

Regular Meeting, Wednesday, October 13, 2021,7:00 p.m. Government Center, Verona, VA.

PRESENT: Gerald Garber, Chairman
Butch Wells, Vice-Chair
Pam Carter
Michael Shull
Scott Seaton
Jeffrey Slaven
Timothy K. Fitzgerald, County Administrator
Jennifer M. Whetzel, Deputy County Administrator
John Wilkinson, Director of Community Development
Leslie Tate, Senior Planner
Kathleen Keffer, Assistant County Attorney
Beatrice Cardellicchio-Weber, Community Development Secretary

ABSENT: Steven Morelli
Angie Michael, Executive Assistant
James Benkahla, County Attorney

VIRGINIA: At a regular meeting of the Augusta County Board of Supervisors held on Wednesday, October 13, 2021, at 7:00 p.m., at the Government Center, Verona, Virginia, and in the 246th year of the Commonwealth....

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Chairman Garber welcomed those present for the meeting.

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The following students from Wilson High School led the Board of Supervisors in the Pledge of Allegiance:

Taylor Connor is a senior and plans to attend University of Virginia.
Brooke Hughes is a senior and is undecided in regards to future plans.

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Dr. Seaton, Supervisor for the Wayne District, delivered the invocation.

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VACO CERTIFIED SUPERVISOR PRESENTATION
Presentation of certificate to Pam Carter, Pastures District for completing her VACo Board of Supervisors certification requirements.

Dean Lynch, Executive Director of VACo, presented Ms. Carter with a certificate for completing the Supervisors Certification Program.

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Sandy Bunch, Zoning Administrator, was presented with Zoning Administrator of the Year from the Virginia Association of Zoning Officials.

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LEGISLATIVE PACKAGE

The Board considered a draft of the 2022 Legislative Package.

Jennifer Whetzel, Deputy County Administrator, stated that the first draft of the legislative package is complete and up for discussion. This package follows VACo's priorities. Some items are specific to the County and some are part of what VACo would propose. Ms. Whetzel reviewed what was in the package and pointed out important information. It was pointed out that the State has a significant surplus and unencumbered American Rescue Plan monies. If there is anything the Board is interested in pursuing from a funding standpoint that is to be pointed specifically to those funds, it may be important to add that to the package. Ms. Whetzel provided the Board with mandate information.

Ms. Carter asked if it was possible to insert the code section that spells out the mandate requirements.

Ms. Whetzel will add it.

Mr. Shull thanked Ms. Whetzel for preparing the package. Taxes cannot always be kept at the same rate because of the State and Federal requirements on every day business for the County.

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NATURAL CHIMNEYS CAMP STORE

The Board considered funding for the Natural Chimneys Camp Store from the North River Parks & Recreation Infrastructure account.

Funding Source: North River P&R Infrastructure 8023-49 \$11,250.00

Timothy Fitzgerald, County Administrator, stated that during the budget process, Parks & Recreation made a request to create a camp store at Natural Chimneys Campground. The request was for \$11,250.00 and it was not funded due to budget restraints. Mr. Slaven has agreed to fund the request from the North River Parks & Recreation Infrastructure account. The store will be in place for the next camping season.

Mr. Slaven moved, seconded by Dr. Seaton, that the Board approve the funding request as presented.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

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NATURAL CHIMNEYS BUILDING REMOVAL

The Board considered funding for removal of buildings at Natural Chimneys Campground.

Funding Source: North River P&R Infrastructure 8023-50 \$6,250.00

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NATURAL CHIMNEYS BUILDING REMOVAL (CONT'D)

Mr. Fitzgerald stated that there are two buildings on the Natural Chimneys property. One is an old log cabin structure and the other is a small house the park ranger once lived in when it was controlled by the Upper Valley Regional Park. The removal cost is estimated at \$6,250.00, which consists of the actual removal of the buildings and asbestos and lead paint mitigation. The lowest bid came in from Howdyshe Excavating.

Mr. Slaven moved, seconded by Ms. Carter, that the Board approve the funding request as presented.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

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WAIVERS

John Wilkinson, Director of Community Development, stated that Tom Riegel, agent for Orvin H. Kiser, Jr., property owner, has requested a waiver from fire flow requirements in order to construct a 3,600 square foot metal building for the Big "O" Tree and Lawn Service business. The applicant has provided a cost estimate of between \$85,000.00 to \$100,000.00 to extend the water line 450 feet to connect to the existing line on Flory Avenue. The property owner feels the cost would be unreasonable, and they feel that the tanker strike force could get water to the location in the event of a fire.

