. *Presumably we would have it available under FOIA.*

Continued...

- ▶ May not take into account the need for the project. *This is new.*
- ▶ May not take into account the specific technology used. *This is new.*
- ▶ May not ask for propagation maps, traffic studies, or other data. *This is new.*
- ▶ May not ask for information already given to any federal agency. *This is new.*
Prevents us from taking into account RF emissions, which was already provided under TCA. However, also prevents us from taking into account other environmental impacts (that would be in the NEPA) or historical impacts (that would be in the NHPA).
- ▶ May not require the removal of any existing facility. *This is new, and partially already the law, but might result in issues with multiple towers on the same site.*
- ▶ May not impose surety requirements for removal, unless otherwise required for similar projects. *This was already the law.*
- ▶ May not impose unreasonable aesthetic requirements. *This was already the law.*
- ▶ May not require the project to allow collocation of public safety or government. *This was already the law.*
- ▶ May not impose a setback of fall zone requirement that is different from other similar structures, including utility poles. *Utility poles are exempt from zoning—this seems not to make sense. Industry has identified wind turbines as comps.*

Continued...

- 
- ▶ May not limit the duration of an SEP, except to require work to begin within two years. *This was already the law, subject to lapsing of a permit if use is discontinued for two years under nonconforming use law.*
 - ▶ May not require restoration work for areas not directly affected. *This is an incremental extension of existing law.*
 - ▶ May require removal of abandoned structures. *This was already the law.*
 - ▶ May deny application if other nearby support structures are available at reasonable rates and conditions. *This was already the law.*
 - ▶ May deny an application if over 50' in height and subject to a rule of general application. *Apparently this is an implied limitation—this is new.*
 - ▶ Complex undergrounding requirements applicable, potentially, in Madison Heights:



What do we need to look at?

- How much should we regulate this at all, given how little real control we have? (Probably)
- We have not historically provided for zoning of VDOT and railroad rights of way. Should we? How do we do that?
- We do not have subdivision and site plan performance standards for wireless facilities. Should we? What should they be?
- How should we amend our zoning current ordinances to take these changes into account? We need to do this, but how?
- Does the BOS want to look at these issues first along with staff, or ask staff to work with the Planning Commission to take the first look?

QUESTIONS?