

**Regular Meeting of the Sussex County Board of Supervisors
held in the General District Courtroom, Sussex Judicial Center on
Thursday, November 18, 2010 - 7:30 p.m.**

BOARD MEMBERS PRESENT

T. Wayne Birdsong
Wayne M. Harrell

Charlie E. Caple, Jr.
Harris L. Parker

C. Eric Fly, Sr.
Rufus E. Tyler, Sr.

STAFF PRESENT

George E. Morrison, III, Interim County Administrator
Henry A. Thompson, Sr., County Attorney
Jerry L. Whitaker, Director of Finance
Eddie T. Vick, Public Safety Coordinator
W. Travis Luter, Building Official
Shannon D. Fennell, Assistant to Director of Planning
Nicole L. Scuderi, Administrative Secretary
Deborah A. Davis, Assistant to County Administrator

Chairman's Announcement

Chairman Parker announced that due to the unexpected large attendance and in order to comply with fire safety codes, the meeting was moved to the auditorium of the Sussex Central High School, 21394 Sussex Drive, Waverly VA.

Item 1) Call to Order

Chairman Parker called the meeting to order; the Pledge of Allegiance was recited by all; the Invocation was offered by Supervisor Fly.

Item 2) Approval of Regular Agenda

Supervisor Birdsong requested that Item 6a under Unfinished Business, Conditional Use Permit #2010-01, David J. Taylor, applicant, be moved to Item 2a under County Administrator's Report.

George E. Morrison, III, Interim County Administrator, requested that Item b, Personnel Matters and, Item c, Prospective Business, under Closed Session, be removed from the agenda.

Supervisor Fly requested that Improper Closed Session be added under Unfinished Business.

Chairman Parker advised that the Board addressed the Improper Closed Session issue at the last meeting.

Supervisor Fly responded that this item was on the agenda, but the Board did not address it.

Chairman Parker stated that Supervisor Fly was given the opportunity to discuss this issue at the last meeting, but he believes it should be discussed in Closed Session.

Chairman Parker announced that he would entertain the wishes of the Board on this particular item.

Supervisor Fly stated that it is not a Closed Session item, nor does it qualify for a Closed Session item under state code.

ON MOTION OF SUPERVISOR BIRDSONG, seconded by SUPERVISOR FLY to place Improper Closed Session on the agenda under Unfinished Business.

Supervisor Caple stated that he has been instructed that all personnel items are Closed Session matters, and asked why the Board was taking it out.

County Attorney Thompson requested that the Board's consider placing this matter under Closed Session, pursuant to Virginia Code Section 2.2-3711 regarding consultation with legal counsel pertaining to actual or probable litigation. He further suggested that subject to the Board's independent review, this is a matter that clearly should be under Closed Session.

The Chairman announced: "All in favor that this item requested by Supervisor Fly be placed in open session,"

Voting aye: Supervisors Birdsong, Fly, Harrell

Voting nay: Supervisor Caple, Parker, Tyler

The motion failed.

Supervisor Fly stated that they did not discuss this issue itself and he would like to discuss the issue in an open session.

Chairman Parker stated that it was recommended by legal counsel that this item be discussed in Closed Session.

ON MOTION OF SUPERVISOR TYLER, seconded by SUPERVISOR BIRDSONG and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves of the regular agenda of November 18, 2010 meeting; subject to the following: (1) Under County Administrator's Report, add Item 2A, Staff Report on Conditional Use Permit #2010-01, David J. Taylor, applicant; (2) Under County Administrator's, add Item 2b, Citizens' Comments; (3) Under County Administrator's Report, add Item 2c, Board's Action on Conditional Use Permit #2010-01, David J. Taylor, applicant; (4) Remove Items B and C, Personnel Matters and Prospective Business, respectively.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 3) Approval of Consent Agenda

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR FLY and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves the Consent Agenda, inclusive of the following: (1) Minutes of the September 16th and October 21st Meetings; (2) Appropriation of \$1,162.72 received from VACo Risk Management Programs for the payment of property damage to a 2009 Ford Expedition, VIN 8252, to be restored to the Sheriff's Department budget; (3) Warrants and Vouchers in the amount of \$363,049.39; (4) Payroll Deduction Checks in the amount of \$143,857.57.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 4) Standing Reports

Item 4a) Health Department - absent

Item 4b) County Administrator's Report

Item 4b1) Tobacco Commission Mega Site Application Resolution

George E. Morrison, III, Interim County Administrator, reported that included in the Board packet, is the resolution providing County Administration to make application for the Tobacco Commission's \$20,000,000.00 grant funding for a Mega Site Project in the region. Each member of the Board of Supervisors was contacted and agreed to the submission of the grant application by November 1, 2010. The grant application submitted by County Administration was hand delivered on October 29, 2010.

