

VIRGINIA:

A meeting of the Lancaster County Board of Supervisors was held in the Administrative Building Board/Commission Meeting Room of said county on Thursday, March 29, 2012.

Members Present: B. Wally Beauchamp, Chair
 F.W. Jenkins, Jr., Vice Chair
 Ernest W. Palin, Jr., Board Member
 Jason D. Bellows, Board Member

Staff Present: Frank A. Pleva, County Administrator
 Jack D. Larson, Assistant County Administrator
 Don G. Gill, Planning and Land Use Director

Mr. Beauchamp called the meeting to order at 7:00 p.m.

Mr. Beauchamp asked everyone to keep Dr. Russell in prayer and pause for a moment of silence. After undergoing surgery he is still in ICU.

PUBLIC INPUT

Concerns from the Edison Group

John Payne, owner of Edison Group stated his company had a contract with Lancaster County to perform elevation services on three properties and would like give their side of the story on the job at 129 Winona Drive. He said he formerly requested the opportunity to present the information to board; however, was denied by the county administrator and county attorney. This project financially destroyed him and forced the Edison Group to cease operations. He would like to send each board member a letter summarizing the story of the loss his company took and ask the board to review the situation. He believes that after careful review the board would have acted as he did. He asked the board if they would consider this request.

Mr. Beauchamp stated he would read any and all information sent to him; however, that does not mean that action will be taken on the issue.

PRESENTATION

1. Lancaster High School 2012 Boys Basketball State Championship Team – Resolution – Mr. Beauchamp said we have a great opportunity to recognize the Lancaster High School 2012 Boys Basketball State Championship Team for Group A, Division 2.

Mr. Pleva read the following resolution:

**A RESOLUTION
OF THE
BOARD OF SUPERVISORS
OF
LANCASTER COUNTY, VIRGINIA

LANCASTER HIGH SCHOOL
2012 BOYS BASKETBALL TEAM**

WHEREAS, the 2012 Lancaster County High School Boys Basketball Team won the Northern Neck District regular season championship and the Northern Neck District Tournament championship; and

WHEREAS, the 2012 Lancaster County High School Boys Basketball Team was the runner-up in the Virginia High School League’s Region A Tournament thereby qualifying for the Group A, Division 2 state championship playoffs; and

WHEREAS, the 2012 Lancaster County High School Boys Basketball Team won the Group A, Division 2 state championship by defeating Region B Champion Dan River High School 59 to 58 in the First Round, defeating Region

D Champion Virginia High School 82 to 60 in the Semi-Final Round and defeating Region B Runner-Up George Mason 66 to 51 in the Championship Game on March 10, 2012 at Virginia Commonwealth University's Siegel Center in Richmond; and

WHEREAS, the 2012 Lancaster County High School Boys Basketball Team won the first state basketball championship in school history and, in the process, completed the season with a record of twenty-seven wins and only two defeats, which is the best basketball record in the school's history;

NOW, THEREFORE BE IT RESOLVED, that the Lancaster County Board of Supervisors hereby commends the following members of the 2012 Lancaster County High School Boys Basketball Team for their laudable accomplishments: Head Coach Tim Rice; Assistant Coaches Malcolm Carter, Wayne Carter, Troy Henderson, Tyrell Veney and Bill Young; Guard and Captain Michael Coleman, Center and Captain Melvin Gregory, Forward and Captain Brandon Morris, Guard Tyler Colding, Guard Keith Craft, Guard Jovante Davis, Guard Ricky Gibson, Guard/Forward Kedrick Lee, Guard Aaron Manning, Guard Brian Moody, Center Dalton Moore, Forward Keondra Owens, Forward Jovante Smith, Forward Taj Smith and Forward James Walters; and Managers Travis Boyd, Mark Saunders and Clarence Thomas; and

BE IT FURTHER RESOLVED, that the Lancaster County Board of Supervisors hereby expresses its admiration to the 2012 Lancaster County High School Boys Basketball Team for the exemplary dedication, determination, skill and poise that the team displayed during its state championship basketball season of 2011-12.

Mr. Jenkins made a motion to Approve the Resolution for the 2012 Lancaster County High School Boys Basketball Championship Team.

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Jason D. Bellows	Aye

VIRGINIA DEPARTMENT OF TRANSPORTATION

Six Year Plan Public Hearing Scheduled

Mr. Harper stated VDOT would like to hold the work session on the Six Year Plan at the regular meeting of the Board of Supervisors on April 26, 2012.

Kilmarnock Truck Bypass Update

Mr. Harper said the James Jones Memorial Highway/Kilmarnock Truck Bypass has been approved and signage will be erected in approximately 30 – 45 days.

Devils Bottom Bridge Work Update

Mr. Harper stated the work on the VSH 614/Devil's Bottom Road bridge work has been scheduled to begin June 18, 2012. The road will be closed for approximately 30 – 40 days.

County Maintenance

Mr. Harper said mowing will begin on May 1, 2012.

Speed Study Request

Mr. Palin requested a speed study on Pinckardsville Road near the “Old Country Brent Store.”

