

**At A Regular Meeting of the Sussex County Board of Supervisors
Held on Thursday, April 18, 2013, 7:00 p.m., in the
General District Courtroom, Sussex Judicial Center**

Board Members Present:

Charlie E. Caple, Jr.
C. Eric Fly, Sr.
Alfred G. Futrell
John A. Stringfield
Rufus E. Tyler
Raymond L. Warren

Others Present:

Michael R. Packer, County Attorney
Onnie L. Woodruff, Treasurer/Interim Director of Finance
Kelly Woodley Moore, Secretary/Receptionist
Ellen G. Boone, Commissioner of the Revenue

Item 1. Call To Order/Determine Quorum

The April 18, 2013 meeting of the Sussex County Board of Supervisors was called to order by Chairman Tyler.

Item 2. The Invocation/Pledge of Allegiance

The Invocation was offered by Supervisor Stringfield; the Pledge of Allegiance was recited by all.

Item 3. Election of Chairman of Board of Supervisors for Calendar Year 2013

Michael R. Packer, County Attorney, stated that Items number 3 and 4 (Election of Chair and Vice Chair for Calendar Year 2013) have been voted upon by the Board previously and he asked if any member of the Board of Supervisors wishes to change his vote as it relates to these two items.

Supervisor Stringfield asked that he be allowed to make a motion to elect a Chairman and a Vice Chairman and suggested that the Board move forward in choosing Chairman and Vice Chairman at this time. Supervisor Stringfield also asked that Supervisor Fly agree with him in making this decision.

County Attorney Packer then asked for nominations for Chairman for Calendar Year 2013.

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR FUTRELL and carried:
RESOLVED that the Sussex County Board of Supervisors hereby tables the election of

Chairman of the Sussex County Board of Supervisors for Calendar Year 2013, until the May 16, 2013 meeting.

Voting aye: Supervisors Fly, Futrell, Warren

Voting nay: Supervisors Caple, Stringfield

Abstaining: Supervisor Tyler

Chairman Tyler stated that at the last budget work session, the Board agreed to add one item to Closed Session, an item dealing with the construction of the Commonwealth's Attorney building.

Item 5. Amended Agenda

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR WARREN and carried: to the following items be added to the agenda under Closed Session: (1) VACo Lawsuit and (2) County Attorney's contract.

Supervisor Stringfield offered a substitute motion to table the County Attorney's contract until next month; seconded by Supervisor Caple.

Supervisor Fly explained that the reason he asked that the County Attorney's contract be placed on tonight's agenda is that the County Attorney's contract will expire on tomorrow.

Chairman Tyler stated that it is appropriate to add that item to Closed Session tonight because of the contract expiration on April 19th.

Supervisor Stringfield withdrew his motion; Supervisor Caple withdrew his second.

The Chairman carried the motion pertaining County's Attorney's contract being added to the agenda in Closed Session.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

(Please note that this vote was not done by roll call).

Supervisor Fly explained that there is a lawsuit filed against Board members and against the Board itself by some citizens and VACoRP has been engaged to represent the County. Supervisor Fly stated that this lawsuit has never been brought before the Board; never been discussed by Board members, never brought into Closed Session and never been placed on the agenda.

Supervisor Caple stated that the lawsuit was against three (3) Board members and it was suggested that these Board members obtain attorneys.

The Chairman called the vote to add VACoRP Lawsuit to be added to the agenda in Closed Session.

Voting aye: Supervisors Fly, Futrell, Warren,

Voting nay: Supervisor Caple, Stringfield, Tyler

The motion failed due to tie vote.

Item 6. Approval of Regular Agenda

Supervisor Fly requested that “k” (Departmental Appropriation, \$92,890.00) under Consent Agenda be moved to regular agenda under Treasurer’s Report; move “h” (Approval of Appropriation, Moseley Architects, \$51,797.20) under Consent Agenda, to be acted on after Closed Session.

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR WARREN and carried: RESOLVED that the Sussex County Board of Supervisors move Item “h” under Consent Agenda (Approval of Appropriation, Moseley Architects, \$51,797.20) to the regular agenda and be discussed and acted upon after the Closed Session.

