

BOOK 32**VIRGINIA:**

At a regular meeting of the Board of Supervisors of Amherst County held at the Administration Building thereof on Tuesday, the 19th day of February, 2008 at 7:00 p.m. at which the following members were present and absent:

BOARD OF SUPERVISORS:

PRESENT:	Mr. V. Wood Mr. L. Parrish Mr. D. Kidd Mr. C. Adams Mr. R. Vandall	ABSENT: None
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PLANNING COMMISSION:

PRESENT:	Mr. J. Fulcher, Mr. D. Hedrick Mr. M. Heishman Ms. B. Limbrick	Mr. L. Parrish Mr. R. Fener Ms. B. Jones	ABSENT: None
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Mr. Wood called the meeting to order.

Mr. Parrish opened with prayer and led in the pledge of allegiance to the flag.

Mr. Wood turned the floor over to the Planning Commission Chairman, James Fulcher.

IN RE: PUBLIC HEARING – ZONING CASES

2008-02 Request by Grace Points Church for a special exception in the R-1 Limited Residential District. The proposed special exception is to operate a church located at 122 Casa Loma Lane and is further identified as tax map parcel 124-2-E.

Mr. Bryant, Planning Department Director, informed the Planning Commission and the Board of Supervisors that Case 2008-02 would be postponed until the next regularly scheduled joint public hearing.

On motion of Ms. Limbrick, seconded by Mr. Fener and with the following vote, the Planning Commission agenda was approved with deletion of zoning case 2008-02.

AYE: Mr. Fulcher, Mr. Parrish, Mr. Hedrick, Mr. Fener, Ms. Jones, Mr. Heishman and Ms. Limbrick.
NAY: NONE

2008-03 Request by Bellona Arsensal Farm Associates for a special exception in the A-1 Agricultural Residential District. The proposed special exception is to allow public entertainment uses, such as: festivals, performances, theater, weddings and related events. The property is located at 1351 N. Amherst Highway and further identified as tax map number 82-A-10.

Planning Director Bryant presented details of the request to the Planning Commission with resulted in discussion of various concerns to be addressed. Applicants were invited for a presentation.

Bill Fitzhugh, Proctor Harvey, Landscape Architect, Richard Hanson

Public Hearing was opened.

Proponents: Michael Hall; Lucille Rose
 Opponents: None

Public Hearing closed.

On motion of Ms. Limbrick, seconded by Mr. Hedrick, the Planning Commission moved to table the request until Tuesday, March 18, 2008 to allow time for further consideration of conditions that maybe imposed to applicant for approval.

AYE: Mr. Fulcher, Mr. Parrish, Mr. Hedrick, Mr. Fener, Ms. Jones, Mr. Heishman and Ms. Limbrick.
 NAY: NONE

2007-17 Request by the County of Amherst for an amendment to Article III. Erosion and Sediment Control Ordinance. The purpose of the above-referenced amendment to the Code of Amherst County is to repeal the current ordinance pertaining to Erosion and Sediment Control and replace it with the model ordinance developed by the Virginia Department of Conservation and Recreation (DCR) for use by local governments responsible for regulating land-disturbing activities pursuant to the Virginia Erosion and Sediment Control Law and Regulations. The proposed ordinance adds a site plan review fee for erosion and sediment control plans. Furthermore, the purpose of the proposed ordinance is to bring the county's code into compliance with state law.

Planning Department Director Bryant presented details of the request.

Public Hearing was opened.

Proponents: None
 Opponents: None

Public hearing closed.

PLANNING COMMISSION RECOMMENDATION: Due to public necessity, convenience, general welfare or good zoning practice, on motion of Mr. Hedrick, seconded by Mr. Fener and with the following vote, the Planning Commission recommended adoption of the proposed repeal of the current Erosion and Sediment Control Ordinance and replace it with the model ordinance developed by the Virginia Department of Conservation and Recreation (DCR).

AYE: Mr. Fulcher, Mr. Parrish, Mr. Hedrick, Mr. Fener, Ms. Jones, Mr. Heishman and Ms. Limbrick.
 NAY: NONE

On motion of Mr. Parrish and with the following vote, the Board of Supervisors approved the recommendation by the Planning Commission to repeal the current Erosion and Sediment Control Ordinance and replace it with the following:

ARTICLE III. EROSION AND SEDIMENT CONTROL

Section 11-35. Title, purpose, and authority.

