Amherst County Board of Supervisors
County Ordinance No. 2020-0012

AN ORDINANCE, NO. 2020-0012

Amending §§ 302, 701, 702, 703, 704, 705, 706, 707, 711, 712, and 918, and enacting §§ 923 and 1011 of the Zoning and Subdivision Ordinance of Amherst County, Virginia.

Approved as to form and legality by the County Attorney

PLANNING COMMISSION PUBLIC HEARING: September 17, 2020
BOARD OF SUPERVISORS PUBLIC HEARING: October 6, 2020

THE BOARD OF SUPERVISORS OF THE COUNTY OF AMHERST HEREBY ORDAINS:

§ 1. That §§ 302, 701, 702, 703, 704, 705, 706, 707, 711, 712, and 918 of the Zoning and Subdivision Ordinance of Amherst County, Virginia, are hereby amended and §§ 923 and 1011 are enacted as follows:

APPENDIX A – ZONING AND SUBDIVISIONS

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Article III. Definitions of Terms Used in This Ordinance

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302. – Specific definitions.

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Solar generation facility, agricultural. A solar generating facility that:

(1) Has a generating capacity of not more than 1.5 megawatts and does not exceed 150% of the site's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;

(2) Is located on the same site that is used for the calculation under criterion (1);

(3) Is located on the site and is interconnected with its utility through a separate meter;

(4) Is interconnected and operated in parallel with an electric utility's distribution but not transmission facilities;

(5) Is designed so that the electricity generated by the facility is expected to remain on the utility's distribution system; and

(6) Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978.

For the purposes of this definition, the term "utility" means a supplier or distributor, as applicable, and the term "site" means one or more parcels under common use, ownership, and control.

Solar generation facility, small. A solar power or thermal energy generation facility that serves the electricity or thermal needs of the property upon which such facilities are located, and/or adjacent parcels under common use, ownership, and control.

Solar generation facility, utility-scale. A renewable energy project that (i) generates electricity from sunlight, consisting of one or more photovoltaic systems and other appurtenant structures and facilities within the boundaries of the site; and (ii) is designed to interconnect with the electrical grid and/or to serve facilities that are not adjacent or under common use, ownership, or control.

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Article VII. – Use Requirements by Zoning Districts

701. – Public Lands District P-1.

701.02. Permitted uses (Public Lands District—P-1 zone). Those uses deemed by the county to serve the public interests, necessity, and convenience of Amherst County including but not limited to lands designated as national forest, publicly owned reservoirs, parks, schools, libraries, water/sewer utilities, emergency services, animal shelters, pounds, industrial parks, governmental facilities, and personal wireless service facilities as provided in Section 919 and small solar generation facilities.

701.03 Special exceptions (Public Lands District—P-1 zone).

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5. Solar generation facilities, utility-scale.

6. Any other use which the zoning administrator determines is consistent with the statement of intent for this district and is of the same general character as special exception uses in this district.

702. – Agricultural Residential District A-1.

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702.02. Permitted uses. Within the A-1 district, the following uses are permitted:

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26. Solar generation facilities, small.

27. Solar generation facilities, agricultural.

702.03. Special exceptions (Agricultural Residential District—A-1 Zone)

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28. Solar generation facilities, utility-scale.

29. Any other use which the zoning administrator determines is consistent with the statement of intent for this district and is of the same general character as special exception uses in this district.

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703. – Limited Residential District R-1.

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703.02. Permitted uses. Within the Limited Residential District R-1, the following uses are permitted:

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11. Solar generation facilities, small.

703.03. Special exceptions (Limited Residential District—R-1 zone).

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15. Solar generation facilities, utility-scale.

16. Solar generation facilities, agricultural.

704. – General Residential District R-2.

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704.02. Permitted uses. Within the General Residential District R-2 the following uses are permitted:

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705. – R-3 Multi-Family Residential District.

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705.02. Permitted uses. Within the Multi-Family Residential District R-3, the following uses are permitted:

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706. – Village Center District V-1.

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706.02. Permitted uses. Within the Village Center District V-1 the following uses are permitted:

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22. Solar generation facilities, small.

23. Any other use which the zoning administrator determines is consistent with the statement of intent for this district and is of the same general character as permitted uses in this district.

707. – General Commercial District B-2.

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707.02. Permitted uses. Within the General Commercial District B-2, the following uses are permitted:

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78. Solar generation facilities, small.

79. Any other use which the zoning administrator determines is consistent with the statement of intent for this district and is of the same general character as permitted uses in this district.