Voting aye: Supervisor Caple, Fly, Futrell, Tyler, Warren

Voting nay: Supervisor Stringfield

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR STRINGFIELD and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves of the April 18, 2013 Consent Agenda; to wit: (a) Minutes of February 28, 2013 Special Meeting; (b) Minutes of March 21, 2013 Regular Meeting; (c) Minutes of March 27, 2013 Finance Committee Meeting; (d) Minutes of April 4, 2013 Budget Work Session; (e) Approval of Appropriations: Timmons Group, \$31,000.00; (g) Approval of Appropriations: Timmons Group, \$9,400.00; (f) Approval of Appropriations: Rancorn Wildman, \$8,957.94; (g) Approval of Appropriations: Oyster Point Construction, \$305,235.00; (h) Approval of Warrants and Vouchers in the amount of \$1,198,400.93.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

County Attorney Packer requested that the April 3, 2013 minutes of the Sussex County Board of Supervisors be approved as amended.

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR CAPLE that Sussex County Board of Supervisors hereby approves the minutes of the April 3, 2013 meeting, as amended.

Chairman Tyler asked that the April 3, 2013 minutes be included on the April 25, 2013 budget work session agenda for approval, because he has some problems with the minutes.

County Attorney Packer agreed to the Chairman’s request.

Chairman moved that they be stricken from the April 18, 2013 agenda and be placed on the April 25, 2013 meeting for approval and stated that there is a substitute motion to that effect.

Supervisor Caple seconded the motion.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

Item 7. Approval of Regular Agenda

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR STRINGFIELD and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves the April 18, 2013 regular agenda with the following amendments: (1) Add “k” (Departmental Appropriation, \$92,890.00) under Consent Agenda be moved to regular agenda under Treasurer’s Report; move “h” (Approval of Appropriation, Moseley Architects, \$51,797.20) under Consent Agenda, to be acted on after Closed Session; and (2) the County Attorney’s contract be included in the Closed Session.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

Item 8. Appointments

- a. Blackwater Regional Library Board of Directors:** Mr. Tom Baicy’s term will expire June 30, 2013 and he is not eligible for reappointment. The name of Judy Marks, 13180 Halifax Road, Post Office Box 212, Stony Creek VA 23882, has been offered as a person of interest. Mrs. Marks is a retired educator who taught school for thirty (30) years. She is a retiree from Greensville County Public Schools. Staff spoke with Mrs. Marks today and she advised that she is willing to serve, if appointed. (The Board’s other local appointee is Mrs. Charlene Pope from Waverly). The new appointee’s term will expire on June 30, 2017.

Supervisor Caple nominated Judy Marks to serve on the Blackwater Regional Library Board of Directors.

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR STRINGFIELD and carried: RESOLVED that the Sussex County Board of Supervisors hereby closes the nomination of Judy Marks for appointment to the Blackwater Regional Library Board of Directors, term of office beginning July 1, 2013 and ending June 30, 2017.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

- b. Industrial Development Authority Board of Directors:** The term of Mr. Bruce Spencer will expire on May 15, 2013. Mr. Spencer is eligible for reappointment and has stated that he would like to be reappointed. The term of George Urquhart will also expire on May 15, 2013; staff has left a message for Mr. Urquhart regarding his desires to be

reappointed, but as of this writing, he had not returned the phone call. If appointed, both terms will expire May 15, 2017.

ON MOTION OF SUPERVISOR STRINGFIELD, seconded by SUPERVISOR WARREN and carried: RESOLVED that the Sussex County Board of Supervisors hereby reappoints Mr. Bruce Spencer, Post Office Box 581, Waverly VA 23890 to the Industrial Development Authority Board of Directors for a four year term, beginning May 16, 2013 and ending May 15, 2017.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

- c. Building Code Appeals Board:** The term of Mr. Keith Cox will expire on June 30, 2013. Mr. Cox is eligible for reappointment and has stated that he would like to serve again. If reappointed, his new term will expire June 30, 2016.

