

At a Special Meeting of the Sussex County Board of Supervisors
Held in the General District Courtroom, Sussex Judicial Center
On Thursday, January 6, 2011, 7:30 p.m.
(Rescheduled from the December 16, 2010 Regular Meeting)

BOARD MEMBERS PRESENT

T. Wayne Birdsong Charlie E. Caple, Jr. C. Eric Fly, Sr.
Wayne M. Harrell Harris L. Parker Rufus E. Tyler, Sr.

STAFF PRESENT

George E. Morrison, III, Interim County Administrator
Henry A. Thompson, Sr., County Attorney
Jerry L. Whitaker, Director of Finance
Nicole L. Scuderi, Administrative Secretary
Brenda H. Drew, Housing Programs Coordinator
Erin E. Belt, Code Compliance Specialist
Andre' M. Greene, Director of Planning
Shannon D. Fennell, Assistant to the Planning Director
Eddie T. Vick, Public Safety Coordinator

Item 1. Call to Order/Pledge of Allegiance/The Invocation

The January 6, 2011 meeting of the Sussex County Board of Supervisors was called to order by Chairman Parker; the Pledge of Allegiance was recited by all; the Invocation was offered by Supervisor Tyler.

Item 2. Approval of Regular Agenda

ON MOTION OF SUPERVISOR BIRDSONG, seconded by SUPERVISOR CAPLE, and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves of the Regular Agenda of the January 6, 2011 meeting, inclusive of the following: (a) Tobacco Commission Special Projects Committee Recommendation be added as Item 4(b)(4) under County Administrator's Report; (b) 460 Improvements be added as Item 4(b)(5) under County Administrator's Report; (c) Acquisition of Real Property, Applicable Code Section 2.2-3711(A)(3) be added as Item 8(a) under Closed Session; (d) Legal Matters Pertaining to Legal Contracts, Applicable Code Section 2.2-3711(A)(7) be added as Item 8(b) under Closed Session; (e) Advice of Legal Counsel, Board of Supervisors Freedom of Information Act Procedures, Applicable Code Section 2.2-3711(A)(7) be moved to Item 8(c) under Closed Session; and (f) Prospective Business Matters, Applicable Code Section 2.2-3711(A)(5) be added as Item 8(d) under Closed Session.

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

Voting nay: none

Item 3. Approval of Consent Agenda

(Prior to the approval of the Consent Agenda, Supervisor Fly asked that the Approval of Warrants and Vouchers be deleted, because he did not have the opportunity to review them).

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR CAPLE and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves of the Consent Agenda of the January 6, 2011 meeting, inclusive of the following: (a) Approval of minutes October 25, 2010 Personnel and Finance Committee Meetings, November 16, 2010 Finance Committee Meeting; November 18, 2010 Regular Meeting; and November 30, 2010 Finance Committee; (b) Approval of Appropriation of Funds received in the amount of \$850.00 for the 2010 Housing and Community Event.

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

Voting nay: none

Item 4. Standing Reports

Item 4a. Health Department—Absent

Item 4b. County Administrator's Report

Item 4b1. Commonwealth's Attorney Request

George E. Morrison, III, Interim County Administrator, advised the Board that included in their packet is information regarding the request for salary increases provided by Mrs. Lyndia Person-Ramsey, the Commonwealth's Attorney. Mrs. Ramsey, during a previous Finance Committee meeting, advised that the part-time attorney separated from the County in November 2010. She requested that the funds budgeted for that position be used to provide salary increases to her staff. The total current budgeted amount is \$40,386.75 and she is requesting to use \$14,909.23 for the increases, thus the net cost savings would be \$25,459.52.

ON MOTION OF SUPERVISOR TYLER, seconded by SUPERVISOR CAPLE and carried: RESOLVED that the Board of Supervisors hereby approves of the Commonwealth's Attorney request to use existing funds to provide for an increase in staff's salaries, in the amount of \$14,909.23.

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

Voting nay: none

Item 4b2. MACE Inc., Quarterly State of the System

Eddie T. Vick, Public Safety Coordinator, advised that there has been a failure of a major component in the communications equipment. He cautioned that as soon as funding becomes available, that the Sheriff's Department should be switched over to digital.

