

**BOARD OF SUPERVISORS
REGULAR MEETING
MARCH 24, 2020**

At a regular meeting of the Board of Supervisors of Floyd County, Virginia, held on Tuesday, March 24, 2020 at 7:00 p.m. in the large conference room of the County Administration Building thereof;

PRESENT IN PERSON: Joe D. Turman, Chairman; Jerry W. Boothe, Vice Chairman; W. Justin Coleman and Linda DeVito Kuchenbuch, Board Members; Terri W. Morris, County Administrator; Cynthia Ryan, Assistant County Administrator.

PARTICIPATING REMOTELY BY TELEPHONE FROM HOME pursuant to Virginia Code §2.2-3708.2 and Floyd County's adopted Remote Participation Policy: Lauren D. Yoder, Board Member. The reason for remote participation is to follow public health guidance to observe social distancing.

Agenda Item 1. – Meeting Called to Order.

Chairman Turman called the meeting to order at 7:00 p.m.

Agenda Item 2. – Opening Prayer.

The Opening Prayer was led by Supervisor Coleman.

Agenda Item 3. – Closed Session with Steve Durbin, County Attorney – §2.2-3711 A.8. Legal Advice on Specific Legal Matters.

On a motion made by Supervisor Kuchenbuch, and seconded by Supervisor Boothe, and unanimously carried, it was resolved to go into closed session under Section 2.2-3711, Paragraph A. 8., Legal Advice on Specific Legal Matters – Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel for discussion of instituting emergency procedures to ensure continuity of County government in response to COVID-19 disaster.

Supervisor Coleman – yes
Supervisor Kuchenbuch – yes
Supervisor Yoder – yes
Supervisor Boothe – yes
Supervisor Turman – yes

On a motion of Supervisor Boothe, seconded by Supervisor Kuchenbuch, and unanimously carried, it was resolved to come out of closed session.

Supervisor Coleman – yes
Supervisor Kuchenbuch – yes
Supervisor Yoder – yes
Supervisor Boothe – yes

Supervisor Turman – yes

On a motion of Supervisor Coleman, seconded by Supervisor Kuchenbuch, and unanimously carried, it was resolved to adopt the following certification resolution:

**CERTIFICATION RESOLUTION
CLOSED MEETING**

WHEREAS, this Board convened in a closed meeting on this date pursuant to an affirmative recorded vote on the motion to close the meeting to discuss Legal Advice on Specific Legal Matters in accordance with Section 2.2-3711, Paragraph A.8 of the Virginia Freedom of Information Act;

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby certifies that, to the best of each member's knowledge (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act were heard, discussed or considered in the closed meeting to which this certification applies; and (2) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting to which this certification applies.

Supervisor Coleman – yes

Supervisor Kuchenbuch – yes

Supervisor Yoder – yes

Supervisor Boothe – yes

Supervisor Turman – yes

This certification resolution was adopted.

Agenda Item 5.a. – Floyd County Declaration of Emergency.

On a motion of Supervisor Boothe, seconded by Supervisor Coleman, and unanimously carried, it was resolved to adopt a resolution declaring a state of emergency within the County due to COVID-19 and the peril to life (Document File Number 1101).

Supervisor Coleman – yes

Supervisor Kuchenbuch – yes

Supervisor Yoder – yes

Supervisor Boothe – yes

Supervisor Turman – yes

Agenda Item 6. – Old/New Business.

Mr. Steve Durbin explained the reason for adopting an ordinance instituting emergency procedures to ensure continuity of County government in response to COVID-19 and the peril to life:

