

**At a Recessed Meeting of the Sussex County Board of Supervisors held in the  
General District Courtroom, Sussex Judicial Center on  
Thursday, April 5, 2012, 7:30 p.m.**

**Present:**

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

**Others Present:**

Thomas E. Harris, County Administrator  
Raymond R. Bell, Sheriff  
Lyndia Person-Ramsey, Commonwealth's Attorney  
Ellen G. Boone, Commissioner of the Revenue  
Brenda H. Drew, Housing Programs Coordinator  
Marquitta Shaw, Housing Assistant  
Lorenzo Turner, Housing Assistant  
Sandy Skinner, Administrative Assistant  
Narendra Pleas, Assistant Commonwealth's Attorney  
John Broderick, Director of Finance/IT  
Charles H. Harris, III, Superintendent of Schools  
George E. Morrison, III, Deputy County Administrator/Director Economic Dev.  
Chequila H. Fields, Director of Social Services

**Item 1. Call To Order**

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

The Chairman announced that as a result of the because of the large crowd in attendance tonight; the General District Courtroom has a seating capacity of 124. The meeting was relocated to the Sussex Central High School Auditorium.

Upon arriving at the school, Chairman Tyler advised that anyone who wants to speak will be allowed 2 minutes each. He asked that speakers give their name, address and the district that they are from; that they address comments to the Chair as opposed to getting personal; not to be redundant and repetitive in comments; asked that they be respectful; during board deliberations, keep comments and remarks silent.

**Item 2. Approval of Agenda**

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR WARREN and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves the agenda of the April 5, 2012 meeting.

Supervisor Caple: “Point of order, on the agenda, you have under legal matters in Closed Session, regarding the Deputy County Administrator’s time sheets, hiring and firing of employees, potential violation of Virginia Procurement Act – that matter was turned over to the Personnel Committee and the Personnel Committee has not met to discuss and decide what it is and what we are going to do. So I would suggest that we remove that until the Personnel Committee meets; supposed to be meeting April 9<sup>th</sup> at 2:00 p.m., and at that time, we will have time to discuss that and do whatever it is we need to do with that. So the Personnel Committee still has not yet met to handle the matters that were turned over to them previously from the other meeting.”

Chairman Tyler: “Mr. Warren and Mr. Futrell asked for the special, he is requesting that the said item which was turned over to the Personnel Committee, which will meet on the 9<sup>th</sup> and it will be taken up at that particular time.”

Supervisor Warren: “I don’t have a problem with that.”

Supervisor Fly: “Because this is a special called meeting, and not a regular meeting of the Board of Supervisors of Sussex County, you cannot add or delete from the agenda. Because it was placed in the paper and this is a special called meeting, so the agenda is guided by a different set of guidelines than a regular meeting where we could take things off of the agenda, so it would be inappropriate to remove anything from the agenda because was put in the paper.”

Supervisor Caple: “That might be true, but it also states in the by laws in Robert’s Rules of Order that anything that is turned over to the Personnel Committee unless the Board takes it from them, cannot be brought back and discussed and deliberated on because it has been turned over to that Committee and the Committee has not had time to.....I guess I could say it was put on there erroneously, but it’s not supposed to be on there.”

Chairman Tyler: “The individuals who requested the special meeting have agreed to, because it was referred to the Personnel Committee to wait until Monday for the Personnel Committee to take that issue up, Monday at 2 o’clock. At this time, the Chair calls for the question. All those in favor say aye.”

Supervisor Fly: “We are voting on what?”

Chairman Tyler: “On the agenda, taking it off the agenda.”

Supervisor Fly: “Can you do those in two separate motions?”

Chairman Tyler: “Alright, let’s go back the item that is being taken from the agenda, all those in favor of deleting that item from the agenda, say aye.”

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

Voting nay: Supervisor Fly

Chairman Tyler: "The next item will be for the approval of the agenda, with the items as stipulated, all those in favor say aye. Is there a motion on the floor, for the approval of the agenda?"

ON MOTION OF SUPERVISOR WARREN, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves the April 5, 2012 agenda.

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

Voting nay: none

### **Item 3. Payment for the former County Attorney**

Chairman Tyler: "On your agenda, the request for the special meeting, it was requested to pay Henry Thompson \$54,315.95. Mr. Futrell, Mr. Warren, do you want to proceed with that?"

Supervisor Warren: "Yes, we put it on here because this was agreed to by the Board in November of 2011 and to this date, it still has not been paid. It's already been approved, so all we are asking tonight is a motion to authorize payment."

Supervisor Stringfield: "Well with that being said, I think at the last meeting, we authorized Mrs. Ramsey to contact the attorney general for ruling and I think we should table this until we get approval from the attorney general. And we have not got that yet."

Chairman Tyler: "Are there other discussions regarding that?"

Supervisor Fly: "I believe you (speaking to the Chair) and I know I did receive a phone call from the Commonwealth's Attorney indicating to us that she had made a ruling and that the ruling had been sent to the AG's office and had been declared correct and that her ruling that the motion of November 17<sup>th</sup> by the Board of Supervisors of Sussex County to release Mr. Thompson and in specific to the two meeting requirement was legal and correct. And that the requirement for two meetings was null and voided for two reasons, one, first it was more restrictive than the FOIA request requires, you can't pull the Board in the closed session and second with the Board eliminating or releasing the county attorney, then it basically did away with requirement. So we have gotten an AG opinion back, so I think we should go ahead, I don't see any reason why we would delay this payment. This payment can really, even in the absence of an AG's opinion, which we do have, we have the AG's opinion. The AG's opinion said the Board was correct on the 17<sup>th</sup> of November. Even if we didn't have that AG's opinion, the Board of Supervisors of Sussex County voted and had a majority vote to terminate the County Attorney and to pay him one year's severance. And so regardless of the AG's opinion, that doesn't matter. The Board of Supervisors on November 17, 2011 voted to pay the money, we owe the money and we should pay the man his money."

Chairman Tyler: "Are there other discussion on the motion?"

Supervisor Caple: "I don't have a problem so much with it, other than the fact we are waiting for the attorney general's opinion to determine whether or not he is still employed or he is not employed. So if we are waiting for that decision to come back and said we are going to pay him this money, so if we pay him this money and he comes back, will that money be refundable to come back to the County or does he keep it and work? And I would think, since this is so much, if I might use the term, in litigation, and had not been settled, let's wait until we get the opinion from the attorney general. Mr. Fly said it has come back, but have you seen that Mr. Chairman? Do you have that opinion?"

Chairman Tyler: "Well, members of the Board, at the last meeting when we begin to deliberate over this issue, many of us had a difference of opinion for two reasons, as we insinuated earlier. Back in 2004 or 3, thereby, I think Mr. Collins was on the Board at that time, there was some concern at that time regarding how the County dealt with its administrative staff, specifically County Administrator and County Attorney. At that time Ms. Mary Jones who is deceased, did not have a contract. And we were concerned about them being treated fairly. There was a resolution passed by the Board stating that in order to dismiss the county attorney or the county administrator, had to be introduced at one meeting and voted on at the next meeting. During November, Mr. Harris Parker was the Chair of the Board at that time, became ill and was in the hospital. Obviously that left five members. At that time, a board member brought it up on the agenda at the night of the meeting to add it to the agenda and to discuss that item. Mr. Caple was at that meeting, but the other members are not here. But there was concerned whether it was ethical, obviously you can add something to the agenda, that's okay. But the concern was that there were no prior notification that this would be added to the agenda, the vote was taken to dismiss the County Attorney, without cause, there were no reasons. Because we had a resolution that said you introduce at one meeting and vote at the next meeting. After he was dismissed at the January meeting, I for one, brought that issue up, had the county violated its own resolution. And the reason I brought that up, because the county has adopted Robert's Rules of Order as its procedure for conducting meetings. Robert's Rules of Order states, which we adopted, any motion that's made which conflicts with your bylaws, resolutions or charter is null and void. If you make a motion that conflicts with your resolution or bylaws, it's null and void and that's Robert's Rules of Order. So that raised the question was the termination legal or not. Well, we did not know, I read Robert's Rules of Order and I said in the meeting "well Mr. Thompson, you can come back to work Monday." Then I said better yet, we will give the Commonwealth's Attorney thirty days to get a written opinion from the Attorney General, for several reasons. One, if we did not do that, it could be in litigation and we would use your taxpayer dollars in court defending the county. Secondly, based on progress, a lot of time, we move on things then we had to go back and correct. So we are trying to avoid that. Now the Attorney General has not given a written approval as of yet, I have not received one as of yet. Upon receiving that, I for one, if the Attorney General say it was proper or legal; some things are proper, but not legal. But if it's legal, then I can live with that and we can move on. If it's legal, I think the Board could live with that and move on. But we don't want to move improperly, then being caught using your taxpayer dollars to fight the attorney in court. So I am of the opinion that from November up until current that we have not disbursed and appropriate these dollars. It might be a little wisdom to wait a few more days. We have another upcoming meeting in a week or so; it

might be appropriate to wait until then. And I think Mr. Caple brought up a point. Let's say for instance that the Attorney General looks at the resolution and say it is a conflict; will he have to come back to work. And if we disburse this money, are we going to ask for it back or can we take it back? I don't know. If he comes back to work, from the time he was dismissed until now, it's about \$18,000 that we will owe him, retroactive pay which will be a net savings to the County of \$36,000, if he will agree with that. I don't know if the former County Attorney will do that, I don't know. But my point is that we have a fiduciary responsibility when we deal with your dollars and that we take very seriously. I think it would be appropriate to wait until we get an official ruling from the Attorney General and once we get that ruling then we can go on and disburse the funds to the former County Attorney."

Supervisor Fly: "I guess the first question Mr. Chairman is for you. Did you receive a phone call from the Commonwealth's Attorney this week concerning this matter?"

Chairman Tyler: "No, I did not receive a phone call. I visited the Commonwealth's Attorney's office."

Supervisor Fly: "And what did she tell you?"

Chairman Tyler: "The Commonwealth' Attorney said that she, if I may, if she thinks its appropriate at this time. it's her opinion that....."

Commonwealth's Attorney Ramsey: "Good evening to those that I have not spoken to, if I may Mr. Chairman I requested an opinion from the Attorney General; I had a conversation with his office. They initially told me that they would prefer not to issue a formal opinion and their informal answer was given to me. After further discussion with Mr. Tyler, I determined that it would be in the best interest of the Board to request a written opinion and that is what I have done at this point. I have advised them of the time limit that you gave me of thirty days; they are aware of that and it was submitted in writing yesterday. So we are waiting to hear again from the Attorney General and I would prefer if we would wait until we receive that written ruling."

Supervisor Fly: "Let me ask a question here; one of the things I think that, if I could address this to Mr. Caple, I think that one of the things that we are confusing here is we talk about Robert's Rules of Order and we talked about the resolutions and all that. The fact of the matter is that on November 17<sup>th</sup>, the Board of Supervisors terminated the County Attorney. It would be this Board's responsibility to hire him back, not the prior Board. Even if the Attorney General's ruling comes back and even if we think we know what it is, but if it comes back and it says that the motion on November 17, 2011 by the Board of Supervisors was improper. Then the County Attorney would have recourse against the County for damages. But still it would be the Board of Supervisors of Sussex, the six of us that are sitting at this table today, not the board that is out. It would be this Board that would have to hire the County Attorney back. And this Board has repeatedly voted 3 to 3, not to hire that particular individual as County Attorney. If the motion is on the floor and a second and three of you want to vote against giving the many the money he is owed, okay, that's fine we will let that go. But let's not confuse the issue. Waiting

for an Attorney General's opinion has nothing to do with hiring that attorney back. That would be the determination of this Board. This Board has shown absolutely no interest in hiring that attorney back. It has constantly tied 3 to 3, so I would ask Mr. Caple, am I correct or incorrect on that?"

Supervisor Caple: "The answer from the attorney general is what we made a request for. It was left at that when the request comes back and the decision would be made as to whether or not we could hire him back. And my question tonight was if we pay him this money now, and I don't have a problem paying him, and you decide you want to hire him back, are we going to try to get some of that money back? Or are we going to let him keep it? That's my question. (Please note that this portion of the recording was difficult to understand).

Supervisor Fly: "I will ask another question of Mr. Caple, if I could. I want to make sure that everybody understands my point. So does the Attorney General have the authority, outside of a courtroom to mandate to this Board? Because that's what you're saying. That we are waiting on a ruling from the AG's office and if the AG's office comes back and says that what we did on November 17<sup>th</sup>, the past Board, the miraculously this Board will have capitulate and hire somebody back that this Board has repeatedly voted not to hire back. So my question to the representative from Stony Creek is does the Attorney General of the Commonwealth of Virginia have the authority to dictate to this Board outside of a courtroom?"

Supervisor Caple: "I don't know what sort of authority he has over this Board, but why do you get opinions from him if you concerned about something being legal or not legal? If he does not have any bearing on whether we will follow his request or his opinion, then we won't get one from him. I think what we trying to come to a consensus or conclusion was whether or not he was dismissed illegally. Then we cross that bridge when we get to it. It has not been determined whether or not according to the policy this Board had made. We said it was illegal and now you want an opinion from the Attorney General and if it does not mean anything, why are we getting one from him?"

Supervisor Futrell: "Mr. Caple, Mr. Fly and the Chairman, it's like this. It is a matter where we have a legal issue, I can't discuss that right now, but to this point here, we have to move on for the County. We have to make these cases in court; have these cases represented for the County. If we table it for ninety days to get an opinion, now Mr. Caple is asking about the attorney general, you guys are the ones that asked for it. The best thing to do, we have two or three other cases in court, pay Mr., Thompson his money and if he's right, he can take us to court like the rest of them."

Chairman Tyler: "I appreciate the comments but I would say that I would hope that if the Attorney General, not to say that his ruling is the gospel truth, because it is a legal opinion, however I would think if this board get a ruling back saying that you acted improperly, then I would wonder whether the Board would reconsider its actions. And that's the issue. But if the Board has wronged someone and move to correct. And I am of the opinion that this Board will. However, let me say one more thing as we bring closure on this debate – the other issues out there is there is a state law which states that the

County Attorney and the County Administrator work at the pleasure of the Board. That's state law and we can dismiss them with any cause or no cause. Then within the framework of that law, you have a resolution that we have adopted that is a more restrictive covenant. Saying this is the process and procedures that we will follow. So that's where we are and that's why the deliberation came. And that's where Robert's Rules of Order come in. There are several issues that conflict."