ON MOTION OF SUPERVISOR WARREN, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the Sussex County Board of Supervisors hereby reappoints Mr. Keith Cox, 35360 Shingleton Road, Waverly VA 23890, term beginning, July 1, 2013 and ending June 30, 2016.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

Item 9. Staff/Committees/Organizations Standing Reports

a. Chairman's Report

1. EEE Consulting Scope of Services and Budget Estimate (2013-2014): The scope of work and budget estimate for Environmental Services for groundwater and gas monitoring and regulatory compliance at the Gin Hill and Robinson Road Landfills has been provided by EEE Consulting, Inc. The scope of work applies to semi-annual groundwater assessment monitoring, landfill gas monitoring, regulatory compliance issues and documentation and reporting requirements from May 1, 2013 to February 28, 2014. EEE will pursue variance requests for Alternative Points of Compliance instead of Corrective Action. The maximum fee for a variance request is \$1,310.00 and the variance will require a public hearing.

ON MOTION OF SUPERVISOR STRINGFIELD, seconded by SUPERVISOR CAPLE that the Sussex County Board of Supervisors hereby approves of the variance fee in the amount of \$1,310.00 for the Scope of Service and Budget Estimate for Year 2013-2014 Environmental Services for Gin Hill and Robinson Road Landfills as requested by EEE Consulting, Inc.

A substitute motion was offered by Supervisor Fly.

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR CAPLE and carried: that the Sussex County Board of Supervisors hereby authorizes staff to contact Mr. Doug Fraser, PG, Senior Geologist, of EEE Consulting, Inc. and ask him to attend the May 16, 2013 meeting of the Board of Supervisors to clarify the scope of work, budget estimate, variance, etc.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren
Voting nay: none

2. Employee Drug Testing/Criminal Background Check

Chairman Tyler stated that it is important that the County conduct drug testing and criminal background checks prior to candidates being hired for employment and that after they become employed, that periodic drug tests be also administered.

County Attorney Packer stated that it is common practice for local governments in Virginia to perform certain drug tests and criminal background checks for new employees, as allowable under the law. As it relates to random drug testing, the courts in the United States limit those types of employees who could be subject a random drug test to those who perform certain functions that otherwise could be dangerous if they were to perform under the influence. Those employees who are not so classified cannot be drug tested; that would be considered unlawful search and seizure. Those jurisdictions that perform random drug testing typically have a personnel policy that specifically directs how such testing is to be done. He suggested that the Board consider having a policy in place prior to the implementation.

Chairman Tyler advised that it is Administration's recommendation also that the County Attorney be authorized to draft a policy regarding drug testing and criminal background check and that it become part of the County's personnel policy, after its adoption.

3. Signage

Chairman Tyler stated that when travelers enter other localities, you will note that they have welcome signs. He introduced David Bland, a sign contractor who provided a brief presentation regarding the type signs he manufactures.

Chairman Tyler also stated that Administration has met with VDOT to ensure that all Land Use Permits are completed and all requirements met.

4. Email/Internet Issues at County Complex

Chairman Tyler reported there have been some issues with the County staff emails and use of the internet and that the Board members have asked for County email addresses. He stated that he contacted Mr. Tim Bradshaw, owner of Insercorp Ltd, and asked him to come on site and perform an assessment of what the problem may be, but he has not received the report from Mr. Bradshaw as of yet.

b. Treasurer/Interim Director of Finance

Onnie L. Woodruff, Treasurer/Interim Director of Finance advised that the monthly report has been included in the Board packet. He requested that the Board approve appropriations for various departments.

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves of the following appropriations:

<u>Department</u>	<u>Account No.</u>	<u>Approval Amount</u>
Building and Grounds	21200-221	\$29,000.00
Environmental Inspections	21600-262	11,700.00
County Attorney	22100-281	2,600.00
Special Magistrates	61100-613	2,290.00
	Total	\$45,590.00

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

c. Commissioner of the Revenue

Ellen G. Boone, Commissioner of the Revenue stated that she is having problems and needs a solution. Her internet services have not been up and running for about three (3) days. This is her busy time of the year; she has refunds that need to be keyed in. Her email is also not working. She also stated that she cannot go another day without being able to do her work.

Chairman Tyler advised her that he would get Mr. Bradshaw or someone to get to her office to take a look at her situation.

Treasurer Onnie L. Woodruff explained that the Commonwealth's Attorney had a gentleman on site today to because her office is experiencing the same problems.