- 1) Adoption of an ordinance would allow for the continuity of local government for Floyd County and its constituent bodies pending the resolution of the current COVID-19 emergency;
- 2) The President of the United States has declared a national emergency as a result of the coronavirus pandemic;
- 3) The World Health Organization has declared the coronavirus outbreak to be a pandemic;
- 4) The Governor of the Commonwealth of Virginia has declared a statewide emergency as a result of the pandemic;
- 5) The Director of Emergency Management for Floyd County has declared a local emergency as a result of the pandemic;
- 6) This Board has just ratified that resolution;
- 7) County government still needs to function;
- 8) This is difficult because guidance from the Center for Disease Control, from the Virginia Department of Health, and from the Governor's Office all make it clear that gathering in groups of more than 10 or where you can't observe social distancing of at least 6 feet are to be avoided;
- 9) The typical functioning of government has us gather together to discuss matters in public and in person and doing that could actually make the crisis worse by spreading the virus;
- 10) The Virginia Freedom of Information Act (FOIA) was not really designed to address this issue because it provides for open meetings with the public to be there;
- 11) FOIA provides for remote participation meetings but the public would still be present and a quorum of the public body must still be physically located together in one location that is open to the public;
- 12) FOIA provides one exception to respond to emergencies but that exception is limited in the scope of discussion;
- 13) FOIA allows you to meet entirely electronically where the public is not present in times of a declared emergency but only to respond to the emergency;
- 14) This is all consistent with the Attorney General's opinion issued on March 20 which goes on to say that there is a provision in the Code of Virginia §15.2-1413 that provides specifically notwithstanding any other provision of law, general or special, localities may provide for continuity of government, by adoption of an ordinance;
- 15) Consistent with the Attorney General's opinion you have before you an ordinance that would provide for continuity and provide the ability to meet electronically when necessary to maintain County government functioning;
- 16) As drafted the ordinance provides the same ability to the Boards and Authorities that are created by the County and appointed by this Board;
- 17) It provides an ability to meet electronically to follow best practices to avoid making the coronavirus worse, but still provide for public participation to the best extent possible;
- 18) The ordinance does not tell you what that participation would look like in any given situation because that may change as this develops, but it does provide that this body will provide for public participation in all future meetings to the greatest extent possible;

- 19) I suggest this include giving notice in writing in advance of all meetings, 3 days at least for regular meetings and best practicable when there is a special or emergency meeting;
- 20) Provision needs to be made so the public can submit comments and questions ahead of time in writing or telephonically to the greatest extent that we can because it is still important to provide for public participation and public comment;
- 21) This ordinance would also, whenever there is a deadline prescribed by the County code or the Code of Virginia, to take action and it is impossible or impractical to meet to address that deadline that the deadline would be continued until such time as a meeting can be held and action taken;
- 22) The ordinance also provides authority for the County Administrator to take objective, reasonable action to address the crisis, including purchasing necessary items, pay bills, establish a succession plan if key members of County government were unable to perform their duties;
- 23) The ordinance provides for an automatic expiration after 6 months because authority granted under §15.2-1413 has a 6 month maximum from the date of the emergency so this is intended to be a temporary measure to get us through the worst of the crisis;
- 24) It would be repealed upon the cessation of the emergency;
- 25) The ordinance is effective upon adoption; it can be adopted under §15.2-1427 without advertisement as an emergency ordinance but it will remain effective for only 60 days;
- 26) If the Board wants to take action tonight you will have this emergency procedure in place for 60 days and that would give you enough time to advertise it, have a public hearing, and readopt it for the rest of the 6 month period.
- 27) This ordinance or similar provisions to this ordinance have been adopted by numerous localities in the Commonwealth and it is consistent with best practices and the guidance issued by the Local Government Attorneys of Virginia, the Virginia Municipal League, and the Virginia Association of Counties.

Vice Chairman Boothe – I know there are certain procedures in place when the Chairperson or two Board members ask for a special called meeting. If a certain deadline is not in place you have to sign waivers of notification. Does this ordinance waive any part of that procedure or is that still in place?

Mr. Durbin – That is still in place. If an emergency meeting has to be called we would still give notice to the public at the same time notice is given to the Board of Supervisors that we are going to have a special meeting. Only the matters that are in the notice can be considered, unless all members are there and they consent to the expansion of the agenda.

Vice Chairman Boothe – I believe there is also a provision that if each of us signs it we can waive notification.

Mr. Durbin – That usually comes into play when you have a special called meeting for a particular purpose, but not everybody can be there. Someone who could not participate could sign a waiver that would allow you to expand the agenda if you need to.

Supervisor Kuchenbuch – Just so I am clear, this ordinance now would supersede anything we have on the books. If the health crisis gets worse and we have to meet more than once electronically this supersedes the previous ordinance we have regarding electronic meetings? We can meet as many times electronically as we have to?

Mr. Durbin – Yes, because this is under a completely different code section. I think this Board is committed to, and my advice will always be, to follow the Virginia Freedom of Information Act to the “T” every time we can. But when we are prevented from following it by the emergency, this ordinance would give you the ability to still take action to keep government functioning.

Supervisor Kuchenbuch – You mentioned trying to make it available for people to have input through public means. In your opinion that is what we should strive to do, correct?

