

January 25, 2023

The Regular Meeting of the Rockingham County Board of Supervisors was held on Wednesday, January 25, 2023, at 6:00 p.m., at the Rockingham County Administration Center, Harrisonburg, Virginia.

The following members were present:

- DEWEY L. RITCHIE, Election District #1
- SALLIE WOLFE-GARRISON, Election District #2
- RICK L. CHANDLER, Election District #3
- WILLIAM B. KYGER, JR., Election District #4
- MICHAEL A. BREEDEN, Election District #5

Also present:

BRYAN F. HUTCHESON, Sheriff

- STEPHEN G. KING, County Administrator
- THOMAS H. MILLER, JR., County Attorney
- CASEY B. ARMSTRONG, Assistant County Administrator for Economic Development
- PATRICIA D. DAVIDSON, Assistant County Administrator for Finance & Operations
- RHONDA H. COOPER, Director of Community Development
- PHILIP S. RHODES, Director of Public Works
- KELLY S. GETZ, Zoning Administrator
- DYLAN L. NICELY, Land-Use Planner
- MOLLY S. BARNETT, Deputy Clerk
- DONALD F. KOMARA, Residency Administrator  
Virginia Department of Transportation
- C. BURGESS LINDSEY, Assistant Residency Administrator  
Virginia Department of Transportation

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**CALL TO ORDER  
PLEDGE OF ALLEGIANCE  
INVOCATION.**

Chairman Ritchie called the meeting to order at 6:00 p.m.

Supervisor Kyger provided the invocation, and Public Works Director Rhodes led the Pledge of Allegiance.

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**APPROVAL OF MINUTES.**

On motion by Supervisor Chandler, seconded by Supervisor Breeden, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board approved the minutes of the regular meeting of January 11, 2023.

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**CONCERNS REGARDING COURT SQUARE THEATER PROGRAMMING.**

Tom Heffernan, County resident, appeared on behalf of City Elders of Virginia and shared concerns surrounding an upcoming drag show at Court Square Theater.

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**REPORT – VIRGINIA DEPARTMENT OF TRANSPORTATION.**

The Board heard Mr. Komara’s report on the activities of the Transportation Department, including updates to recent bridge, road, and rural rustic projects.

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**RECESS.**

At 6:33 p.m., Chairman Ritchie recessed the regular meeting.

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**JOINT MEETING WITH THE MASSANUTTEN WATER AND SEWER AUTHORITY – CONSIDERATION OF RESOLUTION.**

At 6:33 p.m., Chairman Ritchie called to order a joint meeting of the Rockingham County Board of Supervisors and the Massanutten Water and Sewer Authority.

APPROVAL OF MINUTES

On motion by Supervisor Breeden, seconded by Supervisor Kyger, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board approved the Massanutten Water and Sewer Authority minutes of the reorganizational meeting held on January 11, 2023.

CONSIDERATION OF RESOLUTION

County Attorney Miller stated County staff and Board members attended two meetings with Massanutten Property Owners Association (MPOA). The purpose of the meetings, Mr. Miller explained, was to ensure that MPOA members and property owners understood the process, costs, risks, and next steps associated with the acquisition of the water and sewer system on the Mountain. He emphasized that customers of Massanutten Public Service Corporation (MPSC) have always been the driving force behind this initiative, not the County or Board of Supervisors.

Mr. Miller said that Board members have received complaints about MPSC from Massanutten residents for years. He stated that, contrary to recent assertions made by legal counsel for Corix, the Board is not rushing into a decision. Acquiring the water and sewer system on the Mountain has been discussed for a very long time. The assertion that there is some rush to judgement are merely another part of the attempts by Corix to delay the process and increase costs, all in an effort to discourage property owners and the community from moving forward. He said property owners are ready to purchase the system now at a reasonable price. Much of the higher costs Corix talks about can be alleviated if Corix is willing to negotiate, rather than run up costs through litigation.

Mr. Miller stated that, across the Commonwealth, a typical monthly bill for a household of four to five people is approximately \$50.00, and in Rockingham County, monthly bills average about \$47.50. He said Massanutten residents pay approximately \$200.00 per month. Mr. Miller said that what is considered fair market value of the system on the Mountain can also be influenced by the value of services rendered as determined by looking at what other systems charge their customers, rather than the State Corporation Commission (SCC) approved cash flow for MPSC.

After reviewing the graph presented by Corix’s legal counsel during the December 14, 2022, meeting, Mr. Miller pointed out that none of the examples included the values of the systems as estimated by the company’s appraiser, and none of the cases were in Virginia. One point made by Corix’s legal counsel was that government appraisers, specifically including the appraiser the County is working with, must not know very much about appraising water and sewer systems because the courts in the cases he cited handed out judgements of higher values.