Tom Regal stated that there are a number of other options which would require a significant amount of money for a building being constructed of noncombustible materials. The building is within 400 feet of the existing fire hydrant.

Mr. Shull would like to table the item until the next meeting to allow for further review.

Mr. Shull moved, seconded by Mr. Wells, to table the waiver request until the October 27, 2021 Board of Supervisors meeting.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

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CONSENT AGENDA

Mr. Wells moved, seconded by Mr. Shull, that the Board approve the consent agenda as follows:

CLAIMS

Consider claims paid since September 1, 2021

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CONSENT AGENDA (CONT'D)

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
Nays: None
Absent: Morelli

Motion carried.

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MATTERS TO BE PRESENTED BY THE PUBLIC

Ryan Burtner, 2306 Lyndhurst Road, Waynesboro, provided the following written statement:

Good evening, I am Ryan Burtner and I appreciate the opportunity to address the Board. I want to start by thanking each of you for serving our community in what I am sure is a thankless job.

The issue I would like to bring to your attention today is concerning a short piece of road that has served as a driveway since 1991. My wife and I bought our home at 2306 Lyndhurst Road, Waynesboro on May 7, 2020. Shortly after purchasing, we knew we needed to talk to someone about the driveway as the asphalt was beginning to crack and crumble. Part of the road to our house was listed as State Route 1379. I spoke with VDOT multiple times asking them to come talk to us but unfortunately, they kept closing out our ticket. Finally, in December 2020 someone from the Maintenance Department in Fishersville met me at my house, saw the issue, and agreed to tar and gravel it to fix it but it would probably be end of spring or first of summer.

At Christmas, my wife made some goodies for the neighbors and went around saying "Merry Christmas" and introducing us, as we had not met many people yet due to COVID. Upon meeting our neighbors out front at 2310 Lyndhurst Road, she happened to mention we had talked to VDOT to come fix the "State Route" so they may see paving work going on at some point. Within a month of that conversation, that same neighbor started parking a box truck along what we believed to be a "State Route". The box truck eventually turned into as many as four at any given time. Neither our direct neighbors, the Griffin's, nor ourselves liked the vehicle sitting there but did not approach the neighbor because we did not know what was legal. I started asking cops and researching about parking on public right-of-way trying to learn what was legal and what was not.

In early May 2021, we noticed the neighbor at 2310 brought in someone and cut the sod off from beside his house and started hauling dirt in. It appeared he might be adding to his current driveway, which made me hopeful he would move his vehicle soon. My family and I left to go camping over Memorial Day and came home to find the curb along the "State Route" to our house had been cut and he had moved dirt creating a new driveway onto the "State Route". By the first of the week, he took the sod he cut from the side of the house and placed it over his existing driveway and roped it off. It was apparent he was abandoning the original driveway so I called VDOT to make them aware.

VDOT came out, took pictures, and did research on the road only to find out it was not State Route 1379 and had never been entered into their maintenance program. He also said with only two houses, it did not qualify. He said the neighbor had not obtained any permits but with it not being a VDOT maintained road it was not his battle to fight. I called the County and spoke with Michele Astarb. She mentioned there may be a way to lay "quick claim" to the property and suggested talking to a surveyor to look at the plat. I contacted Barry Lotts and he pulled the documents for me. He told me he saw where the road was "dedicated" to the County in the 1960's but no reference from the County as to accepting it. He advised me to contract a lawyer, which I have, and he is up to speed on our issue. He has advised me up to this point

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MATTERS TO BE PRESENTED BY THE PUBLIC (CONT'D)

to enter a discussion with the County to purchase the property from the County.

I learned thru the deed and plat that in 1964/1965 Lyndale Subdivision was created and the piece of road to my house as well as "Lyndale Lane" were dedicated to the County however, nobody has been able to show me or prove to me that this dedication was ever accepted by the County in the Board minutes. This backside of the subdivision never panned out due to flood plain issues and the land was bought by Gary Argenbright in 1990/1991 in which he built himself a home which I now live in. At that time, he contacted the county to pave the "public street" as it reads on the deed because at the time it was dirt and grass. The county refused. He also attempted to purchase it but was unsuccessful. So, to ensure he had a usable driveway to his home he paid out of his own pocket to pave and gravel it.