This ordinance shall be known as the "Erosion and Sediment Control Ordinance of Amherst County". The purpose of this chapter is to prevent degradation of properties, stream channels, waters and other natural resources of Amherst County by establishing requirements for the control of soil erosion, sediment deposition and nonagricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.

This Chapter is authorized by the Code of Virginia, Title 10.1, Chapter 5, Article 4 (Sec. 10.1-560 et seq.), known as the Virginia Erosion and Sediment Control Law.

Section 11-36. Definitions.

As used in the ordinance, unless the context requires a different meaning:

Agreement in lieu of a plan means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

Applicant means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Board means the Virginia Soil and Water Conservation Board.

Certified inspector means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

Certified plan reviewer means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of plan review, (ii) is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or (iii) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Certified program administrator means an employee or agent of a program authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

Clearing means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.

County means the County of Amherst.

Department means the Department of Conservation and Recreation.

Development means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

Director means the Director of the Department of Conservation and Recreation.

District or Soil and Water Conservation District refers to the Robert E. Lee Soil and Water Conservation District.

Erosion and Sediment Control Plan or Plan means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion Impact Area means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000

square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

Excavating means any digging, scooping or other methods of removing earth materials.

Filling means any depositing or stockpiling of earth materials.

Grading means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.

Land-disturbing Activity means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:

- (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas;
- (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Article 2, (Sec. 10.1-604 et seq.) of Chapter 6 of the Code of Virginia, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Sec. 10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Sec. 10.1-1163;
- (8) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Disturbed land areas of less than 10,000 square feet in size;
- (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles, and;
- (11) Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.

Land-disturbing permit means a permit issued by the County of Amherst for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein.

Local erosion and sediment control program or *local control program* means an outline of the various methods employed by the County of Amherst to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

Natural channel design concepts means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

Owner means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.

Permittee means the person to whom the permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.

Plan-approving authority means the certified program administrator or certified plan reviewer for Amherst County as designated by the Board of Supervisors responsible for determining the adequacy of a plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

Program authority means the County of Amherst which has adopted a soil erosion and sediment control program that has been approved by the Board.

Responsible Land Disturber means an individual from the project or development team, who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who (i) holds a Responsible Land Disturber certificate of competence, (ii) holds a current certificate of competence from the Board in the areas of Combined Administration, Program Administration, Inspection, or Plan Review, (iii) holds a current Contractor certificate of competence for erosion and sediment control, or (iv) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Article 1 (Sec. 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Runoff volume means the volume of water that runs off the land development project from a prescribed storm event.

Single-family residence means a noncommercial dwelling that is occupied exclusively by one family.

State erosion and sediment control program or *state program* means the program administered by the Virginia Soil and Water Conservation Board pursuant to the Code of Virginia including regulations designed to minimize erosion and sedimentation.

State waters means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

Transporting means any moving of earth materials from one place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

Water Quality Volume means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

Section 11-37. Local erosion and sediment control program.

(a) Pursuant to section 10.1-562 of the Code of Virginia, the County of Amherst hereby adopts the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.

(b) Before adopting or revising regulations, the County of Amherst shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when the County of Amherst is amending its program to conform to revisions in the state program. However, a public hearing shall be held if the County of Amherst proposes or revises regulations that are more stringent than the state program.

In addition, in accordance with §10.1-561 of the Code of Virginia, stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

In accordance with §10.1-561 of the Code of Virginia, any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.

(c) Pursuant to Sec. 10.1-561.1 of the Code of Virginia, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The Erosion Control Program of Amherst County shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.

The County of Amherst hereby designates the zoning administrator as the plan-approving authority.

(d) The program and regulations provided for in this ordinance shall be made available for public inspection at the office of the zoning administrator.

Section 11-38. Submission and approval of plans; contents of plans.

(a) Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the zoning administrator for Amherst County an erosion and sediment

control plan for the land-disturbing activity and such plan has been approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the Board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

(b) The standards contained within the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook as amended are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the State regulations shall take precedence.