What he failed to report was that, in those same cases, the company's appraiser was farther off on the high side of the court's value than the government's appraiser was low. Sometimes much farther off. Mr. Miller cited one particular example from Ojai, California, in which the company's appraisal was exorbitantly higher than both the government appraisal and the final price determined by the court. He said the information presented on December 14 was expressed in a manner intended to divide the community and Board members.

Mr. Miller indicated debt service on the appraisal price of \$25.8 million, plus running the system, would most likely result in monthly bills equal to or less than residents' current bills. He also explained that if MPOA and property owners should decide at any point after commencing litigation not to purchase the system, they will be responsible for Corix's legal fees, which estimated by their representative will be \$2 million, twice the legal fees of the County.

Mr. Miller said on January 21, 2023, the MPOA Board of Directors made a strong statement of support by adopting the following resolution:

MASSANUTTEN PROPERTY OWNERS ASSOCIATION, INC.  
BOARD OF DIRECTORS

BOARD RESOLUTION #R23-02

**A Resolution Supporting the  
Rockingham County Board of Supervisors and Massanutten Water & Sewer Authority  
of Intent To Purchase The Massanutten Public Service Corporation System**

**Whereas**, for decades, property owners in Massanutten have been subjected to unreasonably high water and sewer rates combined with frequent service disruptions and lack of proper investment in capital replacement; and

**Whereas**, the service provider, Massanutten Public Service Corporation (MPSC), a State Corporation Commission regulated entity, has utterly failed to come to terms with real property owners and water and sewer customers; and

**Whereas**, the MPOA Board of Directors has heard the calls of action by property owners and rate payers in the past and has fought several instances of repeated requests for unsubstantiated rate increases, disproportionately falling on property owners, who are already burdened with some of the highest rates in the Commonwealth, and

**Whereas**, in addition to the incredibly burdensome rates, MPSC also has established a record of routine major service disruptions through the lack of adequate pressure throughout various main lines, repeated leaks, and substandard brownish water; and

**Whereas**, MPOA and Great Eastern Resort Corporation have advocated that the Rockingham County Board of Supervisors intervene on their behalf in the absence of sufficient response by MPSC; and

**Whereas**, heeding those calls in 2020, the County Board of Supervisors ordered the formation of the Massanutten Water and Sewer Authority for the express purpose of the "acquisition...[and] operation...of a water system and a sewer system...for the area known of as the Massanutten community, and currently served by the Massanutten Public Service Corporation... "

**Whereas**, the County Board of Supervisors has conducted an independent appraisal of the MPSC system and introduced a resolution offering \$25.8 million to acquire MPSC, which was considered during a joint public hearing on December 14, 2022; and

**Whereas**, the MPOA Executive Committee subsequently held a meeting January 9, 2023 with County officials and Great Eastern Resort Corporation representatives present to discuss the proposed resolution; and

**Whereas**, The MPOA Board of Directors has determined that the County Board of Supervisors adopting this joint resolution would be in the long-term interests of its

property owners to better address and remedy the multitude of operational, rate, and service deficiencies experienced as customers of the existing MPSC.

**Now, Therefore, We, the Board of Directors of Massanutten Property Owners Association, Resolved** support the passage of a joint resolution by the County Board of Supervisors and Massanutten Water & Sewer Authority of their intent to purchase the water and sewer system (MPSC) currently owned and operated by Utilities, Inc.;

**Be it Further Resolved,** The MPOA Board of Directors supports the County's pursuit of the necessary legal means to acquire the MPSC system should this offer be declined.

**Resolved this 21st day of January 2023.**

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Mr. Miller said the proposed resolution authorizes Administrator King to make the offer, and the matter will come before the Board again before a condemnation petition is filed. He concluded that a negotiated settlement is unexpected.

On motion by Supervisor Breeden, seconded by Supervisor Kyger, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the following resolution was adopted by the Board of Supervisors and the Massanutten Water and Sewer Authority:

**A JOINT RESOLUTION OF  
THE BOARD OF SUPERVISORS OF ROCKINGHAM COUNTY, VIRGINIA,  
AND THE  
MASSANUTTEN WATER AND SEWER AUTHORITY**

**RECITALS**

1. For many years, residential and commercial real property owners on Massanutten Mountain earnestly and consistently urged the Board of Supervisors of Rockingham County, Virginia (the County, or, the Board), to take over the water and sewer service on the Mountain. The complaints made by Massanutten property owners include such issues as:

A. Water and sewer rates on the Mountain are now and have been for a long time significantly higher than rates charged by the County's water and sewer system and water and sewer authorities administered by the County. In fact, the monthly bills sent to residential customers on the Mountain are three-and-one-half (3 ½) to four (4) times bills sent to typical residential customers by water and sewer services across the Commonwealth.