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708. – Industrial District M-1.

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708.02. Permitted uses. Within the Industrial District M-1, the following uses are permitted:

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18. Governmental facilities;

19. Solar generation facilities, small.

708.03. Special exceptions (Industrial District—M-1 Zone):

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8. Solar generation facilities, utility-scale.

9. Any other use which the zoning administrator determines is consistent with the statement of intent for this district and is of the same general character as special exception uses in this district.

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711. – Mixed Use/Traditional Neighborhood Development (MU/TND) District.

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Use/Activity	Neighborhood Center	Residential Neighborhoods	Open Space
Solar generation facilities, small	P	P	X

712. – Residential Mixed Use District RMU-1.

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712.02. Permitted uses.

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17. Solar generation facilities, small.

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918. – Small wind energy systems.

918.01. Intent. The purpose of this section is to regulate the placement, construction and modification of small wind energy systems while promoting the safe, effective, and efficient use of small wind energy systems and not unreasonably interfering with the development of independent renewable energy sources.

918.02. Applicability. The requirements set forth in this division shall govern the siting of small wind energy systems used to generate electricity or perform work which may be connected to the utility grid, serve as an independent source of energy, or serve in a hybrid system.

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923. – Solar generation facilities.

923.01. Development standards for small solar generation facilities. The following provisions apply to all small solar generation facilities:

1. Small solar generation facilities located on structures shall comply with all provisions of the Uniform Statewide Building Code.

2. Small solar generation facilities shall comply with generally accepted national environmental protection and product safety standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy) projects, such as those developed for existing product certifications and standards including the National Sanitation Foundation/American National Standards Institute No. 457, International Electrotechnical Commission No. 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and Underwriters Laboratories No. 61730-2. A site development plan or building permit application shall make reference to the specific safety and environmental standards complied with.

3. Small solar generation facilities shall be treated with anti-reflection coating.

4. The provisions of this subsection may be varied or modified as part of a master plan or proffered condition.

923.02. Development standards for agricultural solar generation facilities. The following standards apply to all agricultural solar generation facilities:

1. Setbacks for agricultural solar generation facilities shall be 150 feet from the nearest lot line of a parcel not under common ownership, unless mounted on a structure that otherwise meets setbacks.

2. Agricultural solar generation facilities located on structures shall comply with all provisions of the Uniform Statewide Building Code.

3. Agricultural solar generation facilities shall comply with generally accepted national environmental protection and product safety standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy) projects, such as those developed for existing product certifications and standards including the National Sanitation Foundation/American National Standards Institute No. 457, International Electrotechnical Commission No. 61215-2, Institute of Electrical and Electronics

Engineers Standard 1547, and Underwriters Laboratories No. 61730-2. A site development plan or building permit application shall make reference to the specific safety and environmental standards complied with.

4. Agricultural solar generation facilities shall be treated with anti-reflection coating.

5. The provisions of this subsection may be varied or modified as part of a master plan or proffered condition.

923.03. Community meeting prior to application for utility-scale solar generation facility. A public meeting shall be held prior to the public hearing with the planning commission to give the community an opportunity to hear from the applicant and ask questions regarding the proposed facility. The meeting shall be held under the following guidelines:

1. The applicant shall inform the zoning administrator and adjacent property owners in writing of the date, time, and location of the meeting, at least seven but no more than 14 days in advance of the meeting.

2. The date, time, and location of the meeting shall be advertised in a newspaper of general circulation in the county by the applicant, at least seven but no more than 14 days in advance of the meeting date.

3. The meeting shall be held within the county, at a location open to the general public with adequate parking and seating facilities that will accommodate persons with disabilities.

4. The meeting shall give members of the public the opportunity to review application materials, ask questions of the applicant, and provide feedback.

5. The applicant shall provide to the zoning administrator a summary of any input received from members of the public at the meeting.

923.04. Application requirements for a special exception for a utility-scale solar generation facility. In addition to the requirements set forth in Section 1003.03, an application for a special exception for a utility-scale solar generation facility shall contain:

1. A project narrative identifying the applicant, facility owner, site owner, and operator, if known at the time of application, and describing the proposed large scale solar energy facility, including an overview of the project and its location; the size of the site and the project area; the current use of the site; the estimated time for construction and proposed date for commencement of operations; the planned maximum rated capacity of the facility; the approximate number, representative types and expected footprint of solar equipment to be constructed, including, without limitation, photovoltaic panels; ancillary facilities, if applicable; and how and where the electricity generated at the facility will be transmitted, including the location of the proposed electric grid interconnection.