Supervisor Fly: "I appreciate Mr. Futrell's comments and I agree with him, but I don't want the public to be fooled. We have had three attorneys look at this, three attorneys that specialize in this type of law look at this particular resolution that was passed by the Board in 2003; looked at it, their legal opinion is that the resolution is illegal; that it will not stand up in court. So just so the citizens understand, there is no inner framework to a state law. The state law sits on the code books of the state of Virginia as a single entity in connection with all the other code sections. Ordinances don't fit in there. So there is a state law that says an at will employee which is what the County Attorney is, can be fired for no reason whatsoever. Our resolution by three separate attorneys has been deemed illegal. You can wait until the AG's office comes in with a hard copy, you know what the decision is going to be. But if you want to delay paying the man's money, so be it."

Chairman Tyler: "At this time the Chair, is there any other discussion on the motion; was there a motion on the floor?"

Supervisor Fly: "Yes and seconded."

Chairman Tyler: "The motion is pay the money tomorrow. There's a motion, is there a second to that motion?"

Supervisor Futrell: "Second."

Chairman Tyler: "It's been properly moved and seconded to pay the former county attorney \$54,315.95. All those in favor, say aye."

Supervisor Warren: aye

Supervisor Caple: aye

Supervisor Fly: aye

Supervisor Stringfield: "I am of the opinion that we should wait for an opinion from the attorney general. Then pay him. Voted nay.

Chairman Tyler: abstain

The audio recording confirms that the Chair did not call for Supervisor Futrell's vote.

#### **Item 4. Requirements of County Attorney**

Supervisor Fly: "This is something that Mr. Warren and Mr. Futrell put in and has helped me, as a request and I am going to make a motion, then I would like to explain the motion. And the motion is that the successful applicant or person hired as county attorney

of Sussex County shall have no ethical violations, private reprimands, private admonishments, no public reprimands, public admonishments, suspensions, revocations as determined by the Virginia State Bar within the last thirty six months. There's my motion.

Chairman Tyler: "There's a motion, is there a second to the motion?"

Supervisor Caple: "What were you reading, a law and ordinance or something?"

Chairman Tyler asked Supervisor Fly to repeat his motion."

Supervisor Fly: "The motion is that the successful applicant or person hired as county attorney of Sussex County shall have no ethical violations, private reprimands, private admonishments, no public reprimands, public admonishments, suspensions, revocations as determined by the Virginia State Bar within the last thirty six months."

Supervisor Warren: "Mr. Chairman, I second that motion."

Chairman Tyler: "There is a motion on the floor and has been seconded, any discussion on the motion?"

Supervisor Caple: "What is he asking for; that we advertise for hiring?"

Chairman Tyler: "No, the motion on the floor, let me say this to those in the audience, all due respect to the Board members. We received our packages last night around 8 o'clock. This Board has not had the opportunity to research many of these items and to review them. It's not timely, but that's reality that we are dealing with. Normally we have our packets five days in advance so we can research issues. However, for this meeting, we received it last night, which is not timely, but we understand that the individual was out on vacation, etc, but just want to let you know what the deal is. Read that again, the motion is on the floor and has been seconded."

Supervisor Fly: "I will read it again and then I will explain. My motion is that the successful applicant or person hired as county attorney of Sussex County shall have no ethical violations, private reprimands, private admonishments, no public reprimands, public admonishments, suspensions, revocations as determined by the Virginia State Bar within the last thirty six months. Now I will explain where this comes from. I had two groups of citizens come to me since the last meeting concerned that some of the applicants in which we were looking at hiring had bar violations. There are attorneys that are licensed to do work in the Commonwealth of Virginia and they had ethical violations or other violations of the attorneys' code and ethics or rules and they had been basically sanctioned by the state bar. And these citizens were concerned and I became rather concerned listening to them talk that the citizens of Sussex County do not want to hire attorneys who have violated their own ethical or code of standards. And then have these different levels of disciplinary taken upon them. And it was pointed out to me that there are 30,228 practicing attorneys in the Commonwealth of Virginia. And I called the state bar trying to get some figures on that and that figure seemed to be correct. Less than 10%

of the licensed and practicing attorney in the Commonwealth of Virginia has ever received any of these disciplinary actions, which I just talked about, So that would leave Sussex County about 27,200 attorneys to choose from to be our county attorney. So in agreeing with these citizens, I agreed to make this motion that basically Sussex County should not hire any attorney that has had ethical violations or other violations deemed by the state bar. It means that they did something wrong and with 27,200 other attorneys, there is no need for Sussex County to be looking at attorneys that have violated the state bar. So my motion is simply to make sure, as Mr. Caple had said earlier, that we do what's in the best interest of citizens of Sussex County and that is that through this motion, we will hire only the best that is out there. Our citizens deserve the best; that we will only hire the best and to facilitate that, that we will eliminate from our interview process, our hiring process, those who has these admonishments against them. That's what the motion is."

Chairman Tyler: "Does anyone want speak to that? Is there any discussion on the motion?"

Supervisor Stringfield: "I believe that on the last special meeting, we had we reviewed quite a few attorneys and they said that it would be impossible to be an attorney, depend on what type of attorney you are, that you wouldn't get some type of violations."

Supervisor Fly: "I would like to address the gentleman from Wakefield. I talked to a lot of attorneys, but two of the attorneys that we interviewed, one had thirty-two years of experience and he had no bar violations. But he did explain to us that he was a city attorney for the City of Petersburg and he said in that element, it would somewhat be difficult for him to have a bar violation because he has a direct boss. He had lots of experience and he understood what we need; quite frankly many of us thought he was the best candidate. But it was also another candidate that came into the room who had been practicing for fourteen years who also had zero violations. He stated that it wasn't really that hard to keep away from violations, so I would respectfully disagree with the representative from Wakefield that it is impossible for us to find someone without these violations and I think we owe it to the citizens of Sussex County to seek out and find the best attorney that we can. The basis for how you judge attorney is on the violations that come from the Virginia State Bar. So I think we owe it to the citizens of Sussex County to pass this motion so that we are only looking at those that can serve the citizens the best."

Chairman Tyler: "Other discussion on the motion."

Supervisor Warren: "Call for the question."

Chairman Tyler: "Let me say this. I can appreciate the thought behind that, however, when we interviewed and I think that was mentioned earlier, the gentleman with 32 years experience, who was our number two candidate – he and Mr. Thompson ran neck in neck. And we asked him about that. He said very frankly, I never been in private practice. I have always worked as an attorney for a locality or school division, which makes it almost impossible for me to ever have an infraction because of the amount of exposure

that you will have in the legal realm. Now, it's two things I am thinking. One, every attorney might not want to come to Sussex County and that's factual. Two, I am not sure that they want to come to Sussex County when have the revenue to pay them to come. Three, I sit in the General Assembly and seen judges appointed who have things on their record. So it's a matter of 36 months or what's on their record. So what's the timing of that? If we can in the Commonwealth of Virginia appoint judges with something on their record, but if they correct it, then surely Sussex County can appoint someone to be an attorney who might have errored along the way. Whether they know it or not know it. So it's not an issue always of what they have on their record because none of us are perfect. A lot of us have something on our record too, so none of us are perfect. We all have sinned and come short of his glory. But the issue is, if they have corrected that and able to provide adequate competent legal service and guidance for this Board, that's the bottom line. So from that perspective, I think we are being too restrictive in terms of saying we will only accept those who have a perfect record in the last 36 months. I think that's a little restrictive because as a matter of fact, if they are in practice, then they are capable, otherwise the state bar should have taken their licenses. So I am of the opinion that we should open the flood gates where if it gets to the point of interviewing, this Board uses its will and the Personnel Committee use its wisdom to listen to those individuals to do due diligence, search their background and make your decision if this is the kind of person you want for Sussex. Because there might be some insinuating circumstance and I don't want to box us in. I would ask the Board not to box us in to say they have to have a clean record because might be some legitimate exception to the rule, I don't know."

Supervisors Fly: "Your comment that if they are in practice, they are competent, I think there are a lot of prisoners in our prison that would disagree with you. But the other thing is the reason I put the 36 month on there is just what you stated. 36 months, if they have had a violation, they can correct the problem, they go through the Bar's structure that they have to correct their problem and in their 36 months, they can have their disciplinary counsel, they will know what they did wrong and put them on corrective action and then they can prove to us, that in hiring them, that they have not returned to their old ways. That's why I put the 36 months on there. So it doesn't eliminate someone that made bad violation 40 years ago. So I don't' think it's too restrictive; the other thing is I hope that you are not suggesting to this Board that Sussex County somehow is an inferior county and because I would disagree with you wholeheartedly that we are inferior; that we should settle for less than the best. I just think for us to adopt a policy that our citizens don't deserve the very best we can find for them, that don't deserve the very best County Administrator we can find, they don't deserve the best County Attorney we can find for them. And that for some reason because we are only 9,800 people and we are a small rural county that somehow we are not as good as Fairfax or anybody else; that we should settle for less that the best. That is foreign concept to me completely. And all I am asking is that with this motion, we don't exclude people that have been in practice for a long time and made a mistake; It's 36 months and if you had a violation within the last 36 months, we don't want you right now, but may take a look at you 36 months from now, but we don't want you right now because there are plenty of attorneys that will come to Sussex County and practice part time on behalf of the county at a good rate. We got one that's in our pool now. But I would ask the Board to pass this resolution because not passing this resolution is basically saying that you want to hire someone that is inferior;

that someone who has violated what their own profession has deemed them to have made a critical error and hurt their client. And I don't want to have an attorney representing the citizens of Sussex County that has been found guilty of disciplinary action, of hurting their client; we would be the client. And I think it's too big a risk to start looking at attorneys that have these violations within the last 36 months and to vote against this is basically voting to say let's hire every unethical person that shows up. Hopefully we vote in unethical people for the constitutional officers and this Board. We expect everyone that we hire to perform at a professional level so the citizens of Sussex County get their money's worth, as Mr. Caple mentioned earlier. And the only way to do that is to raise the standard of who we are going to hire and that's what my motion attempts to do.'

Supervisor Warren: "I sit here and I cannot understand for the life of me, why we spent as much time here tonight defending second best. This county deserves better. If we work as hard as we have worked the last 35 minutes defending second best, we could solve every problem we got in this county in two hours. So with that said, I am in favor of this motion, put some teeth into and let's move on with the County business."

Chairman Tyler: "Let me just clarify my comment. By no means am I saying that Sussex deserves second best. And I am not insinuating that we want an inferior attorney. But what I am saying, that when I look at the list of those attorney who has something on their records, some of them are practicing right now in some of the most progressive counties in the state of Virginia. So what does that tell you? It's not a matter of what's on their record; it's their performance. The second thing is we just made a comment, the state law says this. The county attorney and the county administrator works at our pleasure. If we hire one who we deem inferior, who cannot perform, who cannot give us legal guidance, we have the right, given by the state, to fire them immediately, without justification. So now, if that's the case, according to state code, then that tells me, if a person is not performing, we can let that person go. So what is the issue? I guess I am saying we don't want to be too restrictive, if someone has something who has corrected it and is an excellent attorney, we cannot give them the opportunity to serve us."

Supervisor Warren: "Mr. Chairman, you just very ably answered your own question, you said that they serve as our will, we can fire at anytime we want to, without any cause. That exactly what the prior Board did in November and I sat at all those meetings last year and I can tell you why, because of inability to do the job, incompetence and the list goes on and on. We are here to discuss paying the man his severance."

Chairman Tyler: "If we were to walk down the road why he really was fired, I think if you really want to walk down that road why he really was fired, then I can share that with you. Maybe I need to share that with the audience. Let me share why he was fired."

Supervisor Fly: "Point of order. We have been told by three separate attorneys that we hired that it is not in the best interest, experts in the field of employment law, that it is not in the best interest of the County to state any reasons why the former County Attorney was released. State law states that he or she is an at-will employee and can be released by the Board at any time for no cause. The other thing that we discovered was that the County's grievance policy was never filed with the Circuit Court Clerk's Office, which is

required by law. Wherever the blame lies, with the County Administrator's Office before Tom got here or with the former county attorney, not sure, but it doesn't matter. The problem is that our grievance policy was never filed with the Clerk of Court. Now because of that, the law says that we default to the state grievance code. State grievance code says that an at will employee, a County Attorney has no grievability. So it's nothing there, but we have been advised by three separate attorneys that it would not be in the best interest of the County to state any reasons why the county attorney was dismissed. So if you go forward, my point of order, is if you go forward with the discussion, you have been warned by three attorneys, you are now being warned one member of this Board that you could damage financially and legally."

Chairman Tyler: "Thank you very much; however there was a statement made that the County Attorney was incompetent. Let me pause and tell you the truth and I think the truth is what set us free. And I think we need to do that because people come to meetings and sometimes they are misled. Let me back up, the citizens need to know the truth. They deserve that. For those of you who came to the meetings over in the last year, if you are in the audience would you raise your hand? If you remember something called redistricting where we had to draw the lines, the General Assembly had to draw lines; the General Assembly fought over those redistricting lines; that's the truth. Every ten years, every locality have to draw the redistricting lines. When you came to those meetings, last year, you and I know it was chaotic; there were things said that shouldn't have been said. You know it and I know it."

Supervisor Fly: "This is germane to what?" Point of order, the motion on the floor is my motion that we put some regulations, some guidelines into how we hire or the person that we hire.....I am having hard time figuring out how your conversation is germane with the motion on the floor and as the Chairman, you need to rule that your own conversation that you are having with yourself is not applicable to the motion that's on the floor. It's got to be germane with the motion on the floor to discuss it. And if I might, one other point of order, under the large rules, if the Chairman is going to engage in a lengthy discussion or debate, he needs to step down as Chair. "

Chairman Tyler: "Mr. Fly, you are reading Robert's Rules of Order, this is not a large group, this is an assembly, this is smaller, which is different. Let's go to Robert's Rules of Order."

Supervisor Fly: "Let's address the motion."

Chairman Tyler: "I want to deal with the ruling. It is regarding your decision. Let me read from Robert's Rules of Order regarding that and you might be right Mr. Fly. 'Any two members have the right to appeal from the decision of such question that the chair might have. A member has no right to criticize the ruling of the chair unless the appeal; it has an appeal from his decision. On page 256. A member has no right to criticize the ruling of the chair unless they appeal from his decision. It further says that a majority vote or tie vote sustains the decision of the chair on a principle that the chair's decision stands until reversed by a majority. If the presiding officer is a member of the assembly, which I am, he can vote to create tie and thus sustain the decision. My decision is that I am not out of

order because it was mentioned the reason why he was fired. Saying he was incompetent, so I am dealing with the reason why he was fired because a Board member just mentioned that, that's Robert's Rules of Order. So now if you want to just say I am out of order, I would call for the vote."

Supervisor Fly: "The motion, we have got to speak to the motion."

Chairman Tyler: "I have ruled and you can go ahead and appeal it. The chair will entertain a motion to appeal my decision at this time."