ON MOTION OF SUPERVISOR TYLER, seconded by SUPERVISOR BIRDSONG and carried: RESOLVED that the Sussex County Board of Supervisors authorizes the submission of Fiscal Year 2011 Tobacco Commission Economic Development Special Projects Mega Site Grant Application for the development of the Route 626 (Beef Steak Road) Mega Site; and

FURTHER RESOLVED that George E. Morrison, III, Interim County Administrator, is authorized to sign and submit the Fiscal 2010 Tobacco Commission Economic Development Special Projects Mega Site Grant Application and will be responsible for the accuracy of the application and for the appropriate use of funds, should they be granted.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 4b2) Appointments to Virginia's Gateway Region Board of Directors

George E. Morrison, III, Interim County Administrator, advised that staff is in receipt of correspondence from the Virginia's Gateway Region's Executive Director, Rene Wyatt Chapline, requesting appointments for the two (2) board members whose terms will expire on December 31, 2010. The two (2) members currently representing Sussex County are Mr. Sanjay Gandhi and The Honorable Wayne M. Harrell. Both members have agreed to serve again, if reappointed,

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR BIRDSONG and carried: RESOLVED that the Sussex County Board of Supervisors hereby reappoints Mr. Sanjay Gandhi and The Honorable Wayne M. Harrell to the Virginia's Gateway Region Board of Directors, term expiring December 31, 2011.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 4b2A) Staff Report for Conditional Use Permit #2010-01, David J. Taylor, applicant

George E. Morrison, III, Interim County Administrator, advised that Supervisor Fly requested that this item be placed on the agenda. Per Supervisor Fly's request, Mr. Morrison also included in the Board packet, is an excerpt from the November 15, 2007 minutes where the Board approved the text amendments to the Zoning Ordinance unanimously. Included in the text amendments under Section 16-22, Use Regulations, "#42, Kennels with a conditional use permit" was added at that time as well.

Mr. Morrison further advised that also included is correspondence from Mr. Andre M. Greene, Director of Planning, regarding his recent meeting with Sussex County Treasurer, Mr. Onnie L. Woodruff, for the Board's edification.

Mr. Morrison proceeded to read the correspondence from Mr. Greene: "At the direction of the Board, staff from the Planning Department (Mr. Andre Greene and Mrs. Shannon Fennell) met with staff from the Treasurer's Office (Mr. Onnie Woodruff, Mrs. Deste Cox and Mrs. LaVerne Ford) on Tuesday, November 9th at 2:00 p.m., in the conference room of the County Administration Building. Mr. Thompson, County Attorney, was also present at the meeting. The purpose of the meeting was to discuss the provision of the Zoning Ordinance that requires a conditional use permit for kennels.

Prior to the meeting, Planning Department staff drafted a kennel zoning approval application and recommended that the Treasurer's Office, prior to issuing any new kennel licenses, would have citizens complete the form and deliver it to the Planning Department for approval. After receiving approval of the Planning Department, the application would be signed and a copy given to the applicant to take back to the Treasurer's office for purchase of the kennel license. It was mutually agreed that the kennel zoning approval application would be used temporarily on a trial basis for sixty (60) days to see if this will alleviate any confusion and miscommunication over the issuance of kennel licenses.

After hearing the concerns expressed by the employees of the Treasurer's Office regarding the provision of the Zoning ordinance relating to kennels, it was agreed that the Planning Department would (1) recommend an amendment to the definition of a kennel; (2) recommend that the requirement of a conditional use permit for a kennel be amended to pertain only to commercial kennels where monies are paid to house animals (dogs, cats, etc.) and/or where such animals are bred and sold for monetary compensation; and (3) recommend distance requirements for kennels from property lines."

Members of the Board of Supervisors held a discussion regarding conditional use permits relating to kennels.