2. A concept plan including the following information:

a. Property lines, minimum required setback lines, and any proposed setback lines that exceed the minimum requirements.

b. An area map showing the proposed site within a five-mile radius, together with prominent landmarks and physical features.

c. Existing and proposed buildings and structures, including preliminary location(s) of the proposed solar equipment.

d. Existing and proposed access roads, permanent entrances, temporary construction entrances, drives, turnout locations, and parking, including written confirmation from the Virginia Department of Transportation (VDOT) that all entrances satisfy applicable VDOT requirements; provided, however, these requirements shall not exceed VDOT requirements for other types of projects in the underlying zoning district.

e. Proposed locations and maximum heights of substations, electrical cabling from the solar systems to the substations, panels, ancillary equipment and facilities, buildings, and structures (including those within any applicable setbacks).

f. Fencing or other methods of ensuring public safety.

g. Areas where the vegetative buffering will be installed and maintained and areas where pollinator-friendly and wildlife-friendly native plants, shrubs, trees, grasses, forbs, and wildflowers will be installed and maintained.

h. Existing wetlands, woodlands, and areas containing substantial woods or vegetation.

i. Identification of recently cultivated lands and predominant soil types (based on publicly-available data) of those lands.

j. Additional information may be required, as determined by the zoning administrator, such as a scaled elevation view and other supporting drawings, photographs of the proposed site, photo or other realistic simulations or modeling of the proposed solar energy project from potentially sensitive locations as deemed necessary by the zoning administrator to assess the visual impact of the project, aerial image or map of the site, and additional information that may be necessary for a technical review of the proposal. The planning commission or board of supervisors may also require other relevant information deemed to be necessary to evaluate the application.

3. A landscaping and screening plan that addresses the vegetative buffering required, including the use of existing and newly installed vegetation to screen the facility. The plan also must address the use of pollinator-friendly and wildlife-friendly native plants, shrubs,

trees, grasses, forbs, and wildflowers in the project area and in the setbacks and vegetative buffering.

4. The following materials relating to environmental and cultural resources shall also be submitted:

   a. A report by the Virginia Department of Historic Resources Virginia Cultural Resource Information System must be submitted to identify historical, architectural, archeological, or other cultural resources on or near the proposed facility.

   b. A copy of the cultural resources review conducted in conjunction with the state Department of Historic Resources for the Department of Environmental Quality permit by rule process. This report shall be in addition to the report required in subsection (a) above and shall further identify historical, architectural, archeological, or other cultural resources on or near the proposed site.

   c. A report on the potential impacts on wildlife and wildlife habitats at the site and within a two-mile radius of the proposed facility using information provided by the Department of Game and Inland Fisheries or a report prepared by a qualified third party.

   d. A report on potential impacts on pollinators and pollinator habitats at the site, including but not necessarily limited to the submission of a completed solar site pollinator habitat assessment form as required by the zoning administrator.

   e. A glint and glare study that demonstrates that the panels will be sited, designed, and installed to eliminate glint and glare effects on roadway users, nearby residences, commercial areas, and other sensitive viewing locations, or that the applicant will use all reasonably available mitigation techniques to reduce glint and glare to the lowest achievable levels. The study will assess and quantify potential glint and glare effects and address the potential health, safety, and visual impacts associated with glint and glare. Any such assessment must be conducted by qualified individuals using appropriate and commonly accepted software and procedures.

   f. Copy of any agreement between the utility, landowner, and applicant that grants permission to connect to the electrical system.

5. The zoning administrator may accept an application for processing in situations in which some or all of the materials in subsection 4 are unavailable. For utility-scale solar generation facilities less than 15 megawatts in size, the zoning administrator may waive this requirement if it is reasonably expected to be waived in the Department of Environmental Quality permit-by-rule process. However, the final decision whether to act upon, grant, deny, or condition a special exception notwithstanding these materials not being included in the application lies with the board of supervisors.

923.05. Development standards for utility-scale solar generation facilities. The following development standards apply to all ~~agricultural and~~ utility-scale solar generation facilities:

1. The facility shall use only panels that employ anti-glare technology, anti-reflective coatings, and other available mitigation techniques, all that meet or exceed industry standards, to reduce glint and glare. The applicant shall provide written certification from a qualified expert acceptable to the county that the facility's panels incorporate and utilize anti-glare technology and anti-reflective coatings and reduce glint and glare to levels that meet or exceed industry standards. The board of supervisors may impose conditions requiring that through project siting and proposed mitigation the solar project minimizes impacts on viewsheds, including from residential areas and areas of scenic, historical, cultural, archeological, and recreational significance.