Since that time, the public street has been maintained privately by 2306 Lyndhurst Road and eventually 2304 Lyndhurst Road after it was built years later. Today it operates the same way. As you can see from the pictures there is grass on both sides that myself and my neighbor Jeff Griffin beside me share the responsibility to mow, weed eat, trim trees, fix potholes in driveway, remove snow, etc. The neighbor shares no responsibility with this and in fact, most times I have to mow around his vehicles, which have now killed the grass and caused mud spots where he parks.

I called the County back after getting the documents and talking with a lawyer to discuss purchasing the land. Doug Wolf was the first one I talked with who told me I could not buy it but instead the neighbors in front of me had first opportunity. This caught me completely off guard. How could someone other than Jeff Griffin or myself have rights to the road that serves our home? I later talked with John Wilkinson who effectively told me the same thing and said basically there was nothing he could do. He advised me this was a private matter. I made the county and VDOT aware of the new driveway being constructed while it was happening. I was told both by the county and VDOT he did not have a permit for any of the work he was doing. Now I was being told it was a private matter. This is when I contacted Steve Morelli who did some research of his own only to find the same result.

I have been asked several times why I have not talked to the neighbor and my response is simple. I wanted to learn what was right before I talked to him which I am still attempting to do. I also did not want him to be able to purchase the property and land lock Jeff Griffin and myself. I believe in what is right and wrong and everything about this feels wrong. How can the county step aside, allowing a citizen to do as they please on a piece of county property, and then force neighbors into a battle with each other?

His vehicles being parked along the driveway causes many issues for us. I live on a dangerous curve on Lyndhurst Road where many accidents take place. The car that fatally struck two motorcycles head on last year ran off the road in my driveway. A few months ago, our mailbox was taken out. We now get forced to come to a complete stop on this curve anytime someone is coming out of the driveway because with the neighbors' vehicles parked along the side of the public street we cannot pass each other. We also have additional runoff onto our property now since our home sits nearly 100 feet below Lyndhurst Road and this neighbors' house.

I have been told by the county this far that this is a private matter. I am happy to make it a private matter and the county can wash their hands of the whole thing by selling me the property, which has been utilized as a private drive for nearly 30 years. I have been extremely patient and nice with everyone I have talked to, all the while my neighbor has done whatever he wanted without any permits and I have basically told "no harm, no foul". I ask you to come take a look for yourself to gain a better understanding of the issue and I believe you will understand. Three homes now use a road in which Gary Argenbright had to get special permission from the county to add a 2nd house to the public street.

Mr. Wilkinson has been to the property several times. Not sure why the original developer never finished the project. He explained the layout of the properties and what requirements were during the time of construction.

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MATTERS TO BE PRESENTED BY THE PUBLIC (CONT'D)

After a lengthy discussion the Board deferred the concern for discussion during the next Staff Briefing on October 25, 2021.

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MATTERS TO BE PRESENTED BY THE BOARD

Ms. Carter stated that the first Redistricting Committee meeting took place today. She has had several questions on what day Halloween should be celebrated.

Mr. Garber stated that it is not the County's business to determine when to celebrate Halloween.

Kathleen Keffer, Assistant County Attorney, stated that all delinquent files have been sent to the outside agency to begin collecting delinquent taxes.

Dr. Seaton encourages everyone to vote.

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MATTERS TO BE PRESENTED BY STAFF

Mr. Fitzgerald discussed the following:

1) The Board was given the Augusta County Emergency Communications Center Standard Operating Guidelines. These are not guidelines in reference to Mr. Shull's request as far as vehicle maintenance. There is currently not a notification for such information.

Mr. Shull would like a copy of the City of Staunton's notification policy and then bring it back to the Staff Briefing.

2) The County is in the process of recruiting a Fire Chief. There are several steps he would like to take to evaluate before the recruitment starts. A survey will be going out to determine what staff and volunteers feel important to see in the next Fire Chief. The survey will go out to all career staff and the volunteers in the fire-rescue system

3) There is a nationwide opioid settlement to resolve opioid related claims. Localities have the opportunity to opt in to the settlement to receive some of the funding. The following resolution will allow Augusta County to participate in the settlement.

