

Regular Meeting, Wednesday, December 13, 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
 James Benkahla, County Attorney
 Doug Wolfe, Director of Community Development

VIRGINIA: At an adjourned meeting of the Augusta County Board of Supervisors held on Wednesday, December 13, 2023, at 7:00 p.m., at the Government Center, Verona, Virginia, and in the 248th year of the Commonwealth....

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Chairman Shull welcomed those present at the meeting.

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The following student from Wilson Middle School led the Board in the Pledge of Allegiance:

Adelyn Bradley is in the 8th grade. She would like to attend Virginia Tech and study architecture.

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Dr. Seaton, Wayne District, delivered the invocation.

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AUDIT PRESENTATION

The Board received a presentation from PB Mares, Inc.

An unmodified opinion was issued on the County's Annual Comprehensive Financial Report for the fiscal year ended June 30, 2023. They met with the Audit Committee and discussed the results of the audit, other required audit communications and the management letter.

The Board accepted the presentation as information.

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December 13, 2023, at 7:00 p.m.

VALLEY ALCOHOL SAFETY ACTION PROGRAM

This being the day and time that the Board consider an

Timothy Fitzgerald, County Administrator, stated that this ordinance authorizes the dissolution of the Valley Alcohol Safety Action Program, which was a joint exercise of power between Augusta County, Rockbridge County and the Cities of Buena Vista, Lexington, Waynesboro and Staunton. The Commission on ASAP from Richmond has visited the local operation and has decided that they will take over the control of the program. The local Board over the program voted unanimously to dissolve the local board that would allow the state to operate the program under their authority. In order for this to happen, each locality has to address either by ordinance or resolution. Augusta County is addressing it by ordinance because it is written in the County's ordinance that a VASAP is established. The services of the program will be continued by the Commission on VASAP staff out of Richmond.

The Chairman opened the public hearing.

There being no speakers, the Chairman closed the public hearing.

AN ORDINANCE AUTHORIZING THE DISSOLUTION OF THE VALLEY ALCOHOL SAFETY ACTION PROGRAM

WHEREAS, the County of Augusta is a member of the Valley Alcohol Safety Action Program (VASAP), a joint exercise of powers among Augusta and Rockbridge Counties and the Cities of Buena Vista, Lexington, Staunton, and Waynesboro pursuant to Sections 15.2-1300 and 18.2-271.2 of the Code of Virginia; and

WHEREAS, the Policy Board of VASAP resolved on November 1, 2023, to dissolve and begin windup of its affairs, and has communicated to this locality its request that its Board authorize the dissolution of VASAP in accordance with its governing documents.

NOW THEREFORE, the Board of Supervisors of Augusta County, Virginia, hereby ordains that:

1. Its ordinance joining the Valley Alcohol Safety Action Program (VASAP) is repealed, effective December 31, 2023;
2. That the County Administrator is authorized to confer with the chief administrative officers of the other member localities of VASAP, and to equitably divide the personal property of VASAP among its member localities, or, if such personal property is no longer needed by any member locality, sell such property as surplus in the manner provided by law;
3. That the Chair of VASAP is authorized and directed to obtain its release from its lease on its office space in Staunton, provided, however, that only such funds as are held in the name of VASAP or in trust for VASAP shall be spent on such resolution or on rent until such resolution, and no funds of this locality shall be spent therefor; and
4. The City of Staunton is authorized to hold, in trust as fiscal agent of VASAP, VASAP's funds for a period of 12 months following the effective date of this ordinance in order to defray any remaining invoices that may come due from VASAP after the date of its dissolution, after which time such funds shall be distributed to the Commission.

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VALLEY ALCOHOL SAFETY ACTION PROGRAM

Ms. Bragg moved, seconded by Mr. Wells, that the Board approve the ordinance for dissolution of Valley Alcohol Safety Action Program as presented.

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

Motion carried.

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MIDDLE RIVER AG AND FORESTAL DISTRICT

This being the day and time that the Board consider a request from Charles and Donna Patterson to withdraw land from the Middle River Ag and Forestal District.

Julia Hensley, Planner II, stated that this request is to withdraw 6.331 acres owned by Charles and Donna Patterson from the Middle River Agriculture and Forestal District. Staff does not see any adverse impact to the Middle River Ag and Forestal District if this portion of the parcel is withdrawn and the Planning Commission has recommended approval.

The Chairman opened the public hearing.