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR STRINGFIELD and carried: RESOLVED that the Sussex County Board of Supervisors hereby authorizes Administration to proceed in taking care of the technology problems that exist in Administration, in the Office of Commissioner of the Revenue and other offices.

Supervisor Futrell suggested that Administration get bids so that everyone at the complex can be on the same service; but to try to get the Commissioner of the Revenue up and running as soon as possible.

Supervisor Fly suggested that the Commissioner of the Revenue be given one of the wireless cards that are used by County Administration. He asked that the Supervisor making the previous motion would amend his motion by adding a dollar value cap, not to exceed a certain amount.

Chairman Tyler stated that there is an Administrative Efficiency Policy that dictates the amount of money that the County Administrator can spend without the Board approval.

Supervisor Caple stated that the Treasurer has dealt with that issue previously and may have some idea of the cost associated with correcting the problem.

Supervisor Fly offered a substitute motion.

8:35 p.m.

ON MOTION OF SUPERVISOR FLY that the Sussex County Board of Supervisors hereby authorizes the County Administrator to move forward to solve the internet problems in the Complex with the expenditure not to exceed \$5,000.00.

Chairman Tyler explained that there is an Efficiency Policy currently in place and that motion would be in conflict with the Policy.

County Attorney Packer stated that if the money is already appropriated, then the Efficiency Policy gives the authority to Administration to spend on a particular item of service and goods up to \$15,000.00. If the money is not appropriated, the Board has to appropriate funds before they can be spent. If the Board wishes to limit the authority of Administration to a degree greater than the limitations in the Policy, then the Board can suspend the Policy as it relates to this particular item and limit the expenditure for it.

Supervisor Fly stated that the money that can be used by this Efficiency Policy is housed in the Contingency Fund and that Contingency Fund is \$200,000.00 and the Board may have exceeded that amount.

Interim Director of Finance Woodruff stated that the individual responsible for taking care of the County IT issues has all of the knowledge, all of the passwords, controls everybody that comes into our firewall, including Pearson Appraisals, School Board, routing IP addresses that come into the 400. This person controls all of that, so we cannot restrict him, so if we get somebody, you have to turn it over. This person should be knowledgeable enough to know where the T1 line comes in.

Chairman Tyler advised Mrs. Boone that Administration will try to get this issue resolved on tomorrow.

County Attorney Packer stated that there is a motion on the floor and it should be addressed.

Chairman Tyler asked for roll call vote for the substitute motion.

Voting aye: Supervisors Caple, Fly, Futrell, Warren

Voting nay: Supervisor Stringfield

Abstaining: Supervisor Tyler

(Please note: After listening to the audio, the Deputy Clerk did not hear a second to the motion that was just approved).

- d. Sheriff's Department – no report
- e. Superintendent of Schools
- f. Department of Social Services – no report
- g. General Registrar – no report
- h. Health Department – no report
- i. County Attorney's Report

1. Social Services Board Appointee Ruling

County Attorney Packer provided an opinion regarding the Social Services Board Appointee and quoted directly from the Attorney General's Opinion which states "the prohibition against service of more than two consecutive terms on the Board of Public Welfare's equally applicable to Board of Supervisors' members of the Board of Welfare as to any other members serving on that Board." He stated that it is his opinion that all members of the Social Services Board can serve no more than two full consecutive terms and that includes a member of the Board of Supervisors who serves on the Board of Public Welfare. The Clerk of the Board performed some research in that regard, pursuant my request.

Supervisor Caple advised that the reason for his serving more than two consecutive terms is that the state Board of Social Services was under the assumption that the County Board of Supervisors appointed members to the Board as one member of the local Social Services Board and they serve at the discretion of the Board of Supervisors and not subject to the two term limit, but serve at the pleasure of the Board that appointed the member.

County Attorney Packer advised that the County has in writing from a representative from the state Board of Social Services that it is their advice to local welfare boards that the appointed official from the Board of Supervisors would serve at the discretion of the Board of Supervisors and was not limited, but that he (County Attorney Packer) disagrees with that. He agrees with the Attorney General's Opinion.