Supervisor Fly: "What was your decision?"

Chairman Tyler: "My decision is that I think my comment would be germane to the conversation because a Board member said that he was fired because of incompetence and I want to address the reason why he was fired."

Supervisor Fly: "May I restate the motion?"

Chairman Tyler: "You said point of order, now I am going to have to call for a vote on the appeal. The chair will entertain a motion whether I am point of order that I could not speak to this motion, at this time. Is that your appeal Mr. Fly?"

Supervisor Fly: "My appeal is that your conversation is no longer germane with the motion that has been made and seconded."

Chairman Tyler: "The motion on the floor that the Chair's ruling is improper, all those in favor of that motion raise their hand, say aye."

Voting aye: Supervisors Fly, Futrell, Warren

Voting nay: Supervisors Caple, Stringfield, Tyler

Supervisor Fly: "The motion dies."

Chairman Tyler: "The motion does not die; the reason being is because the motion does not pass. So now let me proceed and share for whatever reasons they don't want me to tell the reason why he was fired. Let me share with the audience."

Supervisor Fly: "Point of order."

Chairman Tyler: "Point of order, Mr. Fly."

Supervisor Fly: "May I restate my motion?"

Chairman Tyler: "No sir because I have the floor at this time. The reason why is during the redistricting process."

Supervisor Fly: "Point of order."

Chairman Tyler: "The Chair has the floor."

Supervisor Fly: "Point or order."

Chairman Tyler: "The Chair has the floor. During the redistricting process, there was so much tension about the drawing of those lines. We sat for about five or six months trying to compromise and trying to draw the lines such it would reflect the population in Sussex. Former Chairman Parker, I will give him the credit, he spent an enormous amount of energy dealing with that issue. Until finally, he agreed to give up territory in Waverly such that the other districts would have adequate population that it would be an agreement to submit it to the Justice Department for approval. There were individuals who felt when we drew those lines, at one point we had three minority districts, after those lines, it increased to four minority districts; it was submitted to the Justice Department. The Justice Department approved of the lines; the election was held on the 8<sup>th</sup> of November. Mr. Stringfield won the election in the new district. He won on the 8<sup>th</sup>, the very next meeting, Mr. Thompson was fired. That's the truth, the whole truth, so help me. So, what can you draw with that? What motivated it? Was it the election? Many people say yes. I am telling you there are a lot of reasons. There was nothing brought up, I have been on this board for sixteen years, there was nothing brought about Mr. Thompson, the grievance policy, nothing brought about being certified on file. They were certified, but not filed. It was administration's responsibility to file. So that is what happened, it was the redistricting process, which really cost him his job. And I just felt that was unfair."

Supervisor Fly: "I guess what you just told us is, we are willing to wait for the AG's opinion. You just gave us the opinion, is that what you are saying?"

Chairman Tyler: "No, I just told you, I just explained to the audience why we got to this point where we are now."

Supervisor Fly: "Let me just make two more points and hopefully will bring us back on point. You made a comment before about hiring county attorneys that we need to judge their performance. That is exactly what the state bar does when they discipline attorneys. They are judging the performance of that attorney based on his or her actions and results. So if we are really looking to judge their performance, that's a great tool that we have in front of us is whether or not they have had any disciplinary actions placed upon them by the Virginia State Bar. That is the measuring tool that attorneys use in their professions to measure the performance of attorneys. So I would hope that this Board would vote to use that mechanism that's already in place. If you look at how the Virginia State Bar disciplines attorneys, it goes through three steps; judges are involved in that; so what you have with these disciplinary actions is attorney and judges of the Commonwealth of Virginia determining the performance levels of attorneys that are licensed to practice in the Commonwealth. So it's an excellent gauge for us to look what an attorney has done. I hope we adopt the motion, my 36 months was put on their for exactly what you said; if an attorney had made a mistake, corrected their mistake, had some months under their belt showing that they had corrected their problem, then they are fine. But until they pass the

36 month criteria that I am asking for, I think it is shortchanging the citizens of Sussex County to hire these attorneys who have these disciplinary actions when there are plenty attorneys; we had nine attorneys apply for the job, only two of them had bar violations. So it's not that we can't get attorneys to come to Sussex County, it's not that we can't get attorneys to come to Sussex County that no bar violations, we had seven out of nine had zero disciplinary actions taken against them by the state bar. So this is not an out of the way motion that I have made, it's simply making sure that the citizens of Sussex County, that we exercise our responsibility as elected officials and make sure, just as the School Board does, they make sure we have the best superintendent and make sure we have the best teachers, best bus drivers. And we need to make sure that we have the best staff that we can put forward for Sussex County especially in the upcoming months where we will handling a lot of economic development projects to move the county forward. So my motion is on the floor, I believe it has been seconded and I hope it would be the pleasure of this Board to raise the bar and let's hire us an attorney that can push this county forward."

Chairman Tyler: "Any discussion on the motion? I have no problems with raising the bar, I just don't want to be too restrictive. That's my position. Would you repeat the motion?"

ON MOTION OF SUPERVISOR FLY that the successful applicant or person hired as county attorney of Sussex County shall have no ethical violations, no private reprimands, no private admonishments, no public reprimands, public admonishments, suspensions, revocations as determined by the Virginia State Bar within the last thirty six months.

Chairman Tyler: "Any discussion on the motion? If not the Chair calls for the question, all those in favor say aye."

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

Voting nay: Supervisor Stringfield

(Please note that the Chairman did not ask for a second when he asked the motion to be stated again. (9:10pm)

Supervisor Caple: "Mr. Chair, if I might add, just before you go to the next item, we need to stop playing judge and jury. We got all of the answers, we judge everybody, we play judge and jury and we need to stop doing that. We need to take care of the business that we need to take care of. Every night that we come here for the past two or three years, not just this year, we want to try to determine to the public or somebody, I know more than you do; and you don't know much as I know and you're right and I am wrong and I am wrong, and you're right. We need to stop that. This County has been doing business for the last 30 or 40 years. What happened then, you didn't have anybody on there that knew what they were doing or you are saying now that people don't know what they are doing? I am getting tired of people playing judge and jury and not giving the Board respect for one another and taking care of the business that need to be taken care of and I would appreciate it if each member would respect each other member on this Board regardless of whether you agree with his decision or not. Respect the Board member."

## **Item 5. Hiring of County Attorney**

Chairman Tyler: "Next, we will move onto the hiring an attorney."

Supervisor Futrell: "I make a motion on Mr. Packer because he is number one of the other three; he has 34 years in public government and is willing to work part time."

Supervisor Fly: "Second."

Supervisor Caple: "I would like to make a substitute motion. We have tried this before and I thought it was a good gesture because we had two candidates that was the top vote getter – that was Mr. Thompson and Mr. Packer that we could hire for part time. So one could work a few hours and the other work a few hours and we would always have an attorney that we get in touch with and do what we need to do. That would be Mr. Thompson and Mr. Packer – to hire them both as part time attorneys to serve for the County.

Chairman Tyler: "Other discussion on the motion? "

Supervisor Fly: "I agree with Mr. Futrell. Mr. Packer has 34 years of experience. The citizens unfortunately did not get the opportunity to look at his resume'. He was the city attorney for Petersburg for 34 years, he handled major economic development projects, he comes highly recommended. Delegate Rosalyn Dance spoke highly of Mr. Packer and the list goes on and on with his references. The other thing that I was impressed with is that he is retired and by far he offered Sussex County the lowest cost of the attorneys that we interviewed. Being retired, he can make only \$60,000.00 per year and we spend over \$120,000 in the County Attorney's office for various things. He did not want a laptop, he did not want a cell phone. All he wanted is an office with a phone and wants to work three days a week. He said that he could not see how he could spend more than 36 hours a week working for Sussex County. He felt like once he got our legal house in order, that he would not be needed even thirty hours a week and was willing to work basically by the hour and agreed to contract with us for \$5,000 a month. An attorney of his caliber, if we were to go into a law firm, as you will see in the next agenda item, he would cost of in excess of \$300-\$350 dollars an hour. I would hope it would be the pleasure of the Board not to let this gentleman get away. He is exactly what Sussex County needs; it fits the budget."

Supervisor Caple: (most of the comments are inaudible because of the microphone being distorted). It we hire Mr. Packer and Mr. Thompson part time...Mr. Thompson has already proven himself to Sussex County, so if we hire both of them we have what we need. "

Supervisor Stringfield: "I agree with Mr. Caple. Mr. Thompson has been around the County for a long time and I have served with Mr. Thompson. He is a fine gentleman, not giving Mr. Packer any slack. I agreed on hiring two attorneys, Mr. Packer and Mr. Thompson. Mr. Thompson has been a benefit to all of you that sitting in the audience today, one way or the other, he's been a benefit to Sussex County. And to allow him to

stop doing what he's doing. He has a love for Sussex County; he's a resident of Sussex County and you want to throw away all of that? Mr. Thompson deserves to be Sussex County Attorney, along with Mr. Packer, if you want to hire two."

Supervisor Futrell: "We started out with one part time attorney and when we went into the meeting, that's when we had the confusion about Mr. Packer and Mr. Thompson. By hiring Mr. Packer, you will save this county \$80,000.00 and with that money, you can give this money to the constitutional officers or the county employees, social services and the director, school board employees; the \$500 they can get and the part time people can get \$250.00. If this is passed, they can have it by the 15<sup>th</sup> of May. "

Supervisor Fly: "Just to get clarification of what Mr. Futrell said. Is the gentleman from Waverly suggesting that with the money that would be saved by hiring Mr. Packer; that we then use that money to give the employees the second phase of the bonus package that we had put forward back in September for the employees of the county. Is that what I hear him saying?"

Supervisor Futrell: "Yes."

Supervisor Fly: "Sounds like a good plan to me."

Chairman Tyler: "Other discussion on the motion?"

Supervisor Warren: "The only thing that I would like to add to this that I think is very very important for this county at this time. Mr. Packer would come to us as a complete outsider. He has no allegiance to you, to me or anybody else at this table and no officer and no staff. He would be totally unbiased and that's exactly what this county needs right now."

Supervisor Fly: "Mr. Chairman if Mr. Futrell will allow me to offer a friendly substitute motion."

Chairman Tyler: "We have a substitute motion on the floor."

Supervisor Fly: "What was the substitute motion,"

Chairman Tyler: "There is already a substitute motion. There is a motion on the floor that we hire Mr. Packer. There is a substitute motion that we hire Mr. Thompson and Mr. Packer; still on the floor."

Supervisor Fly: "Was there a second?"

Chairman Tyler: "Let me say two things and they are right, Mr. Packer, when all of us did the scoring, he came in number one or number two; Mr. Thompson came in number one or number two, from all of us. They were both neck in neck. Now the fact that this was put on the agenda to hire an attorney, I guess Mr. Caple has submitted a compromise because we have been in a stalemate for a long time on an attorney. Mr. Packer did say

that he would be willing twenty some hours a week. He made it clear that he would not work full time. He indicated that and we accepted that. Subsequently, during our Board meeting, Mr. Thompson indicated that he would be willing to work part time, which means that we would have Mr. Packer and Mr. Thompson. Instead of having one full time, you would have two part times; and half and a half equals a whole. That motion that on the floor which is a compromised motion to move this county forward, because we have been dealing with this a long time. I believe that Robert's Rules of Order states that you vote on the substitute motion first, are you ready for the question?"

Supervisor Fly: "Discussion on the substitute. We advertised for a part time attorney; that's all Sussex County needs is a part time attorney. We did not run an ad for two part time attorneys to make it a full time attorney. So the cost savings go out the window if hire two part time attorneys. I think that the motivation of the board to continue to look at Mr. Packer comes from the fact that we are going to save a great deal of money with an extremely competent, extremely experienced attorney, so the substitute motion is to hire two attorneys part time making the full time, which means, number one we save no money; number two, its impossible to have two people leading your legal team. We have sort of proved that with the county administrator's office, which we will talk about a little later; that you cannot have two bosses. So I think we will setting this up as a disaster, but the major problem is, if you hire two, you don't save any money and that is not the purpose we interviewed for. We interviewed to hire a part time attorney because Sussex County at this point does not need a full time attorney. And if you remember back, for the last thirteen years, we have not had a full time attorney. Mr. Thompson when he was county attorney had his own practice. He did county work part time and I don't see why we need to move into a full time attorney. It's just going to cost us more money in an extremely tight budget that we are going to be dealing with. The ability to save \$78,000 overrides anything that we are talking about."

Supervisor Stringfield: "Even though Mr. Thompson had worked part time, his hours were between 60 and 75 hours per week. So that wasn't part time. He was putting in a lot of extra work that he wasn't getting paid for. That's my take."

Chairman Tyler: "There's a motion on the floor and we vote for the substitute motion first."

Supervisor Warren: "Was there a second to the substitute motion?"

Chairman Tyler: "The substitute motion was to hire Mr. Thompson and Mr. Packer,"

Supervisor Stringfield: "I second."

Chairman Tyler: "The motion has been properly seconded, The chair will make an observation later. But there is a motion on the floor and I would think that the second substitute motion might be improper and the reason being I believe.....we will have to check and see, subject to approval. I would hate to make that statement without reviewing the records. The motion is on the floor, the substitute motion is to hire Mr. Thompson and Mr. Packer, contingent upon meeting, could I ask you to add something to

your motion? (directing the question to Supervisor Caple). Contingent upon meeting all stipulations as approved by the Board, would you allow me to do that? Would you approve that as second or not?" (directing the question to Supervisor Stringfield).

Supervisor Stringfield: "Second."

Chairman Tyler: "The motion on the floor, all those in favor of hiring both Mr. Packer and Mr. Thompson, contingent upon complying with all regulations as approved by the Board, let it be known by saying aye."

Voting aye: Supervisors Caple, Stringfield, Tyler

Voting nay: Supervisors Fly, Futrell, Warren

Chairman Tyler: "The motion fails. All those in favor of hiring Mr. Packer for the County Attorney part time, let it be know by the sign aye."

By roll call vote:

Voting aye: Supervisors Fly, Futrell, Warren

Voting nay: Supervisors Caple, Stringfield, Tyler

Chairman Tyler: "The motion dies. Let me make an observation, if I may. We probably would have to revisit this issue at the next Board meeting. Maybe that will give us time also to get a ruling from the attorney general. Once we get a ruling from the attorney general, I think the Board should be able to move forward in making a definitive decision regarding hiring an attorney."

Supervisor Fly: "I would like to make a motion that the Board of Supervisors of Sussex tonight hire Mr. Packer as a part time county attorney not to exceed five thousand dollars a month; in that the money that will be saved in hiring Mr. Packer be utilized to pay the second half of the bonuses to all the employees of Sussex County."