Item 4b2b) Citizens' Comments

Comments were heard from the following:

- Jim Hackett, State Chairman for VA Hunting Dog Alliance
- Otto Wachsmann, Courthouse District
- Ted Upton, Blackwater District
- Lane Chambers, Stony Creek District
- L. Chester Carter, Stony Creek District
- John Pierce, Carson
- Fred Turck, Blackwater District
- Anne Joyner, Courthouse District
- Tameka Williams, Henry District
- William Savedge, Wakefield District
- Al Peschke, Courthouse District
- Ora Briggs, Stony Creek District

Board of Supervisors' Action on Conditional Use Permit #2010-01

The Board of Supervisors having considered the health safety and concerns, adopted an emergency ordinance for a period of sixty (60) days.

ON MOTION OF SUPERVISOR TYLER, seconded by SUPERVISOR CAPLE and carried: RESOLVED to adopt the emergency ordinance which will not disrupt the hunting practices in Sussex nor will it penalize the existing hunting clubs in Sussex County, to wit:

WHEREAS, Board of Supervisors does here and now refer, to the Sussex County Planning Commission for additional solicitation of public comments, research and recommendations regarding the classification of kennels now and hereafter located in the County and whether a distinction should be made regarding the requirement of or non-requirement of a conditional use permit for the location of a kennel in the A-1, General Agricultural District of the County; and

WHEREAS, the Board of Supervisors, from public comments received at its regular meeting of November 18, 2010, from a written and oral report of county staff regarding this matter and from its own independent review of the same, has preliminarily determined that, after its findings that the health, safety and welfare of the County's citizens, and possible liberty interests of its citizens, may be more effectively served by not requiring a conditional use permit for non-business and not-for-profit kennels to be located and/or located in the A-1, General Agricultural District of the County while, subject to the Planning Commission's review and recommendation to the Board of Supervisors, continuing the requirement of a conditional use permit for commercial and for-profit kennels in the County subject to later review and action; and

WHEREAS, the Board of Supervisors is mindful of the need for further Comprehensive discussion and review by the County's Planning Commission of this matter as to any other incidental regulations (i.e. distance requirements from residence, a more concise definition of commercial and non-commercial kennels, etc.), after a public hearing, which should thereafter be forwarded to the Board of Supervisors for action, after a public hearing, which may also be a joint public hearing with the Planning Commission, as County Administration deems necessary to facilitate discussion and action on this matter within sixty (60) days of the passage of the hereinafter ordained emergency ordinance; and

WHEREAS, the Board of Supervisors does hereby refer this matter to the Planning Commission to do the lawful necessities with the assistance of County Administration and the County Attorney, to bring this matter back to the Board of Supervisors for final review and action regarding its amendment of or revision of the previously stated Sussex County Code Section 1 6-22(37) and other provisions of the Sussex County Code related to kennels and their requirements in this matter.

NOW, THEREFORE, BE IT AMENDED AND RE-ORDAINED, on an emergency basis, by the Sussex County Board of Supervisors on this 18th day of November, 2010, Sussex County Code Section 1 6-22(37) Use Regulations with said provisions being and is hereby amended and re-ordained as follows:

16-22(37) Commercial and for-profit kennels with a conditional use permit provided however, notwithstanding any other provision in this Code Chapter 16, that no conditional use permit shall be required for any kennel located on the real estate parcel of any land owned by an individual or individuals real property when such kennel is not-for-profit.

BE IT FURTHER RESOLVED THAT:

1. This ordinance amendment shall take effect immediately and is adopted on an emergency basis pursuant to Virginia Code Section 15.2-1427(F) provided that this ordinance amendment shall not be enforced for more than sixty (60) days unless readopted with prior notice and public hearing pursuant to that Virginia code section.

2. This emergency ordinance shall not be set out in the Sussex County, Virginia County Code.

3. County Administration and the County's Director of Planning and the Chairman of the County's Planning Commission, with the advise as necessary of the County Attorney, shall cause the necessities to be done to assure that this matter shall come before the Board of Supervisors for further review and action prior to the expiration of the now enacted emergency ordinance and a copy of this emergency ordinance proclamation shall forthwith be mailed or otherwise delivered to the County's Director of Planning and the Chairman of the County's Planning Commission

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 4b3) Appointment to South Centre Corridors Resource Conservation and Development Council

George E. Morrison, III, Interim County Administrator, advised that the South Centre Corridors Resource Conservation Council is requesting an appointment be made to their Council. This appointment was held by Ms. Mary E. Jones in her capacity as County Administrator. Mr. Morrison advised that he is more than willing to serve on the Council and requested that the Board of Supervisors appoint the position of County Administrator or their designee.