PUBLIC HEARING

1. Update to the Comprehensive Plan – Introduction and Chapter One – Mr. Gill said the Code of Virginia Section 15.2-2230 requires that the Planning Commission review the Comprehensive Plan at least once every five years. The current Comprehensive Plan was adopted by the board of Supervisors on September 7, 2007. Given the fact that the economy has been stagnant at best since that adoption, the Planning Commission and staff feels that many of the issues raised during the last update are still applicable today and an exhaustive revision is not necessary at this time. It is also felt that there is no need to employ an outside firm, as has been done in years past, to accomplish a minor review and overhaul of the current Comprehensive Plan. As in previous years, chapters will be tweaked and sent to public hearing individually prior to being forwarded to the Board of Supervisors for approval.

Mr. Gill said the Planning Commission reviewed the Introduction and Chapter One of the Comprehensive Plan at its November 2011 and January 2012 meetings and held a public hearing at its February 2012 meeting. All of the changes requested at the prior Planning commission meetings have been made and are highlighted on the draft copy of the Introduction and Chapter One of the Comprehensive Plan provided for the Board.

Mr. Gill stated advertising has been conducted as required by law. To date, other than the discussion at prior Planning Commission meetings, there has been one response from the public, with a minor change on page 1-6 which will read “The population of Lancaster County has declined from 11,567 as of the 2000 census to 11,391 as of the 2010 census, but expansion of tourism, the recreation industry, and retail trade are still feasible while preserving the natural beauty and rural character of the area”. This change was requested by Mr. Costello.

Chairman Beauchamp opened the public hearing.

Mr. Costello, District 2 said the reason he requested that change was because the whole Comprehensive Plan talked about the rural nature of the area and he believes it was inadvertently removed. He asked the board to consider the change during the approval of this chapter.

Chairman Beauchamp closed the public hearing.

Mr. Palin asked for the wording on Page 1 of the Introduction to be left in place, which read: “Pursue economic development and increase the number of higher paying jobs with benefits”. He stated we would like to increase the number of jobs, but also wanted to try to find higher paying jobs. He sees a number of parents working two and three jobs, and they are unable physically to care for their families; therefore he would like the wording to be left in the Comprehensive Plan to serve as a reminder.

Mr. Jenkins proposed that the change read: “Pursue economic development and increase the number of jobs with benefits and higher paying opportunities.”

Mr. Bellows made a motion to Approve the Introduction and Chapter One of the Comprehensive Plan as submitted with the recommended changes.

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Jason D. Bellows	Aye

Chairman Beauchamp stated Public Hearing Docket Items 2 – Application for Change of Zoning District Classification and Item 3 – Special

Exception made by Clyde A. Stewart, Jr. would be combined into one public hearing.

2. Application for Change of Zoning District Classification – Clyde A. Stewart, Jr. –
Mr. Gill presented an Application for Change of Zoning District Classification from R-1, Residential, General to A-2, Agricultural, General by Clyde A. Stewart, Jr. for a 43.51-acre parcel described as Tax Map #20-12 and a 3.999-acre adjoining parcel described as Tax Map #20-13. These parcels are located near the End of State Maintenance of Western Branch Road (VSH 665) in District 1.

Mr. Gill said the applicant is a local tree service contractor and wishes to use these unimproved parcels for the processing and recycling of tree debris generated from his business, Magic Tree Service. The applicant's tree debris disposal site would be allowed (with a special exception from the Board of Supervisors) in the A-2 Agricultural General District, but is not allowed (as currently zoned) in the R-1, Residential General District. As a result, the applicant seeks a rezoning from R-1 to A-2 to be able to use this parcel for the processing and recycling of tree debris. However, reaching that ultimate goal is a two-step process. First, there is a rezoning request that is heard by both the Planning Commission and the Board of Supervisors and then there is a special exception request that is heard only by the Board of Supervisors.

Mr. Gill stated Mr. Stewart has been in business for nine years and for the first seven years had been disposing of the debris on these R-1 parcels, not knowing it was a violation of the R-1 district. When a complaint was received and investigated in October 2009, Mr. Stewart was sent a letter requiring him to cease the disposal and remove the debris, but explained the steps he could take if he wanted to make the tree debris disposal legal under the zoning ordinance. Since that time, Mr. Stewart has complied and taken his debris elsewhere. On February 10, 2012, Mr. Stewart applied for a rezoning and special exception to make the disposal of tree debris on his property legal under the zoning ordinance.

As Zoning Administrator, with the authority to remedy any condition found in violation of the ordinance, and since the process for the rezoning and special exception had begun, I have allowed Mr. Stewart to dump tree debris from his business on these parcels since February 10th until the outcomes of the applications are known. Mr. Stewart understands that if his applications are denied, the debris that has been dumped in the interim will have to be removed.

Mr. Gill said the Planning Commission conducted its public hearing of this rezoning request on March 15, 2012. Staff received ten written responses from the public with only one supportive, however only two of nine adjoining property owners responded and the remaining eight responses were from a waterfront residential area further down the private portion of Western Branch Road.