Chairman Tyler: "Motion on the floor, is there a second?"

Supervisor Futrell: "Second."

Chairman Tyler: "I think that motion has been made before."

Supervisor Futrell: "No it wasn't."

Chairman Tyler: "The motion has been made and seconded, ready for the question."

Supervisor Fly: "Discussion. I think this is a good thing; we get an excellent attorney. We set out a plan working with the Treasurer back in the fall. As people know, we have not given the employees of Sussex County a raise for four years. We saw a little bit of a savings; a little bit of an increase in revenues in the landfill, a little bit of savings in some other area of the county. We were able to execute the first bonus which was \$500 right

before Thanksgiving. We had hope to get the second bonus in, the budget is extremely tight. But this would free up....\$42,000 would be needed to honor the second portion of that bonus as it unfortunately once again, seems like we won't be able to give increases in salaries. A 2% increase cost us about \$172,000 a year to do that. I think this would go a long way to boosting the morale of our employees and in keeping our employees on. We have lost some critical employees here in the past couple of weeks. And I think this would go a long way in thanking our employees for the work they have done and this is something that Mr. Caple has preached to us every since I came on this Board that we take care of the employees. I hope that the Board will want to move forward with this and bring this attorney on and give the bonus to our employees."

Chairman Tyler: "Other discussion on the motion."

Supervisor Warren: "I agree with Mr. Fly entirely on that. It is an excellent way to utilize the money that we have been spending for attorneys. It will go a long way in dealing and trying to bring the whole county back together. These employees deserve a raise. The money is not there; it's going to be extremely tight this year. So I would say this is a perfect way to take care of both issues – take care of our employees and hire a very competent attorney and I will be in favor of the motion."

Chairman Tyler: "Other discussion on the motion?"

Supervisor Stringfield: "Yes I would agree that giving the county employees a raise would be good and that did that before, \$500. But they have an operation budget that they have to abide by, even though you have given the employees \$500 extra dollars, you have taken away a job and you are talking about somebody's livelihood. Everybody needs their job. I am all for giving the county employees a raise, but not off the back of somebody else. Mr. Thompson needs his job. Mr. Packer needs a job. I am saying that I don't want to take away from the county employees because they do a good job. But there are other means and ways that we can get around that. See you talk about, you are listening to Mr. Fly and you heard him say on last month's meeting, he would do anything, to lose, we got \$4 million plus dollars coming to the county. He said that he would do anything to disrupt that. The county needs that money, the county has potential, you have people that don't want to work with us to make it happen. We need new schools, we need jobs, we need all of that, but we need out citizens to continue to work and do a job as well."

Mr. Thompson (interjected): "I have to call a family member, I am waiting for public comment."

Chairman Tyler: "No, it's not citizens' comment yet. Thanks so much, we appreciate that."

Supervisor Futrell: "Mr. Stringfield, it's like this. Mr. Thompson will be getting his salary of \$54,315.95. He has the right to re-apply for next year when the time comes for the attorney, but the people that working for the county, all the employees of the county, they have to live as well. These people deserve a cost of living raise, a bonus. But you got

to look out for the people. This county is not solely dependent on Mr. Thompson – it is dependent on the citizens and the people that work for the county.”

Chairman Tyler: “I agree. I’ve always said that the most valuable asset that we have in Sussex County are our employees. That’s unquestionable and I do think that they deserve far more than what we are compensating them for. I don’t think we can ever say thank you enough for what they do. Now, conversely, I want to remind the Board, we can’t talk out one side of our mouth to compliment our staff and humiliate them in the office and in public. If you appreciate the staff, let them know that by the way you treat them. So we can tell our staff we are doing a good job, all day long, but then you come in my office and you humiliate me and in public, we know the difference. So I agree that we do need to compensate our staff. However, I believe that to hire anyone tonight without having the ruling from the attorney general might be premature. I really would like for us to wait until we get the ruling because I would hate to see us back track one way or the other. And I think once we get the ruling, the Board should be able to move forward in a cohesive fashion and make a decision to hire someone. And that’s what I would ask because this issue needs to be resolved and it’s not going to be resolved tonight, we might as well face that. Because we are not together on this attorney deal. So I would ask the Board again, I know there is a motion on the floor, I would like to put a substitute motion, as Chair, that we table this matter until we get the ruling from the attorney general. We have a meeting next week, week after next. We don’t know how soon that the attorney general will submit a response. It could take two weeks, a month, we don’t know. It all depends on how fast they will turn it around. But I would like to see us wait until we get that ruling, such that the Board can rule and we can put that issue to rest once and for all. Let’s face this, we are not going to solve it tonight. We can put motions on the floor all day long, but we will not hire anybody tonight and we might as well face that. So we need to, I think, move forward table this matter until we get a ruling from the attorney general. That’s what I ask the Board to consider.”

Supervisor Fly: “Point of order. The substitute motion has to add to or enhance the existing motion on the floor and your motion does neither.”

Chairman Tyler: “Well the motion that you made, repeat your motion.”

Supervisor Fly: “My motion was that we hire Mr. Packer at a sum of \$5,000 per month and the money that we save in hiring Mr. Packer, be used to finance the second portion of the bonuses for Sussex County employees.”

Chairman Tyler: “And my substitute in reference to that motion is not to hire anyone and wait until the ruling from the attorney general. And the reason why it’s germane because we are talking about hiring an attorney.”

Supervisor Fly: “I will wait for your second.”

Chairman Tyler: “Is there a second to the motion?”

Supervisor Stringfield: “I second.”

Chairman Tyler: “Substitute motion has been seconded that we will not hire anyone tonight, that we will wait for the attorney general’s ruling in hopes that our next meeting we will have a ruling back; that we will be able to move the Board forward in a cohesive fashion.”

Supervisor Fly: “Speaking to the secondary motion, we have a legal matter that we need to appear on April 11<sup>th</sup>. The attorney that was working that project for us or that case for us resigned last week because we refused to pay him. So Sussex County has no alternative and we need to go to mediation and to court with this legal matter on the 11<sup>th</sup>; we don’t meet again until the 19<sup>th</sup> and I would like to point out that by delaying this particular case, which we have done now since November, by delaying this particular case in which the County allegedly illegally fired one of our employees. By continuing to put this off, we already cost the county \$30,000; we had to hire a temp, we had to do some other things to cover that position, we had attorneys take a look at this case; we have already spent \$30,000 waiting and we have got to go and do something with this case on April 11<sup>th</sup> and we don’t have an attorney. By hiring an attorney tonight, I think we can put this to rest. So I would ask that this Board not vote for the secondary motion, allow the first motion to come back on to the floor to stop the bleeding. We are wasting taxpayers’ money. But by putting this off once again, we are wasting taxpayers’ money. The other thing is, and I really don’t want to get into to it too far, I really think it’s wrong to talk about these court cases. But this is pretty cut and dry and it’s been in the papers so it’s not that bad. This thing is going to wind up costing us a couple of hundred thousand dollars, if we don’t put it to bed. We did not put it to bed in November, we did not put it to bed in December and we could. It’s not that we can’t, the other side of this case is waiting for us to show up with an attorney and to solve this issue. We didn’t do it in November, we didn’t do it in December, we didn’t do it in January, we didn’t do it in February, we didn’t in March. And now we are at a point where it’s too late to do it in April. We have to appear on the 11<sup>th</sup>, so I would ask the Board to vote against the secondary motion and allow the original motion to come to the floor, pass the motion and let’s get on it and stop the bleeding of the taxpayers’ money on this issue which we should have resolved months ago. There is no reason, no rational reason that when presented with an outstanding attorney at an extremely low cost, that we don’t take advantage of that. And waiting for an attorney general’s ruling doesn’t make a difference with that at all. There is absolutely no rationale for waiting; all we’re doing is continuing to spend money and damage the county. We can put it to rest tonight. Our attorney can go to work on this and it can be resolved within five to six days. And I would ask for the Board to reject the substitute motion.”

Chairman Tyler: “The Chair will ask for a five minute recess and then we will come back to deal with this motion.” (9:45 p.m.)

The meeting reconvened at 9:54p.m.

Chairman Tyler: “Call the Board back into session at this time. During the recess, we were deliberating over hiring an attorney. I have given my opinion, but there was a

motion on the floor and a second to hire Mr. Packer as the attorney on a part time basis and use whatever savings toward bonuses for our staff.”

Supervisor Caple: “If I may, (after taking the microphone to speak, his voice was very distorted) I am very concerned because the employees are not being adequately being compensated and taken care of. We can’t have both sides and if I may offer a substitute motion that we hire Mr. Packer for one year and use the savings for bonuses to the employees.”

Chairman Tyler: “There is a substitute motion on the floor.”

Supervisor Fly: “Mr. Chairman, could you re-state the motion?”

Chairman Tyler: There is a substitute motion on the floor to hire Mr. Packer for one year and the savings will be utilized for bonuses; discussion on the motion.”

Supervisor Fly: “I second that motion.”

Chairman Tyler: “There’s a motion and a second. Discussion?”

Supervisor Warren: “There is the same motion that has already been on the floor. It’s the same motion that Mr. Fly put in.”

Chairman Tyler: “The substitute motion is on the floor to reconsider hiring Mr. Packer for one year and utilize the savings to award bonuses for our staff and there is a second on that motion. We have to vote on the substitute motion first. All in favor, say aye.”

Supervisor Fly: “Discussion. So to make sure I understand this – we are going to hire Mr. Packer for twelve months, at a rate of \$5,000 per month maximum.”

Supervisor Stringfield: “Even though you keep saying that there is money that’s going to be saved, but Mr. Thompson had a secretary that had to be paid, so what money are you talking about saving?”

Chairman Tyler: “The secretary has been moved to the County Administrator’s Office and is working on a temporary basis there. Discussion on the motion? If not, all in favor, say aye.”

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

Voting nay: none (9:59pm.)

Supervisor Fly: Just a follow up on that, so are we giving the County Administrator the authority to go ahead and make this hire.”

Chairman Tyler: “I will get with the County Administrator and we will make sure that we make the proper contact and sit down with him.”

Supervisor Fly: “Then I make a motion that we authorize the County Administrator to move forward, contact Mr. Packer and bring him into employment with Sussex County.”

Chairman Tyler: “Would you amend that because I think we can make an offer, but we don’t know whether there will be a counter offer. I think we can get a general consensus to do that, do we need a motion?”

Supervisor Fly: Motion on the floor.”

Supervisor Caple: “What are you saying you want?”

Supervisor Fly: My motion is that we authorize the County Administrator to move forward with the employment of Mr. Packer as the County Attorney for Sussex County.”

Supervisor Warren: “Second.”

Chairman Tyler: “The motion has been made and seconded; all those in favor say aye.”

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

Voting nay: none

#### **Item 6. Payment of Attorneys**

Chairman Tyler: “As you know upon the termination of Mr. Thompson, a board member took it upon himself to hire three attorneys and upon doing that, he came back to the Board for payment. The board declined those payments, due to the fact that they were not approved by the Board. This has been on our agenda repeatedly for several months and we have for several months declined. However, in visiting the County Administrator’s office the other day, I noticed that there was an invoice for \$4,343.75 and in looking at that invoice I realized that the invoice inclusive of work that this Board had approved in January, starting January 24<sup>th</sup> – the work that this Board approved in January, this board obviously obligated to compensate Mr. Drewry for his service. So I would ask the Board to move ahead and pay Mr. Drewry for his services starting January 24<sup>th</sup> to current, at a rate of \$125 per hour, which would come to \$1,531.25. And that is for work that this Board approved from January 24<sup>th</sup> to current.”

Supervisor Stringfield: “Move for approval.”

Supervisor Caple, “Second.”

Chairman Tyler: “Discussion.”

Supervisor Futrell: “To pay these attorneys in full – some old words were always given, you say kind words, sweet words, and those might be some words you have to eat. By you having these three attorneys, you never know when you might need one of the three. So I make a motion to pay the \$11,816.55 to the three attorneys.”

Chairman Tyler: "There is a substitute motion on the floor to pay all the attorneys, even those that this Board did not approve, prior, which comes to a total of \$11,816.55, is there a second? All those in favor say aye.

Voting aye: Supervisor Fly, Futrell, Warrant  
Voting nay: Supervisors Caple, Stringfield, Tyler

The motion died due to tie vote.

Chairman Tyler: "The original motion was to pay for work which has been approved by this Board starting January 24<sup>th</sup> until current to Mr. Drewry; That amount comes to \$1,531.25, that is the Chair's recommendation and I believe that's the motion on the floor that was made by Mr. Stringfield and seconded by Mr. Caple, all those in favor, say aye."

Supervisor Warren: "I am vehemently opposed to not paying these bills. I'm telling you, we are digging a hole so deep, the word out on the street in the countryside is that we don't pay our bills and you keep referring that these were not legitimate bills. They were legitimate by the prior Board. This Board had nothing to do with these bills except the one that you are trying to pay. It was approved by another Board, 3-2 vote and we need to pay our bills. Like Mr. Futrell said, we may need these people one day. It's all over the state that we won't pay our bills; Let's pay these people that's already performed this work for this county that did due diligence and some of that work that was performed is still going to help us on these cases. Why not pay these bills and let's move on with the county's business? "

Chairman Tyler: "Let me respond to that Mr. Warren, if I may. Back in November, I was on this Board. Now listen, I received a call from the County Administrator after they fired Mr. Thompson, asking permission to hire attorneys to determine....let me just read something. During that meeting, I said this, Mr. Chairman, I remember this document, talking about the resolution that we discussed several times before. But I don't think we should use the opportunity; let's go back to the document that the Board has instituted, been in operation since 2003 to try to manipulate and/or do something that might adversely effect the county. I don't think that's the way the government should work. I warned the Board that there would be an adverse effect by doing that. Now after the fire, then our dear Board member, without calling a name, and according to this document, there was a call by the County Administrator who provided the document to your attorneys. The Board did not approve of that. Somebody said it was not the consensus. That's incorrect, Mr. Caple disapproved, I disapproved; Mr. Parker was in the hospital who was adamant and totally disappointed, he disapproved. You have six Board members, three members disapproved of something and three agreeing, that means a no. Besides, no Board member can go out and incur expense on behalf of the County without the Board's approval. You have to come back afterwards and try to get the consensus and that what's he trying to do now. Therefore, if that's the case, tomorrow I am going buy a Cadillac and I am going to donate it to Mr. Warren, without the County approval. I am going to bring that bill back and give it to you. Are you going to honor that bill? Absolutely not. So what you are asking us to do tonight and I want this to go on the record. I will not vote for it, make it clear. Because you cannot operate a county. These

are things we have done in the past and I told you in January, we've changed in a new direction. We cannot allow Board members to go out and incur cost without the Board's approval and say look here's your bill, I've hired three attorneys. Now pay this bill. It doesn't work. Those types of things have gotten us up to this point and we have to stop it. Now those persons that the Board has hired to do the work, absolutely, pay them. That's our obligation; we have a fiduciary responsibility do to that. But if we do it this time, then next time, somebody else can do the same thing. And what are you going to do? Are you going honor it then? Now that is exactly what happened. If that did not happen, then why are we asking the Board to approve it tonight. Now Mr. Fly, you know that's exactly what happened. You went out, and maybe you did it in good faith; but I disapproved in advance, Mr. Caple disapproved in advance, and even on Mr. Parker's (at that time we did not know) his death bed, he was against it up until the time he passed. So you have six Board members, three opposed, three said yes, so you proceeded. Now that's what happened and that's my reason for not approving because I know that's been done in Sussex County for so long. We have to stop that kind of governance."