Mr. Durbin – Absolutely, to the maximum extent that it is practical to do so.

Vice Chairman Boothe – We are adopting this for 60 days and then it will go out for public comment and sometime before the end of the 60 days, we need to readopt it?

Mr. Durbin – Yes, with 2 advertisements in accordance with normal procedures. The ordinance actually directs the County Administrator to prepare that advertisement so the public sees the ad in the paper to be able to access the ordinance and review it before it would be extended for the rest of the 6 months.

On a motion of Supervisor Kuchenbuch, seconded by Supervisor Boothe, and unanimously carried, it was resolved to adopt an ordinance instituting emergency procedures to ensure continuity of County government in response to COVID-19 disaster (Document File Number 1102).

Supervisor Coleman – yes
Supervisor Kuchenbuch – yes
Supervisor Yoder – yes
Supervisor Boothe – yes
Supervisor Turman – yes

Chairman Turman – I would like to read into the record a resolution that Supervisor Coleman brought to our attention today, and I wholeheartedly agree with him. We have before us a resolution declaring a local day of prayer for Floyd County to be held on March 29. I would like to read the resolution into the record:

**RESOLUTION OF THE FLOYD COUNTY BOARD OF SUPERVISORS
DECLARING A LOCAL DAY OF PRAYER FOR FLOYD COUNTY, VIRGINIA**

WHEREAS, the Governor of Virginia declared a state of emergency on March 12, 2020 and on March 13, 2020 the President of the United States declared a national emergency beginning March 1, 2020, due to the outbreak of COVID-19; and

WHEREAS, the Board of Supervisors by Resolution has ratified a Declaration of Local Emergency for Floyd County on March 24, 2020, in preparation for and mitigation of the impacts of COVID-19 to Floyd County; and

WHEREAS, more than 150 years ago, one of our greatest leaders, President Abraham Lincoln felt led by God to call this great nation and all who resided herein to seek the Lord in a day of prayer, fasting, and humiliation, and subsequent Presidents of the United States and governors from around this country have honored that call and have made similar calls to prayer in times of great need and circumstance; and

WHEREAS, we as a County have found ourselves in unprecedented times and now face unknown challenges and various threats to our health, economy and way of life, due to the potential permeation and spread of COVID-19 within our community, throughout the Commonwealth, the country, and the world.

NOW, THEREFORE BE IT RESOLVED, by the Floyd County Board of Supervisors, that Sunday, March 29, 2020, shall be declared officially a “County Day of Prayer” for the citizens of Floyd County to collectively, in one accord, seek God’s mercies, favor and grace upon our community in this time of monumental crises.

NOW, THEREFORE BE IT FURTHER RESOLVED, that the Board of Supervisors encourages all its citizens to voluntarily honor this County Day of Prayer and fervently pray for our health, our economy, our Country, this nation, our leaders and all those affected by COVID-19 and our swift recovery.

On a motion of Supervisor Coleman, seconded by Supervisor Boothe, and unanimously carried, it was resolved to adopt a resolution declaring March 29, 2020 as a local day of prayer for Floyd County Virginia (Document File Number 1103).

Supervisor Coleman – yes
Supervisor Kuchenbuch – yes
Supervisor Yoder – yes
Supervisor Boothe – yes
Supervisor Turman – yes

Agenda Item 4. – Approval of month end disbursements.

Questions and discussion followed.

On a motion of Supervisor Yoder, seconded by Supervisor Kuchenbuch, and unanimously carried, it was resolved to approve the month end and additional bills as presented.

Supervisor Coleman – yes
Supervisor Kuchenbuch – yes
Supervisor Yoder – yes
Supervisor Boothe – yes
Supervisor Turman – yes

Agenda Item 7. – Board member time.

Supervisor Yoder – I appreciate your bearing with me on the phone. I think it is important that we try to set an example and that is part of what I wanted to do tonight, to set an example. Sometimes it is inconvenient to do things remotely. I hope our community takes this seriously and that we can get through this together. I appreciate everybody, especially the team working on the emergency management side.

Chairman Turman – I hope enough people joined us on Facebook tonight to see how our County government operates and in the future we will see your faces. I hope this passes quickly and everybody gets back to health, not only in our County, but for the world also.