(c) The plan-approving authority shall review conservation plans submitted to it and grant written approval within 45 days of the receipt of the plan if it determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as provided by § [10.1-561](#), of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance.

(d) The plan shall be acted upon within 45 days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval.

When the plan is determined to be inadequate, the plan-approving authority shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(e) An approved plan may be changed by the plan-approving authority when:

- (1). The inspection reveals that the plan is inadequate to satisfy applicable regulations; or
- (2). The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the plan-approving authority and the person responsible for carrying out the plans.

(f) Variances: The plan-approving authority may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

- (1). At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
- (2). During construction, the person responsible for implementing the approved plan may request a variance in writing from the plan-approving authority. The plan-approving authority shall respond in writing either approving or disapproving such a request. If the

plan-approving authority does not approve a variance within 10 days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.

(g) In order to prevent further erosion, the County of Amherst may require approval of a plan for any land identified in the local program as an erosion impact area.

(h) When land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

(i) In accordance with the procedure set forth by §10.1-563 (E) of the Code of Virginia, any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks, pursuant to a permit issued by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the Board for review and approval consistent with guidelines established by the Board.

(j) State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 10.1-564.

Section 11-39. Permits; fees; security for performance.

(a) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

(b) No person may engage in any land-disturbing activity until he has acquired a land-disturbing permit, unless the proposed land-disturbing activity is specifically exempt from the provisions of this ordinance, and has paid the fees and posted the required bond.

(c) An administrative fee shall be paid to Amherst County at the time of submission of the land-disturbing permit in accordance with the following:

10,000 sq. ft. – 1 acre:	\$ 35.00
1 – 5 acres:	\$100.00
6 – 20 acres:	\$300.00
21 acres and up:	\$600.00

(d) No land-disturbing permit shall be issued until the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed.

Noncommercial and commercial sites.

(1) Noncommercial sites: The administrator shall collect a plan review fee of five hundred dollars (\$500.00) for projects that require an erosion and sediment control plan; plus an additional ten (\$10.00) per acre, or part thereof, for projects involving more than one (1) acre.

(2) Commercial sites: For commercial sites, including subdivision developments, the administrator shall collect a plan review fee of five hundred dollars (\$500.00) for projects that require an erosion and sediment control plan; plus an additional fifty dollars (\$50.00) per acre, or part thereof, for projects involving more than one (1) acre.

(e) All applicants for permits shall provide to the County of Amherst a performance bond, cash escrow, or an irrevocable letter of credit acceptable to the zoning administrator to ensure that measures could be taken by the County of Amherst at the applicant's expense should the

applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land-disturbing activity.

(f) The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five percent of the cost of the conservation action. Should it be necessary for the County of Amherst to take such conservation action, the County of Amherst may collect from the applicant any costs in excess of the amount of the surety held.

Within sixty (60) days of adequate stabilization, as determined by zoning administrator in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof, shall be either refunded to the applicant or terminated, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

Section 11-40. Monitoring, reports, and inspections

(a) The County of Amherst may require the person responsible for carrying out the plan to monitor the land-disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.

(b) The certified inspector shall periodically inspect the land-disturbing activity in accordance with Sec. 4 VAC 50-30-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.

If the certified inspector determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities.

The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this ordinance and shall be subject to the penalties provided by this ordinance.

(c) Upon determination of a violation of this ordinance, the zoning administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

If land-disturbing activities have commenced without an approved plan, the zoning administrator may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.

Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to

comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.

The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court of Amherst County.

If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the zoning administrator may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of Amherst County.

The owner may appeal the issuance of an order to the Circuit Court of Amherst County.

Any person violating or failing, neglecting or refusing to obey an order issued by Amherst County may be compelled in a proceeding instituted in the Circuit Court of Amherst County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

Nothing in this section shall prevent the zoning administrator from taking any other action authorized by this ordinance.

Section 11-41. Penalties, injunctions, and other legal actions.

(a) Violators of this ordinance shall be guilty of a Class I misdemeanor.

(b) Any person who violates any provision of this ordinance shall, upon a finding of the General District Court of Amherst County, be assessed a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land-disturbing activities without an approved plan shall be \$1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$3,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000. The adoption of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of this section.