Supervisor Fly: "There have been a lot of things done wrong in Sussex County for a long time, I agree with you there. However, that's your version of the story. Let me just follow your logic to its conclusion. Your logic is that the consensus of the Board was three three. Now let me back up. Because the person that you are talking about is me. So the citizens know. The Board member he is talking about is me. At the time I served as Vice Chair. At the time, our Chairman, who unfortunately passed away was in the hospital and was in and out of consciousness. We had a situation where we needed an attorney. Now let me just follow your logic if I could to its conclusion. Your logic is that when one Board member is not present at a meeting, that his will on what he desires can be counted in the tally of the vote, is that what you saying?"

Chairman Tyler: "No."

Supervisor Fly: "So, if I follow your logic to conclusion, when Mr. Harrell, was in the hospital and you brought Mr. Morrison's contract that had been signed in the middle of the night on July 15<sup>th</sup>, when you brought that to the Board in October, Mr. Harrell was lying in the hospital and the Board voted to agree to that contract, was three to two. So under your logic, and we all know that Mr. Harrell who was in the hospital that night was opposed to that contract. So under your logic, then Mr. Morrison is not employed by this County because his contract is null and void, is that what you're telling me?"

Chairman Tyler: "No, that's not what I am telling you. At that meeting we approved Mr. Morrison's contract, we had an official Board meeting sitting here. What you did was outside of the Board meeting, there was no Board meeting, when you incurred those costs. If it was inside of a Board meeting, then you know that wouldn't have been approved."

Supervisor Fly: "I disagree, but let me make sure. We had two active lawsuits that needed to be dealt with; then when the Board legally terminated the county attorney, he threatened a lawsuit. For some reason which I still had not figured out, the Deputy County Administrator threatened a lawsuit, and I am still puzzled. But anyway, so that

brings us to four lawsuits that were facing the county, plus I did not count in the one with Waverly Gas, that would be five and I am not counting in the two illegal acts in violation of the procurement act, that's seven; so we had seven legal issues that were attacking Sussex County; therefore attacking the citizens. So as Vice Chair, and acting as Chair because of the ill health of our chairman, I called you and I called Mr. Caple and I called every member of the Board. And I asked for a consensus to hire an attorney immediately to handle the county's legal crisis. We were being attacked and we were being sued and as Vice Chair, I did that. I called around and got a consensus. You voted against hiring an attorney, which I felt like put the county in danger; Mr. Caple voted against hiring an attorney, which I felt put the county in danger. I voted to hire an attorney, Mr. Birdsong voted to hire an attorney and Mr. Harrell voted to hire an attorney. I then traveled to Petersburg to the hospital to speak to the Chairman, who was unconscious. So the consensus of the Board was three to two to hire an attorney. So I informed the County Administrator to hire these attorneys, which we did. Now, let me point out something. That's how this all happened. The only thing that we failed to do, members of this board failed to show up at four meetings in December so we could ratify the consensus and pay the attorneys. That's how we got into the situation where we still owe these attorneys. But let me read something because two days after you assumed the Chairmanship, you sent a letter to Mrs. Helm with VACORP, and for the citizens, that who handles our insurance. 'Please be advised that on Monday, January 9, 2012, the Sussex County Board of supervisors agreed by consensus. You called every member of this Board to gain consensus. I gave you my consent because I as well as anybody on this Board realize the legal predicament that we were in with all these violations. And you said agreed by consent to request to and pay for Risk Management to assume all legal duties and responsibilities in the Malcolm Knowles case for Sussex County. Additionally, with VACORP's approval, the Board of Supervisors would ask that Ms. Sharon Pandak, the exact same lawyer on the exact same case that I called as vice chair in December and got a consensus of the Board to hire. Two days after you became chairman, you sent a letter to VACOP saying to hire the exact same attorney on the exact same case, Ms. Sharon Pandak or a VACORP approved attorney that be considered to represent the county in this case. Furthermore, the Board of Supervisors fully understands that because of the urgency of this matter, the County will assume responsibly additional legal costs to assure our citizens proper and professional representation. So you called around, I called around, I got consensus, you got consensus, I spent money, you spent money and you said right in your letter that the County will assume responsibility for additional legal cost to assure our citizens proper and professional representation. Signed Sincerely, Rufus E. Tyler, Sr., Chairman, Sussex County Board of Supervisors. So, what I am having a hard time with is the rationale that when you did it, it was right and when I did it, it was wrong, And questions goes back to what Mr. Futrell has stated and exactly what Mr. Warren has stated. We owe the money, these attorneys checked into these cases. These are the same active cases we have now. They did do the legal work; they have done the ground work; we have that ground work. They didn't just bill us and didn't do anything, they have done the work and the work needs to be paid for. It's the exact same situation with the exact same cases with the exact same attorneys, the only difference is that Mr. Stringfield, yourself and Mr. Caple for some unknown reason have decided that you are going to try to make me look bad, but in actuality, we're making the county look bad because what I did was legal, ethical, moral and has been done many times in this county.

There are at least one ex chairman that will chairman sitting in this room that will tell you that in an emergency situation been able to call around and be able to get a consensus of the Board, which is exactly what I did and exactly what you did. So I would ask that the vote for the motion to pay these attorneys. They did the work, they were legally hired by Sussex County and they need to be paid.”

Chairman Tyler: “Let me respond to that Mr. Fly. First of all, it is not the same case. It is not the same situation. Insomuch so that the letter that you are referencing, it was drafted by our County Administrator and you called to ask if I could contact the other Board members regarding the situation and that dealt with the Knowles case. What you have Mr. Fly, and look on the bill for December 2<sup>nd</sup>, that dealt with a telephone call with the County Administrator. On December 2<sup>nd</sup>, Mr. Parker was very conscious. Mr. Parker said he totally disagreed with it. You had talked to Mr. Parker, absolutely not and even if you had your talked with him, it’s up to the Board to ratify the actions you took. The letter that I sent did not incur any costs; and the reason being, at the request, we submitted the letter, and I received a call from Gerald Poindexter, saying that I have a letter that you sent up to VACORP. He said that he was representing this case. I said no you are not. He said I am. Immediately, I called the County Administrator. Then I got the County Administrator and Gerald Poindexter on the phone. And that’s why Gerald Poindexter is representing this case as well. So the assumption was, at that time that we had nobody representing this case and Gerald Poindexter was representing this case the entire time. So we did not incur any cost. VACORP was our insurance carrier; that’s why the letter was sent to VACORP. So it’s not the same situation; there was no expenses incurred, otherwise if there were expenses incurred, you could definitely ask me to pay for it. But what you did was you incurred the expense and brought the bill to the county and said now I need you to ratify it, absolutely not.”

Supervisor Fly: “Let me read the second paragraph again. Further the Board of Supervisors fully understands that because of urgency of this matter, the County will assume responsibility for additional legal costs. At the time that you signed this letter, you assumed, did you not, that we going to incur costs?”

Chairman Tyler: “Let me clarify that. And maybe the County Administrator might want to verify it.”

County Administrator Harris: “We really got to get all this stuff straight, honestly. First off, I love what the City of Denver did. They asked one of the Board members or the city council members, this was several years ago. They asked them how many Boards the city of Denver had. They said one; it started in 1899 and it’s going because we stand on the backs of those founding fathers. We stand on the backs of the ones that started it for us. I got a phone call from Mr. Fly in a sense of urgency and he’s exactly right, we had multiple cases which by the way, the Knowles case was one of them. The fact of the matter is we did know what cases we had because the information was never turned back over to the County from the former county attorney. And you know we have been battling that issue up until today. So as soon as we got the information, we tried to move forward with it. Mr. Fly called and said I was supposed to do something. I said I can’t do that. Because it requires the consensus of the Board to do that. He made his phone calls,

he sent me a letter saying here's what the consensus was. You called and told me to do the same thing. We need to get an attorney."

Chairman Tyler: "For what?"

County Administrator Harris: "For whatever the cases were that you were concerned about. Or I called you."

Chairman Tyler: "You called me, don't say I called you. Let's get it straight."

County Administrator Harris: "You're right, you never called me. But the fact is, when you asked me to get an attorney, I said I can't do that. You have to get a consensus of the Board."

Chairman Tyler: "Absolutely not. You called me."

County Administrator Harris: "Are you going to allow me to speak Mr. Chairman?"

Chairman Tyler: "Not when you are inaccurate. You called me and you drafted a letter and gave the letter to me and I signed off on it. That's exactly what happened."

County Administrator Harris: "I talked to Nancy Helms and she said that we need a letter officially. I met you in Jarratt so you could sign it and so we could send it off. And that's exactly what we did. But you needed to get the consensus, not me, which is exactly what I told Mr., Fly. At some point, there has got to be some concern and some consideration for the appearance of this Board. And I don't want to get too carried away, but let me remind you, you actually told this citizenry and this gentleman here that if he would apologize and say he was sorry for what he did, you would vote for it."

Chairman Tyler: "Absolutely."

County Administrator Harris: "Then how in the world is it considered an ethical consideration, when all you need is punishment."

Chairman Tyler: "When the issue came up, we gave Mr. Fly the opportunity to say what you did was wrong. If you would apologize to this Board, we will proceed. Mr. Fly said no."

Supervisor Fly: "I didn't do anything wrong."

Chairman Tyler: "Oh you didn't? I tell you what. We are going to move ahead; if you didn't do anything wrong, then guess what, I am going to tell you what I told you that night, that bill that you incurred, that will be your bill."

Supervisor Fly: "This is absolutely ridiculous, but anyway. We just spent the earlier portion of tonight talking saving legal fees; these attorneys are going to sue us. Do you understand that? I would like to ask the gentleman from Stony Creek, does he understand

that these attorneys are going to sue us and it going to cost us more, because they did the work that the Board in 2011 asked them to do.”

Chairman Tyler: “No the Board did not. You’re the Board, go right ahead.”

Supervisor Fly: “By consensus, the Board asked them to do the legal work, does the gentleman from Stony Creek understand that by voting not to pay these bills, that the County will be at risk of being sued by three attorneys?”

Supervisor Caple: (Difficult to hear because the sound was distorted). “If I understood correctly, from Sharon Pandak when she appeared before this Board and explained to her why the money had not been paid, it was explained to her that the Board did not approve nor ratify paying the bills. Her statement was that I might not get paid because it wasn’t done properly. She understood as well as anybody else. Mr. Fly you said that you did not want to apologize because you did not do anything wrong. I have apologized for things I didn’t do wrong, but it would clear up the situation, I apologized. And tonight, the Board is saying that if you apologize, and ask the Board to pay the bills, I wouldn’t have a problem with that.”

Supervisor Fly: “Mr. Chairman, what I am understanding is that your legal defense, when these attorneys drag us into court and sue us, your legal defense is we didn’t pay you because Mr. Fly wouldn’t apologize. Is that what you are going to take to court?”

Chairman Tyler: “Listen, if the attorneys carry us to court for an expense that you incurred without the Board’s approval, then I want to be the first person sitting on the front row. Because as Ms. Pandak said when she met with us, she said I know it wasn’t done properly. She said I know I might not get paid because I know the Board should have approved it prior to. The Board did not approve it with the total consensus, so I not really worried about this issue. Anyone else has discussion on the motion?”

County Administrator Harris: “She did not say anything was done illegally. What she said was she understood that it needed to be ratified. You are implying that something was done wrong.”

Chairman Tyler: “Ratification simply means that it had to be approved by the Board. If it’s not ratified by the Board, then we are not going to pay the bill.”

County Administrator Harris: “That doesn’t make it wrong, what Mr. Fly did.”

Chairman Tyler: “Are you saying that what Mr. Fly did was right?”

County Administrator Harris: “I am saying that what he did, he followed the legal procedures to make this happen in what he perceived and the majority of the Board at that time believed was in the best interest. “

Chairman Tyler: “Mr. County Administrator, that’s inaccurate. And the reason being is that the majority of the Board would include Mr. Parker was very conscious, who was

adamantly opposed. So the majority of the Board did not. We have six members on the Board; a majority would be four. And we had three. I will call for the question because we have to move forward.”

Supervisor Fly: “This would have been ratified, the money that we owed these attorneys would have been ratified if we would have been able to muster a quorum in December. So you know as well as I do why we didn’t muster a quorum. So this would have been ratified by the board. So your continuing assurances to the citizens that this wouldn’t have been ratified by this Board is incorrect. Because we had a consensus to hire the attorneys and those same members that gave the consensus to hire the attorney would have surely come to the board meeting in December and approved payment. You are playing some little silly game that makes no sense and I wish you well when they sue you in court.”

Chairman Tyler: “Thank you very much. Chair calls for the question, all those in favor of paying Mr. Drewy the \$1,531.25, say aye.”

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

Voting nay: none

#### **Item 7. County Administrator’s Authority/Duties Pursuant to State Code**

Chairman Tyler advised that the Board has been provided in their packet a sheet referencing 15.2-1541 regarding administrative heads of government, which deals with the county administrative duties and responsibilities.