2. Utility-scale solar generation facilities must comply with generally accepted national environmental protection and product safety standards for the use of solar panels and battery technologies for solar photovoltaic (electric energy) projects, such as those developed for existing product certifications and standards including the National Sanitation Foundation/American National Standards Institute No. 457, International Electrotechnical Commission No. 61215-2, Institute of Electrical and Electronics Engineers Standard 1547, and Underwriters Laboratories No. 61730-2. A final site plan must reference the specific safety and environmental standards complied with.

3. The project area must be set back a distance of at least 150 feet from all property lines. Exceptions may be made for adjoining parcels that are owned by the applicant.

4. The project area must be enclosed by security fencing not less than six feet in height and equipped with appropriate anticlimbing device such as strands of barbed wire on top of the fence. Fencing must be installed on the interior of the vegetative buffer required so that it is screened from the ground level view of adjacent property owners. The fencing must be maintained at all times while the facility is in operation.

5. A vegetative buffer sufficient to mitigate the visual impact of the facility is required. The buffer must consist of a landscaping strip at least 15 feet wide, located within the setbacks required in subsection 3 above, and must run around the entire perimeter of the project area. The buffer must consist of existing vegetation and, if deemed necessary for the issuance of a special exception, an installed landscaped strip consisting of multiple rows of staggered trees and other vegetation. This buffer should be made up of plant materials at least three feet tall at the time of planting and that are reasonably expected to grow to a minimum height of eight feet within three years. Non-invasive plant species and pollinator-friendly and wildlife-friendly native plants, shrubs, trees, grasses, forbs and wildflowers must be used in the vegetative buffer. Fencing must be installed on the interior of the buffer. Existing trees and vegetation may be maintained within such buffer areas except where dead, diseased or as necessary for development or to promote healthy growth, and such trees and vegetation may supplement or satisfy landscaping requirements as applicable. If

existing trees and vegetation are disturbed, new plantings shall be provided for the buffer. The buffer must be maintained for the life of the facility.

6. The project area must be seeded with appropriate pollinator-friendly native plants, shrubs, trees, grasses, forbs, and wildflowers. The project area must be seeded promptly following completion of construction in such a manner as to reduce invasive weed growth and sediment in the project area. The owners and operators also are required to install pollinator-friendly native plants, shrubs, trees, grasses, forbs, and wildflowers in the setbacks and vegetative buffering.

7. Ground-mounted solar energy generation facilities may not exceed a height of 20 feet, which shall be measured from the highest natural grade below each solar panel. This limit does not apply to utility poles and the interconnection to the overhead electric utility grid that meet State Corporation Commission requirements.

8. Lighting must be limited to the minimum reasonably necessary for security purposes and shall be designed to minimize off-site effects. Lighting on the site shall be dark sky-compliant.

9. Large scale solar energy facilities may not be located within one mile of an airport unless the applicant submits, as part of its application, written certification from the Federal Aviation Administration that the location of the facility poses no hazard for, and will not interfere with, airport operations.

10. In approving conditions on a special exception, the board of supervisors may expand, waive, or modify the requirements of this section, but it may not waive subsections 3 and 11.

923.06. Considerations on issuing special exception. The board of supervisors may impose conditions reasonably designed to mitigate the impacts of a solar generation facility where permitted only by special exception. Conditions on such a special exception may include requirements for (i) dedication of real property of substantial value to the county or one of its instrumentalities or (ii) substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the granting of the special exception, so long as such conditions are reasonably related to the project. In considering any application for a special exception for a utility-scale solar generation facility, the board of supervisors shall consider the following matters in addition to those otherwise provided in this Appendix:

1. The topography of the site and the surrounding area;

2. The proximity of the site to, observability from, and impact on urban and residential areas;

3. The proximity of the site to, observability from, and impact on areas of historical, cultural, and archaeological significance;

4. The proximity of the site to other large scale solar energy facilities, other energy generating facilities, and utility transmission lines;

5. The proximity of the site to, observability from, and impact on areas of scenic significance, such as scenic byways, vistas, and blueways;

6. The proximity of the site to, observability from, and impact on public rights-of-way, including, but not limited to, highways, secondary roads, streets, and scenic byways;