Item 4b3. Director of Finance Report

Jerry L. Whitaker, Director of Finance, provided an update to the Board. One new item for the County: the insurance for volunteer firefighters and public safety officers will be increased; the numbers will not be available until March or April. (A copy of the Director of Finance's report is retained in the December 16, 2010 Board packet).

There was a brief discussion regarding the County's payment of overtime.

Item 4b4. Tobacco Commission Special Projects Committee Recommendation

George E. Morrison, III, Interim County Administrator, advised that the County had submitted the application for the Mega Projects Industrial Park. A recommendation for the Special Projects is to award \$250,000.00 to the County for preliminary engineering. There is a meeting scheduled for next week regarding the mega-projects for the industrial parks and the funding. Mr. Morrison will provide an update to the Board at the January 20, 2011 meeting.

Item 4b5. Route 460 Improvements

George E. Morrison, III, Interim County Administrator, advised that the public comment period for the Route 460 Improvements ends on Monday, January 10, 2011.

The Board held a brief discussion regarding the 460 Improvements.

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR HARRELL, and carried: RESOLVED that the Sussex County Board of Supervisors hereby directs the Interim County Administrator to draft a resolution in opposition to the Route 460 Bypass and to draft a letter to be signed by all members of the Board of Supervisors and forward to the appropriate staff at the Virginia Department of Transportation.
Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler
Voting nay: none

Item 4c. Treasurer's Report

Onnie L. Woodruff, Treasurer, briefly spoke about the issue regarding the Department of Corrections payment in lieu of taxes. He states that several localities have contacted him about the same issue.

Item 4c1. AS400 System Upgrade

Supervisor Fly reported that the Finance Committee had met and determined that the current AS400 system is outdated. The recommendation by the Finance Committee is to purchase a new computer system so that citizens can make payments online, access

information online, etc. If the current system fails, it will cost more to repair it. \$75,000.00 is the cost for the new system.

ON MOTION OF SUPERVISOR HARRELL, seconded by SUPERVISOR CAPLE and carried: RESOLVED that the Board of Supervisors approve the purchase of a new computer system estimated at \$75,000.00, to replace the current AS400 system.

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

Voting nay: none

Item 4c2. Monthly Report

Onnie L. Woodruff, Treasurer, reported that tax collections for the County are currently at 90%, which is excellent for a rural county. Mr. Woodruff further commented that the deadline for dog tags for the County is January 31st. The current rabies clinic that is scheduled for the County is not until Saturday, February 19th, which is (20) days after the deadline. Dr. Cupp could not commit to an earlier date. (A copy of the Treasurer's Report is retained in the December 16, 2010 Board packet).

Item 4d. Commissioner of the Revenue—Absent

Item 4e. Sheriff's Department

Raymond R. Bell, Sheriff, reported that overtime will run out before the year is over, and is requesting an appropriation. The request was sent to the Finance Committee.

Item 4f. Superintendent of Schools

Dr. Charles Harris, III, Superintendent of Schools, provided an overview of the requested funding for new elementary school construction program, in the amount of \$18 million dollars. The breakdown of the projected cost of building is \$11,130,000.000; additional funding of \$6,860,000.00 is for site construction, building design, technology, furniture audio visual equipment, architectural and engineering fees.

Supervisor Fly advised that the Finance Committee discussed this previously, but is not ready to make a decision at this time. They should have an answer by the next board meeting, hopefully.

Item 4g. Director of Social Services—Absent

Supervisor Caple advised that the Social Services Board lost a board member recently (due to the death of Mr. Will Massenburg). He also advised that he knows an interested party willing to serve. Chairman Parker asked Supervisor Caple to bring the information regarding that individual to the next meeting.

Item 4h. County Attorney's Report—No report

Item 5. Citizen's Comments

Comments were heard from the following:

- Pastor Edward Rose, owns property in Wakefield (lives in Williamsburg VA), made comments about the cyber café located in Wakefield VA
- Tameka William, Henry District, made comments about the elementary school construction project.

Item 6. Unfinished Business

Item 6a. Conditional Use Permit #2010-02, Walter Tuma, applicant

Andre' M. Greene, Director of Planning, presented the staff report for Conditional Use Permit Application #2010-02.