County Administrator Harris: “What I am doing is I am passing out the packet of information regarding position of county administrator in the state of Virginia. I guess most of you may not understand the issues in the Administration Office. Basically what we have are two contracts that are both have two individuals answering to the Board of Supervisors simultaneously. When I took this position as county administrator, there was no job description for County Administrator in Sussex County. What I had to go on was state code which I have provided to the Board this evening. That state code is very clear about what my duties are as a county administrator. It states that I am responsible to the Board and responsible for all the departments, etc. In addition to that, the only other information that I had was an organizational chart that had all county employees answering to the deputy county administrator who in turn answered to the county administrator, who in turn answered to the Board, which is not that unusual in local government. In addition to that, as I said I had no job description or the county administrator had no job description, but ironically there was a deputy county administrator job description, which again said that they answered to the county administrator. So in taking this position, leaving my former position, I was under the impression that Sussex County operated like the rest of the world. That we did in fact follow state code; we did in fact follow policy and procedure. But an interesting thing happened. I signed that contract on July 8<sup>th</sup>. I started on August 1<sup>st</sup>. But between July 8<sup>th</sup> and August 1<sup>st</sup>, a couple of things happened, first off a contract was signed evidently not in the presence of the Board or the attorney, but done privately at the former Chairman’s

house, without the direction or approval by the Personnel Committee, which in fact was working on that. That was done July 15<sup>th</sup>. I won't debate the legality of it one way or the other. But what I will say is this. I took the job understanding what my duties were pursuant to state code. Pursuant to the resolutions passed by this Board and we have done a great deal of debate about what resolutions mean in this county. So I walked away understanding that on August 1<sup>st</sup> to be the county administrator. When those changes were made, they materially affected my job, without any public disclosure, any private disclosure that somehow my contract was now subject to a second contract that had nothing to do with nor any input to. Then it materially changed my job description, my authority in this county. And it's very difficult to sit up here Mr. Chairman. I have you two examples tonight where you broke the law, but you didn't pay any attention to me. I need to know what my authority actually is. I cannot advise you if you won't listen. I cannot advise you if staff is running around me. I cannot help fix what's broke, if there is always another way for the cat to escape. And I am trying desperately to do the right thing for this community to the best of my ability. So here we are, now August 1<sup>st</sup> and now I find out that half my staff no longer works for me. Because of a contract that was written and signed that my job was not the same. I think what they called in legal terms is fraudulent inducement, it I am not mistaken. I know clearly what it means is a breach of contract because I signed and negotiated and came to this county in good faith. That I would do and serve the people in this county, in which I have tried to do. In the Personnel Committee and two of those members are here, we talked about several things. One of those was reorganization – so the fact that the organizational chart looked kind of bizarre but not inconsistent wasn't bothering me. Because what I said the first day I was here, Chairman Parker was sitting in my office and he gave me a list of things I needed to do. Personnel manual, organizational chart, look into a personnel matter that has transpired prior to my coming there. He was pretty clear about what my direction was. I believe that I pretty much satisfied that. You've got a personnel manual now, even though it took four years to get to that point. In the personnel manual, it talks about what my duties and responsibilities are, who's responsible; it is consistent with state code. I gave you a timeline in here to show you exactly what transpired and when it transpired and I need to know what my direction is. These last couple of months have been very difficult. Don't know what some of the staff is doing most of the time; I get directions from the Board at meeting and individual direction from the Chairman. And let me say, it's not uncommon for the Chairman to be the spokesperson for the board in dealing with the County administrator. I have been doing this for 35 years. I understand that, but this board has never made that. This board doesn't have rules of procedure. This board doesn't have bylaws. This board chose not to do that. The 2003 resolution that gets thrown around all the time, I won't even go into the legality of it, but the simple fact that each incoming board cannot be held responsible for and bound by the previous board. There are things that you do; on an annual basis, in January each year, the Dinwiddie Board of Supervisors adopts its rules of procedure. It adopts it publicly and it changes it as it's needed. We don't do that, in fact we haven't done it since 1991. Again, I am sitting here, maybe I am taking this a little personally, I am proud that we won our first case, Waverly Gas, it's done and I want to thank the Treasurer and Commissioner of the Revenue. We did not have to go into a courtroom. We sat down and talked. So all the talk about all the attorneys in the world, we shouldn't be in court. If we are in court, we have failed, administratively to do our jobs. We have failed as a Board. So I guess what I am saying

Mr. Chairman, here are the issues that I bring to you; here are the legal documents that I bring to you; the resolutions that this Board had adopted that would indicate that the county administrator is in charge, yet there still appears to be some dysfunction and lack of understanding and I am asking the Board publicly to clarify my role as county administrator in this county and give me some direction.”

Supervisor Caple: “Taking in account what Mr. Harris has just said, it looks like we need....I guess it’s several ways we can do this. According to what he said, certain things we don’t have that we never had and some things we need that we have not had for 10 or 15 years, but then he gave us 15 or 20 pages. I think we need a workshop or retreat or something to lay out some rules and policies. I know he’s not looking for anything tonight because he just gave me this. I think we need some time to go over this and talk about it and see what we can work out and get something in writing, so that we can have some procedures that we can follow and he will know his role. I know the state code and Robert’s Rules of Order say that county administrator duties are delegate to him by the Board. We need to delegate something to him in writing. I would think that we need some time look at this and work things out.”

County Administrator Harris: “I appreciate that Mr. Caple. I started August 1<sup>st</sup> in Sussex County. Isn’t it about time that somebody figured out before I came here or whoever would have come here, what the job and duties of the county administrator would be in this county? Wouldn’t that be a reasonable assumption?”

Supervisor Caple: “I assumed that had been done. I thought you had your duties.”

County Administrator Harris: “When I signed my contract, I did have my duties. When I sat down with Chairman Parker, I did have my directions, but unfortunately, this Board ratified a contract that was signed prior to my coming here without ever notifying me that it was done. And let me take one step further, because the former county attorney repeatedly said you can’t change that contract unless both parties agree. But it seemed to be perfectly okay to materially change my contract without any input from me whatsoever.”

Supervisor Caple: So you say you have a contract. I don’t have a copy.”

County Administrator Harris: “What I am trying to tell you Mr. Caple is that when I came here the only thing that I had to go on was the good word of this Board. So the bottom line is I am asking for direction and it this board after almost going on a year of my being here, now has to go back and decide what a county administrator is in this county, shame on you.”

Supervisor Fly: “I think we can make some big leaps forward tonight on this issue and work out some minor details and that is I would make a motion that this Board, that we uphold Mr. Harris’s contract; we ratify his contract as stated when he signed it; that all aspect of his contract are in full effect; that he is in full control of the county; including the direction to all departments heads, that they starting tomorrow, report to the county

administrator, including the deputy county administrator; that all departments report through a single source and that is, the county administrator. That's my motion."

Chairman Tyler: "There is a motion on the floor, is there a second?"

Supervisor Futrell: "I second."

Supervisor Caple: "As I stated I don't have a copy of his contract and I don't know what's in it. I can't vote to ratify something and I don't know what's in it."

County Administrator Harris: "You don't need to ratify anything. You just need to do what you said you would do. You passed a resolution in September. The job is county administrator; I want to follow state code; I want to be the county administrator that I was hired to be. That's all."

Supervisor Fly: "The contract was already ratified by the Board; it was already signed, I was just simply asking that we honor his contract that he signed as a provision for coming to this county. And the problem that we have Mr. Caple and the reason it needs to be done tonight. We had an episode this week and it shows the problem that we have. This Board at its last meeting directed the County Administrator to develop a grant application for the Henry Industrial Site; to fill out, to execute and to make accurate. In the resolution that we passed, it said that the County Administrator make sure that happened. What happened because of the odd set of co-administration that we've allowed to be set up, is the grant application was done and was sent by the deputy county administrator to the Tobacco Commission, without the county administrator ever seeing it. No signature, no cover letter, I know it's all done electronically now. But I think we have a very serious problem when this board gives a direction and the resolution was that the County Administrator creates this grant, make sure it was proper, make sure it was accurate and get it to the Tobacco Commission. I don't think we will solve it tonight, how it wound up going out of this office by the Deputy County Administrator. But I think tonight what we can do, is honor his contract, but honor a resolution we made in September. Back in September, this Board passed a resolution saying that all department heads including the Deputy County Administrator report to the county administrator. Now, that the department heads report to the Deputy County Administrator and then he reports what he found out from them. We are a small county with a small staff. You got seven people reporting to two people, makes no sense. What we need to do tonight is honor his contract by a motion, honor the resolution in September, which states that all department heads report to the county administrator including the deputy county administrator and he has full responsibility of the county. Now I go back to a resolution that we made in July of 2011 and it says On motion of Supervisor Fly, seconded by Supervisor Birdsong and carried unanimously that Sussex County Board of Supervisors hereby transfers full county administrator responsibilities to Mr. Thomas E. Harris, effective August 2, 2011. Now we have deviated off that course. The other thing that I would point out is that I think we violated his contract. I also think we violated state code because the state code clearly says that the County Administrator is in charge of all departments. So I would restate my motion that we honor Mr. Harris's contract as stated the day he signed it; that we honor the September resolution of this board that all department heads including the

Deputy County Administrator report directly to the County Administrator and that the County Administrator has the full responsibilities for Sussex County. That's my motion. It would help alleviate some of the problem we have right now."

Chairman Tyler: "Is there a second to that motion?" Let me say, number one, if he has a contract, we don't have to ratify his contract. We have to honor his contract period. Secondly, I visit the county administrator the other week and I asked for the job description for County Administrator. I was told that there is not one. But now we did a salary study and we had all job descriptions. And the reason I say that is because we had to do an evaluation of Mary Jones at a time when I was chair. And I pulled her job description, now where that job description, I don't know. There are a lot of things in my opinion, administratively needs to be cleaned up. Additionally, I went to the Personnel, the contract that we signed is not in the office. I asked the County Administrator for a copy of his contract and I don't know if he has brought a copy and put it in his file."

County Administrator Harris: "The County owes me a contract. Mr. Chairman, no offense..."

Chairman Tyler: "A copy of the contract that we gave you, let me ask you a question, what I said was a copy of the contract; I asked the payroll person for the County Administrator's file and the deputy and neither contract was in either file. And I asked her specifically how are you making payroll if you are not making it based on the contract and leave? She said that a letter that she received from the former county attorney. And my comment was, that's not good business. If you have a contract, that contract should be in the personnel file. But I think it's real complicated because you've got to have two contracts. You've got to have one from the deputy county administrator and you have one with the county administrator. Now it's not just passing a motion up here and they haven't been drafted, I recommend that this is a complex situation and no secret, there has been so much friction there in the office that has been adversely affecting the county. I would definitely recommend that we not take action tonight, that we refer it to the Personnel Committee which will meet Monday to review personnel items; that the Personnel Committee will pick this item up as well as all the other items we have to do. There's a lot of heavy lifting that we need to do. But the Personnel Committee supposed to meet Monday at 2 o'clock and we will add this item to the agenda."

Supervisor Fly: "There's a motion on the floor."

Chairman Tyler: "I would like to make a substitute that we do that.....that we would refer this to the Personnel Committee, along with the other things we have assigned that we could look at the contract; we can look at the job descriptions; we can look at the state code and try to put our arms around the thing and to fix it if possible."

County Administrator Harris: "Could I be so bold to ask and no offense to anybody, but what kind of background and experience does anyone on your Personnel Committee have in doing this type of work?"

Chairman Tyler: "Well, I think I would assume that Mr. Caple has had quite a bit of training."

County Administrator Harris: "No offense Mr. Chairman, we got the issue of assuming and presuming that gets us in this mess to start with."

Chairman Tyler: "I will be there as well to look at that and I have many years experience in personnel, especially in administration, no question about that. So I will be there to walk through that process to make sure that's legal and comprehensive."

County Administrator Harris: "So to make sure I understand...I left the job in Amelia, turned down a job in King William to come to Sussex. Because the Personnel Committee and I think you chaired that personnel committee, if I am not mistaken, it seemed, at least that my skills set were needed in this community and that I would be provided the opportunity to utilize those skills. And here we are 8 months into the program and now we want to go back to decide what that meant. Can I get some help here? I mean this is bizarre."

Chairman Tyler: "I think my position is that this board needs to go and look at your contract, Morrison's contract, Morrison's job description, your job description and the personnel policy and in addition to that, there is a state code.....the state code which you have tonight is 15.2-5041, but if you will go over to state code 15.2-407, that tells the powers and duties of the county administrator. That delineates your responsibility, so we need to look at all that together to determine and develop a job description for the county administrator that we will have something that you can actually carry out your duties and responsibilities. So what we have tonight is the administrative head of government, but 15.2-407 has the powers and duties of county administrator."

County Administrator Harris: "I would caution the Board, the Chairman, that there are four different forms of government and the traditional form of government, this is the one that it's applicable to."

Chairman Tyler: "You're right and there are three different forms of government, so we have to determine what form of government that we are."

County Administrator Harris: "No, there are state codes that requires, whether it's by vote or consensus."

Chairman Tyler: "I understand that, but my point to you is, this code deals with the administrative head of government. This 15.2 says the powers and duties of the county administrator."

County Administrator Harris: "What I am trying to tell you is this code applies to all county administrators; this code may very well only apply to the executive form for government which you do not have."

Chairman Tyler: “We understand that, we had training on that. But the state code also says the Board of Supervisors has to determine what duties and responsibility what duties and responsibilities that they want the County Administrator to have.”

County Administrator Harris: “That’s what I am saying. That’s why you have these resolutions that very clearly lay out.”

Chairman Tyler: “And that’s what you are asking for?”

County Administrator Harris: “No I’m asking you to honor them.”

Chairman Tyler: “What we will do, we will go to the Personnel Committee, my motion is to carry it to the Personnel Committee to review this matter and to formulate a reasonable solution to this problem that we currently have. That’s a substitute motion. Are there discussions on the motion?”

Supervisor Fly: “On your substitute motion, I think what we need to do, and we need to move on because the citizens are here and they want to speak and that’s next up on the agenda. But I think it’s critically important that we need to understand at this minute that we sit here – we sit here right now, our government is not functioning. We have set up some bizarre co-administration that’s not functioning. And what I would reiterate again, is all we need tonight, and I agree you’ve got to go through all of this in your personnel committee. I am not sure what you’re going over. We don’t have a copy of the contract because the attorney we had doesn’t have a copy of the contract. Let’s speak frankly, we can get into that one too. Requesting documents that we can’t get. But on this matter, if we simply tonight reaffirm through a motion and honor his contract as constituted when he signed it and we honor the resolution of September 2011 and we honor the resolution of July 2011, which both state that he has full authority to run the county; he reports to the board and that all department heads (Mr. Caple that does not include Social Services) and all department heads that are under the County Administrator’s office, report to the county administrator. If we pass that, then your Personnel Committee can take and go look at everything and try to come up with whatever you need to come up with. But tonight, we have a crisis. We have a crisis because we have things that are illegal being done, things that are not being done and the county is hurting and we need to put it to an end tonight, while you meet. So I would ask that you withdraw your motion and that the original motion be honored, it was seconded and voted on. And all it does is re-instate what we have already set. There is nothing new here. I am not breaking new ground. The two motions that we made that gave him full responsibility, all department heads report to him, including the deputy, happened in September 2011. In July 2011, there was a resolution saying that he has full control as county administrator. He signed the contract in July that says the same thing. What we need to do tonight, through a motion, is honor his contract, honor those resolutions and let him go back to work.”