There being no speakers, the Chairman closed the public hearing.

Mr. Garber moved, seconded by Mr. Slaven, that the Board approve the withdrawal request.

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

Motion carried.

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Mr. Shull stated that there are four ordinance amendment public hearings regarding solar. Ms. Hensley will review each public hearing and then the public hearing will be opened to allow public comments on the ordinance amendments.

Mr. Garber stated that due to a potential conflict of interest he will be abstaining from voting on the four ordinance amendments.

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The Chairman opened the public hearing for the four ordinance amendments.

Stan Sikorski, 169 Benz Road, Waynesboro, stated that the proposed ordinance amendments are good start and compromise of the County's Comprehensive Plan. He recommended that any further commercial buildings that can support solar panels should be required to install them. With the advent of electric vehicles, it should be mandatory to have covered and solar powered charging stations. Lastly, if other types of solar installations are approved, a corollary clause needs to be added to the Comprehensive Plan to protect the County and its citizens.

Rick Pfizenmayer, 30 Round Hill Drive, Stuarts Draft, urges the Board to approve all amendments of the solar ordinances. He emphasized three important points; all of the amendments are needed clarifications to the 2021 amendments for the solar provisions of the Comprehensive Plan, these amendments will protect investments made in infrastructure that would otherwise become stranded in a burden to taxpayers and rate payers and those who argue that consideration of these amendments should be deferred pending completion of the current Comprehensive Plan revision process have it backwards. These amendments will help in distinguishing solar from other uses such as agriculture, industry, housing and community development.

Matt Hooper, AES Clean Energy, stated that AES has a pending solar application which the County reviewed and accepted as complete in March 2023. It is his understanding that these ordinance amendments will be applied to applications going forward and will not apply to pending applications. The ordinance should contain express language that amendments shall not be applicable to any previously submitted applications that have been deemed complete and notified the completeness review and paid their permit fee.

Phil Martin, Executive Director of Augusta Water, stated that Augusta Water supports the proposed changes to the solar ordinance. The proposed revisions to the solar ordinance make it less likely that funds already spent on water and sewer infrastructure will have been spent needlessly and they make it more likely that future decisions and expenditures can be prudently made. For these reasons, he asks that the Board of Supervisors approve the proposed revisions to the solar ordinance.

Rebecca Angelo, 26 E. High St., Stuarts Draft, stated that she supports all four amendments. There is a need for clearer guidelines in place in controlling the placement size and growth of the numerous solar projects anticipated for Augusta County.

Kristin Jackson, 562 Churchmans Mill Road, Stuarts Draft, supports the amendments to the solar ordinance.

Bobby Whitescarver, 164 Whiskey Creek Road, Churchville, is in favor of clarifying the area to be considered. He encourages the Board to make the small solar requirement 50 acres within the fence. Mr. Whitescarver is against prohibiting solar anywhere. He is against the two-mile limit.

Millard Driver, 333 Eakle Road, Staunton, has a small solar panel on his farm and would like to see dual used in solar projects. Based on his observations, the productivity of pasture could be considerably improved by proper installation of solar.

Nancy Sorrels, 3429 Cold Springs Road, Greenville, would like to see any ordinance changes be put on hold until after the Comprehensive Plan is complete. It makes no sense to change an ordinance that is working and follows the comprehensive plan to

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something that does not match the comprehensive plan and may or may not match the pending citizen input regarding solar development within Augusta County. The County's solar ordinance is one of the most comprehensive in the state.

Kirk Quillen, 1382 Ladd Road, Waynesboro, is speaking on behalf of Waynesboro Nurseries to express disappointment and opposition to the proposed ordinance amendments. The nursery would like to be able to cite carefully developed solar on various parts of their properties. The proposed ordinance amendments disrespects landowners by telling them the County's vision for their properties is more important than their vision.

Randall Wolfe, is concerned with why the County is updating the solar ordinances while in the process of starting the twenty-year update of the Comprehensive Plan. Why does the solar industry have restrictions that no other industry has? Mr. Wolfe asked the Board to hear from more citizens about solar and what land should be used.

Elena Finelli, 90 Broad Street, Harrisonburg, is speaking on behalf of her generation and future generations. She urges the Board to not weaken Augusta County solar ordinance. Changing this will make it impossible to have utility scale solar, which is what we need.

