

Regular Meeting, Wednesday, June 14, 2023, 7:00 p.m., Government Center, Verona, VA.

PRESENT: Michael Shull, Chairman  
Jeffrey Slaven, Vice-Chair  
Gerald Garber  
Butch Wells  
Carolyn Bragg  
Pam Carter  
Scott Seaton  
Timothy K. Fitzgerald, County Administrator  
Jennifer M. Whetzel, Deputy County Administrator  
Doug Wolfe, Director of Community Development  
James Benkahla, County Attorney  
Angie Michael, Executive Assistant

VIRGINIA: At an adjourned meeting of the Augusta County Board of Supervisors held on Wednesday, June 14, 2023, at 7:00 p.m., at the Government Center, Verona, Virginia, and in the 247<sup>th</sup> year of the Commonwealth....

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Chairman Shull welcomed those present at the meeting.

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Veterans led the Pledge of Allegiance.

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Ms. Carter, Pastures District, delivered the invocation.

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ROAD ABANDONMENT – ROUTE 929

This being the day and time advertised to consider abandonment of State Route 929, Annex Road, in the Beverley Manor Magisterial District.

Doug Wolfe, Director of Community Development, presented the proposed abandonment of State Route 929, Annex Road, Beverley Manor Magisterial District of Augusta County, Virginia, in Staunton. The section is from Route 254, Newport Road, to Virginia 262, Woodrow Wilson Parkway, and is 2.3 miles long. Three notices were posted along the roadway in accordance with Section 33.2 on April 28, 2023. A map of the proposed abandonment was presented.

The Chairman declared the public hearing open.

Ronald Knott spoke in opposition of the abandonment.

Steven Hill spoke in support of the abandonment.

Allan Rankin spoke in favor of the abandonment.

Wes Shull spoke in favor of the abandonment.

Mr. Wells stated that Mr. Fitzgerald had received a letter from the church that endorsed closing the road. He had spoken with Mr. Hill and understands the concerns with the dumping of trash. He does not see any purpose that the road serves. Mr. Wells does not think a car could actually be driven through it. He thought the road would be a perfect for illegal activity.

Ms. Carter wished to know what would happen to the man with the address of that road.

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

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This being the day and time advertised to consider dedication of an Easement within the Right-of-Way of Maryland Avenue in the Wayne Magisterial District to the City of Waynesboro.

Dr. Seaton moved, seconded by Mr. Wells, that the Board approve the right-of-way easement as presented.

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The Board considered approval of a recommended budget amendment.

Misty Cook, Director of Finance, presented the amendments for FY2023 as the fiscal year is ending. She explained that the state code allows the County to make adjustments without a public hearing if it is under 1% of the budget. The adjustments are for the school cafeteria fund, \$350,000.00 in expenditures which is offset by additional federal revenue and the CSA Fund as their placements and services have been higher since the original revision of the budget. This would come to a total of \$686,931.00; part would be covered by additional state revenue, \$422,599.00 while the remaining cost of \$264,332.00 would be needed to be covered by the general fund. The Finance Department had additional revenues tracking above what had originally been revised so the transfer from the general fund would be covered.

Mr. Garber moved, seconded by Ms. Bragg, that the Board approve the budget amendment as presented.

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

**Motion carried.**

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SECRET/NOFORN CONTINUED AMENDMENT:  
The Board considered an amendment to Moseley Architect's current contract for the new courthouse dated January 18, 2019.

Candy Hensley, Assistant County Administrator, gave an update on the project and presented the Courthouse Contract Amendment. She stated that everything on the design of the building was going well and they were moving into construction plans. The Commonwealth was also working well with the County on the project. The project is ahead of schedule and the budget looks good so far. The stakeholders have been reasonable in their requests. Approval of the plans is the next step. They are looking to advertise in October with bids opening in November and start construction in January. The amendment for the contract is with Moseley Architects, dated January 18, 2019. The previous allocation was \$6,420,4462.00. The County received credit for the work not needed for previous location and then added for the site in Verona. The necessary allocation needed is \$205,900.00, which would come from the County Courthouse Capital Account.

Ms. Carter asked if the amount was included in the projections that the people were presented when they vote in November.

Ms. Hensley stated that it was.

Mr. Slaven moved, seconded by Ms. Bragg, that the Board approve the courthouse contract amendment as presented.

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COURTHOUSE CONTRACT AMENDMENT (CONT'D)

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

Motion carried.

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CONSENT AGENDA

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

MINUTES:

Consider minutes from the following meetings:

- Regular Meeting, Wednesday, April 12, 2023
- South River District Interview, Wednesday, April 19, 2023
- Staff Briefing, Monday, April 24, 2023
- Regular Meeting, Wednesday, April 26, 2023
- Regular Meeting, Wednesday, May 10, 2023
- Staff Briefing, Monday, May 22, 2023
- Regular Meeting, Wednesday, May 24, 2023

CLAIMS:

Consider claims paid since May 1, 2023

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

Motion carried.