Mr. Gill stated the responses expressed concern about what *could* happen on the property under its most intense use. There is fear that the operation will grow into a “Lively Wood yard look-a-like” accepting tree debris from all over, possibly getting the county contract for tree debris disposal. Other reasons for opposition involve vehicular safety, possible road degradation, personal safety, fire hazards, environmental issues, property values and a prior denial for a similar request on a different parcel on this road in 1990.

Mr. Gill said since the Planning Commission meeting, Mr. Stewart has proffered in writing that these parcels will be used for the dumping and recycling of tree debris generated from his business, Magic Tree Service, only, and that the debris will be burned and covered, not chipped. With this proffer, Mr. Stewart would not be able to bid on the county contract for tree debris disposal since it is limited to his business only. In addition, the residents in this area should see no increase in truck traffic or activity on these parcels above and beyond what they experienced during the seven years Mr. Stewart (illegally) disposed of tree debris on these parcels. Also, the digging of pits is permitted outside the 100-foot Resource Protection Area and the burying of the burned tree debris recycles it

back to the earth. Equal fire hazards exist on any large wooded parcel in the county. The declining property value argument is always subjective. Lastly, the denial in 1990 was for a stump storage and recycling facility in an open field less than half the size of Mr. Stewart's parcels.

Mr. Gill stated staff views this rezoning request as reasonable and appropriate. These parcels adjoin other A-2 parcels and there are just as many, if not more, A-2 properties than R-1 properties in this area. These unimproved parcels are wooded and their combined size (47.5 acres) would allow for more than adequate perimeter buffering from surrounding properties. Also, rezoning to A-2 would be a down zoning from the more intense R-1 district.

Mr. Gill provided the Board with the rezoning application, the GIS map and a recent survey of the properties for their review.

Mr. Gill stated adjoining property owners have been notified and advertising conducted as required by law. To date, there has been no further response from the public. There has been some opposition as concerns have been raised that there could be an increase risk for fire spread. Mr. Stewart, however; would only do a controlled burn once a year in a pit with a crew in place and the sheriff's office notified. Another concern expressed was in regard to an increase of traffic on the very narrow Western Branch Road. Because Mr. Stewart has proffered this is for his business only, there should not be any additional traffic. There may be some validity to having VDOT perform a traffic and speed study because of the number of curve on Western Branch Road. There was another concern about insect infestation in the rotting debris. In a controlled confined space if there was an insect infestation it could be easily controlled with a pesticide application confined to that pit area. He stated the Department of Forestry cut timber down and it could take up to a year to schedule a burn. He has never heard nor had a complaint about insect infestation from this activity.

Mr. Gill stated there are a number of concerned citizens that live in that area. He has had 15 written letters in opposition, 2 letters of support and a petition with 197 signatures in favor of the rezoning and special exception. The estimated distance of the nearest house from the pit area is 1033 feet and, this is a less intense use of the property. There are just as many A-2 parcels in the area as there are R-1 parcels, a 48-acre unimproved wooded parcel is a typical A-2 property and the fact that it is 48 acres and wooded and the pits are basically in the center of the property would allow for more than adequate perimeter buffering. The rezoning from R-1 to A-2 is a down zoning as R-1 is more intense. If this property was fully developed under the R-1 district for housing, utilizing a central water supply, the total number of lots including a 10% open space would be 94.

Mr. Beauchamp asked what other uses are allowed under A-2 zoning.

Mr. Gill stated there are 55 permitted uses under the A-2 zoning and 32 permitted uses under the current R-1 zoning. He said under Article 4-15 the stump, brush, scrap wood burning and/or chipping facility with the proffer would be allowed for tree debris from Mr. Stewart's business only.

Chairman Beauchamp opened the public hearing.

Madison Fontaine stated he lives less than one mile away from Mr. Stewart's proposed site and who's to say he will not allow other folks to dump debris.

Mr. Gill said the written proffer restricts the source of the debris from Mr. Stewart's business "Magic Tree Service" only.

Mr. Fontaine asked what if Magic Tree Service contracted with other companies to take debris.

Mr. Jenkins said the proffer states it will be restricted for only his business but does not state the specific nature of his business, so what if his business expands. The county would have a difficult time enforcing not bringing in debris from other companies, because we have not been specific as to what type of business he has.

Mr. Fontaine addressed the extra traffic on Western Branch Road and degradation of the road. He stated he pays for the upkeep and maintenance of his road and why should the State have to pay if his business causes damage to the roadway.

Randy Romaine, 2125 Western Branch Road, provided the board with a picture and stated he does not believe there are as many A-2 as R-1 parcels in the area as reflected in the handout. He stated they did not know anything about a petition and questioned if the signatures were of the affected community or countywide. He said he has the following concerns:

- He stated the dumping has been going on for seven years not six years as stated because Magic Tree Service was incorporated in October 14, 2003 and Mr. Gill filed the complaint October 2009.
- When Magic Tree Service started the business was there a significant amount of traffic on that road and what and how much was dumped? Mr. Stewart purchased the property in 2005 but who would have done a traffic count or tally of the dump trucks going by.
- At the Planning Commission meeting it was stated that there were two adjacent A-2 properties to Mr. Stewart's property. What was not stated is that there are seven residential properties adjacent to Mr. Stewart's property. The two A-2 properties are not on Western Branch Road, one access on VSH 354 and the other access on VSH 201. He said for two miles on Western Branch Road it is zoned residential.
- He said the commercial dump site is in the middle of a residential area.
- He asked if this would be setting a precedent because in May 1990 the

board rejected a similar request made by Clarence Doggett to operate a stump storage and mulching/recycling facility on 20 acres. It was not acceptable then and why would it be now.