RESOLUTION

A RESOLUTION OF THE AUGUSTA COUNTY BOARD OF SUPERVISORS APPROVING OF THE COUNTY'S PARTICIPATION IN THE PROPOSED SETTLEMENT OF OPIOID-RELATED CLAIMS AGAINST MCKESSON, CARDINAL HEALTH, AMERISOURCEBERGEN, JANSSEN, AND THEIR RELATED CORPORATE ENTITIES, AND DIRECTING THE COUNTY ATTORNEY TO EXECUTE THE DOCUMENTS NECESSARY TO EFFECTUATE THE COUNTY'S PARTICIPATION IN THE SETTLEMENTS

WHEREAS, the opioid epidemic that has cost thousands of human lives across the country also impacts the Commonwealth of Virginia and its cities and counties by adversely impacting, amongst other things, the delivery of emergency medical, law enforcement, criminal justice, mental health and substance abuse services, and other services; and

WHEREAS, the Commonwealth of Virginia and its cities and counties have been required and will continue to be required to allocate substantial taxpayer dollars, resources, staff energy and time to address the damage the opioid epidemic has caused and continues to cause the citizens of Virginia; and

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MATTERS TO BE PRESENTED BY STAFF (CONT'D)

WHEREAS, settlement proposals have been negotiated that will cause McKesson, Cardinal Health, AmerisourceBergen, and Janssen to pay up to \$26 billion nationwide to resolve opioid-related claims against them;

NOW THEREFORE BE IT RESOLVED that the Augusta County Board of Supervisors, this 13th day of October, 2021, approves of the County's participation in the proposed settlement of opioid-related claims against McKesson, Cardinal Health, AmerisourceBergen, Janssen, and their related corporate entities, and directs the County Attorney to execute the documents necessary to effectuate the County's participation in the settlements, including the required release of claims against settling entities.

Dr. Seaton moved, seconded by Ms. Carter, that the Board adopt the opioid resolution as presented.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

Mr. Shull would like an update on the DARE Program.

4) A Staffing plan and issues report will be discussed at the meeting on October 25, 2020 Staff Briefing. There will also be recommendations

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CLOSED SESSION

On motion of Mr. Wells, seconded by Mr. Shull, the Board went into closed session pursuant to:

- (1) **the personnel exemption under Virginia Code § 2.2-3711(A) (1)**
[discussion, consideration or interviews of (a) prospective candidates for employment, or (b) assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific employees]:
 - a) Boards and Commissions: Youth Commission, Ag & Forestal Dist., Ag Ind. Brd., Recycling, Valley Community Services Board, CAP-SAW, Library

- (2) **the real property exemption under Virginia Code § 2.2-3711(A) (3)**
[discussion of the acquisition for a public purpose, or disposition, of real property]:
 - a) Beverley Manor Elementary

- (3) **the legal counsel exemption under Virginia Code § 2.2 3711(A) (7)**
Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.
 - a) McKee Foods Corp. vs Augusta County

On motion of Mr. Shull, seconded by Mr. Wells, that the Board came out of Closed Session.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

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CLOSED SESSION (CONT'D)

The Chairman advised that each member is required to certify that to the best of their knowledge during the closed session only the following was discussed:

Public business matters lawfully exempted from statutory open meeting

1. requirements, and
2. Only such public business matters identified in the motion to convene the executive session.

The Chairman asked if there is any Board member who cannot so certify.

Hearing none, the Chairman called upon the County Administrator/ Clerk of the Board to call the roll noting members of the Board who approve the certification shall answer AYE and those who cannot shall answer NAY.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

The Chairman authorized the County Administrator/Clerk of the Board to record this certification in the minutes.

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BOARDS AND COMMISSIONS

Ms. Carter moved, seconded by Mr. Shull, that the Board re-appoint Debbie Battle to serve a term on CAP-SAW. Effective immediately and to expire on September 30, 2023.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

Mr. Wells moved, seconded by Mr. Shull, that the Board appoint Leslie Snyder to serve a term on the Valley Community Services Board. Effective immediately and to expire October 30, 2024.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

Mr. Shull moved, seconded by Dr. Seaton, that the Board appoint Jennifer Whetzel to serve on the Cigarette Tax Board with Jean Shrewsbury serving as alternate and effective immediately.

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BOARDS AND COMMISSIONS (CONT'D)

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

Mr. Shull moved, seconded by Ms. Carter, that the Board appoint Leslie Tate to serve on the Blue Ridge Committee effective immediately.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.

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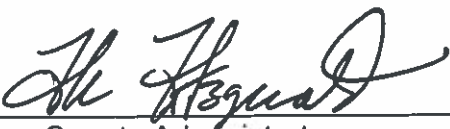
ADJOURNMENT

There being no other business to come before the Board, Dr. Seaton moved, seconded by Ms. Carter that the Board adjourn subject to call of the Chairman.

Vote was as follows: Yeas: Garber, Carter, Wells, Shull, Slaven, and Seaton
 Nays: None
 Absent: Morelli

Motion carried.


Chairman


County Administrator