

February 26, 2020

The Regular Meeting of the Rockingham County Board of Supervisors was held on Wednesday, February 26, 2020, at 6:00 p.m. at the Rockingham County Administration Center, Harrisonburg, Virginia. The following members were present:

- BRENT V. TRUMBO, 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
- RHONDA H. COOPER, Director of Community Development
- PATRICIA D. DAVIDSON, Director of Finance
- PHILIP S. RHODES, Director of Public Works
- BRADFORD R. R. DYJAK, Director of Planning
- KELLY S. GETZ, Deputy Zoning Administrator and Code Compliance Officer
- JESSICA G. KILBY, 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
INVOCATION
PLEDGE OF ALLEGIANCE.

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

Supervisor Chandler provided the Invocation and County Administrator King led the Pledge of Allegiance.

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INTRODUCTION OF STUDENTS.

Students from James Madison University and Eastern Mennonite and Turner Ashby high schools introduced themselves to the Board.

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APPROVAL OF MINUTES.

On motion by Supervisor Chandler, seconded by Supervisor Trumbo, and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board approved the minutes of the regular meeting of February 12, 2020.

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TRANSPORTATION DEPARTMENT.

The Board heard Mr. Komara’s report on the activities of the Transportation Department, including updates to bridge, road and rural rustic projects. He announced a public hearing for the bridge replacement project on Smithland Road (Route 720) scheduled for Thursday, March 26, 2020, from 4-6 p.m., at the VDOT Harrisonburg Residency Office.

Board members brought attention to the following transportation matters:

- South East Side Highway (Route 340) and Island Ford Road (Route 649) - large potholes are developing on the overlay where the lanes change;
- Route 42 North and South of the City limits – request to clear bicycle and buggy lanes of debris;
- Weavers Road (Route 726), just west of Eversole Road (Route 766) – evaluate rough section of pavement in center portion of Weavers Road;
- Intersection of Indian Trail Road (Route 620) and Cross Keys Road (Route 276) - request to temporarily extend green traffic signal to reduce traffic backup on Indian Trail Road (until turn lane improvements occur);
- Interstate 81 in Mount Crawford - ramps are beginning to show wear and tear;
- Airport Road (Route 727) – request for speed study due to speeding concerns

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COMMISSIONER OF THE REVENUE – TAX REFUND.

Commissioner of the Revenue Lowell R. Barb presented a refund request. The assessed value of a portion of property in the County was incorrect due to a clerical error during the 2018 general reassessment. The real estate taxes were paid in full for 2018 and 2019. Commissioner Barb would like to issue a refund of \$5,183.18 for the overpayment.

On motion by Supervisor Breeden, seconded by Supervisor Chandler, and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board directed the Treasurer to refund \$5,183.18 to Merck Sharp & Dohme Corp. for the erroneous payment of real estate taxes in 2018 and 2019.

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CONSIDERATION – PROPOSED ORDINANCE REGULATING INOPERABLE VEHICLES.

Deputy Zoning Administrator Getz reviewed a proposed ordinance to regulate the storage of inoperable vehicles in the County. Mr. Getz reported that over the past ten years, complaints related to inoperable vehicles have been one of the main issues he has dealt with. He explained that, currently, the only way to address complaints is through the County Zoning Ordinance by issuing a zoning violation, likely creating a legal case for the County Attorney’s Office. Mr. Getz indicated many Virginia localities have an ordinance to specifically address inoperable vehicles. He said it is staff’s belief that the ordinance will be a more efficient way to address violations.

By concurrence, the Board authorized staff to advertise its intent to adopt the proposed inoperable vehicle ordinance on March 11, 2020.

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REQUEST TO STRENGTHEN SECOND AMENDMENT STATUS.

Brian Robbins provided the Board with a proposed resolution for consideration. The resolution called for a muster of County militia in order to collect contact information and inspect persons ready and able for duty.

Mr. Robbins said the legal basis for the Virginia Militia begins with Article 1 Section 13 of the Virginia Constitution, with further precedent in Section 44-1 of the Virginia Code, which defines and establishes the militia. He said the Board has the authority to pass the resolution, which does not call the militia into service.

Mr. Robbins explained in detail how a local militia could be of use during any time of emergency. For example, he said it could be used to cover a broad search for a missing person, to clear roads after a derecho, or to support fire and rescue during a forest fire. He said the militia, being composed of the body of people, is a self-supporting and self-funded entity requiring nothing from the County budget.

Chairman Kyger responded to the request with the following statement:

Mr. Robbins, thanks for your time and effort bringing this matter to the attention of the Board of Supervisors. We also thank you for the courteous manner with which you have proceeded, including your giving us written materials in advance of your presentation tonight. That gave us the opportunity to study the matter before you spoke with us this evening.

We have sought counsel from several different sources to get as broad a view as possible. The consensus of the opinions we have received is that Virginia localities do not have the authority to take the action you ask us to take.

The difficulty is that neither federal nor state law delegates to local governments such authority or duty. Specifically, under Virginia law, it is the Governor, acting in his capacity as the Commander-in-Chief who calls out the militia, and retains command of the militia. Local officials may request that the Governor call out the militia in certain circumstances, but it is the Governor who must issue the call. Once called out, the militia is under the military control of the governor, not local civilian authorities.

We acknowledge the two historical incidents where local, independent companies were formed, but we cannot accept those incidents, which happened before the formation of much of our existing constitutional and statutory law, and in extreme circumstances, as legal precedent for local legislative action today.