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR BIRDSONG and carried RESOLVED that the Sussex County Board of Supervisors hereby appoints George E. Morrison, III, Interim County Administrator, to the South Centre Corridors Resource Conservation Development Council; and

FURTHER RESOLVED that the Interim County Administrator is appointed to serve the unexpired term of the previous County Administrator, expiring December 31, 2012.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 4b4) Tobacco Commission Grant Award - Route 602 (Cabin Point Road) Industrial Park

George E. Morrison, III, Interim County Administrator, reported that staff has received correspondence from the Executive Director of the Virginia Tobacco Indemnification and Community Revitalization Commission, Mr. Neal Noyes, confirming that Sussex County has been awarded \$50,000 toward the design phase of development for the County's Route 602 (Cabin Point Road) Industrial Park. The award was announced on October 28, 2010. Staff has received the necessary paperwork to accept and execute the requirements of the grant and anticipates that these elements will be completed with the assistance of Townes PC, the County's engineer, and will avail the County to the next round of grant applications to complete the Route 602 Cabin Point Road Industrial Park.

Item 4b5) Galilee Baptist Church as a County Emergency Shelter

George E. Morrison, III, Interim County Administrator, advised that included in the Board packet is a copy of an email received from The Honorable C. Eric Fly, Sr., regarding this issue.

In research and consultation with the County's Public Safety Coordinator, Mr. Eddie T. Vick, he stated that Galilee Baptist Church is officially identified in the County's Emergency Operations Procedure Manual. This facility was approved on the list of Emergency Shelters for Sussex County by resolution dated November 15, 2007, by a unanimous vote of the Board.

Galilee Baptist Church remains on the list of Emergency Shelters, according to the Public Safety Coordinator, due to the flooding of roadways between Stony Creek and the Central Schools Complex.

As for an agreement, staff is unaware of any agreement that may exist between any of the County's Emergency Shelters and the County. It is staff's understanding that the cost of the emergency generator and Galilee Baptist Church was shared between the Town of Stony Creek and the County, with the County agreeing to pay for the upkeep and repair to the emergency generator.

After some discussion, the Board, by general consensus recommended that the Public Safety Coordinator and County Attorney review and discuss the potential liabilities of and lack of an agreement for Galilee Baptist Church and Club Paradise Restaurant and Lounge as the County's emergency shelters.

Item 4b6) Director of Finance Report

George E. Morrison, III, Interim County Administrator, advised that Director of Finance, Jerry L. Whitaker, is absent, but a copy of the monthly report for the period ending October 31, 2010 is retained in the Board packet.

The Board entered into a brief discussion about the Department of Corrections payment in lieu taxes not being provided to the County.

Item 4b7) Board of Supervisor's Annual Retreat

George E. Morrison, III, Interim County Administrator, advised that staff is reviewing dates for the Board's annual retreat and asked for their input.

Chairman Parker suggested that Board members bring what they wish to discuss at the retreat, to the December 2010 meeting, for the County's legislative agenda.

ON MOTION OF SUPERVISOR HARRELL, seconded by SUPERVISOR BIRDSONG and carried: RESOLVED that the Sussex County Board of Supervisors hereby set the annual retreat for January 28 and 29, 2011.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 4c) Treasurer's Report

Mr. Onnie L. Woodruff, Treasurer briefly discussed the Department of Corrections payment in lieu of taxes issue.

With regard to the kennel issue, Mr. Woodruff advised that his staff had a good meeting with the Planning Department.

He also discussed the financial report ending October 31, 2010. (A copy of the October 31, 2010 Treasurer's Report is retained in the Board packet).

Mr. Woodruff also discussed the AS400 Computer System Upgrade.

A Finance Committee meeting was set for Tuesday, November 30, 2010 at 9:00 a.m., to be held in the conference room of the County Administration building for further discussion of the AS400 System Upgrade.