(c) The zoning administrator, or the owner or property which has sustained damage or which is in imminent danger of being damaged, may apply to the Circuit Court of Amherst County to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist.

However, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the local program, and the program authority, that a violation of the local program has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the local program nor the program authority has taken corrective action within fifteen days to eliminate the conditions which have caused, or create the probability of causing, damage to his property.

(d) In addition to any criminal penalties provided under this ordinance, any person who violates any provision of this ordinance may be liable to Amherst County in a civil action for damages.

(e) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to

exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the County of Amherst.

Any civil penalties assessed by a court shall be paid into the treasury of Amherst County, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this ordinance, the County of Amherst may provide for the payment of civil charges for violations in specific sums, not to exceed the limit specified in Subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under Subsection E.

(g) The Commonwealth's Attorney shall, upon request of the County of Amherst or the permit issuing authority, take legal action to enforce the provisions of this ordinance.

(h) Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.

Section 11-42. Appeals and judicial review.

- A. Any applicant under the provision of this ordinance who is aggrieved by any action of the County of Amherst or its agent in disapproving plans submitted pursuant to this ordinance shall have the right to apply for and receive a review of such action by the Board of Supervisors provided an appeal is filed within 30 days from the date of the action. Any applicant who seeks an appeal hearing before the Board of Supervisors shall be heard at the next regularly scheduled Board of Supervisors public hearing provided that the Board of Supervisors and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the Board of Supervisors shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Board of Supervisors may affirm, reverse or modify the action. The Board of Supervisor's decision shall be final, subject only to review by the Circuit Court of Amherst County.
- B. Final decisions of the County of Amherst under this ordinance shall be subject to review by the Amherst County Circuit Court, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

AYE: Mr. V. Wood, Mr. L. Parrish, Mr. D. Kidd, Mr. C. Adams and Mr. R. Vandall

NAY: None

The Planning Commission adjourned.

IN RE: APPROVAL OF AGENDA

On motion of Mr. R. Vandall and with the following vote, the Board of Supervisors approved the agenda for February 19, 2008 with an amendment moving the Amherst Live request to the first item on the agenda.

AYE: Mr. V. Wood, Mr. L. Parrish, Mr. D. Kidd, Mr. C. Adams and Mr. R. Vandall

NAY: None

IN RE: AMHERST LIVE REQUEST

Doris Bryant and Mr. Anderson met with the Board and requested the County's support of planned "2008 Amherst Live" events similar to those scheduled in 2007.

On motion of Mr. V. Wood and with the following vote, the Board of Supervisors approved the request for the same support for the planned 2008 Amherst Live events as was provided in 2007.

AYE: Mr. V. Wood, Mr. L. Parrish, Mr. D. Kidd, Mr. C. Adams and Mr. R. Vandall

NAY: None

IN RE: ZONING CASE 2007-52 CONTINUED FROM JANUARY 15, 2008 FOR BOARD OF SUPERVISORS ACTION

2007-52 Request by Timothy R. Campbell for a special exception in the A-1 Agricultural Residential District. The proposed special exception is to allow machinery sales and service use at tax map parcel 67A-1-1, 2, 3, 4. The parcel is located at the intersection of Route 29 and Route 610.

The Planning Department Director Bryant presented details of the request which was continued from the January 15, 2008 joint meeting.

Mr. Vandall moved for standard reasons to reject the Planning Commission recommendation.

Discussion:

Mr. Kidd stated that he has had a number of calls from citizens of the community in which the proposed business is located that desire that the historical and rural nature of the area remain unchanged.

AYE: Mr. V. Wood, Mr. L. Parrish, Mr. C. Adams and Mr. R. Vandall

NAY: Mr. D. Kidd

On motion of Mr. R. Vandall and with the following vote, the Board of Supervisors moved to approve the request by Timothy R. Campbell to allow as a special exception in the A-1 Agricultural Residential District a machinery sales and service use at tax map parcel 67A-1-1, 2, 3, 4 with the following conditions originally recommended by the Planning Commission:

- All outdoor lighting will be glare-shielded and directed so as to prevent illumination across the property line.
- The proposed entrance off U.S. Route 29 will be an entrance only, and will meet the recommendations set forth by the Virginia Department of Transportation. Additionally, signage will be provided to prevent vehicular traffic exiting directly from the parking area to U.S. Route 29.
- Applicant shall retain vegetative buffer on the southwest portion of the property.
- Hours of operation will be: 7:00 A.M. – 8:00 P.M.
- All work done on machinery shall be performed inside the facility, equipment and all miscellaneous parts shall be stored inside the building.