- There are three 90-degree curves on a very narrow road with no lines. The heavy trucks traveling on Western Branch Road contribute to the road degradation, personal safety of citizens walking, jogging or riding bicycles day or night. Does the county have a duty to provide safety for the residents.
- It poses a fire hazard with the once a year burn because of lack of water. What if the fire gets out of control? The land is heavily wooded and surrounded by other heavily wooded plots. At a rate of 6 to 10 large truck loads per day that works out to 1,500 – 2,500 truck loads per year which is a lot of wood to burn at one time with no nearby fire hydrant. He has concerns about the credentials of Mr. Stewart's staff left to attend what is called a "control burn". He asks if the county had plans for mitigating risk. Who would pay the increased fire insurance premiums, and who would pay to re-forest the miles of sacrificed forest if the fire got out of control?
- There are environmental concerns with truck loads of debris piled up for a year and then burnt, the smoke/ash pollution, the potential for insect infestation, and run off of phosphorus from decomposition which could adversely impact the watershed. He said closely behind the property toward the northeast, Lancaster County flood plain maps show a low area of marsh directly connected to the Little Branch of the Corrotoman River. He asked the County to consider the consequences if the run off from Mr. Stewart's dump site drained in this area.
- Property values could certainly be affected if a commercial dump site is placed in the middle of a residential area. He does not believe this is consistent with the county's master plan, and decreased property values mean a decrease in county revenue. Does the county have some accountability to the residents to not take actions that would degrade

property values?

- In commercial vs. agriculture he said in the county's ordinances he found in the assessment and taxation section that agricultural lands are considered in provisions in accordance with the Code of Virginia and the standards prescribed by the Commissioner of Agriculture and Consumer Services. He visited the website which read, "Agricultural use means the use of any tract of land for the production of animal or vegetable life." Agricultural production means the production for commercial purposes of agricultural products, and includes the processing or retail sale by the producer of agricultural products that are produced on the parcel or in an agricultural enterprise district." Forestal products and production means: "the production for commercial purpose of forestal products and includes the processing or retail sales, by the producer of forestal products that are produced on the parcel or in an agricultural enterprise district." What he did not see in the State Codes is any language providing for the dumping and burning of agricultural or forest products by a commercial business on agricultural land. In the case of Magic Tree Service, this activity would not be conducted by the producer of the product, the products would not have been produced on the parcel, nor would they necessarily have been produced in an agricultural enterprise district. Therefore, he does not see how this commercial dumping and burning activity would be considered an Agricultural or Forestal activity to be permitted on Mr. Stewart's property.
- There are economic considerations in this matter as discussion before the Planning Commission, such as cost factors as justification for this rezoning and special exception. Mr. Stewart stated he could not afford to pay for disposal at Lively Wood Yard (a county supported facility) or if he has to pay the dumping fee that he would have to lay off some employees. Clearly no one wants to see people lose their job. He stated he had used tree services on many occasions including Magic Tree Service and the companies provide a quote for the work with and without debris removal.

He believes the customer, not the tree service company should pay for the debris removal. In fact, his last invoice was \$1,100 including debris removal and he thinks there were two truck loads. Mr. Self at Lively Wood Yard said he charges \$30 per truck load for Mr. Stewart. He does not understand why this would be a hardship for Mr. Stewart since the customer pays it.

- In summary, he stated he is opposed to the rezoning, special exception request and conditional rezoning proffer for the reason he has stated. The Comprehensive Plan, is intended it states to ensure land uses that protect the county's natural beauty, quality of life, and its communities; concentrate commercial development in appropriate areas; ensure new development complements and enhances character and quality of existing neighborhoods and communities; to evaluate rezoning and conditional use permit applications to ensure consistency with the Comprehensive Plan and compatibility with the character of the surrounding area; and to reduce the number of permitted uses in existing zoning districts to avoid mixed, incompatible uses with a zoning district.

Mr. Romaine said there are number of county residents who will be adversely impacted should this request be approved, but believes only one will benefit. So he hoped that the needs of the many would outweigh the needs of one.

Tom Gregory said he lives at the end of Western Branch Road and this area is predominately residential. He stated that there is one and a quarter mile of hard surface road with 15 homes and driveways. There are 15 homes on Sullavan's Road with a lot of children walking and riding bikes. There are 400 homes in Corrotoman By the Bay, 15 homes on Hunton Lane and 8 on River Point Road. This is a densely populated residential area and not a commercial area. He stated he opposed this request for rezoning and special exception by Mr. Stewart.

