

**BOARD OF SUPERVISORS
REGULAR MEETING
MAY 26, 2020**

At a regular meeting of the Board of Supervisors of Floyd County, Virginia, held on Tuesday, May 26, 2020 at 7:00 p.m. in the large conference room of the County Administration Building thereof;

PRESENT: Joe D. Turman, Chairman; Jerry W. Boothe, Vice Chairman; W. Justin Coleman, Linda DeVito Kuchenbuch, and Lauren D. Yoder, Board Members; Terri W. Morris, County Administrator; Cynthia Ryan, Assistant County Administrator, Tabitha Hodge, Economic Development Technician to livestream and film the meeting.

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. – Pledge of Allegiance.

Supervisor Yoder led in the Pledge of Allegiance.

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 5. – Public Comment Period for the reading of any letters or emails received.

No public comments were received.

Agenda Item 7. – Constitutional Officers reports.

Sheriff Brian Craig – I have some money and am here to ask for a one-time bonus for our Communications staff, our dispatchers. As you know we have made great strides with our law enforcement, also with our dispatch. We just lost one more dispatcher. Mr. Carr took a job at

another business. When COVID-19 started I issued an order to our department, because I didn't know how things would go financially, to have zero spending unless it was approved by me. We looked at saving every penny. With that being said I have looked at our overtime money. We had a Compensation Board officer who left and the officer who replaced him is in the Academy and soon to graduate. I put the savings [from difference of salary between former and current deputy] into overtime and we have overtime money you gave us. Currently my estimate is that by the end of the year I will have \$26,213.35. With Mr. Carr leaving I will have more Compensation Board funding and will not have to use that amount of County funding. We have one officer who plans to retire in March and, if he retires with the maximum amount of leave, I will need \$8,843.52, which leaves \$17,369.83 in overtime funds. I have 8 civilians. Since COVID-19 started over two months ago, I have completely quarantined our dispatchers. They have the added stress of not even seeing the officers except through a window. I am looking at retention and the added stress they have. This would be a one-time bonus for eight individuals. I would ask for up to \$1,000 each which would be a total of \$8,000 and still leave me \$9,369.83 in overtime funds to pass back to you at the end of the fiscal year.

Supervisor Kuchenbuch – Is \$1,000 enough?

Sheriff Craig – I would always like to do more for our dispatchers. I would like to keep them around. Even if you went \$1,500 you are looking at \$4,000 more and drop me down to about \$5,000 in overtime funds. That would still leave me a cushion if something major happened.

Supervisor Kuchenbuch – I don't want to second guess you, but from the sound of it they certainly deserve \$1,500, but I leave that up to your discretion.

Sheriff Craig – If the Board would be fine with that...this is something I felt I needed to ask you and Ms. Morris about. \$1,500 would be incredible for my staff if you are comfortable with that.

Supervisor Justin Coleman stated the following for the record:

Today's discussion involves the County budget which includes funding for the Floyd County Sheriff's Office. As many of you know, I am employed by the Floyd County Sheriff's Office. The proposed funding would affect the entire department and not just me individually. Together we constitute a group of three or more individuals who are similarly employed by the Sheriff's Office and similarly affected by the discussion. Therefore the exception of State and Local Government Conflict of Interests Act section § 2.2-3112 A (i) applies to this situation and I am able to participate in this discussion fairly and in the public interest. Thank you.

On a motion of Supervisor Yoder, seconded by Supervisor Kuchenbuch, and unanimously carried, it was resolved to approve a \$1,500 bonus for each dispatcher out of FY20 budget overtime money.

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

Supervisor Turman – yes

Agenda Item 6. – Closed Session with Registrar, Electoral Board and Mr. Dan Persico, Chief Information Officer with Virginia Department of Elections – §2.2-3711 A.19., Discussion of Plans to Protect Public Safety.

On a motion made by Supervisor Yoder, and seconded by Supervisor Kuchenbuch, and unanimously carried, it was resolved to go into closed session under Section 2.2-3711, Paragraph A. 19., briefings related to security and public safety.