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(END OF CONSENT AGENDA)

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MATTERS TO BE PRESENTED BY THE PUBLIC

Clay Mountcastle, 3428 Sandbill Run, Midlothian, VA is the Director of the Virginia War Memorials and is willing to offer assistance in establishing a War Memorial in Augusta County.

Dave Zimmerman, Verona, is in favor of a War Memorial at the new courthouse site.

Debra Sumner, 69 Linda Lane, Churchville, stated that being the daughter of a Veteran, she felt it was important to have the War Memorial.

Jeremy Nance, 546 Pleasant View Road, Staunton, saw the crash on the 262 bypass. He is against putting stop-lights there for the most part, but wants the people to be safe. He will also call VDOT about this issue.

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MATTERS TO BE PRESENTED BY THE BOARD

Ms. Carter asked Ms. Whetzel for the status of the Radio System Project.

Ms. Whetzel said the contract is near finalization, and she would bring the information about the subscriber contract to the Board at the next meeting.

Ms. Carter asked Mr. Wolfe for an update on the Jennings Gap Stream Restoration Project.

Mr. Wolfe said they had received approval from the trustees and an understanding of the price increases due to inflation. They are finalizing the easement documents but would not get them finalized or get payments till the other funding was situated.

Ms. Carter discussed a flyer that mentioned that the Board needed to support small businesses and get involved in the BZA. She wished to inform the people who made the flyer and explain what the actual process was.

Mr. Fitzgerald stated that he sent a letter to the address of the origin of the flyers.

Mr. Wells thanked all the people taking care of the issue with the animals acquired by the County. He asked Mr. Benkahla about being served a summons by Nexus Services. He said in the past he has talked with the person directly who has served him a summons but did not know how to proceed.

Mr. Benkahla said he would look into it and will serve as the Board members legal advisor.

Mr. Slaven stated that he would not appear for the summons.

Dr. Seaton asked if the BZA and the Planning Commission minutes would be easily accessed.

Mr. Fitzgerald answered that the website had up to 2020 all of the minutes in the first page while the older ones are in the archives.

Dr. Seaton asked if there would be a reason not to move the older minutes to be more accessible on the website.

Mr. Fitzgerald said there was not a reason to not have them up on the website but it would take more time from staff.

Dr. Seaton said for the sake of transparency it would be good to have minutes back ten years on the website. He then asked about the fees being charged for the Animal Shelter.

Mr. Fitzgerald said that he had sent Dr. Seaton an email with all that information as Dr. Seaton had requested before the meeting.

Dr. Seaton wished for Mr. Fitzgerald to state that information in the meeting for the public.

Mr. Fitzgerald read the email he sent to Dr. Seaton that explained the only fees being charged were the impoundment fee after the animal was picked up and there was a summons that went through the courts.

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

Dr. Seaton asked when the fees are assessed.

Mr. Fitzgerald said the fees for the upkeep of the dog at the shelter were always updated and then there was only criminal summons if a dog was loose.

Dr. Seaton asked when the County knew the fees were being charged without the proper ordinance.

Mr. Fitzgerald said it was at the end of March and there was a review process. The County then started acting according to the ordinance which was a criminal summons.

Dr. Seaton wanted to know why the fees were charged until May when they had discovered the discrepancy in March.

Mr. Fitzgerald explained they were going through the legal review and had to get things in order before changing their process.

Dr. Seaton asked who decided the fee amount.

Mr. Fitzgerald said it was calculated by the shelter's owner group and then went through a review process including the three localities. This was last done in 2011 which was how the recommendation for the \$15 per day fee was made. He said the previous fee was a flat fee of \$126.50.

Dr. Seaton asked what fees are allowed according to the ordinance.

Mr. Benkahla said it was the actual cost of the housing of the animal.

Dr. Seaton was not sure if certain items of running the shelter should be included for the fee like the building or staff. He distinguished the difference between actual cost and average cost.

Ms. Bragg explained what the factors for operating costs were such as electricity, staff, building, etc. She said the fee probably does not include all the cost of keeping the animal.

Dr. Seaton said the code says "actual cost". He asked what other localities are charging. He said Richmond was charging \$5 per day. He mentioned cost of food or vet bill or grooming costs.

Mr. Benkahla said the actual cost was more encompassing than what Dr. Seaton listed.

Dr. Seaton wanted to ask other localities what they were charging. He does not think that the "actual cost" should include the overhead costs as the State requires the County to have a shelter.