The applicant, Walter Tuma, is requesting a Conditional Use Permit for the breeding of Yorkies, on 7.62 acres, on Rocky Branch Road (Stony Creek District). Planning staff has received opposition from one (1) non-resident of Sussex County and two (2) residents of Sussex County.

The Planning Commission at their August 30, 2010 meeting, voted unanimously (6-0) to recommend approval of Conditional Use Permit #2010-02, to allow the applicant to locate a kennel for the breeding of Yorkies, subject to the following conditions:

- 1) The applicant shall obtain a kennel license from the Sussex County Treasurer's office and present proof to that office that the dogs have been vaccinated against rabies.
- 2) The existing buffer of trees shall be maintained, unless permission is granted by the Planning Office to remove these trees.
- 3) No more than fifty (50) dogs over six months of age shall be permitted at any one time.

Following the Planning Commission public hearing, staff and the Board of Supervisors received allegations of animal cruelty and neglect against Mr. Tuma. Consequently, the Board of Supervisors at their October 21, 2010 meeting, voted to table the request and had forwarded it back to the Planning Commission for further review. (A copy of the allegations, Mr. Tuma's response to the allegations and a copy of staff's findings are included in the December 16, 2010 Board packet).

Staff visited Mr. Tuma's property in Dinwiddie County and found the kennel to be in relatively good condition. Staff also investigated the complaints against the applicant and had found that the State Veterinarian's Office, in 2009, cited several concerns with the condition of the shelters and the level of care being provided to the dogs in the applicant's possession. The State Veterinarian's Office in its report dated October 16, 2009, stated several recommendations for improvement of the applicant's breeding operation. The recommendations were as follows:

- 1) Mr. Tuma should immediately start to provide and implement changes toward the provision of adequate shelter for all the animals in his charge.
- 2) Mr. Tuma should immediately start to provide and implement changes toward the provision for the adequate care and veterinary care for all animals in his charge.
- 3) Animal Control should follow up to ensure that Mr. Tuma comes into full compliance within the mandated time period and should continue to perform unannounced inspections to ensure that adequate care is being provided on a routine basis.

Mr. Greene's staff report states that Sussex County's adopted Zoning Ordinance defines a conditional use permit as a "permit issued by the Board of Supervisors for a use allowed as a conditional use in a designated district after evaluation of the impact and compatibility of such use; such permit shall stipulate such conditions and restrictions, including any such conditions contained herein, as will ensure the use being compatible with the neighborhood in which it is to be located; or where that cannot be accomplished, shall deny the use as not in accordance with adopted plans and policies or as being incompatible with existing uses or development uses or development permitted by right in the area."

The role of the Planning Commission is to determine if the intended use of the property for the commercial breeding of dogs is appropriate and compatible with other uses permitted by right in the general area. Staff and the Commission have evaluated the request and found that the location for the proposed use to be appropriate as the site is located in a rural location, is over 1,000 feet off the road and is buffered by trees.

The actual operation of the proposed breeding operation falls under the jurisdiction of the County's Animal Control Office. As stated earlier, Sussex County adopted a set of regulations in 2004 pertaining to the breeding of dogs and cats which is administered and enforced by the Animal Control Office.

The Planning Commission at their December 6, 2010 meeting, reconsidered the request and voted unanimously (7-0) to forward the item back to the Board of Supervisors with a recommendation for approval, with the addition of two (2) extra conditions. They are as follows:

- 1) The Conditional Use Permit shall be granted for a period of one (1) year and may be renewed thereafter at the discretion of the Board of Supervisors.

- 2) The applicant shall obtain the required breeding permit from the Animal Control Office and shall operate his breeding operation in accordance with Chapter 14, Article 7(A) of the Sussex County Code, which regulates the breeding of dogs and cats.

The Planning Commission's approval was based on the fact that the applicant has never been formally charged or convicted in a court of law for animal cruelty/neglect and given that the Animal Control Officer from Dinwiddie County has found no further problems with the applicant's breeding operation.

Mr. Greene advised that the applicant, Mr. Walter Tuma is present.