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

On a motion of Supervisor Yoder, 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 Yoder, seconded by Supervisor Boothe, 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 for Discussion of Plans to Protect Public Safety in accordance with Section 2.2-3711, Paragraph A.19. 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 8.a. – Discussion of Possible Ridgeline Ordinance.

Ms. Morris – I sent you some comments from Mr. Durbin. He looked back through the Code to see if there were any changes since 2013. He said there were some minor changes, but nothing of substance. He said the main question that remains is what the valley floor actually means. He said there is no Code definition for that. You asked to look at the elevation maps [Floyd County]. Ms. Martin provided those.

Mr. Mike Bedsaul, Sands Anderson – The concern regarding what the adjacent valley floor is – a lot of restrictions you are considering putting in an ordinance, usually you are protecting a ridgeline, for example at a 3000' level, – where do you start counting the 2000 or 3000 feet? The issue is the ridgeline isn't such a quick drop; it is more gradual.

Vice Chairman Boothe – Wouldn't you use the U.S. Geological Survey topographical maps for what the elevations are? Like Tuggles Gap has a certain elevation. For the ridgelines I am certain there is a specific elevation.

Mr. Bedsaul – They do. The question Ms. Martin raised was if your ridge is very gradual in terms of its decline instead of step like, where do we start measuring the adjacent valley floor?

Supervisor Yoder – The area I live in would probably be a good example. There is not really a valley floor but it is still a high elevation.

Mr. Bedsaul – This hasn't really been tested. My thought is that we establish some kind of methodology for that in the ordinance itself as to how we define that.

Supervisor Kuchenbuch – Can you say something like 2700' and above?

Vice Chairman Boothe – Period. Then it doesn't matter where you started. That is what I was getting at with the topographical maps.

Supervisor Kuchenbuch – The concept, as Ms. Martin has explained it to us, is that all of Floyd is pretty much at 2500' for the most part.

Vice Chairman Boothe – If you use the established heights, it doesn't matter where the floor is per se.

Mr. Bedsaul – I think the last ordinance we drafted for the Board to consider was to protect mountain ridges in excess of 3000'. It was really only protecting the highest points.

Vice Chairman Boothe – When it started out it was all set in stone. The original map based on elevations covered $\frac{3}{4}$ of the County and you only had 40' from what was considered to the highest point. I talked to you and you talked to the State representatives and they started

adjusting this to allow localities to designate elevations. Did they adjust the elevation as well as the height?

Mr. Bedsaul – I thought so. That is my understanding of the ordinance.

Supervisor Yoder – Looking over the elevations, if we did 2500' and above that would protect the areas we are talking about. We have some areas in Floyd at 2000' which we could describe as a valley floor.

Mr. Bedsaul – I think what we want to do is articulate as best we can how we are calculating that. Again if it has not been tested, we may just have to go with it and defend it because you don't have any other choice.

Supervisor Yoder – The one concern I have if we went with 3000' in the Copper Hill or Check area, there is a large area that is a plateau. When we talked to people at James Madison University, they said that area of the County had some of the best wind for turbines. Because it was flatter it was more conducive for putting in a large operation because they wouldn't have to move so much dirt. My concern is if we use 3000', then suddenly they will say we don't want to go to the top of Wills Ridge anyway because it will be so hard, we will go right over here to Indian Valley or Check.

Mr. Bedsaul – That would make sense that if you had a level ridge that is more conducive because it was flatter. It is my understanding that part of the concern for consideration of regulating this to begin with was to construct something there had to be blasting that could affect the water. That is certainly a valid public purpose to consider.

Vice Chairman Boothe – I could live with 2500'.

By consensus the Board agreed to change the draft ridgeline ordinance to use 2500' for elevation.

Vice Chairman Boothe – Did we finally agree on a 300' height which is the average for cell phone towers? We are basing that on the average of cell phone towers so the number is not necessarily arbitrary and capricious. Is that a defensible reason to pick 300'?