Adam White, Arborist for Magic Tree Service, said his family formerly owned Arborist Tree Service in Gloucester County and this is job. He stated he has done work for Federal, State, and local companies and never encountered anything like this. The citizens have concerns about the traffic and damage to the roadway. Magic Tree Service has been traveling that very same road for years without any concerns brought forth by citizens. Farm equipment would do more damage to the roadway than the dump truck. There were also concerns voiced about the smoke for the burn pit, the debris would be burned under the right conditions. He said he is a licensed miner, dug the pit and has experience with control burns. There is not a insect infestation at the Lively Wood Yard which provides more then Magic Tree Service and does not believe that should be a concern. Mr. Stewart has taken any and all precautions to ensure safety. If there are concerns with the speed limit have VDOT, perform a speed study. He stated that as a commercial driver, obeying the rules and regulation are extremely important in order to maintain your CDL.

Mr. Jenkins stated he has received a number of complaints from citizens about the speeding and safety in that area by trucks, even from a person who supports the petition.

Mr. White continued by saying if there are concerns about speeding or unsafe driving they should contact Mr. Stewart. If this request is not approved, Mr. Self at Lively Wood Yard will raise his prices per load and Mr. Stewart can not afford that to happen.

Dorsey Ficklin, resident on Belmont Creek, District 1, said Mr. Stewart is a respectable man and believes that he will follow the rules and regulations. Mr. Stewart is a taxpayer and he needs the Board to approve this request to continue operation of his business. He asked the board to approve this request for rezoning and special exception made by Mr. Stewart.

Catherine Gregory resident at 1951 Western Branch Road, District 1 stated she did not want to speak in opposition to Magic Tree Service because it is a great company and provides an excellent service. However; she felt she must speak out to save her home. The company is owned by her neighbors, and she pleased with their success as they have grown. She stated that she and her husband walk and bike along Western Branch Road regularly. Over the past several years Magic Tree Service trucks have become more frequent and much larger. They had no idea that Mr. Stewart's company was not in compliance with the county ordinance and although they were unhappy, they did not wish to complain about their neighbors. However, once they learned about the commercial dumping and the huge amount of debris that has been burned, and that the county staff had knowledge of this illegal activity for a many years, they were very unhappy. They were informed that Mr. Stewart had submitted application for change of zoning on parcels described as Tax Map # 20-21 and if approved he is also asking for a special exception permitting use of the land for a sawmill and a stump/brush/scrap wood burning and/or chipping facility. One should not correct violations by changing the rules. She said her community should be able to retain its residential character and not be forced to bend to the wishes of the county officials. This would be spot rezoning for one contractor which is wrong. She asked the board not to approve the zoning change or special exception even with the proffer. Because it endanger the homes of the affected community from fire and smoke pollution, this would change our community from a quiet peaceful place where they chose to live, endanger their personal safety, place the waters of the Corrotoman River further at risk, and fail to respond to the expressed desires of the Western Branch communities.

Walter Harcum lives at 1324 Western Branch Road, District 1 which is about 100 feet from the end of the state maintained road directly across the road from the property in question. He said he and his wife are opposed to the request made by Mr. Stewart. He said some of his concerns would be the smoke from the

once a year burning, but what if Mr. Stewart decided to burn more often than once a year after the property is rezoned. He said the noise would be detrimental to their home, and he read the Lancaster County noise ordinance: "It shall be unlawful to create any unreasonably loud, disturbing or unnecessary noise in the county; and noise and disturbance of such character, intensity and duration as be detrimental to the life or health of any person or unreasonably to disturb or annoy the quiet, comfort or repose of any person is hereby prohibited." The only exceptions being commercial farmers and watermen.

Jane Langloh lives at 1919 Western Branch Road, District 1 stated they built their home there in 2000. She said Mr. Doggett and a golf ball stamping company were both denied. Magic Tree Service is a commercial business. What are the future plans for this property? Should the Board approve Mr. Stewart's request, how would the Board be able to deny another commercial business from entering this residential area.

Catherine Bennett, Corrotman By the Bay (CBTB) property owner and one who also serve as board member for CBTB said there are about 600 lots with 400 homes in the CBTB Subdivision. She stated if Mr. Stewart was looking for appropriately zoned property. It should be zoned M-1 not A-2 property that requires a special exception. The forestry department does burn once during a year, but only every several years. After some research in certain States they have banned the burning of woods because there are links to cancer from the smoke.

Lewis Conway stated he is a Western Branch Road property owner, and there are two properties being addressed but only one application fee. There has been no mention of a feasibility study to address run off or the effects of the soils being burned. The burn site is 3.999 acres, but Mr. Stewart is requesting that an additional 43 acres be rezoned. What can be done if the property is rezoned to A-2? If they are granted the special exception they can do what they want with the

property without coming back before the board (i.e. mobile home park). He said he lived in that area a number of years ago and does not ever recall a commercial company being there, except with the occasional logging and farming. He said the combines only run once or twice a year verses the trucks on an everyday basis. He stated Doggett was denied in 1990, and asked if this would set a precedent. It appears as though the request benefits only one person/company but this has always been a residential community.