ON MOTION OF SUPERVISOR FLY seconded by SUPERVISOR TYLER and carried: RESOLVED that the Finance Committee draft a resolution expressing their extreme concerns regarding the General Assembly's amendment to the Department of Corrections budget.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 4d) Commissioner of the Revenue - absent

Item 4e) Sheriff's Department

Item 4e1) Request to Accept DMV Grant Funds

Sheriff Bell advised that he has applied for and the County has been awarded grant funds from the Department of Motor Vehicles in the amount of \$8,620.00. These funds will be used for the purchase of two (2) in-car cameras. With the purchase of these (2) two cameras, every vehicle in the patrol fleet will be upgraded to digital equipment, thus eliminating the need for VHS videotapes.

The Sheriff further advised that there is no local match from the County other than the fuel and maintenance costs that is incurred on a normal basis. He requested that the Board approve the acceptance of the grant funds.

ON MOTION OF SUPERVISOR BIRDSONG, seconded by SUPERVISOR FLY and carried: RESOLVED that the Sussex County Board of Supervisors hereby accepts and appropriates the grants funds as awarded by the Department of Motor Vehicles, in the amount of \$8,620.00; and

FURTHER RESOLVED that these grant funds shall be used for the purchase of two (2) in-car cameras for the Sheriff's Department patrol vehicles.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 4f) Superintendent of Schools

Item 4f1) Request For Funding of Elementary Construction Program

Prior to speaking on the Funding of the Elementary Construction Program, Dr. Charles H. Harris, III, Superintendent of Schools, spoke to the issue of vandalism of Jackson Elementary School. He advised that the school was broken into last spring. The school's staff immediately replaced the broken windows. He thanked the County staff for their assistance. He advised that the School staff checks the building on a regular basis and there have been "No Trespassing" signs posted

on the school's property. He also advised that he and Mr. Vick have communicated and have resolved that Annie B. Jackson Elementary School can be used and is still available for use as a County emergency shelter.

Dr. Charles H. Harris, III, Superintendent of Schools advised that the Sussex County School Board is submitting a request to the Board of Supervisors for the elementary school construction program. The School Board is requesting \$18,000,000.00 for the construction of an elementary school on the central school site. School construction costs continue to appear to be below the high cost of where school construction was several years ago.

The Board discussed the school construction program and decided by general consensus, to forward the elementary construction program to the Finance Committee for their November 30, 2011 meeting.

Item 4g) Director of Social Services - no report

Item 4h) County Attorney's Report

County Attorney Thompson reported that he will be seeking an injunction against a business in the County, which will be filed on Monday.

Item 5) Citizens' Comments

(The Board heard Citizens' Comments earlier in the meeting, as it was moved up on the agenda).

Item 6) Unfinished Business

Item 7) New Business - none

Item 8) Closed Session

ON MOTION OF SUPERVISOR HARRELL, seconded by SUPERVISOR BIRDSONG and carried: RESOLVED that the Sussex County Board of Supervisors shall hereby enter Closed Session for the following: (1) For a discussion regarding the acquisition of property for possible use as a public facility, applicable Code Section 2.2-3711(A)(5); and (2) Actual probable litigation, applicable Code Section 2.1-3711(A)(7), regarding the Freedom of Information Act.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Item 9) Return To Open Session

ON MOTION OF SUPERVISOR HARRELL, seconded by SUPERVISOR CAPLE, and carried: RESOLVED that the Sussex County Board of Supervisors has convened a Closed Session on this date, pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and,

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by Sussex County Board of Supervisors that such Closed Meeting was conducted in conformity with Virginia law.

NOW, THEREFORE BE IT RESOLVED that the Sussex County Board of Supervisors hereby certifies that, to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies; and (ii) only such public business matters were identified in the motion convening the Closed Meeting were heard, discussed or considered by the Sussex County Board of Supervisors.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none

Supervisor Fly announced that the Finance Committee will meet at 9:00 a.m. on Tuesday, November 30, 2010 in the conference room of the County Administration building.

Item 9) Adjournment

ON MOTION OF SUPERVISOR BIRDSONG, seconded by SUPERVISOR HARRELL and carried: RESOLVED that the Sussex County Board of Supervisors hereby adjourns the November 18, 2010 meeting at 10:57 p.m.

Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler

Voting nay: none