County Attorney Packer also stated that other Attorney Generals' Opinion indicated that once it has been determined that a person is no longer eligible to serve, that there is a vacancy issue.

Supervisor Futrell asked if the vacancy has to be filled by a member of the Board of Supervisors or could the appointee be a citizen.

County Attorney Packer indicated that the state law reads that it does have to be one member of the Board of Supervisors on the Social Services Board unless the Board of Supervisors specifically determines that the makeup of the Social Services Board shall not contain a member of the Board of Supervisors. So until the Board of Supervisors vote that there not be a member of the Board of Supervisors on the Social Services Board, then there shall be a member of the Board of Supervisors on the Social Services Board.

Supervisor Caple said a citizen of each district serve as representatives of the Social Services Board.

Supervisor Futrell asked that the Board consider an appointment at the next meeting.

Chairman Tyler asked for nomination for Social Services Board appointment.

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR TYLER that John A. Stringfield, be appointed to the Social Services Board.

ON MOTION OF SUPERVISOR WARREN, seconded by SUPERVISOR FLY, to nominate Alfred G. Futrell to the Social Services Board.

Roll call vote for Supervisor Futrell to be appointed to the Social Services Board.

Supervisor Caple: nay
Supervisor Fly: aye
Supervisor Futrell: aye
Supervisor Stringfield: nay
Supervisor Tyler: nay
Supervisor Warren: aye

The motion failed due to tie vote.

Roll call vote for Supervisor Stringfield to be appointed to the Social Services Board.

Supervisor Warren: nay
Supervisor Tyler: aye
Supervisor Stringfield: aye
Supervisor Futrell: nay
Supervisor Fly: nay
Supervisor Caple: aye

The motion failed due to tie vote.

Item 10. Citizens' Comment(s)

Comments were heard from the following:

Henry District – none

Stony Creek District –

Otto Wachsmann – see an improvement in tonight's meeting; appreciate the roll call vote, County is extraordinarily divided; need a County Administrator from the outside who has experience; hopes that County Attorney Packer will decide to stay here.

Courthouse District –

Kevin Bracy – been coming to meetings over seven years; he is ashamed that business people throughout Virginia think that Sussex County is a laughing stock because of the three three; stated that the Chairman allow employees for the County to work without supervision; need a County Administrator, there are some people in the Administration building are never there to answer questions.

Female citizen (did not give her name) – stated that Mr. Packer has been down some rough roads with the County since he has been here and she hopes that things are going to get brighter in Sussex County soon; she asked Mr. Packer to stay here.

Bill Collins – spoke about the history of the local BB&T bank.

Blackwater District – none

Waverly District – none

Wakefield District –

Al Peschke – echoed the other citizens and asked that the Board retain Mr. Packer because we have tough times ahead of us.

Supervisor Futrell apologized for the outburst at a previous meeting.

Chairman Tyler advised that the Board would take a 5 minute recess. (9:10pm).

Reconvened at 9:20 p.m.

Item 11. Unfinished Business

a. Compensation Requests

Chairman Tyler explained that at the last Board meeting, requests were made for compensation for certain staff. Mrs. Shannon Fennell has taken on the additional responsibilities of the Code Compliance Specialist without additional compensation. A letter has been forwarded to the Board members from Mrs. Fennell, requesting an increase in pay. The person who was the previous Code Compliance Specialist was earning twenty some thousand dollars and Mrs. Fennell is requesting \$15,000.00. Chairman Tyler stated that Administration is requesting that the Board approve an increase for Mrs. Fennell for taking on the additional responsibilities. At the last Board meeting, a recommendation was made to give a \$10,000.00 increase.

ON MOTION OF SUPERVISOR STRINGFIELD, seconded by SUPERVISOR CAPLE that the Sussex County Board of Supervisors approve of the \$10,000.00 salary increase for Mrs. Shannon Fennell.

Supervisor Warren advised that at the last meeting, the Board asked Administration to provide the County's salary scale.

Chairman Tyler indicated that with a \$10,000.00 increase, Mrs. Fennell would move from Step 4 to Step 8, per her supervisor.

Voting aye: Supervisors Caple, Stringfield, Tyler

Voting nay: Supervisors Fly, Futrell, Warren

The motion failed due to tie vote.