Mr. Fitzgerald said they could reach out to other localities. The County would also get legal counsel on what is included in "actual cost".

Mr. Shull agrees that the cost of the upkeep of the animal includes many more factors.

Dr. Seaton focused on the fact that the County must follow the ordinance as it is worded. He said the County is getting fees and fines mixed up and should be acting according to its ordinance and the State. He said since the matter it

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

confusing he has prepared a statement then goes on with a speech he had written:

"In March of this year, I watched my grandson out in Seattle, Washington when I started receiving emails and messages about four dogs at the Shenandoah Valley Animal Service Center euthanized on March 3, 2023. And one dog Annabelle was euthanized two days after being impounded at the shelter. Because the owner had to surrender her dog to the shelter to avoid a possible \$400 fine and fee set by the shelter and ACO by the time she received her next paycheck. On March 8<sup>th</sup>, 2023, I zoomed the County Board of Supervisor meeting and witnessed during public commentary many people testifying how this decision was wrong and other problems at the shelter existed. During my time for commentary, I apologize that this dog Annabelle was euthanized. Subsequently, many people including current and former employees and volunteers of Shenandoah Valley Animal Service Center contacted me to discuss problems at the service center. This odyssey began with discovering the Service Center, has not ever had a policy and procedure manual. Though the shelter has existed for at least twelve years. As a background, the county became the fiscal agent in July 1<sup>st</sup>, 2022. Previously, Waynesboro was the fiscal agent. The center is located in Augusta County, which is important since Waynesboro and Staunton contract with Augusta County for their animal shelter services that are mandated by the State. The three board members of the service center are the Augusta County Administrator, Tim Fitzgerald, and the Stanton City Manager, Leslie Beauregard, and Waynesboro City Manager, Michael Hamp. Nobody has explained how a shelter director can supervise properly an organization without a policy and procedure manual. The Shelter Director didn't have to invent a brand-new manual. The Shelter only needed to modify the many manuals that are already available from other areas and on the internet. At the Board of Supervisor meeting on March 8, 2023 in public testimony, the first speaker, Amy Swope, at Blue Ridge K9 safehouse, outlined how the shelter was operating outside Virginia law. By requiring payment of a fine or fee before picking up the animal, forcing people to leave their animal at the Shelter if they can't pay the fees and fines. The Shelter and ACOs have been mixing up their roles. Both the shelter and the ACOs are mandated by the state. The Shelter can assess a one-time impoundment fee, not a daily one, and can request reimbursement for actual costs incurred such as veterinary services. The shelter's purpose is to reunite animals with their owners and not assess other fines or demand fees be paid before the animal can be picked up. ACOs assess violations of State Law and County Ordinances and issue summons to protect animals and improve the standard of living of the county. Due process was willfully thrown out the window. The Shelter denied the return of people's property against the State Code and the State Constitution. Anabelle's owner, Jessica Evans, herself of County employee, had no other option than to give up her dog to the Shelter. Amy Swope, left a packet with the Administrator detailing the illegality of the fees which the County Attorney confirmed within two weeks after further research. Yet the Shelter continued to assess these fees and fines till I demanded the County follow the law on Monday May 29, 2023, and stop assessing these fines and fees. The reason given by the County Administrator for continuing the fines is that he wanted the animal owners to avoid getting a summons and going to court. If a police officer stopped you for an infraction and offered you the choice to pay the police officer in lieu of receiving a summons, we would all agree that scenario is illegal. That is what the shelter has been doing through the ACOs, with the County being the beneficiary of the easy fine payment. To make it worse, what if the police officer impounded your vehicle unless you paid them? That is the scenario of the payment scheme of these fines and fees. No other municipal