Janet Rollings, 615 Elk Mountain Road, stated that the lack of clarity within the provisions has inadvertently allowed solar developers to exploit gaps, often at the expense of homeowners who rely on the preservation of their neighborhood's residential character. These proposed amendments are not just adjustments to policy. They encapsulate the collective voice of residents who have weathered the storms of previous solar project controversies. Delaying approval of these amendments only perpetuates the uncertainties that have fueled the community's discontent.

Jared Burden is the Virginia Policy Advisor for the Center for Infrastructure and Economic Development and also a partner in a law firm based in Harrisonburg. The Center for Infrastructure and Economic Development has a strong opinion that numerical caps, density percentages, and radius restrictions, such as the two-mile restriction, are ill advised on a policy level and more importantly, are suspect under Virginia state and constitutional law. Boards should not tie their hands when considering solar projects. Solar should be addressed on a case by case basis. He urges the Board to take the Planning Commission's recommendation and not approve the two-mile restriction.

Virginia Badgett, Elm Spring, LLC, stated that earlier this year a twenty-five-acre small scale distributed solar project on the family farm. The current solar ordinances work. When the solar project is completed, it will improve the farm's financial performance, maintain the mixed used agricultural character of the farm through solar grazing and ensure the family will continue to own the land and operate the farm for the future. Currently, the farm is in an urban service district. At the time of purchase, it was not mapped as an urban service district. The family has no interest in selling or developing the land. Small scale solar allows the family to keep the farm as multi use. The proposed changes to the solar ordinances strip away the rights of family farm owners to make the best decisions for their land and their circumstances.

George Taylor, 3941 Morris Mill Road, has solar panels installed at his residence and is satisfied at this point. He has also installed solar panels for their business. He recommends looking at all rooftops and distribution centers for solar panel placement.

Jean Smith, 419 Wyndham Hill Drive, Fishersville, is concerned about the proposed changes regarding solar energy systems in Augusta County. Current climate changes have fueled extremes in weather worldwide. Increasingly more violent weather events

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happen as the climate crisis intensifies. The Board of Supervisors has the opportunity to make decisions on how the County moves forward in ensuring future generations will benefit. She recommends waiting on approving the ordinance changes until after the Comprehensive Plan is complete.

Eric Martin, 18 Laurel Street, Harrisonburg, stated that he believes the amendments that speak to Urban Service areas should be rejected because they do not reflect a balanced land use and they do not ensure that the overall long term common good of the community is kept in balance according to the current Comprehensive Plan. It does not make sense to make changes to these ordinances until after the Comprehensive Plan is complete.

Jack Barber, 169 Windsor Drive, Fishersville, stated that there is very little land that can be used in the County for solar power because of the limitations of the infrastructure. He encourages the Board to vote against the ordinance amendments.

Skyler Zunk is speaking on behalf of Energy Right and stated that solar can be a very valuable partner in preserving agriculture economy. The ordinances will not incentivize the types of projects that the Board has signaled they want to see come to the County. Moving the size of projects down from fifty to twenty-five will put more projects in from of the Board and away from the Board of Zoning Appeals. The two-mile distance separation makes no sense. Drawing a two-mile line from one project to another is not going to make that second project any better on the view shed. The two-mile regulation will hurt the ag economy in Augusta County. There is plenty of land in urban service area and community development areas that are owned by landowners who want to explore solar on their land. These ordinances need to be studied more.

Karen Cohen, Gentry Lake Attorneys, Roanoke, represents solar developers; including AES which has a pending project under the existing ordinance. Clarification is needed to stated that changes to the ordinances 20-75.6 and 20-75.8 needs an expressed provision that they do not apply to pending applications.

There being no other speakers, the Chairman closed the public hearings.

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ORDINANCE AMENDMENT – CHAPTER 25 SECTION 25-70.1

This being the day and time that the Board consider an ordinance to amend Chapter 25. Zoning. Division A. in General Article VI.D. Solar Energy Systems. Section 25-70.1. Definitions. The Planning Commission recommends approval.

Ms. Hensley stated that this amendment defines fenced in area as the land area that includes the photovoltaic panels, stormwater facility or facilities and landscaping that will be taken out of land use taxation. It also redefines small solar energy systems as projects with less than twenty-five fenced in acres and large solar energy systems as projects with greater than twenty-five fenced in acres.

Dr. Seaton questioned who directed staff to review this ordinance amendment.

Ms. Carter questioned why the acreage went from 50 acres to 25 acres.