Supervisor Kuchenbuch – It is important that you do observe that safe distance. As many of you can see here, we have done that in this room. I have tried to shelter in place myself as best I can. My family has as well. I think it is really important to understand how much we can affect the outcome of this if we all work together. I also want to add that whenever you can to help our local businesses in whatever you are doing. That is really important at this time. I appreciate everybody in this County coming together, serving food to others and helping others who are less fortunate. I also want to give a shout out to our schools and the division for making sure that each and every child in school receives food through the school bus and will do so for the rest of this year. These are very challenging times and I think when we find ourselves in these challenging times the best of us comes shining through.

Chairman Turman – What is your pleasure on the budget meeting tomorrow?

Supervisor Yoder – My main concern is that with the crisis it may be a little difficult to know how long that will go and how it will impact our County budget. It will become clearer as we go along. I would personally like to push the deadline for tax collections back and by doing that maybe push the budget back.

Vice Chairman Boothe – I understand that and that is a plan. We can push the payment back and it will help delay what we have to do a little bit. But if we are looking at any type of tax increase, we are still faced with those deadlines and have to have it done to meet the 30-day requirement for advertising and that is approaching.

Ms. Morris – If we keep the June 5 deadline we have already missed the deadline for the tax rate.

Supervisor Yoder – My request would be to push back the collection date 60 days. It would give us another 60 days to work on the budget and the tax rate. It would give people some time.

Mr. Durbin – You can change the collection date.

Ms. Morris – A budget would still need to be adopted by June 30.

Mr. Durbin – It wouldn't give you 60 days necessarily, but it would give you some more time.

Vice Chairman Boothe – That is why I am inclined to go ahead and have some budget talks to set a course of action on where we are headed, but we also need to have a backup plan as this thing evolves. That backup plan may be no increase. We need to be somewhere between no increase and what we are doing now. I don't know how big a window we can work all that in if we delay meeting.

Supervisor Yoder – My main concern is that I just prefer that the collection date be pushed back because I think there are a lot of people who will be hurting right now. I would prefer to give them a little bit of breathing room on tax collections.

Chairman Turman – We could go ahead and have a budget in place. The only thing we are concerned with now is going over the budget and trying to get a budget set in place.

Vice Chairman Boothe – If we could theoretically delay things and have a balanced budget in place, but it is nothing like what we have been looking at.

Supervisor Kuchenbuch – But these times are nothing like we have ever looked at.

Vice Chairman Boothe – I know and I am not proposing either way right now because we don't know enough. We could freeze everything at last year's numbers if that is what we choose to do, but that will delay a lot of things. And we may have to.

Supervisor Yoder – My question strictly about budget meetings is if we have a budget meeting tomorrow, does it have to be open to the public because it is not related to the emergency? Does that put us in danger of being over the Governor's limitations in a group?

Mr. Durbin – Yes. You would have to put some procedures in place for public participation remotely. You still have to observe your social distancing and no more than 10 people in the room if you are meeting physically, and have some alternate procedures for public participation to at least hear what is going on. Since it is a budget workshop there will not be public comment.

Supervisor Kuchenbuch – So if we Facebooked the meeting live and also taped it to put on the County website, that would be sufficient?

Mr. Durbin – Yes. That is what you just adopted.

Vice Chairman Boothe – We could do the same thing as we have done tonight and allow 3 citizens in attendance to keep it at 10 and live stream the workshop for everyone else.

Supervisor Yoder – What happens if 4 people show up?

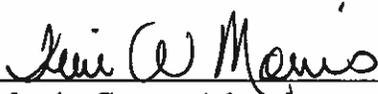
Mr. Durbin – You would handle it the same way if you have a big public meeting where you are expecting 100 people, but the Fire Marshall says the capacity is 80.

Supervisor Yoder – I am fine with meeting tomorrow. I just want to make sure that we follow our policies and don't have 40 people in a room.

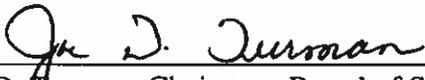
Agenda Item 8. – Adjournment.

On a motion of Supervisor Kuchenbuch, seconded by Supervisor Boothe, and unanimously carried, it was resolved to adjourn the meeting to March 25, 2020 at 9:00 a.m. for a budget workshop.

- Supervisor Coleman – yes
- Supervisor Kuchenbuch – yes
- Supervisor Yoder – yes
- Supervisor Boothe – yes
- Supervisor Turman – yes



Terri W. Morris, County Administrator



Joe D. Turman, Chairman, Board of Supervisors