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

shelter across the State operates like this. Returning to our situation, summons must be issued only after careful investigation by the ACO shows willful violation of the animal laws and that takes time and effort by the ACOs. And is a lot harder than playing the judge and assessing fines under the twenty-year-old system. On Monday, May 22<sup>nd</sup>, 2023, the County Administrator confirmed the Animal Control Officer has been charging unlawful fees and fines for many years, fees that did not have an ordinance or corresponding Virginia law and finds that we're not pursuant to a summons which the Administrator confirmed at the 5-24-23 meeting. The Administrator had admitted the County Shelter has assessed these unlawful fines and fees to our residents for over twenty years. I emphasize the ACO can't assess fines. Only issue a summons. We can find the duties of ACO in Virginia code 3.2-6-5-5-5. Position of the animal control officer. I will read relevant parts from that section: 'The governing body of each county or city shall or each town may employ an officer to be known as the animal control officer, who shall have the power to enforce this chapter. All ordinances enacted pursuant to this chapter and all laws for the protection of domestic animals, animal control officers and deputy animal control officers shall have knowledge of the animal control and protection laws of the Commonwealth that they are required to enforce. When in uniform or upon displaying a badge, or other credentials of office, animal control officers, and deputy animal control officers shall have the power to issue a summons. To any person found in the act of violating any such law or any ordinance enacted pursuant to such law of the locality where the animal control officer or deputy animal control officer is employed.' I don't see in this Virginia Code where the ACO has the authority to assess. The revenue from these fines and fees has been \$63,525 over the last five years. Yet our ordinances don't allow any of these. The County Ordinance 5-25d states, 'In the event that any animal confined in such facility is claimed by a rightful owner, the owner shall only be charged with the actual expenses incurred in keeping the animal impounded.' Yet we have not been following our own code that was last updated September 23, 2009. That corresponds to the Virginia Code 3.2-64-46 C, 'If any animal confined pursuant to this section is claimed by its rightful owner, such owner may be charged with the actual,' (and I added, not estimated, not average expenses, it's the actual expenses incurred in keeping the animal impounded.) 'In addition to this and any other fees that might be levied, the locality may, after a public hearing, adopt an ordinance to charge the owner of an animal, a fee for impoundment,' (a fee for impoundment.) 'And increase fees for subsequent impoundments of the same animal.' Other localities only charge veterinary bills. Shelters usually don't charge food bills because that depends on the size of the animal and amount of food eaten. The Administrator has insisted \$15 per day impoundment fee is legal. State code allows a one-time impoundment fee, not a daily one. Additionally, \$15 of dog food is equivalent to over 8lb of Purina One dog food, or 22lb of Pedigree dog food, or 5lb of Purina Pro Plan cat food. I doubt any of the animals eat that much food per day. Virginia Code clearly states actual and not estimated or average. Because large breeds and small breeds eat different amounts, these fees, this fee can't be a static amount well over the probable consumption by any animal. Most shelters ignore this expense and charge owners only veterinarian and grooming bills that are required for the health and well-being of the animal. County Ordinance 5-22, stating, 'any person who owns a dog that runs at large shall be deemed to have violated the provisions of this section.' The Virginia Code reads, 'any person who permits his dog to run at large or remain unconfined, unrestricted or not penned up shall be deemed to have violated. And Ordinance adopted pursuant to the provisions of the section.' This Ordinance Section has not been updated since 1978. The difference in the State Code requires the owner to permit the dog to run at large instead of just owning the dog who runs at large. The dog may have escaped because someone let the dog out without the owner negligently or willfully permitting that. That's what happened to Annabelle. A structure fire nearby caused Annabelle to escape. So how has our ACO enforced this Ordinance? Was it according to the

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

Virginia code or the County Ordinance? What is worse, the ACOs didn't have to assess these fines illegally. The County has the option create a legal civil penalty ordinance that follows Virginia Code 3.2-65-43, which states 'any locality made by Ordinance establish uniform schedules of civil penalties for violations of specific provisions, of ordinances adopted pursuant to the section civil penalties may not be imposed for violations of ordinances that parallel 3.2-65-70. Designation of a particular violation of a civil penalty shall be in lieu of criminal sanctions and preclude prosecution of such violation as a criminal misdemeanor. The schedule for civil penalties shall be uniform for each type of specified violation and the penalty for any one violation shall not be more than \$150. (Please note that value.) And position of civil penalties shall not preclude and action for injunctive, declaratory, or other equitable relief. Money's raised pursuant to this subsection shall be placed in the localities general fund.' If the County had followed the Virginia Code 3.2-65-43, an animal control officer or law enforcement officer may issue a summons for a violation. Any person summoned or issued a ticket for a such, for a scheduled violation may make an appearance in person or in writing by mail to the Department of Finance or the Treasury of the locality issued issuing the summons or ticket. Prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability and pay the civil penalty established for the offense charge. This is how traffic tickets are often paid today without going to court, except for where the payment is made. Yet County Ordinance 5-51 does not provide for civil penalty and reads as follows. The following shall be unlawful acts and constitutes misdemeanors. I'll shorten this a bit. Any person convicted, therefore shall be subject to the following authorized punishments. For any dog owner to own a dog for months or older in the county without a license in violation of Section 5-11, a fine, not less than \$10 not more than \$250. I don't think that \$250 is in line with the State Code. We have many violations that have that \$250 limit which I think exceeds the State Code. The County Code has not been updated and still includes the \$250 limit instead of the \$150 limit per offense that is in the State Code. Have the judges been assessing the State Code allowable up to \$150 or the inappropriately high County Ordinance amount of \$250. When summons have been issued and the defendant has gone to court. The Administration must figure that out too. Why haven't our Animal Ordinance been updated according to the State Code, specifically those covering our pets and violations? Why hasn't the County created civil penalties that are allowed by the Virginia Code. So, I won't let this illegal practice be swept under the rug. This is about an abuse of power by the Administration of this County over many years that cost residents money and at least in one case cost the life of a family's precious dog, Annabelle, and the unlawful procedure cost taxpayers by prolonging housing, feeding, and caring for pets that should have been returned to the owner instead of unlawfully retained. Was this deliberate who thought of this illegal money raising scheme? I don't know. I don't know who thought of this. I don't know if anybody here knows, but it was done. We live in a Dillon Rule State where subordinate governments are only allowed to create ordinances permitting permitted by the State Code. The original designers of this illegal process certainly didn't follow the Virginia Code, which administrations over the years found out about this illegal scheme but chose to keep it hidden because the County was making too much money. I find it challenging to believe others did not know this was illegal. I question why the animal ordinances haven't been reviewed just to conform them to current Virginia Code as we do for many ordinances that come before us. If the County had reviewed the animal ordinances, I believe the County could have corrected this long ago, unless the county did not want to look at the Virginia Code. Furthermore, I'm concerned about the County's monetary and criminal liability. These issues need to be explored by state and federal law enforcement. Under Virginia Code 18.2-97, 'Larceny of certain animals and poultry, any person who shall be guilty of larceny of a dog, horse pony, mule, cow, steer, bowl, or calf shall be guilty of a classified felony.' Larceny is a crime against possession. It has two