7. The proximity of the site to, observability from, and impact on recreational areas, such as parks, battlefields, trails, lakes, rivers, and creeks;

8. The proximity of the site to airports;

9. The preservation and protection of wildlife and pollinator habitats and corridors;

10. The proximity of the site to any urban planning area, community planning area, or environmentally or culturally sensitive area identified in the comprehensive plan;

11. The size of the site;

12. The proposed use of available technology, coatings, and other measures for mitigating adverse impacts of the facility;

13. The preservation and protection of prime farmland in the county;

14. With regard to any cash payments or in-kind contributions, the impact of the project on probable future uses of the land if not developed with a solar farm, including any changes in future tax revenues; investments in infrastructure for other types of development that may have occurred in the area, and would be of lesser utility; and the provisions of a siting agreement under Sections 15.2-2316.6 et seq. of the Code of Virginia, 1950, as amended; and

14. Such other matters as the board of supervisors may deem reasonably related to the application or its impacts.

923.07. Special provisions for smaller utility-scale solar generation facilities and agricultural solar generation facilities. The zoning administrator may exempt applications for facilities smaller than four acres with a rated capacity equal to or less than 1.5 megawatts (MW) that are allowed by-right from some or all of the requirements of Section 923.05. For such applications that require a special exception, the zoning administrator may exempt such facility from some or all of the application requirements of Section 923.06 as well. However, the final decision on all exemptions from requirements of facilities requiring a special exception lies with the board of supervisors.

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Article X. – Administration

1011. – Surety for decommissioning of a utility-scale solar generation facility.

1011.01. Definitions. As used in this section, unless the context requires a different meaning:

Decommission means the removal and proper disposal of solar energy equipment, facilities, or devices related to a utility-scale solar energy facility. The term includes the reasonable restoration of the real property, including (i) soil stabilization and (ii) revegetation of the ground cover of the real property disturbed by the installation of such equipment, facilities, or devices.

Solar energy equipment, facilities, or devices means any personal property designed and used primarily for the purpose of collecting, generating, or transferring electric energy from sunlight.

1011.02. Decommissioning plan. A site plan for a utility-scale solar generation facility shall include a detailed decommissioning plan that provides procedures and requirements for removal of all parts of the solar energy generation facility and its various structures at the end of the useful life of the facility or if it is deemed abandoned. The plan shall include the anticipated life of the facility, the estimated overall cost of decommissioning the facility in current dollars, the methodology for determining such estimate, and the manner in which the project will be decommissioned. The decommissioning plan and the estimated decommissioning cost will be updated upon the request of the zoning administrator or as provided in the agreement provided for in subsection (c), provided that the update shall be no more frequently than once every five years and no less frequently than once every ten years. The disposal of all panels and related equipment shall be taken to a facility that can accept the materials and shall meet all local, state and federal regulations.

1011.03. Surety for decommissioning. As a condition of the approval of a site plan for a utility-scale solar generation facility, the owner, lessee, or developer of the project (the "responsible party") shall enter into a written project development agreement with the county, setting forth, at a minimum, that (i) if the facility ceases generating electricity for more than 12 consecutive months, the responsible party will provide for its decommissioning; (ii) if the owner, lessee, or developer defaults in the obligation to decommission the facility, the county has the right to enter the real property without further need of consent of the owner to engage in decommissioning; and (iii) the responsible party provides financial assurance of such performance to the county in the form of certified funds, cash escrow, bond, letter of credit, or parent guarantee. The amount of the financial assurance shall be based upon an estimate by a professional engineer licensed in the Commonwealth, who is engaged by the responsible party, who has experience in preparing decommissioning estimates and is approved by the county. The estimate shall not exceed the total of the projected cost of decommissioning, which may include the net salvage value of such equipment, facilities, or devices, plus a reasonable allowance for estimated administrative costs related to a default of the owner, lessee, or developer, and an annual inflation factor.

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§ 2. That this ordinance shall be in force and effect upon adoption.

Adopted this 6th day of October, 2020.

Claudia D. Tucker, Chair
Amherst County Board of Supervisors

Member	**Vote**
Claudia D. Tucker, Chair	AYE
Jennifer R. Moore, Vice-Chair	AYE
David W. Pugh, Jr.	AYE
Tom Martin	AYE
L. J. "Jimmy" Ayers III	Absent

ATTEST:

Dean C. Rodgers, Clerk
Amherst County Board of Supervisors