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ORDINANCE AMENDMENT – CHAPTER 25 SECTION 25-70.1 (CONT'D)

Ms. Bragg stated that the Comprehensive Plan Update is in the process and that process is expected to take about fifteen months to complete. Any changes that would need to be considered would be another two to three more months. This year alone, staff has received fifteen project requests that are somewhere in the process of consideration. The volume of the projects that we are receiving speaks to the need for better clarification on the policy now.

Ms. Bragg moved, seconded by Mr. Wells, that the Board approve the ordinance as presented.

Ms. Carter stated that taxpayer's money is being spent to revise and update the Comprehensive Plan. It has been pointed out that there is some potential policy and legal implications that are associated with the proposed ordinances. It is important to treat people equally especially when it comes to land owner's rights. Ms. Carter encourages the Board to postpone any changes to the solar ordinances to allow for more time to evaluate the situation and get it right.

Dr. Seaton stated that the issue of solar was debated a couple of years ago. What was approved then affects how solar is placed in Augusta County now. We already have restrictions that are in the Comprehensive Plan, we do not need to make an ordinance out of them. There is no good reason for needing the four amendments. Ordinance one will only politicize the approval process by bringing more projects to the Board of Supervisors. Keeping it at 50 acres versus 25 acres is the way to go. If these ordinances are passed, the County will be overregulating a person's land. Dr. Seaton does not want to see every farm field covered in panels, but there are definitely areas of the County that be used for solar that will not affect view sheds. Some think that natural gas is cheaper than other forms of energy production, but that is no longer the case when compared to utility scale solar. The decision of solar should be left to the individual and not a decision that comes from law. Dr. Seaton does not agree with any of the four ordinance amendments.

Mr. Wells stated that if the ordinance amendments are passed tonight does not mean they can't be amended again after the completion of the Comprehensive Plan.

Mr. Shull stated that these ordinance amendments are a way to put this on hold until the Comprehensive Plan is complete and then get more public input and make the necessary changes at that time. There was a wind study done several years ago. At that time, that landfill did not show sustainable winds in April, but every other month was okay during the study. Technology has changed and should be revisited. A windmill will product four megawatts and it takes seven acres to produce one megawatt under solar panels. The topsoil is being stripped from the farming fields to install solar. The production of these fields will never be the same. There needs to be regulations in place. He is in favor of passing the ordinance amendments and then changes can be made as necessary.

Dr. Seaton moved, seconded by Ms. Carter, that the Board approve an amendment to Ms. Bragg's original motion changing 25 acres to 50 acres.

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

Motion failed.

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ORDINANCE AMENDMENT – CHAPTER 25 SECTION 25-70.1 (CONT'D)

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

Motion carried.

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ORDINANCE AMENDMENT-CHAPTER 25, SECTION 25-70.4

This being the day and time that the Board consider an ordinance amendment to amend Chapter 25. Zoning. Division A. in General. Article VI.D. Solar Energy Systems. Section 25-70.4. Uses permitted by special use permit by the Board of Zoning Appeals. The Planning Commission recommends denial of the proposed amendment.

Ms. Hensley stated that this amendment adds the provision for small solar energy systems to be prohibited in mapped planning policy areas as they exist today, December 13, 2023, designated as urban service areas and community development areas within the Comprehensive Plan. It also adds the standard for the proximity of small solar energy systems to not be sighted within two miles of an approved or existing, small or large solar energy system.

Ms. Bragg made several points regarding this ordinance amendment. Out of all of Augusta County only six percent of the land is in Urban Service or Community Development. Augusta Water makes financial decisions based on County ordinances and the Comprehensive Plan. By allowing solar to utilize space that has been planned for development, the County is forcing Augusta Water to switch from being proactive on future development to reactive to projects and economic opportunities. Restricting projects in Urban Service and Community Development areas has an impact on neighbors and citizens that live in those areas. The purpose of the two-mile restriction is to not have projects areas that are stacked. The ordinance currently states that projects should not be placed in close proximity to existing solar facilities. The proposed amendment defines the distance. The purpose of the date is because the Comprehensive Plan does get reviewed every five years or so. This is a house keeping measure.

Ms. Bragg moved, seconded by Mr. Slaven, that the Board approve the ordinance amendment as presented and add pending applications will be governed by the law in effect prior to the effective date of this ordinance approval.

Dr. Seaton asked when someone's land is converted to urban service area or community development are they compensated for placing them in that district?