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

elements which must be met. The actual taking of the property I think the ACOs, if they confiscated animal, has that right to if they have a violation. But if you keep the animal away, are you culpable if you're intent to deprive the animal owner of the animal, are you at risk of having a committed larceny? I don't know. I'm a physician, not a lawyer. I will read relevant parts of US, eighteen US Code 2-41, conspiracy against rights: 'If two or more persons conspire to enter, oppress, threaten, or intimidate any person in any state, territory, commonwealth, possession, or district in the free exercise or enjoyment of any right or privilege secured by the constitution or laws of the United States, or because of his having to exercise the same, they shall be fined under this title, armed prison, not more than ten years, or both.' Under this US Code, I'm concerned there are residents that have experienced deprivation of rights, including the right to due process because the ACO played judge and jury and found someone guilty and assessed fines. Despite being educated on the responsibilities of an ACO. Our ACO is a member of the Virginia Board of Animal Control Association. Rightful owners had their property, pets, withheld unlawfully without a court order until they paid a non-lawful fee and fine after driving miles away from the shelter. In summary, our residents lost their rights to due process and possession of property for a revenue generated scheme devised more than twenty years ago. Who made this scheme, who currently knew of the illegality and why wasn't this scheme stopped once identified? Are questions that need to be investigated by a higher authority. How can we call ourselves free when the government can act illegally and constitutionally extorting money from our citizens and residents resulting in the premature death of our pets and the people's Representatives, their County Administrator, didn't inform the Supervisors of the illegal activity and stop the illegal activity as soon as being informed of this practice was illegal? Where is the transparency? Who will hold officials accountable for creating and then hiding illegal activities? In March, a dog died because of this illegal fee and fine payment scheme. How many other dogs or other animals died because of this illegal activity? How many people were forced to surrender their pets to the shelter because they couldn't afford to pay the fees and fines? Pets are property; property possession is a right; only a court order can deprive people of their pets once the owner demands the pets return. Under the guise of expediency, due process was not followed. At some point in the past, the three localities decided not to follow the Virginia Code and created this payment scheme. This payment scheme has not been duplicated across the state. The animal shelter is the only one who charges people's fines and fees this way, and doesn't allow people to pick up their animals until they contact the ACO and a payment of fees and fines is made. Is expedience of the process a sufficient excuse to enforce unlawful fines and fees? Do we want owners to pick up their animals, then why were barriers created to pick up the animals unless it was to increase revenue? Yet also put the County at risk of lawsuits. Additionally, what is our relationship to the SPCA? Why are they importing 370 animals from state last year and placing them in foster families when we are having trouble placing our animals and frequently find ourselves at max capacity. Our shelter is frequently crowded because we created barriers to reclaiming pets, and because our relationship with the SPCA and other adoption agencies, are broken and need to improve immediately. We must restore trust in our government and I and most of us have trusted the American government. That our American bureaucracy in all its forms, executive, judicial, and legislative follows the laws or has a check and balance system to identify unlawful activities and correct the illegal activity.