AYE: Mr. V. Wood, Mr. L. Parrish, Mr. C. Adams and Mr. R. Vandall

NAY: Mr. D. Kidd

IN RE: CINGULAR WIRELESS – WIRELESS COMMUNICATION FACILITY

Planning Director Bryant introduced a request from Cingular Wireless for a proposed wireless communication structure located in the P-1 Land District and on property owned by the Virginia Department of Transportation.

On motion of Mr. Parrish and with the following vote, the Board of Supervisors moved to postpone a final decision on this matter until the next regular meeting to allow time for staff to review potential discrepancies in the county code regarding the permitting process.

Bryan Siegell of Cingular Wireless addressed the Board regarding their proposed plans and the permitting process.

AYE: Mr. V. Wood, Mr. L. Parrish, Mr. C. Adams, Mr. D. Kidd and Mr. R. Vandall
 NAY: None

IN E: PUBLIC HEARING UNSAFE BUILDING CODE ORDINANCE

Chairman Wood called the public hearing to order as advertised.

The County Building Official met with the Board and presented the following proposed amendment to the unsafe building code ordinance which was advertised for public hearing.

ARTICLE IV. UNSAFE BUILDINGS

Sec. 4-71. Definitions.

The following words, when used in this article for the purposes of this section, shall have the meanings respectively ascribed to them in this article, except in those instances where the context clearly indicates a different meaning:

Board means the board of building code appeals.

Building means every building or structure which meets the criteria for a declaration of a "public nuisance" as set out in the Uniform Statewide Building Code; provided however that farm structures not used for residential purposes shall be exempt from the provisions of this article.

Building Code official means the ~~building inspector or his designee~~ **official who is charged with the administrative and enforcement of this Code, or any duly authorized representative.**

Nuisance includes, but is not limited to, dangerous or unhealthy substances which have escaped, spilled, been released or which have been allowed to accumulate in or on any place and all unsafe, dangerous, or unsanitary public or private buildings, walls, or structures which constitute a menace to the health and safety of the occupants thereof or the public.

Occupant means the occupant or occupants of a building in possession under a contract or lease with the owner thereof or the owner's agent, or occupant or occupants of a building in possession under a sublease thereof.

Owner means every individual, entity or corporation holding legal title to a building appearing of record in the clerk's office of the circuit court of the County of Amherst, where deeds are recorded, the guardian, if any, of any such owner if he or she is an infant or a person under a disability as defined in the Virginia Code and the committee, if any, of such owner if he or she is incompetent, and the trustee or mortgagee under any deed of trust or mortgage creating a lien on such building also appearing of record in said clerk's office.

Responsible Party includes, but is not limited to, the owner, occupier, or possessor of the premises where the nuisance is located, the owner or agent of the owner of the material which escaped, spilled, or was released and the owner or agent of the owner who was transporting or otherwise responsible for such material and whose acts or negligence caused such public nuisance.

(Ord. of 10-5-93; Ord. of 1-18-05(1))

Sec. 4-72. Declaration as public nuisance; abatement.

All buildings defined in section 4-71 of this article are hereby declared to be public nuisances and unfit for human habitation, and shall be made safe through compliance with the Virginia Uniform Statewide Building Code and with this article by being repaired or shall be vacated and either secured against public entry, or taken down and removed as directed by the building official. A vacant building, unsecured or open at door or window, is deemed a fire hazard and unsafe within the meaning of this section.

(Ord. of 10-5-93; Ord. of 1-18-05(1); Ord. of 10-18-05(2))

Sec. 4-73. Determination by building- code official.