Mrs. Foster said she lives at 98 Western Branch Road and has concerns. She asked the board not to approve the rezoning and special exception request made by Mr. Stewart.

Clyde Stewart owner of Magic Tree Service said seven years ago he started dumping on his property and named his business. He said his tax money and the citizen tax money all go into a general fund to take care of the Lively Wood Yard. The citizens are supposed to be able to dump their debris for free at the Lively Wood Yard. He was told that he could pass that cost on to the homeowner which means the citizens are being charged twice. The citizens who signed the petition believe they should not be charged twice. For the past seven years he had no idea what he was doing was illegal and said whether or not this request passed, he can still drive down the same roads. He only travels down Sullavans Road to perform work. He has to pay every three months a heavy highway use tax on two of his trucks which is \$500 that helps maintain the roadways. If he has to pay the dumping fee he can not afford it and the citizens should not have to pay twice. He was working with Mr. Self, and they had agreed if he rented the crane that he could dump for free. That agreement lasted two years. If there was a storm today, Mr. Self would not be able to handle all the debris. Mr. Stewart said if he had to dump debris at the Lively Wood Yard, it would cost anywhere between \$50,000 - \$100,000 per year. He does not process anything on his property. For seven years no one has complained about the smoke, and/or the traffic. He said no one can hear him, smell him or see him on

the proposed property. The cost per truck load at Lively Wood Yard could and probably would increase if this request does not pass. He is trying to do the right thing by having the property rezoned but there are dumping sites throughout the County doing the same thing. He has seven employees, and he is a former waterman. He listens to the weather and takes all safety precautions when burning. He tries to do the right thing by helping the community, giving away free wood to those in need, helping the elderly by giving them wood, or performing tree removal service at no charge.

Linda Underwood said she lives at 35 Greenvale Road and Magic Tree Service offers a great service. Mr. Stewart is a good businessman. If the county loses Magic Tree Service they would lose a great asset. She asked the board to approve the request for rezoning and special exception made by Mr. Stewart.

Tom Russell stated he is employed by Magic Tree Service, enjoys what he does and likes having a job. He apologized for the disrespect shown to the Board by others at this meeting.

Kevin Stewart, son of Mr. Stewart and also an employee, stated they are very conscious of what they do. They have been in business for nine years and have experienced employees. He said his father has donated wood to community members, and that he split the wood as a Scout.

Charles Costello, District 2 said he has concerns about companies paying tipping fees. The taxpayer/citizens who are having the work done must be paying the tipping fees as part of the invoice, it is a part of business.

Chairman Beauchamp closed the public hearing.

Mr. Gill said he would like to address some of the concerns:

- The number of A-2 property acreage is greater than R-2 properties in total.
- The 197 individuals who signed the petition included 70 residents from District 1.
- The zoning was put into effect June 1, 1975, and he has no idea why this property was zoned R-1.
- The request made by Mr. Doggett in 1990 was for a 20-acre parcel of land completely open with no natural buffer. Also that parcel was only accessible by the private portion of Western Branch Road.
- Burning once a year could be a condition of the special exception if the rezoning was approved. It may be justifiable to burn more than once a year with smaller piles. The height of the flame would be less.
- Mr. Stewart has done this for seven years and has a history of burning with no accidents.
- There were concerns about phosphorus run off into the Corrotoman River that is enforced and regulated by the Chesapeake Bay Preservation Act (CBPA) and enforceable within 100 feet of tidal water known as the Resource Protection Area (RPA). The burn pit is located outside the RPA and is therefore not enforceable under the CBPA.
- There were several references to this being a commercial use. It is a permitted use in the A-2 and has been since June 1, 1975 when the zoning ordinance took effect.
- The Comprehensive Plan suggests revisiting the districts and removing some of the uses. Seven permitted uses were repealed out of the A-2 in 2007.
- There was a concern about smoke, but the Department of Forestry does many control burns each and every year.
- A special exception for a sawmill has not been applied for. The special exception is only for the stump/brush/scrap wood facility.
- This would not be spot zoning as there are A-2 properties adjacent to

the parcel and other A-2 properties in the area.

- The noise ordinance was read but what was left out of the definition was the time in which noise is not permitted. He believes it is between the hours of 11:00 p.m. and 7:00 a.m., daily (except Sunday) and between the hours of 11:00 p.m., Saturday night until 9:00 a.m. Sunday morning. 11:00 p.m. – 7:00 a.m.
- Mr. Stewart could do this by right on a M-2 parcel, but if is a permitted use in the A-2 with a special exception.
- Two parcels applied for on one application has been done in the past (i.e. Windmill Point rezoning has six/seven properties on one application).
- The Lara Point site was shut down because they burn all types of debris.

Mr. Palin said Mr. Stewart is an honest, hard working small businessman which is just what the country needs. We need more small businesses getting started, operating and being successful so we can grow our economy. He has seven employees that need to be able to keep food on their tables and take care of their families. Fear will cause us to do a lot of things, and he hated to see a small business fail because of that fear. We live in the country and what Mr. Stewart is proposing to do has been done for seven years. The dumping site and burn pit is in the middle of a 41 acre forest that you cannot see. He said the community may smell a little smoke, but Mr. Stewart has taken every possible precaution. Mr. Stewart is doing an excellent job. Again he would hate to see fear cause him to fail.