B. Significant concern over the current state of repair of the aging water and sewer infrastructure, and apparent lack of provisions for the long-term capital repair and replacement of the same.

C. Service disruptions caused by inadequate pressure, leaks in main lines, water entering residences with suspended brown particulate.

D. Dissatisfaction with responsiveness to immediate casualties and other problems.

E. The service provider, Massanutten Public Service Corporation (MPSC), has established a history of frequent rate

increases that have further widened the gap between MPSC's rates and neighboring publicly operated systems. Recent percentage increases have significantly exceeded cost of living increases.

F. The residential and commercial properties and enterprises on Massanutten Mountain constitute some of the County's most successful economic development activities. They contribute significantly to the County's tax base.

2. It is very much in the interests of the Massanutten community, as well as Rockingham County generally, that there be reliable and affordable water and sewer service on the Mountain.

3. Though the Board of Supervisors prefers to refrain from entering into the affairs of private parties, nevertheless, after listening for several years to the parties involved, the Board, in 2020, ordered the formation of the Massanutten Water and Sewer Authority (the Authority) for the express purpose of the "acquisition . . . [and] operation . . . of a water system and a sewer system . . . for the area known of as the Massanutten community, and currently served by the Massanutten Public Service Corporation . . ." Articles of Incorporation, Mass Wtr and Swr Authority.

A. The County and the Authority, through their staff, contacted MPSC representatives seeking to enter into negotiations for a sale of the water and sewer system. MPSC representatives made it clear MPSC would not participate in a negotiated sale.

B. The Authority and the County then convened a team of lawyers, appraisers, engineers, and other experts and advisers, to work with staff to develop a formal, bona fide, offer based on a third-party appraisal performed by an appropriately experienced and certified appraiser. Such an appraisal has been completed and the offer is ready to be made to MPSC.

4. Though the County has no interest in controlling all water and sewer services operated in the County, and acquiring the Massanutten Public Service Corporation system would be of no benefit to the County's other systems, the Massanutten Water and Sewer Authority and its customers would benefit from sharing assets and personnel with other County systems.

5. Should the County, as opposed to the Authority, proceed with condemnation, it will do so with the understanding that the water and sewer system, once acquired, will be transferred in whole to the Authority.

A. Regardless of whether the County or the Authority proceeds with the condemnation, the Authority ultimately will bear the entirety of the cost and expense of research, legal and expert fees, litigation, acquisition, debt issuance and service, ownership, and operation of the water and sewer system. The County has been advancing, and will continue to

advance, such costs and expenses with the understanding that the Authority will, at the earliest opportunity, reimburse the County in the entirety so that the cost of the water and sewer system is ultimately borne entirely by the Authority and its customers.

Having conducted a joint public hearing on this Resolution on December 14, 2022, and in consideration of input received from the public and the Recitals stated above, it is hereby

RESOLVED and AGREED by the Board of Supervisors of Rockingham County, Virginia, and by the Board of the Massanutten Water and Sewer Authority that

1. It is the intention of the County and the Authority to acquire Massanutten Public Service Corporation's water and sewer system in its entirety. By entirety, the County and Authority mean to acquire the whole water and sewer system as defined by Virginia Code §§ 15.2-1906 and 15.2-2146. The Boards of the County and the Authority find that this acquisition is for a public purpose and is necessary to provide affordable and reliable water and sewer services to citizens and property owners of Rockingham County in the Massanutten Mountain community. It is the County's and the Authority's desire and intention to do so by a voluntary transaction after reaching an agreed upon fair market value through good faith negotiations. However, should negotiations prove ineffectual, the County and Authority intend to proceed with the acquisition through the power of eminent domain.
2. The County Administrator is authorized to act on behalf of the Board of Supervisors of the County and the Board of the Authority as each entity's chief executive officer to execute and deliver a letter of offer of fair market value, as recommended by legal counsel, in accordance with Virginia Code § 25.1-204.
3. A copy of a letter of offer is attached to, included in, and approved by this Resolution. The letter shall be in substantial accordance with the attached letter.
4. As it exists as of the date of this Resolution, a copy of the Executive Summary of the Fair Market Opinion Report prepared by John M. Mastracchio, ASA, CFA, P.E., Executive Vice President of Raftelis, is attached to, included in, and approved by this Resolution, as is the Fair Market Opinion Report itself. The Fair Market Opinion Report, and its Executive Summary, are approved and accepted and shall be in substantial accordance with the attached copies. A copy of the appraisal in its entirety was sent to legal counsel for MPSC on December 15, 2022.
5. The County and the Authority agree that the County's involvement in this acquisition effort is entirely on behalf of the Authority and its constituents, who are also constituents, taxpayers and property owners of the County. All funds expended and advanced by the County in pursuit of the acquisition, including but not limited to attorney, appraiser, engineer, and other expert fees, costs of preparation for and conducting any necessary litigation, bond or other debt

issuance and service, shall ultimately be reimbursed to the County by the Authority from fees collected by the Authority once the Authority begins collecting fees, as the County and Authority shall then agree.