Whenever it shall come to the attention of the building code official that a building is likely to exist in violation of the provisions of this article, the building official shall determine whether the existence of such building is in fact in violation of the provisions of this article. Upon a finding that a building is in violation of the provisions of this article, the building official shall prepare a report to be filed in the records of the office of the building inspector. In addition to a description of the unsafe or uninhabitable conditions found, the report shall include the use of the building, and nature and extent of the damages, if any caused by collapse or failure.

(Ord. of 10-5-93)

Sec. 4-74. Notice – Service by building official.

If a building is found to be unsafe or uninhabitable, the building official shall serve a notice to the owner, the owner's agent or person in control of the unsafe building. Whenever practicable, notice of an unsafe uninhabitable building should also be given to the tenants of said building.

Sec. 4-75. Same – Contents.

The notice shall set forth:

1. The location of the building.
2. A statement of the particulars which cause the building to exist in violation of the provisions of this article; and
3. A statement specifying the required repairs or improvements to be made to the building, or require the unsafe building or portion of the building, to be taken down and removed or secured within a stipulated time. Such notice shall require the person notified to declare to the building official without delay acceptance or rejection of the terms of the notice.

(Ord. of 10-5-93)

Sec. 4-76. Same – Given to owner, owner's agent or person in control.

The notice shall be given to the owner, the owner's agent or person in control of the building by delivering a copy thereof to them in person. If the person named in the notice cannot be found on premise after a diligent search, such notice shall be sent by registered or certified mail to the last known address of such person. A copy of the notice shall be posted in a conspicuous place on the premises. Such procedure shall be the equivalent of personal notice. If an owner of such building is unknown or has no place of abode, office or place of business in the county, or after reasonable efforts, the building inspector cannot locate a last known address, additional notice shall be given by order of publication, by publishing a copy of the notice in a newspaper of general circulation in the county at least thirty (30) days prior to the demolition of the building and a copy of the notice shall also be posted in a conspicuous place on the premises.

(Ord of 10-5-93)

Sec. 4-77. Failure to comply.

Upon the refusal or neglect of the person served with notice of unsafe building to comply with the requirements of the notice to abate the unsafe condition, the building official may revoke the certificate of occupancy. In the case of a vacant building, including one vacated through revocation of the certificate of occupancy, the building official may cause the building to be ~~closed~~ secured through any available means.

(Ord. of 10-5-93)

Sec. 4-78. Actual and immediate danger – Vacation of building.

When, in the opinion of the building official, there is an actual and immediate danger of failure or collapse of a building or any part of a building which would endanger life or when any building or part of a building has fallen and life is endangered by occupancy of the building or when any other hazardous condition poses an immediate and serious threat to life or when a building is declared a public nuisance and unfit for human habitation, the building official may order the occupant to immediately vacate the building. The building official shall post a notice at each entrance to such building that reads: "THIS STRUCTURE IS UNSAFE OR UNFIT FOR HABITATION AND ITS USE OR OCCUPANCY HAS BEEN PROHIBITED BY THE BUILDING INSPECTOR." Upon the posting of the notice no person shall enter such a building except upon authorization of the building official for one (1) of the following purposes:

1. To make the required repairs;
2. To take the building down and remove it; or
3. To make inspections.

(Ord. of 10-5-93)

Sec. 4-79. Safe – Building Code official to have the necessary work done.

- a. When, in the opinion of the building code official, there is immediate danger of collapse or failure of a building or any part of a building which would endanger life, or when a violation of this article results in a hazard that creates an immediate, serious and imminent threat to the life and safety of the occupants or the public, the building code official shall have the necessary work done to the building or part thereof to make such building temporarily safe, whether or not legal action to force compliance has begun. The building code official shall report his actions under this article to the board of supervisors.

- b. ~~The board of supervisors~~ County may, in addition to all other remedies at law:

1. Maintain an action to compel ~~the owner~~ a responsible party to **abate, raze or remove; repair or secure any building, structure or wall constituting a public nuisance;** or
2. ~~Remove, repair or secure the building, wall or other structure which is endangering the public health or safety of other residents of the county.~~ **If the public nuisance presents an imminent threat to life or property, then the County may abate, raze, or remove such public nuisance.**
3. The county may additionally, or as part of any other action filed hereunder, recover the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

(Ord. of 10-5-93)

Sec. 4-80. Costs of expenses chargeable to owner.