Mr. Jenkins said this was the toughest decision he has ever had to make as a Supervisor. He has heard nothing but great things about Mr. Stewart and his business. He wish that before Mr. Stewart purchased the property that someone could have better advised him. It this property was not at the end of residential road he would probable be giving Mr. Self competition. He stated he swore an

oath to uphold the law and unfortunately the property purchased and activity Mr. Stewart wanted to perform is mostly adjacent to the residential properties. He does not like it wished there was a way to make this happen. He cannot however, change the facts.

Mr. Bellows said his biggest concern is the location and once it is rezoned to A-2 there is a possibility of having other permitted uses without coming back to the Board. Also, if the property is sold to someone else, what the new property owners might do is a concern. As a business owner, he believes it is a competitive bidding process and unfortunately the dumping fee will have to be passed on to the customer as a cost to do business.

Mr. Beauchamp agreed with Mr. Jenkins that this may be one of the most difficult decisions this Board has faced in quite some time. He said if the vote is 2 – 2, the applicant is allowed to come back before the Board. He stated he does have concerns about the tipping fees and asked county staff to review that policy. He does not think that it is fair that tax paying citizens have to pay twice at a facility supported by the county.

Mr. Jenkins made a motion to deny the Application for Change of Zoning District Classification from R-1, Residential, General to A-2, Agricultural, General by Clyde A. Stewart, Jr. for a 43.51-acre parcel described as Tax Map #20-12 and a 3.999-acre adjoining parcel described as Tax Map #20-13. These parcels are located near the End of State Maintenance of Western Branch Road (VSH 665).

VOTE:	B. Wally Beauchamp	Nay
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Nay
	Jason D. Bellows	Aye

Motion failed with a tied vote of 2 – 2.

3. Application for Special Exception – Clyde A. Stewart, Jr. – Mr. Gill presented an Application for Special Exception by Clyde A. Stewart, Jr. to operate a stump/brush/scrap wood burning and/or chipping facility (Article 4-1-15A) on a 43.51-acre parcel described as Tax Map #20-12 and a 3.999-acre adjoining parcel described as Tax Map #20-13. These parcels are located near the End of State Maintenance of Western Branch Road (VSH 665) in District 1.

Mr. Gill stated staff recommends favorable consideration with the following conditions:

- 1) These parcels will be used for the dumping and recycling of tree debris generated from his business, Magic Tree Service, only, and
- 2) The debris will be burned and covered, not chipped.

Mr. Gill stated as the preceding public hearing to rezone Tax Maps #20-12 and #20-13 from R-1 to A-2 has been acted upon by the Board of Supervisors, this special exception request can now be considered. This discussion assumes that the preceding rezoning was approved. If the preceding rezoning was not approved, this request is moot.

Mr. Gill said the discussion in the memo from the preceding rezoning documents how the Stewarts got to this point. This request is the second step in the two-step process to allow the applicant to use these unimproved parcels for the processing and recycling of tree debris generated from his business, Magic Tree Service.

Mr. Gill stated Article 13-3 of the Zoning Ordinance allows the Board of Supervisors to place conditions on Special Exceptions and states, "*These special exceptions shall be subject to such conditions as the Board of Supervisors deems*

necessary to carry out the intent of this ordinance. The special exception shall be approved only if it is found that the location is appropriate and not in conflict with the land use plan, that the public health, safety, morals and general welfare will not be adversely affected, that adequate utilities and off-street parking facilities will be provided, and that necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values.”

Mr. Gill said certainly, the limitations outlined in the conditional rezoning proffer should be conditions of this special exception as noted in the recommendation. Other conditions may or may not be necessary.

Mr. Gill stated concern has been expressed over the properties' access road, which is located straight through an almost ninety-degree turn where the state maintained portion of Western Branch Road ends and the private portion begins. The concern was that trucks would not stop as they leave the site and enter onto the public portion of Western Branch Road, possibly endangering any oncoming traffic from the private portion of Western Branch Road. The applicant has stated that he will place a private “STOP” sign at the end of his properties' access road, requiring his trucks to stop at that ninety-degree turn prior to entering onto Western Branch Road. An additional consideration may be to place a private “Trucks Entering Highway Ahead” sign at the Southeastern corner of his properties, which would alert traffic from the private portion of Western Branch Road approximately 350 feet before the ninety-degree turn.

Mr. Gill stated concern has also been expressed about how often and when the applicant would burn the debris and if neighboring residents would be notified of the burns. Other concerns may be expressed at the public hearing, however the more conditions that are placed on the special exception make enforcing it that much more difficult. Staff has recommended what it believes to be the most important conditions. The Board may feel that other conditions may or may not be needed.

Mr. Gill said staff views this special exception request as reasonable and appropriate. These unimproved parcels are wooded and their combined size (47.5 acres) would allow for more than adequate perimeter buffering from surrounding properties.