6. All property acquired by the County in pursuit of the acquisition of the water and sewer system, including any and all interests in real estate, will be conveyed to the Authority as part of the final conclusion of this undertaking.

RESOLVED BY the Board of Supervisors of Rockingham County, Virginia, and the Board of the Massanutten Water and Sewer Authority

This 25th day of January, 2023.

**ADJOURN**

Chairman Ritchie adjourned the joint meeting at 6:50 p.m.

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**RECONVENE REGULAR MEETING.**

At 6:50 p.m. Chairman Ritchie resumed the regular meeting.

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**DIRECTOR OF PUBLIC WORKS.**

At 6:50 p.m. Chairman Ritchie resumed the regular meeting. Public Works Director Rhodes stated bids were received on January 5, 2023, for Pump Station Maintenance for Public Works' Utilities division. Two bids were received and after review, Mr. Rhodes said staff recommended awarding the project to Bradford Morris Excavating in the amount of \$397,600. He noted that amount is for a one-year period.

In response to a question from Chairman Ritchie, Mr. Rhodes said due to the knowledge and skills required, the department has struggled to retain and recruit qualified staff for servicing the sewage pump stations.

On motion by Supervisor Kyger, seconded by Supervisor Wolfe-Garrison, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board awarded the Pump Station Maintenance project to Bradford Morris Excavating for a one-year period in the amount of \$397,600.00.

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**DIRECTOR OF COMMUNITY DEVELOPMENT.**

Director of Community Development Cooper stated three projects submitted for SmartScale funding were not approved. She noted a fourth project at the intersection of Island Ford Road (Route 649) and South East Side Highway (Route 340) was withdrawn. Ms. Cooper explained for that project, VDOT would be funding a railroad crossing and preemptive signal through high-risk funds.

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**PUBLIC HEARINGS.**

At 7:03 p.m., Chairman Ritchie opened the public hearing and Land-Use Planner Nicely reviewed the following request:

REZ22-2098 Candice DiMarchi Murphy, 375 Oakwood Drive, Rockingham, VA, request to rezone 4.062 acres from I-1 C (Industrial with Conditions) to I-1 C (Industrial with Conditions). This is a proffer amendment to add the use, 'Dwelling, in-house security service.' The property is located on the western side of Kratzer Road (Route 753) approximately 0.18 mile north of Pulses Hill Lane (Route 908). Tax Map # 94-(A)-L110A. Election District 2.

The applicant stated she currently owns and resides at Mt. Crawford Mini Storage. Ms. Murphy explained she wishes to expand her business in the future, and the proffers from the previous owner did not allow for on-site residential security.

No public comments were received, and Chairman Ritchie closed the public hearing at 7:08 p.m.

On motion by Supervisor Wolfe-Garrison, seconded by Supervisor Chandler, and carried by a roll call vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; RITCHIE – AYE; WOLFE-GARRISON – AYE; the Board approved REZ22-2098 Candice DiMarchi Murphy, 375 Oakwood Drive, Rockingham, VA, to rezone 4.062 acres from I-1 C (Industrial with Conditions) to I-1 C (Industrial with Conditions). This is a proffer amendment to add the use, 'Dwelling, in-house security service.' The property is located on the western side of Kratzer Road (Route 753) approximately 0.18 mile north of Pulses Hill Lane (Route 908).

Statement of Proffers:

1. A 20' wide strip of land running the length of the property along Kratzer Road will be dedicated to public use and will be shown on the subdivision plat.
2. There shall be no more than ten (10) employees per shift.
3. The uses on this property shall be limited to:
  - a. Agricultural
  - b. Research Facility
  - c. Biomass conversion facility
  - d. Contractor's operation
  - e. Metal-working facility
  - f. Recycling center
  - g. Warehouse
  - h. Motor vehicle tow service (not an impound lot of automobile graveyard)
  - i. Recreational vehicle storage area
  - j. Car wash
  - k. Public safety facility
  - l. Carpet and rug cleaning service
  - m. Electronic data storage or processing center
  - n. Mail service
  - o. Mini-storage
  - p. Office
  - q. Machinery and equipment center
  - r. Water storage tank
  - s. Motor vehicle repair shop and sales lot
  - t. Seed and feedstore
  - u. Dwelling, in-house security service

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**ADJOURN.**

Chairman Ritchie declared the meeting adjourned at 7:16 p.m.

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Chair