In the event that the county, through its agents or employees removes, repairs or secures the building, wall or other structure which is endangering the public health or safety of other residents of the county after complying with the notice provisions hereof, the costs of expenses thereof shall be chargeable to and paid by the owners of the property and may be collected by the county as taxes and levies are collected.

(Ord. of 10-5-93)

Sec. 4-81. Lien against property.

Every charge authorized in this article with which the owner of the property has been assessed and which remains unpaid shall constitute a lien against such property.

(Ord. of 10-5-93)

Sec. 4-82. Appeals.

- a. An owner or agent of the owner of the building may appeal from a decision of the building code official to the board of building code appeals as set forth in, and in compliance with the Uniform Statewide Building Code.
- b. Decisions of the board shall be final, if no appeal is made to the State Building Code Technical Review Board. Any person aggrieved by a decision of the board, who was a part to the appeal, may appeal the board's decision to the State Building Code Technical Review Board as set forth in, and in compliance with, the Uniform Statewide Building Code.

(Ord. of 10-5-93; Ord. of 1-18-05(1))

Sec. 4-83. Failure to comply.

Every owner or occupant who shall fail, refuse or neglect to comply with a notice of the building code official shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than two thousand five hundred dollars (\$2,500.00); additionally, if the violation concerns a residential unit and if the violation remains uncorrected at the time of conviction, the court shall order the violator to abate or remedy the violation in order to comply with this article.

(Ord. of 10-5-93)

Sec. 4-84. Enforcement of state law.

By adopting this article, the county expressly elects to enforce the 2003 edition of the International Property Maintenance Code, adopted as the Uniform Statewide Building Code for the Commonwealth of Virginia by the Virginia Board of Housing and Community Development, and all manifestations of the Building Maintenance Code so adopted in the future.

(Ord. of 10-5-93; Ord. of 1-18-05(1))

Sec. 4-85. Inspection warrants.

If the local building code department receives a complaint that a violation of the building code exists that is an immediate and imminent threat to the health or safety of the owner or tenant of a residential dwelling unit or a nearby residential dwelling unit, and the owner or tenant of the residential dwelling unit that is the subject of the complaint has refused to allow the local building code official or his agent to have access to the subject dwelling, the local building code official or his agent may present sworn testimony to a magistrate or a court of competent jurisdiction and request that the magistrate or court grant the local building code official or his agent an inspection warrant to enable the building code official or his agent to enter the subject dwelling for the purpose of determining whether violations of the building code exist. The local building code official or his agent shall make a reasonable effort to obtain consent from the owner or tenant of the subject dwelling prior to seeking the issuance of an inspection warrant under this section.

(Ord. of 1-18-05(2))

Sec. 4-86. Removal, repair, etc. of certain buildings and other structures required.

- a. The owners of property in the County, shall at such time or times as the Board of Supervisors may prescribe, remove, repair or secure any building, wall or any other structure that might endanger the public health or safety of other residents of the County.
- b. The County through its own agents or employees may remove, repair or secure any building, wall or any other structure that might endanger the public health or safety of other residents of the County, if the owner and lienholder of such property, after reasonable notice and a reasonable time to do so, have failed to removed, repair, or secure the building, wall or other structure. For purposes of this section, repair may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings. For purposes of this section, reasonable notice includes a written notice (i) mailed by certified or registered mail, return receipt requested, sent to the last know address of the property owner and (ii) published once

a week for two successive weeks in a newspaper having general circulation in the County. No action shall be taken by the County to remove, repair, or secure any building, wall, or other structure for at least 30 days following the later of the return of the receipt or newspaper publication, except that the County may take action to prevent unauthorized access to the building within seven days of such notice if the structure is deemed to pose a significant threat to public safety and such fact is stated in the notice;

- c. In the event the County, through its own agents or employees, removes, repairs, or secures any building, wall, or any other structure after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the County as taxes are collected;
- d. Every charge authorized by this section or § 4-79 & 80 with which the owner of any such property has been assessed and that remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 (§ 58.1 – 3940 et seq.) and 4 (§ 58.1 – 3965 et seq.) of Chapter 39 of Title 58.1 of the Code of Virginia (1950), as amended. The County may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed; and
- e. A civil penalty of \$1,000 for violation of this section shall be imposed upon the owners of such property.