Chairman Tyler: “Thank you. The reason why and I have said it for years, the reason why the county is where we are now is because we make decisions and then we have to retroactive try to correct something. Again, I will not withdraw the motion. I think it’s the Personnel Committee responsibility, that’s why it was established and I think it needs to

be the first thing the Personnel Committee review that and other issues which had been referred to it and report back to this board as a working document.”

Supervisor Fly: “Call for the question.”

Chairman Tyler: “That is my position and I ask the board to refer to the Personnel Committee; that’s why we established a Personnel Committee, to do this type of thing. So, there’s a substitute motion on the floor to refer to the Personnel Committee, all those in favor, are you for the question?”

Supervisor Caple: “Second.”

Chairman Tyler: “All those in favor of referring it to the Personnel Committee, raise your hand.”

Voting aye: Supervisors Caple, Stringfield, Tyler

Voting nay: Supervisors Fly, Futrell, Warren

Chairman Tyler: “What was the other motion? The other motion was to ratify and not.”

Supervisor Fly: “No, to honor his contract and”

Chairman Tyler: “We don’t have to worry about that.”

Supervisor Fly: And the resolutions of September 2011 which states that all county department heads, including the deputy county administrator report directly to the county administrator and to honor the resolution of July 2011 which gives him full authority to run the county.”

Chairman Tyler: “There’s a motion on the floor and there is a second to that motion, right?”

Supervisor Futrell: “Mr. Harris was hired as the county administrator; just like Dr. Harris – he’s the administrator, I’m just saying.....”

Chairman Tyler: “We have a motion on the floor and now we have to carry it to a vote. Now we will vote on the first motion. The first motion was that we ratify the contract...”

Supervisor Fly: “Honor.”

Chairman Tyler: “To honor the contract; honor his contract and ratify the resolutions as stated.”

Supervisor Fly: “No, honor the resolutions of September and July.”

Chairman Tyler: “You say honor the resolutions.”

Supervisor Fly: “of September which requires all department heads to report to the county administrator, including the deputy county administrator and the resolution in July.”

Chairman Tyler: “You have that motion in writing?”

Supervisor Fly: “Okay, my motion is that we honor Mr. Harris’ contract as constituted when he signed it and that we honor the resolution of September 2011 which requires all department heads, including the deputy county administrator to report directly to the county administrator; that we honor the July 2011 resolution, which gave Mr. Harris, the county administrator full authority to run the county. These are things we already agreed to.”

Chairman Tyler: “Let me ask you a question. If these things are already on file, we don’t have to ratify them.”

Supervisor Fly: “Honor.”

County Administrator Harris: “I need your support because it’s not working Mr. Chairman and you cover it.”

Chairman Tyler: “My comment is if you have a contract, if you have a resolution, then why make this motion? That’s my question. If you already have the contract which we don’t have a copy of it right this minute and we have resolution on the book, why honor those if they are already on the book?”

Supervisor Fly: “That’s the question Mr. Chairman, I will ask that question. So the reason I’m making my motion is because we are not honoring and as chairman, I’ll ask you the question, why are we not honoring his contract? Why are we not honoring the resolution of September 2011 which you voted for? Why are we not honoring the resolution of July 2011 which you voted for?”

Chairman Tyler: “I am not sure we are not honoring it.”

Supervisor Fly: “When the Board of Supervisors of Sussex County directs the county administrator to perform a grant application to make sure it’s accurate and to make sure that it is sent so that we can get \$240 thousand dollars, I think, to go to your district (the Henry Industrial Park, which is a good thing), but when the Board passes a resolution that says the county administrator is to do that and then the county administrator doesn’t find out that the application has been sent until...it’s was sent on a Friday, he doesn’t know until Monday when he gets a copy in his inbox, you’ve got a problem. We are not honoring his contract. So I am asking for us to honor his contract in a motion that as of tomorrow, we are going to honor his contract, we honor these resolutions. We have played this game too long allowing people to go around the county administrator. It’s time to move the county forward. We are not operating efficiently, it is absolutely ridiculous. I never seen any company run this way and just cannot go on. You cannot

have this co-administration. So that's why the motion is needed, because we are not doing what we have promised to do. The motion is on the floor, it's got a second."

Chairman Tyler: "There is a motion of the floor and a second, let me just say also there is another contract that we have to be conscious of. We don't want ....."

Supervisor Caple: "There's one saying that they do the grants, economic development person do the grant, so there's a conflict somewhere there."

County Administrator: "Yeah, there is a conflict because you all passed.....you signed a contract, a second contract.....that the Board never saw I might add. But passed it and it's in conflict with everything else you have. And when I raised the issue... it's plain and simple. I mean either you need to address the problem or you need the grant the authority to the county administrator to address the problem. Let me be real clear about this. It has nothing to do anything but job performance. Has nothing to do with but doing what you are supposed to do as a sacred trust and a public official and it is getting very, very difficult and I am going to say it Mr. Tyler – you know as well as I do, we lost a good finance director purely and simple because he was so concerned for his career, that he had to leave this county. Jerry told me that himself, okay. The problem here is that too much of this goes on without anyone trying to the bull by horn. If you signed a contract for Mr. Morrison, by all means enforce your contract."

Supervisor Caple: "So my question was, is he following his contract?"

County Administrator Harris: "I don't have a clue what he following, that's my point."

Supervisor Caple: "If we give you all the authority to do what you said you want to do and that's what he has been doing, so we need to do something with his contract then. So the Personnel Committee, we need to do something with that."

County Administrator Harris: "Here's the problem I have Mr. Chairman. I came here to this county because I wanted to do something to make this a better place to be. I wanted to make this....and I said this to the Personnel Committee. I want it to be the best run county in the state. How can it be the best run county in the state when half the stuff that goes on, I don't have a clue. You ask your attorney for something....."

Mr. Thompson (interjecting from the audience): "Careful"

County Administrator Harris: "One email you get, you got 12 years worth of stuff. The next email, you don't anything. You ask the deputy county administrator to report...."

Chairman Tyler: "But listen, the fact of the matter is, there is friction in county administrator's office, everyone knows that. They don't talk to each other, they don't communicate. So that's something that they have to work out and it's no secret and it has been from day one. But now, again we have two contracts, we need to look at both contracts. We need to look at state law; we need to look at the resolutions; we need to look at all those items to come up with a solution to the problem. We are not going to do it tonight. I would suggest again that we refer it to the Personnel Committee. That was

voted down; there's another motion on the floor to ratify....the chair will call for the question. All those in favor of the motion, say aye."

Voting aye: Supervisors Fly, Futrell, Warren

Voting nay: Supervisors Caple, Stringfield, Tyler

The motion dies due to tie vote.

Supervisor Caple: "The Personnel Committee will meet to see what we can do with it and forward it back to the Board."

Chairman Tyler: "We will take it to the Personnel Committee on Monday."

Supervisor Futrell: "Mr. Chairman, I've got one question."

### **Item 8. Rules of Procedures By laws**

Chairman Tyler: "Let's move on the agenda. Next we have on the agenda is the rules and procedures and bylaws of the Board."

Supervisor Fly: "Mr. Chairman

Chairman Tyler: "As you know, we had scheduled a couple of retreats,"

Supervisor Fly: "Mr. Chairman."

Chairman Tyler: "Yes."

Supervisor Fly: "Point of order, please. Due to the lateness of the hour, I would ask that we go into citizens comments section now, then come back to the bylaws,"

Chairman Tyler: "We only have one item. Let's do it real fast. Rules of procedure, we had discussed this and I would recommend to the Board that we have a retreat; we had a retreat scheduled twice, we weren't able to meet. I would recommend that this be referred to the retreat setting that we have, to establish some rules and procedures for the board. That's in agreement with everybody?"

County Administrator Harris: "This is the issue that you face constantly, Mr. Chairman."

Chairman Tyler: "Is that the general consensus of the Board?"

(Affirmative responses were heard from Supervisors Stringfield and Fly).

Supervisor Fly: "The motion to honor his contract failed, but motion to also send this to the Personnel Committee also failed. So it's not going anywhere."

Chairman Tyler: "Right."

Supervisor Fly: “So unless somebody makes a motion....”

Chairman Tyler: “The Personnel Committee will take care of that.”

Supervisor Fly: “You just can’t take something. It’s got to be assigned to you, so I would make a motion, Mr. Chairman, if you allow me to, that we honor....”

Chairman Tyler: “The chair will rule this out of order because the Personnel Committee can look at any Personnel Committee that comes before the Committee. The Chair will move forward to citizens comments at this time. We will only give you two minutes and after that I will ask you to cut it short. If anyone stays long than two minutes, we will ask you be escorted down. We ask that you give your name and what district you’re with.”

### **Item 9. Citizens Comments**

1. Henry A Thompson, Sr.: “Mr. Chairman, members of the Board, as it been said, subject to nothing being over until the fat lady sings. I come before you a parable, two parables that relate to this; one the echo has no closing and two, be what you are. Now you come through here and again, after discharge all you had to say was politics. But now you’re trying to (next few words inaudible). During a twelve year time period, millions of dollars were handled; 60 and 75 hours a week, so it doesn’t bother me to go from those hours, but ,be what you are and tell the truth. Mr. Fly, you always say you’re smart and sly and everything, yes and appeal was three days late; I filed a belated appeal and the appeal was granted. In 2004 an appeal was two days late, a habeas corpus was filed and it was granted. Stop making these assertions and allegations; you members are members of the governing body. All you had to say was look politics that way, I can talk to you like this, which is somewhat of a relief. I am standing tall looking at you all in the face and I am telling you a couple of things here, one be what you are and if you want to do something, tell the truth about it and don’t lie. We have a county administrator in here, he should be fired for insubordination that he showed you tonight. A county administrator (rest of this statement inaudible). And I am going to (next few words inaudible) honored by attorney client privilege with you all. A county administrator when he came here, jokingly told that the deputy county administrator; he was hired to fire black people. A county administrator who on November 8<sup>th</sup> (rest of the statement inaudible). Be what you are. Mr. Fly, this is not related to any attorney client privilege, it’s two things, one, it’s the truth and two, this is just politics” (rest of statement is inaudible).

Chairman Tyler: “Time’s up.”

Sheriff Bell: “I’d like you to know I am putting you on notice, keep the comments to two minutes. His racy thoughts, he needs to keep him to himself. I am putting you on notice.”

Chairman Tyler: “This is a Board of Supervisors meeting.”

2. Magdalene Turner, Waverly District: "I think all of us here tonight have experience enough to understand and to see where your taxpayers' money is going. Now we can't move Sussex County on with a dictatorship. We have a Board with six members and we have six districts, but we've got a chairman that wants to dictate. (Next statement inaudible due to loud applaud). He has no influence, no expressions; he has a vote, yes, but he keeps his personal ideas and business to himself or to herself. But Sussex, we want to move on and we've got to put an end to what going here tonight and when you vote, you vote your own conviction. You don't vote because somebody else is voting one way or the other. You vote your own conviction and you have seen that tonight. Who's voting because of someone else's opinion. I'm sorry, my time is up, much luck to you."

Chairman Tyler: "Let me just say, this is the Board of Supervisors' meeting; this is the public comment; we give you two minutes. If you say something slanderous; that's between you and the person. I just want to say that; this is the Board of Supervisors meeting. Not a citizens meeting, not the Sheriff's meeting, this is a Board of Supervisors meeting, so we want to give you two minutes."

3. Wayne Birdsong, Wakefield District: "I just have a couple of items; one the legal fees for the attorneys that were hired in December, the County needs to pay those bills. Those attorneys were hired because they needed to be hired. If you don't agree with what was going on, you should have attended the meeting instead of avoiding the meetings and running and hiding in the closet. You should have come to the meetings, you were voted in to represent your district; show some backbone and do it. Forget your personal agenda; this county does not need personal agendas, but eat up with personal agenda. Now, you talked about Mr. Fly repaying the county for these attorney fees, what about the two Board members that signed up to go to Homestead; the county paid for them to go to the Homestead, at the last minute, they did not go? Have you paid the county back for the expenses to go to the Homestead? I don't think so. Don't throw rocks if you live in a glass house. And it's time for this Board to grow up and start acting like adults. I see three year old children playing in a sandbox better that you all are behaving, since January 1<sup>st</sup>."
4. Terry Massenburg, Courthouse District: "I am very concerned that we are throwing rocks and hiding our hands; that you're saying you are caring about the citizens of Sussex, but that's not true. You are using the citizens of Sussex. Now we are sitting here in support, but we have to be careful of what we support. Know what you are doing. Now anyone can tell you that they are for the county, but what I see (next statement inaudible). Prior Board members have not done what they were supposed to do. Rocks have been thrown and hands are hidden. Now what's got to happen, the head has got to get together so the tail will follow. And what we have got to do get ourselves together because we don't have anyone's interest at heart. You pick six all the way through; nobody sitting up there tonight is coming through shining for this county. All you are doing is bickering between each other. You can't go forward when you are too busy arguing between each other. And we are as citizens out here, we don't need to

- stand behind none of you. What we need to do is stand behind ourselves together and get our county together. Do you understand what I mean? And if we have to remove what we see in front of us, I don't see nothing to choose from. Because if you can't make a decision amongst yourselves, I know you can't make a decision for this county. So what we've got to do is get our selves together and cause us to move forward. Because you all have thrown rock and hid your hands."
5. Keith Blowe, Stony Creek District: "I came back to this county and brought my family and thinking about how I grew up here. In the evenings, I could sit and watch news with my parents after dinner and it was an educational type of environment. But now when I watch the news, when my grandkids are visiting, I have to watch it very closely. Because most of the time, I run to turn the tv off so they don't see the terrible things that's on during the news hours. It's happening in our political situation. Calling the President everything except his name. I come to this meeting; I used to come to meetings every month, but because of other commitments and travel, I don't come as often as used to. But when I do come and I see the display that has been put on this evening, I wonder if I made a tremendous mistake to come back to this county. I shouldn't feel that way. I came back and started to develop something where I wanted my grandkids to be here and to have a future. But somehow that slipped out. But if we are going to move forward in this County, I ask that before the next meeting, Mr. Fly and Mr. Tyler go, I don't care where you go, but go somewhere and bury the hatchet because this county cannot afford to have you continue to bicker with one another while we struggle."
  6. Debbie Turck, Blackwater District: "First off, I'd like to thank Mr. Futrell, Mr. Fly and Mr. Warren for being able to vote with their heads and not being coached as evidenced in this meeting and previous meetings, To give you a specific example, last time a motion was made by Mr. Fly, seconded by Warren and then after discussion, a vote was called for by the chairman. Mr. Stringfield, Fly and Futrell and Warren raised their hands and voted yes. Mr. Tyler then looked over at Mr. Stringfield, oh no that's not what we're voting on and asked for the vote again. You had a valid four to two vote which the motion at that time was to allow citizens comments at that meeting and then go into executive session. You called for another vote, it went to the three three vote. How did you know that Mr. Stringfield didn't want a vote for citizens comments and the executive session of the meeting? Unless he had been honestly coached, which is obvious as going on in this meeting and previous meetings. It's not Robert's Rules of Order; it's Rufus Rules of Order. This is an illegal vote and it should not be allowed, just as tonight, it was another illegal vote. As chairman, you are not running the meetings as they should, you been on good behavior tonight because the press is here and the room is crowded. Of the 59 years, I have lived in this county, and the previous five years or so that I have attended these meetings very regularly, pretty much every month. You interrupt other board members during discussions, when you are speaking during their allotted time, you interject your own opinions and comments and instead of waiting for others to give their turn. Mrs. Barker, can I

have your two minutes? (Mrs. Barker nodded yes). Thank you, Mrs. Barker has waived her two minutes to me.