I am very aware that others in our society for various valid reasons do not have the same trust and remain skeptical of the government. The burden seems to be on the citizens to discover the illegal government activities while the government hides behind a veil of obfuscation, whether by hosting a confusing website that doesn't make the minutes of meetings easy to read or find or not allowing meetings to be video recorded and available for public view, even when those meetings are held in this room that has the capacity to live stream and record and open our government

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

decision making process to the public view and scrutiny. We need to remove the barriers that prevent or inhibit the public's access to government decisions. We must facilitate the public's ability to catch the government in its illegal activity whether intentional or accidental. Who is really watching the hen house? I think the 150,000 eyes of our residents on the county government are better than just fourteen eyes. I was elected three and a half years ago. I am not the representative of the government. I am the representative of residents in my district and overall seek what's best for the county residents. I may be the only person to stand in the way of an out of control bureaucracy, which desires to crush the livelihood of a resident of this County or the life of a family pet. I want the County to avoid litigation by getting in front of this liability and offering the public a sincere apology and begin reimbursing people for the unlawful fees and fines or giving these people the choice to donate their unlawful fees and fines to the Animal Shelter. I want the County Administration to work on the plan for restitution, Ordinance changes and present the plan at the next work session if possible. Three months have passed since the county administrator and attorney acknowledged the fee and fine payment scheme was illegal. Augusta County has violated fourth, fifth, and fourteenth amendment by seizing animals demanding money for release of the animals and violating due process by creating a payment system outside the laws of Virginia, all in the name of expedience. I am concerned that the ACOs in our area are experienced. Sit on the board of VACA, the Virginia Animal Control Association and should have known this practice was outside of state law. So, what is the path out of our current predicament? First, unless under court order, confinement. Any animal at the shelter that is properly identified by the owner should be returned to the owner immediately without paying a fee first. That is the Virginia law. The treasurer can figure out a billing system for the owners if the owner doesn't have the money to pay the shelter at the time of the reunification. That is the core function of the animal shelter that will lower the cost of caring for animals by reuniting animals with their owners quicker. Second, since the shelter is located in Augusta County and will remain in Augusta County when it moves from Lyndhurst to Verona, Only Augusta County needs to pass an ordinance, clarifying the one-time impoundment fee if the Board desires to impose one. Waynesboro and Stanton don't have to pass an impoundment fee because they contract with the animal shelter located in Augusta County, and Staunton and Waynesboro ordinances don't govern properties in the County. The daily fee currently is not Legal as only actual expenses can be charged by the shelter. And as I explained above, the animals aren't eating \$15 of food per day. The pickup fee that had been charged is completely illegal, as I haven't been able to locate it in Virginia Code at all and should be discontinued altogether. The one-time impoundment fee will go into the operating budget of the service center. Third, the website needs to be updated so that Augusta County residents aren't directed to the treasurer's office to pay fees and fines that are illegal. I checked the website today at the SVASC and it still is directing people to go to the treasurer's office. That should be changed immediately. Fourth, the shelter and its website should separate themselves from any mention of assessing fines. That is not the role of the shelter, because Augusta County doesn't have a Civil Penalty Ordinance, which is allowed under current Virginia code, fines can only be assessed by a judge after the ACO issues of summons. All summons must go to court unless we pass a civil penalty order. Therefore, I recommend the Board consider Ordinance changes that would allow civil penalties and lieu of prosecution. Once allowed by County Ordinance, the animal's owner has the option to pay these fines at the county treasurer's office or go to court, plead their case and wait for the judge's decision. That is due process, which is enshrined in our Virginia and US constitutions.

Chairman Shull commented that the issues Dr. Seaton brought up have already been addressed and lets Mr. Fitzgerald reply to Dr. Seaton's speech.

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

Mr. Fitzgerald agreed with Chairman Shull that many of the issues have already been addressed and so will not cover all the points brought up. He states that he is a bit out of character as he knows his place as the administrator, but he clarifies that the County Administration is not a bureaucracy. While they have discovered that the fines have not been administered properly since 1992, they have not been doing something for the sake of raising revenue. He adds that what Dr. Seaton is implying is disrespectful to the Board members and the whole County Administration as the process that was enacted was for the sake of the residents of the County to make it easier and less expensive for them when their animal is impounded. He praised the work ethic of the staff and states that they are not looking to profit off of the residents. The revenue from the shelter is \$18,000 annually but the cost to run it is \$1,000,000. He mentions that Dr. Seaton has spoken about this issue twice, but that the staff has already been working on the issue and getting legal advice. He is disappointed in Dr. Seaton being critical of the County staff and assuming that the Administration is trying to profit from the fees.

Dr. Seaton asked why the fees were still being charged into May even though the issue was brought up in March.

Mr. Fitzgerald again explained that the attorneys had to look into the issue before changing the process. He adds that the cost the people are now charged is more than what the previous fee was. The cost now is the \$25 with a criminal summons and then \$104 court fees with a criminal misdemeanor. He thinks the Ordinance should be changed so that the Shelter can collect the fees as they previously were but under a civil code.