Mr. Fitzgerald answered no.

Dr. Seaton moved to amend the motion to change December 13, 2023 effective date to the date the land was acquired.

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

Motion failed.

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ORDINANCE AMENDMENT-CHAPTER 25, SECTION 25-70.4 (CONT'D)

Dr. Seaton moved, seconded by Ms. Carter, that the Board remove the two-mile limit from the ordinance.

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

Motion failed.

Mr. Shull directed the Board to vote on the original motion from Ms. Bragg.

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

Motion carried.

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ORDINANCE AMENDMENT-CHAPTER 25, SECTION 25-70.6

This being the day and time that the Board consider an ordinance amendment to amend Chapter 25. Zoning. Division A. in General. Article VI.D. Solar Energy Systems. Section 25-70.6. Uses permitted by special use permit by the Board of Supervisors. The Planning Commission recommends approval of the proposed amendment.

Ms. Hensley stated that this amendment adds the provision for large solar energy systems to be prohibited in mapped planning policy areas as they exist today, December 13, 2023, designated as Urban Service Areas and community development areas within the Comprehensive Plan.

Ms. Bragg moved, seconded by Mr. Slaven, that the Board approve the ordinance amendment as presented and pending applications will be governed by the law in effect prior to the effective date of this ordinance approval.

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

Motion carried.

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ORDINANCE AMENDMENT-CHAPTER 25, SECTION 25-70.8

This being the day and time that the Board consider an ordinance amendment to amend Chapter 25. Zoning. Division A. in General. Article VI.D. Solar Energy Systems. Section 25-70.8. Location, appearance and operation of a project site. The Planning Commission recommends denial of the proposed amendment.

Ms. Hensley stated that this amendment adds the standard for the proximity of large solar energy systems to not be sighted within two miles of an approved or existing small or large energy system.

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NEW HOPE COMMUNITY CENTER IMPROVEMENTS (CONT'D)

Mr. Garber moved, seconded by Ms. Bragg, that the Board approve the funding request.

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 Ms. Bragg that the Board approve the consent agenda as follows:

MINUTES:

Consider minutes from the following meeting:

- Staff Briefing, Monday, October 23, 2023

CLAIMS

Consider claims paid since November 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

Judy Desetti, 160 Carrier Lane, Waynesboro, stated that after recent aggressive behavior from the Sheriff's Department, body cameras are a must for Augusta County

Scott Cline, Mt. Sidney, continues to urge the Board to provide body cameras to the Sheriff's Department.

Randall Wolf, Stuarts Draft, encourages the Board to consider voting to approve body and dash cameras in the upcoming budget. People are losing trust with law enforcement and body cameras would help with that. He also requests that the Board rescind the second amendment sanctuary resolution that was adopted December 2019.

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MATTERS TO BE PRESENTED BY THE BOARD

Dr. Seaton moved that the Board re-appoint him to serve on the SAW-MPO and CAP-SAW effective January 1, 2024.

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

Mr. Shull would like to work with the fire-rescue volunteers on their response times.

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MATTERS TO BE PRESENTED BY STAFF

Mr. Fitzgerald discussed the following:

1. The beginning of 2024 is going to be busy for the County. The reassessment is almost complete and along with that will be the budget. The Fire/Rescue Strategic Plan will happen in the first quarter. The courthouse project will be awarded. The Board will be considering award for the new animal shelter. The Comprehensive Plan and the Economic Development Strategic Plan will continue to go through the process.
2. The Board's consideration is needed to allow for advertising the Chapter 5-Animal Ordinance amendments to be held on January 24, 2024.

Dr. Seaton asked several questions regarding the wording in the proposed animal ordinance amendments.

Mr. Slaven moved, seconded by Ms. Bragg, that the Board approve advertising for public hearing to be held on Wednesday, January 24, 2024.

Mr. Slaven called for the question.

Vote was as follows to call for the question: Yeas: Shull, Slaven, Garber, Wells,
 Bragg, and Carter
 Nays: None
 Abstain: Seaton

Motion carried.

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

Motion carried.

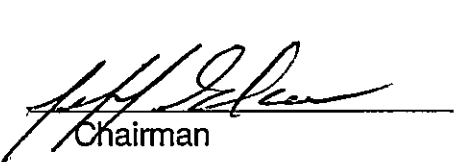
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ADJOURNMENT

Mr. Slaven moved 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