We are also aware of the argument that, while state and federal law provide for the Governor and the President to call out their respective militia, those laws do not prohibit or preclude local governments from doing so. Unfortunately, in Virginia, not prohibiting is not enough to grant authority.

As you are probably aware, Virginia is a Dillon Rule state. As understood by the Virginia Supreme Court, that means local governments have “only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.” Furthermore, the Supreme Court has made it clear that in Virginia the Dillon Rule is to be strictly construed, and that “[i]f there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body”.

So, while the Board of Supervisors shares your concerns regarding the preservation of all Constitutional rights of the county’s citizens, we have concluded the Board lacks the authority to take the action you request. This matter is closed.

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RECESS.

Chairman Kyger recessed the meeting for a meeting of the Lake Shenandoah Stormwater Control Authority.

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RECONVENE.

Chairman Kyger reconvened the regular meeting at 6:44 p.m.

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COUNTY ADMINISTRATOR'S STAFF REPORT.

The Board received and reviewed Mr. King's staff report dated February 21, 2020.

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ASSISTANT COUNTY ADMINISTRATOR'S STAFF REPORT.

The Board received and reviewed Mr. Armstrong's Economic Development staff report dated February 26, 2020.

Mr. Armstrong announced that a new Harrisonburg & Rockingham County Destination Guide will be available next week. The guides will be available at different locations throughout the City and County, the Chamber of Commerce, and via Visitor Centers.

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FINANCE DIRECTOR'S STAFF REPORT.

The Board received and reviewed the Finance Director's staff report dated February 26, 2020.

Finance Director Davidson reported that six bids were received for the safety netting installation on the four baseball/softball fields at Rockingham Park at the Crossroads. Staff recommended awarding the contract to the low bidder, Forenet Inc., for \$47,525.00.

On behalf of the Finance Committee, on motion by Supervisor Breeden, seconded by Supervisor Trumbo, and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board authorized staff to accept the bid from Forenet Inc., for \$47,525.00, for the installation of safety netting on the four baseball/softball fields at Rockingham Park at the Crossroads.

Mrs. Davidson reported that staff would like to issue a Design-build Request for Proposals (RFP) for a pavilion at the Park. Funds are already included in the current year's budget for the project. The design-build process will reduce the delivery schedule and cost for the project.

On motion by Supervisor Chandler, seconded by Supervisor Breeden, and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; the Board authorized staff to issue a Request for Proposal using the Design-build process for a Pavilion at Rockingham Park at the Crossroads.

On behalf of the Finance Committee, Supervisor Breeden expressed appreciation to Finance Director Davidson for the budget information presented at the work session earlier in the day.

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PUBLIC WORKS DIRECTOR’S STAFF REPORT.

The Board received and reviewed Mr. Rhodes’ staff report dated February 26, 2020.

Mr. Rhodes reported that the short extension of the Lilly water system should be completed this week. County Administrator King indicated staff will bring forth a request to adjust connection fees to reflect more of the actual cost and to help offset debt of the Lilly Sanitary District.

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COMMUNITY DEVELOPMENT DIRECTOR’S STAFF REPORT.

The Board received and reviewed Ms. Cooper’s staff report dated February 26, 2020.

Ms. Cooper stated that Virginia Code Section 15.2-2302.B, allows a local governing body to waive the public hearing requirement, if a request for an amendment to proffers does not affect use or density. She reported that HABU Development, LLC seeks to replace an existing proffered condition governing the phasing of construction within South Peak Subdivision. The existing proffers currently limit the developer to no more than 30 building permits in any calendar year. The request would revise the condition to state, “No more than 30 lots will be recorded in any one calendar year.” The project is located on about 22 acres to the northwest of McGaheysville Road, approximately 0.3 mile northeast of Three Leagues Road and zoned R-2C. All other proffered conditions would remain the same.

On motion by Supervisor Breeden, seconded by Supervisor Wolfe-Garrison, and carried by a vote of 5 to 0, voting recorded as follows: BREEDEN – AYE; CHANDLER – AYE; KYGER – AYE; TRUMBO – AYE; WOLFE-GARRISON – AYE; pursuant to Virginia Code 15.25-2302.B, the Board waived the public hearing requirement for HABU Development, LLC to replace an existing proffered condition governing the phasing of construction within South Peak Subdivision.

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2020 CENSUS UPDATE.

Director of Planning Dyjak provided an update concerning the 2020 Census approaching April 1, 2020. He indicated additional information was added to the County’s webpage, County staff partnered with City and County Schools for an art poster contest, and, in coordination with the Registrar’s Office, Census materials will be distributed at polling sites and by mailing inserts. Mr. Dyjak said the County continues to collaborate with its regional partners to disseminate as much information to the community as possible.

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COMMITTEE REPORTS.

The Board heard the following committee reports from Board members and staff:

COMMUNITY CRIMINAL JUSTICE BOARD (CCJB)

The next CCJB meeting is scheduled for March 2, 2020, at 4:00 p.m., at the City Municipal Building.

SHENANDOAH VALLEY PARTNERSHIP (SVP)

Mr. Armstrong mentioned that Jay Langston, Executive Director of the Shenandoah Valley Partnership, is planning to provide an update during the March 25, 2020, Board meeting.

VIRGINIA ASSOCIATION OF COUNTIES (VACO)

Supervisor Kyger stated that he will be in Washington, D.C., February 29 - March 4, 2020, attending the NACo Legislative Conference.

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ADJOURNMENT.

Chairman Kyger declared the meeting adjourned at 6:55p.m.

Chairman