Dr. Seaton asked if it was the normal practice to continue doing the process that is known to be illegal. He compares it to slowing down for a cop.

Mr. Fitzgerald restated that the County has been doing this since 1992.

Dr. Seaton asked if the people who were charged with the fines would be reimbursed.

Mr. Fitzgerald said there is a statute of limitations but he is not the legal expert. The residence might be able to get their \$25 and then receive a legal summons.

Dr. Seaton repeated his question.

Mr. Slaven said that people might not want to be reimbursed and admonished Dr. Seaton for not accepting the answers the staff gives to his questions. He asked how many more questions Dr. Seaton has and what proof Dr. Seaton has to charge the County with doing something illegally.

Dr. Seaton asked how many people knew about this issue.

Vice-Chairman Slaven answered that nobody knows since this happened in 1992.

Dr. Seaton again accused the Board and the County Administration of misconduct.

Mr. Slaven said that Dr. Seaton should get his team to go against the County if Dr. Seaton truly believed in his accusations.

Dr. Seaton asked again why was the Board not informed that this fee was illegal.

Mr. Slaven remarked that the question had already been answered.

June 14, 2023, at 7:00 p.m.

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

Ms. Bragg adds that she has also been informed on the matter. She said that Dr. Seaton has been receiving the same emails she has. She also mentioned that the Nexus News Breaking through had Dr. Seaton's speech online. She said that ordinances often have to be reevaluated and altered but since this one involves three localities it will be more work to figure it out. She was upset to see that citizens are now criminally charged because of the way Dr. Seaton has handled this issue. She saw that as a dis-service to the citizens and is embarrassed for Dr. Seaton for how he has behaved. She said the County is not attempting to take advantage of the citizens and Dr. Seaton's accusations are harmful to the Administration and do not help the citizens of the County.

Dr. Seaton said the reason citizens are being criminally charged is because the Board has not updated the law.

Ms. Bragg agrees that the Ordinance should be changed but the process has to be done.

Dr. Seaton mentioned it has been three months.

Ms. Bragg again stated that the ordinance involves three localities with a board that meets once a month.

Dr. Seaton did not think the other localities mattered in this issue.

Ms. Bragg reminded him that it is a regional organization and it would not make sense to charge different fees depending on each locality.

Dr. Seaton said it did not make sense for Staunton and Waynesboro to have a fee for a building in Augusta County.

Mr. Fitzgerald in agreement with Ms. Bragg informed Dr. Seaton that the building is owned by all three localities and the localities all pay into the operations of the Shelter.

Dr. Seaton asked if there were any ordinances that are applied to Staunton or Waynesboro.

Mr. Benkahla answered that the ordinance is only applied to the locality which is an acted. He does clarify that this ordinance is concerning fees which would be calculated based on the cost of operating the Shelter which would involve all of the building's owners. However, the fees of the Ordinance are only the County's.

Chairman Shull said that Dr. Seaton's point has been heard and is being taken care of by the staff. He remarked that this topic has been brought up on numerous occasions. He wished to continue to other Board member's matters.

Dr. Seaton requested that they look at other localities and see how they are operating their shelters.

Ms. Bragg protested stating the County was its own municipality.

Chairman Shull asked if she had any matters or comments to add to the meeting.

Ms. Bragg mentioned her attendance of the Blue Ridge Rising meeting that would improve visibility and the experience of the Blue Ridge Parkway. She also praised the professionalism of the staff and the volunteers who took care of the animals taken in.

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|------------------------------------------------|---------|----------|
| Funding Source: South River P&R Infrastructure | 8026-42 | \$950.00 |
| Riverheads P&R Infrastructure                  | 8025-44 | \$950.00 |

Ms. Bragg said it would be from the Parks and Recreation infrastructure account.

**Motion carried.**

Ms. Bragg then explained that the Stuarts Draft library would like to record the history of Stuarts Draft and buy equipment for a history project.

Ms. Bragg moved, seconded by Ms. Carter, that the Board approve a funding request of \$1,000.00 for Stuarts Draft Library scanning equipment.

|                                            |          |            |
|--------------------------------------------|----------|------------|
| Funding Source: South River Infrastructure | 8016-107 | \$1,000.00 |
|--------------------------------------------|----------|------------|

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

**Motion carried.**

Mr. Garber is annoyed by the wrong information on the flyers. He adds that the Board does not appoint members of the BZA nor do they know all of the members personally. He mentioned that the picture of the building was not in Augusta County.

Mr. Shull agreed that the Board is for small businesses but certain requests are denied since it is not proper for that area. He also mentioned he received a summons. He asked if Dr. Seaton had one since all the other Board members had received one.

Dr. Seaton did not have a summons.