Mr. Bedsaul – What I would go back to in deciding on your elevation or size of your structure is some public purpose you see related to the health, safety and welfare of the public. What I mean by that is that one of the reasons, as I understood it, you wanted to protect the ridges is because you didn't want to do something in construction on a ridgeline that would affect the water. To me 300', if that is the average cell tower height, doesn't sound overly restrictive.

Vice Chairman Boothe – We don't have a choice with those.

Mr. Bedsaul – Your question as to whether it is defensible, it is a reasonable basis for the limit you picked.

Supervisor Yoder – What about making it less restrictive, to allow smaller structures but not huge ones?

Mr. Bedsaul – I don't know what risks are increased by the increase in height. I assume it would require some greater structure to support.

Supervisor Yoder – Right, a larger foundation and deeper.

Mr. Bedsaul – To determine if it was defensible it would help to know those things.

Supervisor Yoder – One of the concerns in the beginning when we talked about this was a company would come in and install them and then go out of business and walk away. We would be left with a 400' structure that would fall down and rust. That is another reason if you could restrict height to a degree, you are restricting some of the danger. A 200' structure is less dangerous than a 500' structure.

Ms. Morris – We will get them to prepare a draft and bring it back to you to look at before we schedule a public hearing if you decide to do so.

Vice Chairman Boothe – What I see in the future with some of the stuff going on, if we are going to do it, then we need to do it now instead of when they are knocking at the door.

Supervisor Yoder – Either we do it right now or we just don't do it. For me it is much easier to do it and then if someone comes to us with a reasonable proposal, we could change it.

Vice Chairman Boothe – I've told people who have talked to me about it, this would limit us from having the big 500' ones, but if we set it at 300' you might have twenty 298' ones. You don't keep them from coming. It just keeps it containable.

Supervisor Yoder – It provides a level of protection from a lot of issues.

Agenda Item 8.b. – Approval of Ordinance Instituting Emergency Procedures through June 9, 2020.

Ms. Morris – As I reported to you earlier we didn't have enough time to properly advertise this for a public hearing tonight. That hearing has been set for your June 9 meeting. This emergency ordinance will keep everything in place until your permanent ordinance is adopted.

On a motion of Supervisor Boothe, seconded by Supervisor Yoder, and unanimously carried, it was resolved to approve an Ordinance of the Floyd County Board of Supervisors Instituting Emergency Procedures to Ensure Continuity of County Government in Response to COVID-19 Disaster through June 9, 2020 (Document File Number 1112).

Supervisor Coleman – yes

Supervisor Kuchenbuch – yes

Supervisor Yoder – yes

Supervisor Boothe – yes

Supervisor Turman – yes

Agenda Item 8.d. – Discussion of Abandonment Request of Portion of Former VDOT Road off Boone Road Near Closed Bridge Over Burks Fork at Weddle Road, Willis, VA.

Chairman Turman – Let’s table this until the June 9 meeting. I have received some petitions. I would like to talk to Mr. Winston before we discuss this.

Ms. Morris – Mr. Winston has sent a revised request. Mr. Durbin has sent an Attorney General’s opinion for you also.

Agenda Item 10. – Old/New Business.

Ms. Morris – I have one item under new business. I sent you the new Alcohol Beverage Control (ABC) regulations that go into effect July 1. Mr. Durbin did some research as to how we can proceed.

Mr. Bedsaul – The way the law used to be if a locality or election district wanted to permit liquor by the drink, then you had to hold a referendum and citizens would vote. Effective July 1, 2020 the law is changing whereby there is a presumption that liquor by the drink is permitted unless there is a referendum in which the voters vote to prohibit it. It is the opposite. From our research the referendum would have to be brought by qualified voters rather than a petition filed by the governing body of the locality. The petition would have to be signed by either 100 voters in the election district or 10% of the qualified voters as of January 1, whichever is greater.

Vice Chairman Boothe – What happens between July 1 and the November election? Let’s say I purchase a facility and apply for an ABC license. Am I automatically grandfathered in for this short term prior to the referendum? Or an existing business?