Chairman Tyler: "Ma'am, tonight....."

Debbie Turck (continued): "No, that's Robert's Rules of Order. Mrs. Barker said that she would give me her two minutes. Mrs. Barker, Wakefield District, will you give me your two minutes? (Mrs. Barker nodded yes again). Thank you."

Chairman Tyler: "I will grant that."

Debbie Turck: "You are one member of the board of six with one vote and not the dictator of Sussex County. This board is currently in violation of state code of Virginia 15.2-802 which states that the Board shall elect a vice chairman at the first meeting. You have failed to do so. Luckily tonight you did go on and manage to vote hiring an attorney. Mr. Thompson gave quite a few comments tonight regarding his state bar allegations and admonitions and public reprimand, I have copies of all three reports, which statements he made were false. He was cited for two accounts of failure to practice due diligence, one of misconduct which he received a public reprimand, which is one step below suspension. I am glad to see that you did hire an attorney that does not have something on the record. I did check the others you interviewed and there was one other that did have something on their record. So I am glad to see at least you did that. You got a major industrial park situation going on, why in the world would anyone want to business in this county and bring revenue into this county and have jobs when you can't pay your own bills and decide on how to act. It's ridiculous, you made a comment that you couldn't fire a county attorney, but yet you made another comment, that if you didn't want them, you could fire them immediately. That's what happened; it's possible to do that and again, like you said you need to decide which rules you are going to be following instead of making them up as you go along. Mr. Teall, would you give me your two minutes?"

(Mr. Teall nodded yes). Thank you, Mr. Teall.

Debbie Turck ( continued): "The County Attorney is an at-will employee versus Code of Virginia 15.2-1542 and 15.2-529. They are accountable to the Board and they serve at the will of the Board. Any at will employee can be fired at any moment, any time without reason, due process. If you don't like the way the shirt that they have on that day, if you want to fire them, you can fire them. They are at-will employees. And that is possible with any at-will employee. So the fact that he was fired, you can't account for whether it legal, illegal or not. You keep going around in circles about paying the attorneys fees, the point is that, all of a sudden it's legal if someone apologizes; but if he hadn't apologized, you decide that payment is not legal. So code, what rules does that go by? You are just making them up as you go along. I would strongly urge that the code allows for a tie breaker to be established in this county. We desperately need it. If you can't redistrict, we need to have a tie breaker appointed so that they can be present at

meetings and not have these continuous three to three votes. And not redistrict to suit some people to make sure that their house lies in a certain district, so they can stay in that district. But again I strongly recommend a tie breaker and I am also strongly recommend recall votes.”

7. James Gay, Blackwater District: “I am not here tonight to chastise any of you guys sitting on the board. However, I only recall and remind each of you, you guys have lawful duty to the county, regardless of your political affiliations. You have been elected to serve the interest of all people. And I want you to know that. You have a huge responsibility, each of you, to balance the needs of all citizens and to work in the best interest of this county. It is time to put aside the divisive ideology and bipartisanship. You guys have lost respect for each other. That’s what the problem is, you don’t respect one another, you disagree with me on my decisions, but let’s not become disagreeable as individuals. Then you can get some things accomplished. Mr. Chair, I am not here to pick on anybody, but were elected chair because I think the county felt that you were capable of handling it. Don’t show favoritism, I wish I had a mirror to put on the wall so when different members of the board vote and cast their opinion, you can see innuendoes and expressions on your guys faces. It looks terrible. To be a Sussex County native, I am proud to be a Sussex native, but you guys come on and get it together for the benefit of the whole county, please.”
8. Bob Elmore, WHAP, Stony Creek District: “I was sent here by my boss to cover this event for WHAP, but as a resident of the Stony Creek District, I will go ahead and turn my press credentials around and speak as a resident. Mr. Caple, I would like to thank you tonight for breaking the log jam on hiring a new county attorney. That is welcome news. But I would respectfully remind my fellow residents of Sussex County that elections have consequences. This is what we’ve elected folks. And until there is another election or a recall election, these are the gentlemen who represent Sussex County and we all need to be more politically active. We need to get our friends to be more politically active; we need our neighbors to be more politically active. Apathy will not do anymore. And until we have that in Sussex County, the state of affairs will remain the same. It is up to us as citizens, the folks that are here tonight, you are doing your civic duty and you should be proud of it. But you need to get your friends involved; you need to get your neighbors involved and get it done right.”
9. Fred Turck, Blackwater District: “I didn’t grow up in this county; I’ve lived in and around this area for over thirty years. Many of you probably grew up or spent most of your lives in the county. You should be commended for sitting behind that table; you should be condemned for what you do sitting behind that table. It’s people that have come into this county that are trying to make our county the best county it can be. And they should be applauded for what they are trying to do and we should support. There was a gab shot my way earlier about belonging to a group that trying to get citizens involvement. I am tickled pink that we have to move this meeting to this location. I hope we have to move every meeting to this location. People are looking at what we are doing, if you don’t think that people

are looking at what we're doing – I try to put things on a social network site, blogging that covers the good and I put things out there that covers what happens and let people make the decision with what's out there. I let you know that a couple thousand people are looking at this thing. I get calls from people in other counties wanting to know what's going on in Sussex County. They are kind of comparing what's going on in their county to what's going on in our county. We cannot afford for people to see the non unity that we have here in Sussex County. We are not going to grow. And that's what we need to do; I thank you all for being here and yes we are going to be back next week, next month, next year.”

10. Kevin Bracey, Courthouse District: “I just want to say I would have none of your jobs, but if you could just look at the replay of your actions and I have been coming to these board meetings for quite some time. Pointed out a lot of issues, Mr. Harris, you'll be gray headed by the time you leave here because there is no cooperation, there is no one that runs this county except a select group. It's even bad when their own people that work at this county are not even qualified to do the job that they have and it's even worse tell their people in this community that they don't have to answer to them. That's sad. It's even sadder that we are depending on a landfill to pay our bills in this county, because the boards before you all and before that have failed the people of this community to provide industry in this county to help pay taxes. I just got my tax bill, my taxes have gone up, my assessment on my farm almost 40%, which is a joke. When land values are dropping across the country and I just think gentleman you all need to quit this three and three bickering, put your personal agenda aside and I am going to be quite honest with you, I thought America was past this, but it looks very much like racism. You might not believe it, but you sit there. I know Mr. Thompson and I have nothing against him personally, but once you let him go, you all should have stood behind that and went on down the road. Other people been fired, you ain't said one word about it. There's legal going on about that, but you kept that quiet. Enough is enough, let's move on. We need industry in this town so taxes don't keep climbing, like the man said if you don't do something, we got three new people, we can replace some more in the next election. That's not a threat, but come on – you all live in these communities. Let's move on with business. Act like civilized people instead of a bunch of children sitting up here. It's ridiculous. Let this man that you hired to run the county, let him run it.”

11. Al Peschke, Wakefield District: “John Stringfield supposed to represent me, but I will talk to him tomorrow night between 7:30 and 8 and we will talk about his performance. But the rest of the time, I will yield to my good friend Fred Turck.

Mr. Turck: “One thing that really bothered me is when you got up there and you were talking about Harris Parker. That man gave his life for this county. He had more integrity than a couple of people put together. He worked hard for this county, stop dragging him through the mud that has been dragged out and dumped in front of us today, please. Please let him rest in peace.”

12. Orlando Tolliver, Courthouse District: "I am not originally from Sussex County, I am just a country boy from Mississippi. But I am a United State citizen. I did 22 years in the service, Afganistan, Iraq, (other locations he mentioned were inaudible). It's a shame that I decided to make Virginia my home and I see what I see. Don't tell me it's a cow, when it's a dog. This is the second or third time I have been to one of these meetings. I always hear that it's not black and white. Yes it is. Be truthful to yourself and tell the truth. It's about black and white. (Several statements were inaudible). Just like I worked to fight for my county, I will fight for this county to make sure the right things take place, no matter what I have to do."
13. John Tuck, Courthouse District: "I just want to come up here tonight and explain to you all that Mr. Thompson gave ample evidence of why he should have been fired and why he should never be re-hired by this county. He tried to justify his late filings and his misdeeds. That doesn't count; the state bar gave him a fair and impartial hearing and he got below suspension. And if you read the report on the board's website, it says that was a negotiated settlement, which tells me that they were ready to take his license and he was able to negotiate it down a public reprimand and if you sit there and try and bring him back here to be the attorney for this county, that is totally wrong. He should never be employed by this county again and why can he draw a salary and then bill us for other hours? That's double payment. There's nobody else that works that way. It's either a salary or it's billable hours. You need to really think about why he was terminated and never bring him back again."
14. Audrey Norris, Waverly VA; "Most people have already said what I had on my mind, except for a couple of things. But I will repeat one thing and that's about Mr. Thompson. I don't know why, but every meeting I have been to his name is constantly brought up and once he was fired, I don't know why they can't just let it go. And Mr. Tyler, I don't know why you can't agree with one thing, you have to go around and around with it, you wasted so many hours disagreeing with people. We have some good members up on that board and I thankful we have them."
15. Carla Lilley, Courthouse District: "I think several of these gentleman that have spoken tonight and some of the women who mentioned racism....I am so ashamed of our county, I left in 72 and came back 1997 anticipating a wonderful peaceful rural existence where change had occurred, where the movement had purpose and had been for true reason. People died and suffered for a cause of civil rights and equality. Racism is so rampant in our county, is the greatest sadness that I can think of. It's time to put a stop to it. If you have to have a peace forum, have it. Second thing I'd like to comment on is how you can disrespect Mr. Harris, so totally ignoring the fact that a person wrote their own contract, stated their own salary, nobody does that. They don't do that in any business in America, nowhere, but here in Sussex County. And Mr. Caple you cannot understand that it's just flat wrong, disappoints me, you're a good man. You represent many many good people as do you all. You represent the people."

Supervisor Fly: "Seeing that the public comments are so positive here tonight, I would make a motion that Sussex County make it a policy that we have a citizens comment section in every meeting that we have."

Chairman Tyler: "That's already in place. Every meeting we have, there is a citizens comment section on the agenda. What does the board think about a recessed meeting? Normally, when you have a meeting, once you go down your agenda and you have public comments, the next meeting is a continuation of that meeting. So you have already had it; it's the same meeting."

Supervisor Fly: "The motion would be that anytime the Sussex County Board of Supervisors convenes a meeting, that we have a public comment section."

Chairman Tyler: "I don't have a serious problem with that but the only question I would have...if in fact there is a special meeting called by a board member; that board member might or might not want to have a citizens comment on that particular thing. Since it might be an emergency issue. I would like to give way to the Board members whether you want to have a citizens comment or not."

Supervisor Warren: "Second."

Chairman Tyler: "The motion has been seconded. Discussion?"

Supervisor Fly: "The discussion would be...I think it's critically important that every time we meet as a Board, that the citizens have an opportunity to speak to us. We work for them and I think that anytime we convene a meeting of Sussex County, that's a public meeting, that we should add a citizens comment section to that. I think it would be very valuable in moving this county forward."

Chairman Tyler: "Other comments from the board."

Supervisor Stringfield: "I believe that if we continue just have a regular citizen meeting on our regular meeting, but we have special meeting, I don't think there is a need for citizens to comment. It's time available at the regular meeting. So I suggest we continue to have that on the regular meeting."

Chairman Tyler: "Other comments."

Supervisor Futrell: "I think it would be good for the citizens even if it's special meeting, called meeting, even emergency meeting if you have the time for it. But they have the right to give their opinion."

Supervisor Warren: "I just want to echo those words, I said the last time that they didn't get to speak, I thought it was a travesty. They should be able to speak at any meeting we come to, that not closed session."

Chairman Tyler; I think if you have the meeting, it's protocol and if it is the continuation of the same meeting. If a board member has a special called meeting for emergency purposes, these meetings are supposed to be issues that cannot wait for the regular meeting. Because many of these items tonight could have waited to the regular board meeting. But a special meeting is what is says – action you need to take that will not wait until the next regular meeting. But I believe if a member has a special meeting and he or she does not want to have public comment. There is a motion of the floor, is there a second? All those in favor, say aye.”

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

Voting nay: Supervisor Stringfield

### **Item 10. Closed Session**

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the Sussex County Board of Supervisors shall enter Closed Session to discuss the following:

**Closed Session:** Discussion of personnel matters relating to employment and performance of specific employees and Personnel Matters regarding Staff Appointments, Applicable Code Section: 2.2-3711(A)(1)

**Closed Session:** Legal Matters regarding Land Acquisition: , Applicable Code Section: 2.2-3711(A)(3), Acquisition of Real Property/Real Estate

**Closed Session:** Legal Matters regarding Court proceedings/update on Administrative personnel; Applicable Code Section: 2.2-3711(A)(7), Probable Litigation

**Closed Session:** Legal Matters regarding request of Commonwealth Attorney: Applicable Code Section: 2.2-3711(A)(7) Consultation with Legal Counsel

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

Voting nay: none

### **Item 11. Return to Open Session**

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR STRINGFIELD and carried: RESOLVED that the Sussex County Board of Supervisors shall hereby return to open meeting; and

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

**WHEREAS**, 2.2-3711 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 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.

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

Voting nay: none

**Item 12. Motions From Closed Session**

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR CAPLE and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves of the Hurricane Irene overtime pay for Sheriff Raymond R. Bell and Social Services Director, Chequila H. Fields, in the amounts of \$1,992.73 and \$2,176.02, respectively.

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

Voting nay: none

**Item 13. Recess**

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the April 5, 2012 meeting of the Sussex County Board of Supervisors hereby recessed until Monday, April 9, 2012 at 2:00 p.m., in the County Administration Building Conference Room.

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

Voting nay: none