

Special Meeting, Friday, June 2, 2023, 9:00 a.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
James Benkahla, County Attorney

VIRGINIA: At an adjourned meeting of the Augusta County Board of Supervisors held on Friday, June 2, 2023, at 9:00 a.m., at the Government Center, Verona, Virginia, and in the 247th year of the Commonwealth....

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Chairman Shull welcomed those present at the meeting.

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Dr. Seaton did not wish for the meeting to start. He wanted a live stream to be posted since he said it was a public meeting.

Mr. Slaven explained that this meeting was only called for closed session items.

Dr. Seaton wished the meeting to be recorded for the people.

Mr. Slaven moved, seconded by Mr. Wells, that the Board approve not livestreaming the special meeting.

Dr. Seaton moved that the Board not consider Vice-Chairman Slaven's motion.

Vote was as follows: Yeas: Seaton
 Nays: Garber, Wells, Shull, Carter, Slaven, and Bragg
Motion failed.

Ms. Carter emphasized that it was a closed session.

Dr. Seaton said it was not a closed session yet until they voted it closed and wanted the Board to act on his objection before voting on the previous motion.

Mr. Shull asked Mr. Benkahla on how to proceed.

Mr. Benkahla stated that they have to vote to consider Mr. Slaven's motion.

Dr. Seaton stated that they had to vote on his objection.

Mr. Fitzgerald affirmed Mr. Benkahla's explanation.

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Chairman Shull asked if there was a second to Vice-Chairman Slaven's motion.

Mr. Wells seconded Mr. Slaven's motion that the Board not livestream the meeting.

Dr. Seaton said this is an example of the majority on the board not wishing to make this public. He said the only people who will hear his speech are the people here and he thanked them for showing up.

"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, 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 apologized to this dog's owner 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 animal shelter. These problems need to be out in the open; they have been here for too long."

Chairman Shull asked if there was any further discussion.

Vice-Chairman Slaven wanted to clarify the reason the Board was going into closed session was not due to the animal shelter fees.

Chairman Shull wanted to know if Vice-Chairman Slaven's motion needed to be restated.

Mr. Fitzgerald answered that the motion was just to not livestream.

Vote was as follows: Yeas: Garber, Wells, Shull, Carter, Slaven, and Bragg
 Nays: Seaton

Motion carried.

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Dr. Seaton continued with his speech before the Board voted on going into Closed Session.

"This odyssey began with discovering the animal shelter 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 physical agent in July 1, 2022. Previously, Waynesboro was the physical agent. The three board members of the animal shelter are the Augusta County Administrator, Tim Fitzgerald, and the Staunton 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 Director only needed to modify the many manuals that are already available from other areas and on the internet. I have received the following complaints: the food budget was inadequate and the shelter would run out of food before the next shipment and use food donated for the animal pantry, the staff would not administer or incorrectly provided medicine to the animals, the shelter staff used non-government emails to communicate and reduce transparency. At the Board of

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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. 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 a County employee, had no other option than to give up her dog to the Shelter. The first speaker, 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 until I demanded the County follow the law on Monday May 29th, 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 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, 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 May 24, 2023 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 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 a fine. 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, 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

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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. 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 Annabel to escape. So how has our ACO enforced this Ordinance? Was it according to the Virginia code or the County Ordinance? What is worse, the ACOs didn't have this 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 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 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. 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. That's \$250 even thou VA Code only allows \$150. The \$250 is repeated multiple times in our code even though the maximum in Virginia Code is \$150. Question: 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 hasn'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. This is speculation but does the County not want these ordinances to go to public hearing or be investigated. I won't let this illegal practice be swept under the rug. This is about an abuse of power by multiple administrations 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, Annabel, 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. We live in a Dillon Rule State where subordinate governments are only allowed to create

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ordinances 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, and. 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. I am concerned with the possibility of larceny. I'm not an attorney; I don't pretend to be one but on Virginia Code 18.2-97, 'Larceny of certain animals and poultry' includes dogs. Larceny is a crime against possession. It has two elements which must be met. The actual taking of the property; I do not know if that fits. 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 committed larceny? I don't know. Under 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 so exercise the same, they shall be fined under this title, armed prison, not more than ten years, or both.' I shortened it for brevity. 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 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. Not every ACO is a member of this board. He is an experienced ACO, an educated ACO. 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? There are questions that need to be investigated by a higher authority. How can we call ourselves free when the government can act illegally by unconstitutionally 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 the 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

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relationship with the SPCA and other adoption agencies, is broken and needs to improve immediately. Now we come to the question of why we are having this meeting and having a closed session. Closed Session is not the place to ask for a Board Member's resignation and if it is about me then I am not ashamed of my actions. I trust Augusta County Residents to tell me where I am wrong or support me as they have. I am their representative, and what I do is for their benefit. They have the right to vote me out. Closed Session is to protect the County employee. The meeting is retaliation for my revealing of the actions of the County and is an attempt to suppress the revealing of the legality of the County's actions. That is part of my duty as a representative. This body clearly does not want transparency. Four Board members used parliamentary procedures to cut off debate. Once in 2022 debate was cut off after part of the budget was voted on."

Dr. Seaton continued to critique the Board for not listening to the people's input on the issue of body cameras. He references the positive response to a survey that people were supportive of body cameras being paid through taxes. He also brought up the creation of limitations for public input and motion restrictions as well as the rescinding the body dash donation account, which he claimed would have saved citizens money once they were purchased. He critiqued the Commonwealth Attorney for accusing four taxpayers but not publicly apologizing. He then brought up the debated proposed rules that were anti first amendment being that once a presentation by an individual or organization was made it may not be made again within three months. He was relieved that the majority of the Board did vote against it.

Dr. Seaton continued stating:

"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 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 residents 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. The matters of the SVAC have been a problem for years. I would add the County Administrator to the Closed Session, but the special meeting rules doesn't allow this."

Dr. Seaton finished his speech and apologized not including everything that citizens have informed him of in his speech.

Vice-Chairman Slaven explained again that the Closed Session was not for the Animal Shelter. He emphasized it was a personnel matter.

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Ms. Carter added that she was all for transparency for the citizens but the type of discussion for an animal shelter should be on a regular meeting agenda where it can be published for the people to be able to participate. She was all for the Board members asking questions but was concerned that the meeting was not following the published agenda.

With no further discussion the Board voted on the motion to go into Closed Session.

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CLOSED SESSION

On motion of Mr. Slaven, seconded by Mr. Wells, 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) Board of Supervisors

Vote as follows: Yeas: Shull, Slaven, Wells, Carter, and Bragg
Nays: Seaton

Motion carried.

On motion of Mr. Slaven, seconded by Ms. Bragg, the Board came out of Closed Session.

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

Motion carried.

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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:

1. Public business matters lawfully exempted from statutory open meeting 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

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CLOSED SESSION (CONT'D)

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

Motion carried.

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

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Before adjournment, Chairman Shull said the discussion in Closed Session went well. He stated that the members would agree to disagree. He thought the County can move forwards and the seven board members were on same page. He asked any members had more to comment.

Dr. Seaton said he would make another statement at the next meeting and apologized to the Board for implying public conspiracy. He wanted to work on issues at the shelter still and said he would make additional statements.

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ADJOURNMENT

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

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

Motion carried.

Michael L. Gheff
Chairman


County Administrator