Ms. Morris – That is what I understood from the ABC agent I talked to. They would be eligible.

Vice Chairman Boothe – Even if you got a referendum in the fall and it was defeated, they would still be able to operate.

Ms. Morris – I don’t know if they would be at that point. But on July 1 they could.

Mr. Bedsaul – I think this is something we need to research further. We need to look into whether if someone with a license could continue to operate as long as the license remained in effect regardless of the passage of a referendum.

Vice Chairman Boothe – If the citizens choose to, do they have time to get a petition and get it in front of a judge in time to get it on a referendum for the fall?

Supervisor Yoder – That bill passed in 2019.

Chairman Turman – So many bills get passed you don't have time to research all of them.

Mr. Bedsaul – Let us look into those specific questions.

Supervisor Coleman – Is there any guidance on how individuals should proceed with this?

Mr. Bedsaul – This would have to be brought by the voters. They would circulate a petition to qualified voters for a referendum. The petition would be filed with the Circuit Court. If the requirement was met with 100 voters or 10% of your qualified voters, whichever is greater, then the Circuit Court Judge could order a referendum on the question.

Supervisor Yoder – When would the petition need to go to the Circuit Court to get it on the ballot for the general election in November?

Mr. Bedsaul – So what you want us to look into are:

- 1) What about businesses who already have ABC licenses or obtain one between July 1, 2020 and whenever a referendum may be held?
- 2) When would a petition need to be filed?

Supervisor Yoder – Also where someone could get a petition or what form?

Mr. Bedsaul – In the past we drafted them and it kind of just states what the question is.

Supervisor Yoder – So if a citizen wanted one done, we probably should tell them to get an attorney to draft a petition for you. Don't just come up with something because you may get all the signatures...

Mr. Bedsaul – Correct. Many times the statute will specify exactly in what form the question has to be written for the petition. The second most likely issue that comes up is they don't have qualified voters of the district sign the petition.

Agenda Item 11. – Board Member Time.

Supervisor Yoder – I was contacted by a business today that had some concerns about the Governor's new mask policy and who was enforcing that.

Ms. Morris – The Health Department.

Supervisor Yoder – I think a better policy by the Governor would have been to increase available testing for people and masks for people who want to wear masks.

Ms. Morris – Today was the first day the Health Department knew that.

Supervisor Yoder – The reason I bring it up is that we do fund the Health Department. I hope it doesn't become an "I gotcha thing." Right now a lot of businesses are struggling. I hope businesses aren't harassed about controlling the people who come in and out of their business. I

hope we can watch that. I worry about some of our businesses making it right now and if an additional harassment goes on, that worries me a lot.

Chairman Turman – I've had people, even before this was brought up when he said he was going to propose it on Tuesday, say if they walk up to a business door and they tell me I can't come in without a mask, they've lost my business and I'll never go back. It is going to hurt some businesses.

Supervisor Yoder – If someone walks in to buy a soda and you say, "Sorry you can't come in," do you lose the business or do you have the Health Department shut you down. It puts businesses in a terrible dilemma while they are trying to stay afloat.

Vice Chairman Boothe – As swamped as our Health Department is, I don't see where they have the time to do anything anyway.

Ms. Morris – That is basically what she [Director Bissell] said today on our conference call.

Further discussion was held on the effectiveness of masks and the new requirement's impact on businesses.

Supervisor Coleman – Once the General Assembly reconvenes it will become a civil penalty and you know what that means.

Ms. Morris – Law enforcement.

Supervisor Coleman – Exactly. This is just a temporary measure to get them where they want to try to get to when the General Assembly reconvenes and they can change it to become enforceable.

Ms. Morris – If it is an employee complaining about their employer it goes to OSHA [Occupational Safety and Health Administration] which is another layer.

Discussion was held as to the danger for store employees who try to enforce the new requirement.

Agenda Item 10. – Old/New Business continued.