Mr. Gill provided the Board with the special exception application, the survey with proposed signage and a photograph of the properties' entrance off Western Branch Road.

Mr. Gill said adjoining property owners have been notified and advertising conducted as required by law. To date, there has been no further response from the public.

No action taken on this request since the application to rezoning was not approved.

CONSENSUS DOCKET

Motion was made by Mr. Jenkins to Approve the Consensus Docket and recommendations as follows:

A. Minutes for February 23, 2012

Recommendation: Approve minutes as submitted

B. Abstract of Votes – Republican Presidential Primary Election held March 6, 2012

Recommendation: Accept abstracts as submitted

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Jason D. Bellows	Aye

CONSIDERATION DOCKET

The Board considered the following items on its Consideration Docket:

1. Approval of March 2012 Salaries and Invoice Listings

Motion was made by Mr. Palin to approve the salaries for March 2012 in the amount of \$224,874.40 and Invoice Listings for March 2012 in the amount of \$603,798.66*.

*Loan Payment Expenses \$125,299.61

*Capital Improvements \$44,010.15

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Jason D. Bellows	Aye

2. Request for Additional Overtime Funds – FY 2012 – Lancaster County Sheriff –

Mr. Larson stated Sheriff Crockett is requesting additional overtime funding for overtime currently owed.

Sheriff Crockett said he submitted correspondence referring to “refunds to the state \$58,174”. This number correlates to the State Reductions in Aid to Localities for Lancaster County imposed at the start of the fiscal year and applied on a monthly basis through reduced state funding for shared expenses. He has determined that the \$10,268 in vacancy savings and \$24,173 in savings for temporary employees will reduce the “refund to the state” by the total of \$34,441. The overtime line has \$770 remaining or 7.7% remaining vice the expected 25%.

Sheriff Crockett said the overtime is accrued quicker than he can pay as the demands of the sheriff office increases. The state comes up with a budget and

then they tell the localities they're not going to give the amount.

Sheriff Crockett stated this would also be an additional budget requirements for FY 2013 as the he works to eliminate the backlog of uncompensated hours through funds provided in FY 2012 and FY 2013, in addition to granting compensatory leave to the degree possible.

Mr. Beauchamp made a motion to Approve the FY 12 Request for additional overtime for the Sheriff.

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Jason D. Bellows	Aye

3. Sandy Point Subdivision Road Bond Release – Mr. Gill presented a request to release the road bond issued for “Sandy Point Lane” in the Sandy Point Subdivision located off Black Stump Road (VSH 675) in District 5.

Mr. Gill said a \$191,118 irrevocable letter of credit is currently held by the County to guarantee the construction of this private subdivision road and its entrance onto Black Stump Road (VSH 675). The attached documentation verifies that the private road has been constructed to the AASHTO (American Association of State Highway and Transportation Officials) specifications and its entrance onto Black Stump Road (VSH 675) has been approved by VDOT. Acceptable covenants have been recorded to guarantee future maintenance of this private road by the Sandy Point Owners Association. As a result, the bond can now be released.

Mr. Beauchamp made a motion to Approve the Release of the Sandy Point Subdivision Road Bond.

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Jason D. Bellows	Aye

BOARD REPORTS

County Attorney Consultation needed

Mr. Jenkins said a comment was made that as a result of the 2 – 2 vote this issue could be brought back to the board. He believes that according to Roberts Rule of Order which are the board’s adopted rules that only a positive affirmative vote allows this. A tie vote kills the application.

Mr. Pleva stated the by-law read: “a tie vote shall defend the motion, resolution or issue voted upon.”

Mr. Jenkins stated the application for rezoning is now dead.

Mr. Pleva said there is a code section that implied that but the by-law states a tie vote shall defend the motion, resolution or issue voted upon and the vote was to deny the application to rezone.

Mr. Jenkins stated he would hate to take the Planning and Land Use Director to the Board of Zoning Appeals because he told Mr. Stewart he can continue to operate and drive his trucks.

Mr. Gill as Zoning Administrator informed Mr. Stewart that with the understanding if these applications were denied he would have remove all the debris taken in to the dump site during the interim. The logic for doing this is because he had

already been dumping for seven years and never had a formal complaint. He had started the process to bring this into compliance.

Mr. Pleva said he would refer this issue to the county attorney for clarification.

Mr. Beauchamp again stated he would like Mr. Pleva to move forward and get clarification from the county attorney.

COUNTY ADMINISTRATOR

Mr. Larson stated he has provided the board with their budget book and needs to set a work session date for outside agencies and the public hearing for the school board budget.

By consensus of the board the School Board Budget public hearing was set for April 12, 2012 at 7:00 p.m. and the budget work session for outside agencies set for April 19, 2012 at 4:00 p.m. both being held in the Board/Commission Meeting Room.

ADJOURNMENT

Motion was made by Mr. Bellows to adjourn to the meeting to April 12, 2012 at 7:00 p.m. for the School Board Budget public hearing.

VOTE:	B. Wally Beauchamp	Aye
	F. W. Jenkins, Jr.	Aye
	Ernest W. Palin, Jr.	Aye
	Jason D. Bellows	Aye