Chairman Tyler stated that there is a second request from a staff person who has been with the County for over fifteen years, Mr. Andre M. Greene who serves as Planner and in the absence of the Economic Development Director, he has take on those responsibilities. He has stepped up to the plate and has done a fine job and brought in millions of dollars to this locality. Mr. Greene has asked for the Board's consideration of \$10,000.00 increase for taking on the additional responsibilities.

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR STRINGFIELD that the Sussex County Board of Supervisors honor Mr. Greene's request for a \$10,000.00 salary increase.

Voting aye: Supervisors Caple, Stringfield, Tyler

Voting nay: Supervisors Fly, Futrell, Warren

The motion failed due to tie vote.

b. Tuition Reimbursement

Chairman Tyler advised that the Building Official has gone back to school to take classes to improve his skills and stated that the Building Official told him that the previous Administration indicated that if he took classes that the County will partially compensate him for tuition. The Chairman stated that he looked at previous records and there have been two other individuals that have been compensated for tuition reimbursement. Mr. Luter has submitted a request and stated that if all cannot be reimbursed, he would appreciate what the Board could do. Mr. Luter is an honor student who has done extremely well. His tuition bill is \$12,000.00 and ask the Board to consider reimbursing him for some of the tuition costs.

ON MOTION OF SUPERVISOR WARREN, seconded by SUPERVISOR FUTRELL that the Board of Supervisors say no to the Building Official's request for \$12,000.00 tuition reimbursement.

County Attorney Packer stated that under Robert's Rules of Order, negative motions are not to be introduced. State law trumps Robert's Rules of Order in certain instances. In this particular instance, County Attorney Packer indicated that there is no state law that will trump Robert's Rules of Order. The Board has adopted Robert's Ruler of Order as their default rules. So in his opinion, the motion is out of order.

Supervisor Warren withdrew his motion.

c. County Property To Be Sold

Chairman Tyler stated that at the last meeting, there was some dialogue surrounding whether or not the Board should sell some of the property owned by the County, particularly the property located on Route 631 (off of I-95), which was purchased for economic development purposes.

County Attorney Packer advised that Virginia law requires that before a local government can sell or transfer title of property, there must be a public hearing.

Item 12. New Business – none

Item 13. Board Members' Comments

Courthouse District – Supervisor Fly made the following comment: “I have a great concern over the VACoRP Lawsuit. I believe that the Board is being manipulated by the County Administrator because I have been in five lawsuits with this Board in the ten years that I have served. And all five of those lawsuits followed the same pattern – and that was that the County sent a letter to VACoRP stating that we were being sued, put in the stipulation for the lawsuit. They sent down an attorney; the attorney then interviews the Board members in Closed Session and the attorney then evaluates the case; does whatever they do with the other attorney in sending letters back and forth and then the VACoRP attorney comes back to the Board with a recommendation on how they recommend that the Board move forward. Either we push it in the court or we settle and do whatever is in the best interest of the County. For some reason, this particular lawsuit is completely different. On this lawsuit, VACoRP confirmed that they have no engagement letter from Sussex County and they are simply going off the word from a phone conversation from County Administrator. It is my recollection that the County Administrator who works for the Board of Supervisors has not brought this issue to the Board of Supervisors to be discussed in Closed Session. I think it is wrong; I think it is manipulative, that you’ve done what you did. When you sued the County for \$20,000.00 for legal fees, you did not engage VACoRP. When it suited you to have VACoRP step in, you did that without this Board’s knowledge. I would like to ask, this is very concerning to me, because on one hand you don’t engage VACoRP when it’s to your advantage, on the other hand, you engage VACoRP when it is to your advantage. It is improper for any County Administrator to engage in legal action representing this Board without this Board’s knowledge. And I don’t know and have talked to several attorneys, I don’t know how any attorney would represent me without my permission. I have not engaged any attorney; I also don’t understand in this particular lawsuit how any attorney could represent the Board because the Board has different opinions; three members of the Board believe one way and three members of the Board believe another way. So how does the attorney then draw an opinion of what the Board wants to do. I talked to seven different attorneys and they all say the same thing. What you have created is a very convoluted, complicated situation with the attorneys thinking they may have ethical violations in representing the Board without the Board’s permission and then you have a divided Board which has two opinions and the attorney can’t represent both opinions. So I am very, very concerned that County Administration moved this Board forward without its knowledge and I would like to ask who engaged VACoRP on behalf of the Board of Supervisors of Sussex County. Because this has never been on our agenda; it has never been discussed in any meeting of this Board; it has never been discussed in any Closed Session. We attempted to put it on the agenda tonight, you blocked that so that it couldn’t be discussed and were heading onto June 5th into court where we are being sued and this Board has yet to discuss this lawsuit or to be even made known of the lawsuit. I think this is gross incompetence on the part of County Administration and I would like an explanation.”