Sec. 4-86 87 – 4-90. Reserved.

The Public Hearing was held with one speaker, Frank Campbell speaking in favor of the proposed ordinance.

There were no other speakers and the public hearing was closed.

IN R: CONSENT AGENDA

- a. Amherst County Building Department Monthly Report – January 2008
- b. Region 2000 Partnership Community Meeting February 28, 2008
- c. Office of the Sheriff – Monthly report for January 2008
- d. VDOT Traffic Alert – Feb. 11-15, 18-22, 2008

The County Administrator reviewed the consent agenda items with the Board.

IN RE: CITIZEN COMMENTS

Carl Wilson of 236 Rocky Hill Road informed the Board of an inoperable vehicle on private property adjacent to his own.

IN RE: OLD TOWN MADISON HEIGHTS CDBG PROJECT

The County Administrator presented a request to have the County waive solid waste tipping fees and permit fees associated with housing rehabilitation and demolition regarding the proposed Old Town Madison Heights CDBG project.

There was a Board discussion and consensus to support the proposed project and requested the County Administrator to provide a cost estimate of fees proposed to be waived at the time that the formal grant request is presented.

IN RE: APPROPRIATIONS/TRANSFER/DISBURSEMENTS

On motion of Mr. Parrish and with the following vote, the Board of Supervisors approved the following appropriations and transfers:

a. APPROPRIATIONS

Registrar

13020 3007	Advertising	\$	30.00
(General Fund – bailout notice not included in budget)			

Sheriff's Office

31020 5804	Miscellaneous	\$	3,000.00
(Drug Asset Forfeiture)			

Recreation

71010 5807	Miscellaneous	\$	55.00
(Revenue generated from night fishing license sales)			

b. TRANSFERS

Commissioner of the Revenue

Transfer from:

12090 5408	Gas, Great etc	\$	2,000.00
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Transfer to:

12090 3013	Professional services	\$	2,000.00
(Contract Blue Ridge Appraisals to assess new construction)			

Sheriff – Jail Department

Transfer from:

33010 3005	Maintenance Service	\$	300.00
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Transfer to:

33010 5401	Office Supplies	\$	100.00
31020 5401	Office Supplies		300.00
(To cover expenses)			

Animal Control

Transfer from:

35010 5804	Livestock claims	\$	1,100.00
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Transfer to:

35010 7001	Equipment	\$	1,100.00
(Replace oversized cap due to damage of truck bed)			

Public Safety

Transfer from:

35050	3010	Radio Maintenance	\$	4,500.00
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Transfer to:

35050	5408	Gas, Oil and Grease	\$	4,500.00
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Recreation Department

Transfer from:

71010	5408	Gasoline, Oil, Grease	\$	500.00
71010	5413	Recreational Supplies		2,000.00
71010	5506	Travel – Board members		200.00
71010	5413	Recreational Supplies		2,000.00
71010	5806	Senior Citizen Expenses		2,240.00

Transfer to:

71010	5401	Office Supplies	\$	500.00
71010	5412	Cultural Supplies		2,000.00
71010	5507	Travel – Senior Citizens		200.00
71010	8003	Rent – Senior Centers		4,240.00

AYE: Mr. V. Wood, Mr. L. Parrish, Mr. D. Kidd, Mr. C. Adams and Mr. R. Vandall

NAY: None

IN RE: MATTERS FROM MEMBERS OF THE BOARD OF SUPERVISORS

Mr. Vandall requested further consideration of separation of the practice of joint Board/Planning Commission meeting at the next regular Board meeting.

IN RE: LEARNING LANE

The County Administrator provided an update on the Learning Lane project.

IN RE: ADJOURNMENT

On motion of Mr. Parrish, seconded by Mr. Vandall and with the following vote, the Board of Supervisor adjourned until Sunday, February 24, 2008 at 4:00 p.m. at the Amherst County High School.

AYE: Mr. V. Wood, Mr. L. Parrish, Mr. D. Kidd, Mr. C. Adams and Mr. R. Vandall

NAY: None

Vernon L. Wood, Chairman
Amherst County Board of Supervisors

Rodney E. Taylor
County Administrator