Ms. Morris – I left on your table copies of the request from the New River Valley Regional Commission, New River Valley COVID-19 Business Continuity Team. The Commission applied for a GO Virginia grant. We got word last week that they received the grant of \$100,000 and the match is 50% from the localities, which is a \$10,000 request from each locality in the New River Valley. It would come from our CARES funding when we get that. The other localities in the valley have agreed to put up their share. Basically what it will be used for is staffing at the health department to help businesses through this situation. It helps a business who has a COVID-19 case get the things they need. They are also trying to get a grant

from CDBG [Community Development Block Grant] for some extra funds. We are scheduled to get our CARES money by the first part of June.

Chairman Turman – Is that the \$1 million where anything we don't use has to be turned back?

Supervisor Kuchenbuch – May we put on the agenda for the June 9 meeting ways to use the CARES money?

Ms. Morris – Yes. Of course the first thing we will do is reimburse the County for things we have spent.

Supervisor Kuchenbuch – Absolutely. Then we can discuss what else we can do.

Discussion was held as to possibly having more testing in the New River Valley to determine who has been exposed to the virus and possible uses of the CARES money.

By consensus the Board agreed to commit \$10,000 of the CARES money as a match for the GO Virginia grant.

Agenda Item 11. – Board Member Time continued.

Supervisor Kuchenbuch – I talked to Eddie Worth and he had a conversation with Senator Tim Kaine regarding the success of the Drug Court in southwest Virginia. A number of involved people from southwest Virginia were on the call and discussing how well it was going and additional needs for continued success. Transportation and housing were brought up as two things we need here because they are obstacles to success in the program. Mr. Worth gave the Floyd County Board of Supervisors a big nod by saying how our support had taken the Drug Court to the next level. He thought after he said that other callers would say the same thing, but there was silence. He wanted me to tell everyone here that he gave a shout out to Senator Kaine about the support we have given the Drug Court. The call was about ways the federal government can provide funding for Drug Court.

Ms. Morris – I have been working with Mr. Pritchett at New River Valley Community Services to try to think of some transportation options. That was the main thing Judge Long called me up there to talk about a few weeks ago. We are working on that to come up with ideas.

Agenda Item 9. – Budget Work Session.

Ms. Morris – With the changes you made last time we have a balanced budget. We moved about \$100,000 into computer security from the line items you asked us to reduce last budget work session. If you are comfortable with the way the budget is for now, we need authorization to advertise for a public hearing. It takes a little while to prepare the advertisement and it needs to run June 11.

Agenda Item 8.c. – Authorization to Advertise Proposed FY21 Budget.

On a motion of Supervisor Boothe, seconded by Supervisor Yoder, and carried, it was resolved to authorize the County Administrator to advertise the proposed FY21 budget for public hearing on June 23, 2020 at 8:00 p.m.

Supervisor Coleman – yes
Supervisor Kuchenbuch – no
Supervisor Yoder – yes
Supervisor Boothe – yes
Supervisor Turman – yes

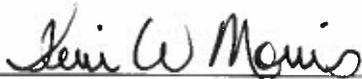
Discussion was held as to the best way to allow multiple means of public comment during the COVID-19 pandemic. It was determined that the public hearing would be posted on the website and advertised in the newspaper. Citizens will be able to provide public comment in writing via mail and email. Citizens will be able to call and leave their phone number and be called during the public hearing to provide public comment either by telephone or by entering the meeting one by one. The Board requested that they be provided with new printed copies of the proposed FY21 budget that will be advertised.

Further discussion was held as to ways to reduce the proposed FY21 budget.

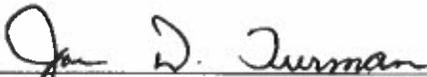
Vice Chairman Boothe – Please check with Mr. Durbin and see if the final FY21 budget can be lower in total than the advertised proposed FY21 budget.

Agenda Item 12. – Adjournment.

On a motion of Supervisor Coleman, seconded by Supervisor Kuchenbuch, and carried, it was resolved to adjourn the meeting to June 9, 2020 at 8:30 a.m.



Terri W. Morris, County Administrator



Joe D. Turman, Chairman, Board of Supervisors