Chairman Tyler asked for Board comments.

Supervisor Futrell commented: "I am in agreement with Mr. Fly because the only way I knew about this is when I got a letter from VACoRP attorney to say that he was representing me in this case. And I was wondering where it came from. I am pretty sure that whoever made that decision could just say that they made the decision without the Board knowing anything about it. That's not right for the Board members or the citizens of this County."

Supervisor Caple commented: "If I remember correctly, when I was given notice that we were being taken to court by some citizens and Mr. Harris. It named three of us, Mr. Tyler, Mr. Stringfield and myself are being sued by three other individuals and we were instructed to have counsel to represent us and that's what we came up with. I don't think we asked them to represent the County, they were representing three individuals that they were being taken to court, by the three individuals that are suing us. Our County Attorney was not in the position to represent us, so we had to get our own attorneys So, that's what happen. And if they want to include the others, I don't have anything to do with that. We were looking out for the three people that were being sued by three other individual, two citizens and another individual. So I ask Mr. Fly, what were we supposed to do? They had their attorney, so we had to get our attorneys."

Supervisor Fly: "Mr. Caple to answer your question, the lawsuit does state the three of you, Mr. Tyler and Mr. Stringfield. But it also includes a fourth entity, which is the Board of Supervisors of Sussex County. So there are four entities that are being sued. What should have happened and what still should happen is that this should be brought before the Board, so the Board can discuss what action to take. That was not done. That was improper. I understand that you needed an attorney and the Board has a need for an attorney. But the thing is VACoRP is the insurance company that the citizens pay for, to protect the county....there general liability, automobiles, the liability of elected officials. The citizens pay for that policy with tax dollars. The proper method, the method we have always followed was when the Board is being sued, the County is being sued, we engaged VACoRP. But Board meets and the County Administrator tells us we are going to be sued and this is what the suit is about; this is where it's coming from and the Board meets in Closed Session and we discuss it and we engage our insurance company. And that's what should take place – that did not take place. And even if it is simply three Board members, they cannot execute and engage the County. If you remember a couple of years ago, I was crucified for hiring attorneys and here we have engaged VACoRP and several attorneys on behalf of the Board and the Board never discussed it. What I am saying is, it is improper. I believe it was done maliciously to keep three Board members out of the loop and it simply was done wrong. What should have happened is that the County Administrator should have brought this lawsuit to this Board in Closed Session and the six of us could sit there and decide what we are going to do. Are we going to engage VACoRP or not? Most likely, we would engage VACoRP, but it is a Board decision that has to be made. The County Administrator works for the Board. This decision to engage our insurance fund must be done by the Board; it cannot be done by the County Administrator. Now when we want to discuss it tonight, we cannot get it on the agenda. The County Administrator's Office knows of this lawsuit and failed to put it on the agenda. I think they are hiding something. I think it's absolutely despicable that the County Administrator's Office did not put it on our agenda. I had no inkling that the County

Administrator's Office was going to be so incompetent to put a lawsuit on the agenda for the Board to talk about. It never entered my mind that this Board is being sued and that our County Administrator's Office didn't think far enough in advance, that just maybe the people that are being sued probably need to know about it. So this thing stinks and we are going to get to the bottom of it. I wish you would put it on the agenda so we can discuss it in Closed Session. You chose not to do that. I hope someone would make a motion to do it now. So we can discuss, if not we are going to figure this thing out with the attorneys. It should have come to the Board."