Mr. Tuma addressed the Board and advised that he has a twelve (12) acre tract and he does not see a problem with breeding his dogs.

Chairman Parker allowed time for Citizens' Comments on this issue. There were none.

ON MOTION OF SUPERVISOR CAPLE, that the Board of Supervisors approves Conditional Use Permit #2010-02, Walter Tuma, applicant, as recommended by the Planning Department and approved by the Planning Commission.

The motion failed due to the lack of a second.

ON MOTION OF SUPERVISOR BIRDSONG that the Board of Supervisors disapprove Conditional Use Permit #2010-02, Walter Tuma, applicant.

The motion failed due to the lack of a second.

ON MOTION OF SUPERVISOR CAPLE, seconded by SUPERVISOR PARKER that the Board of Supervisors approve Conditional Use Permit #2010-02, Walter Tuma, applicant, as recommended by the Planning Department and approved by the Planning Commission.

Supervisor Fly reminded the Board that Supervisor Caple cannot make a motion because Supervisor Caple is on the losing side.

ON MOTION OF SUPERVISOR PARKER, seconded by SUPERVISOR CAPLE that the Sussex County Board of Supervisors approve Conditional Use Permit #2010-02, Walter Tuma, applicant, as recommended by the Planning Department and approved by the Planning Commission.

Voting aye: Supervisors Caple, Parker

Voting nay: Supervisors Birdsong, Fly, Harrell

Abstain: Supervisor Tyler

The motion failed.

Item 7. New Business

George E. Morrison, III, Interim County Administrator, advised that Supervisor Harrell is unable to attend the currently scheduled retreat for January 28 and 29, 2011.

After discussion the Board, by general consensus, scheduled the following meetings:

- 1) Finance Committee, Monday, January 10, 2011, 9:00 a.m., Conference Room, County Administration Building
- 2) Buildings and Grounds Committee, Monday, January 10, 2011, 4:15 p.m., Law Library, Sussex Judicial Center
- 3) Personnel Committee Meeting, Thursday, January 20, 2011, 6:30 p.m., Conference Room, County Administration Building
- 4) Retreat for February 4 & 5, 2011, beginning at 8:00 a.m. on February 4 and 7:30 a.m., on February 5, 2011.

Item 8. Closed Session

ON MOTION OF SUPERVISOR BIRDSONG, seconded by SUPERVISOR HARRELL, and carried: RESOLVED that the Sussex County Board of Supervisors shall hereby enter Closed Session for the following: (a) Pursuant to Section 2.2-3711(A)(3) to discuss or consider the acquisition of real property for the construction and development of an industrial park and the negotiating strategies of the County; and (b) Pursuant to Section 2.1-3711(A)(7) to discuss legal matters related to the County's legal contracts with town rescue squads and the transportation of County citizens seeking medical attention requiring specific legal advise by the County Attorney; (c) Pursuant to Section 2.23711(7), concerning the Freedom of Information Act and procedures to discuss legal matters requiring specific legal advise by the County Attorney; (d) Pursuant to Section 2.2-3711(A)(5) concerning a prospective business's location in the County where no previous announcement has been made by such business interest in locating in the County.

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

Voting nay: none

Item 9. Return to Open Session

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

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

NOW, THEREFORE BE IT RESOLVED that the Sussex County Board of Supervisors hereby certifies that, to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the Closed Meeting to which this certification resolution applies, and (ii) only such public business, matters were identified in the motion convening the Closed Meeting were heard, discussed or considered by the Sussex County Board of Supervisors.
Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler
Voting nay: none

Item 10. Recess

ON MOTION OF SUPERVISOR TYLER seconded by SUPERVISOR BIRDSONG, and carried: RESOLVED that the January 6, 2011 special meeting of the Sussex County Board of Supervisors is hereby recessed until Monday, January 10, 2011, 9:00 a.m., for a Finance Committee meeting, in the Conference Room of the County Administration Building; January 10, 2011, 4:15 p.m., for Buildings and Grounds Committee meeting, Law Library; and Personnel Committee Building, January 20, 2011, 6:30 p.m., Conference Room, County Administration Building.
Voting aye: Supervisors Birdsong, Caple, Fly, Harrell, Parker, Tyler
Voting nay: none