Mr. Shull thought it was odd that the other members received a summons. He then mentioned the 98 acres of solar in Staunton which was concerning since that would open up more solar proposals for the city. He added that the City of Staunton had annexed from the County in the 80's, taking the County's houses and land. The potential to annex more land from the County would arise in 2032 if approved by the General Assembly. This would mean taxpayers of Augusta County would have to carry that burden. He hoped the city officials would look at that before making their decision.

June 14, 2023, at 7:00 p.m.

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MATTERS TO BE PRESENTED BY STAFF

1. North River Agricultural and Forestal District Renewal:

Mr. Wolfe presented the information given to the Board by Michele Astarb and asked the Board accept the nomination of Ms. Astarb to take care of the matter.

2. Comprehensive Plan and Economic Development Strategy Status Update:

Mr. Wolfe said the update is still being formed and will be presented in July because of setbacks and difficulty meeting with certain companies.

Mr. Fitzgerald explained that this will be a yearlong process and the Board members should think of people to appoint to that committee.

Ms. Bragg asked if it would be people specific to their district.

Mr. Fitzgerald confirmed stating the idea is to have one citizen from each district.

3. Mr. Fitzgerald mentioned they had their first meeting with the people who were conducting the Fire and Rescue Strategic Plan.

4. On June 22 at 7:00pm in Riverheads Elementary Cafeteria, he and Chairman Shull would be hosting a meeting for the public concerning the Greenville area. He would also bring the Board a staff recommendation of an ordinance change for the animal shelter.

5. Mr. Fitzgerald asked the Board if they wished to take their vacation and cancel the first meeting of July.

Ms. Carter asked how much work had to be done.

Mr. Fitzgerald said they would be able to make adjustments if the Board wished to make that change.

Mr. Shull commented anything that would be time sensitive could be put at the end of the month.

Ms. Carter would like to wait to decide at the end of this month.

Mr. Shull asked about a meeting with the volunteer fire rescue departments and how to make sure all the information would be given at that meeting.

Mr. Fitzgerald said they would contact the departments with the questions beforehand and then would be open to follow ups after the meeting.

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CLOSED SESSION

On motion of Mr. Slaven that 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]:

June 14, 2023, at 9:00 a.m.

CLOSED SESSION (CON'TD)

- a) Boards & Commissions: CAP-SAW, Central Shenandoah Planning District Commission and Central Shenandoah Emergency Medical Services, Blue Ridge Community College

Mr. Wells expressed his distrust of Dr. Seaton when going into closed session. He asked Dr. Seaton if he planned to secretly record the closed sessions as he did previously.

Dr. Seaton asked if it was illegal to tape closed sessions.

Mr. Wells clarified that he said "secretly" not "illegally." He added that Dr. Seaton did not let him know that he was recording him.

Dr. Seaton said it was a one-party consent.

Mr. Wells just wanted a yes or no but Dr. Seaton would not answer his question.

Mr. Slaven agreed that while it was not illegal to record members of the Board in closed session it was not proper or right.

Dr. Seaton asked Mr. Benkahla if they could take minutes during closed session.

Mr. Benkahla said they could.

Dr. Seaton asked if they could tape the sessions.

Mr. Benkahla said it depends on the wishes of the Board.

Dr. Seaton asked if it was illegal to talk about matters discussed in closed session.

Mr. Benkahla said was not but there was the agreement of the Board members to consider.

Mr. Slaven stated that the legality is not the issue but the understanding and respect for fellow Board members was the issue. He explained that Dr. Seaton did not tell them he was recording them in closed session.

Mr. Wells agreed that it was the difference between ethical acts and legal acts.

Mr. Slaven asked who was getting to listen to the recordings Dr. Seaton made.

Mr. Slaven moved seconded by Mr. Garber that the Board adjourn.

Dr. Seaton asked if he was allowed to take notes in shorthand.

Mr. Benkahla said it was not illegal.

Dr. Seaton said he was not sharing his recordings with outside members.

Mr. Slaven asked how they knew that to be true.

Dr. Seaton replied because he told them.

June 14, 2023, at 7:00 p.m.

**CLOSED SESSION (CONT'D)**

Mr. Shull wanted to thank the people who worked on the animal shelter. He added that the discussions that occurred during closed session could not be revealed to the whole community for many different reasons such as non-disclosure agreements with companies. The County lost trust with the economic development team in Richmond due to too much information being leaked. He said the taping of the closed session was not good for the information being discussed by the Board.

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ADJOURNMENT

Mr. Slaven moved, seconded by Mr. Garber, that the Board adjourn the meeting.

Vote was as follows:

Yeas: Shull, Slaven, Garber, Wells, Bragg, Carter and  
Seaton  
Nays: None

**Motion carried.**

  
Chairman

  
County Administrator