Supervisor Caple: "I don't know why you think somebody is hiding something; we weren't hiding anything when we were taken to court, when we were given a summons to go to court. I didn't know I had to go until I got the summons from the County and the citizens. We didn't hide anything from the Board – we were looking out for our...."

Supervisor Fly: "The same attorney that's representing you Mr. Caple is representing the Board and who engaged them? That's what we are trying to figure out. And to answer your question why I think it's something sneaky because when the County Administrator benefitted from not having VACoRP come against him when he was suing us for \$20,000.00, VACoRP wasn't informed. They said they never knew about that. Now that it's to the benefit of the County Administrator to have VACoRP provide free legal service, they were notified. I think it stinks."

Chairman Tyler asked if there were anymore Board comments.

Chairman Tyler commented: "Let me just say for clarification Mr. Fly, I understand the politics."

Supervisor Fly: "There's no politics behind this, what's behind this is we didn't follow proper procedures and the Board never made a decision to engage a lawsuit. That is wrong. There is no politics involved. Do not insinuate that I have some political agenda, which I do not. The only agenda I have is that either we do things properly or we don't and when we don't do them properly we need to correct ourselves. That's why I tried to put it on the agenda, you chose not to do it, we will correct it a different way."

Chairman Tyler: "Again, I understand the politics behind it Mr. Fly, despite of what you might say. We understand that. However, understanding that Mr. Collins, Mr. Harris and Magdalene Turner issued suit. The Board does have insurance to cover that and more specifically is that the Board members did talk with our County Attorney, who could not represent us or did not want to represent us. However, what I think we need to do is to realize and Mr. Caple was right; Mr. Fly and if in fact that you have been sued, then I think you should thank us for making sure that there is representation to protect your interest. I am not sure that you are concerned...it has to be hypocrisy that you are concerned. My position is that if in fact what you are concerned with is that somebody is representing you and going to protect your interest and you are really concerned about that, I think that it is hypocrisy and I know that's not the case – it's political, you know it, I know it and the people on this Board know it. So my thing is, the Board has voted not to carry this into Closed Session and we will move forward with the agenda. If there are no other Board comments, we have reports from departments."

Supervisor Fly: "Mr. Chairman, what is my interest? You brought the question up."

Chairman Tyler: "We will move forward."

Item 14. Reports from Departments – none

Item 15. Closed Session (10:21 pm)

ON MOTION OF SUPERVISOR STRINGFIELD, seconded by SUPERVISOR CAPLE that the Sussex County Board of Supervisors shall hereby enter Closed Session for discussions pertaining to Personnel Matters and Real Estate Matters, applicable Code Sections 2.2-3711(A)(1) and 2.2-3711(A)(3).

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

Item 16. Return To Open Session (10:54pm)

ON MOTION OF SUPERVISOR WARREN, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the Sussex County Board of Supervisors hereby returns to Open Session; and

WHEREAS, the County of Sussex Board of Supervisors has convened in a closed meeting on this date pursuant to an affirmative recorded vote in accordance with the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia, 1950, as amended, requires a certification by the County of Sussex Board of Supervisors that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the County of Sussex Board of Supervisors hereby certifies that to the best of each member's knowledge (1) only public business matters lawfully exempt 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, we heard, discussed or considered in the meeting to which this certification applies.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren

Voting nay: none

Item 17. Board's Action on Closed Session Items

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR STRINGFIELD and carried: RESOLVED that the Sussex County Board of Supervisors hereby agrees to continue the employment with Michael R. Packer, County Attorney, on a month to month basis for the same hourly salary that is in the previous contract, \$62.50 per hour with a maximum of eighty-eight (88) hours per month; under the same terms and conditions as the previous contract except it won't be a yearly contract.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren
Voting nay: none

Item 18. Recess (10:57pm)

ON MOTION OF SUPERVISOR STRINGFIELD, seconded by SUPERVISOR CAPLE and carried: RESOLVED that the April 18, 2013 meeting of the Sussex County Board of is hereby recessed until Thursday, April 25, 2013 at 7:00 p.m.

Voting aye: Supervisors Caple, Fly, Futrell, Stringfield, Tyler, Warren
Voting nay: none