

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on December 3, 2013, at 12:00 p.m., Room 241, County Office Building, McIntire Road, Charlottesville, Virginia. The meeting was adjourned from November 14, 2013.

PRESENT: Mr. Kenneth C. Boyd, Ms. Jane D. Dittmar, Ms. Ann Mallek, Mr. Dennis S. Rooker and Mr. Duane E. Snow.

ABSENT: Mr. Rodney S. Thomas.

OFFICERS PRESENT: County Executive, Thomas C. Foley, Assistant County Executive, Bill Letteri, Assistant County Executive, Doug Walker, County Attorney, Larry W. Davis, and Clerk, Ella W. Jordan.

Agenda Item No. 1. The meeting was called to order at 12:24 p.m., by the Chair, Ms. Mallek. Ms. Mallek welcomed everyone present and thanked them for attending this joint session. Ms. Mallek asked everyone present to introduce themselves. (**Note:** Prior to the meeting starting, the Board members and Legislators ate lunch.)

Agenda Item No. 2. Meeting with Area Legislators. State Legislators Present: Senator Steve Landes from the 25th District, Senator Bryce Reeves from the 17th District, Delegate Rob Bell from the 58th District, Delegate David Toscano from the 57th District, and Delegate Matt Farris representing the 59th District in the southeastern part of Albemarle County.

Also present were: Legislative Liaison for the Thomas Jefferson Planning District Commission (TJPDC), Mr. David Blount, and Ms. Tracy Eppard, Legislative Aide for Senator Creigh Deeds, Liz Palmer, Supervisor-elect, Samuel Miller District, and Diantha McKeel, Supervisor-elect, Jack Jouett District.

Thomas Jefferson Planning District Legislative Program Summary, David Blount.

Mr. David Blount addressed the group, reviewing the legislative agenda and noting some of the new items on the priority list. He stated that, at the request of some of the rural localities this year, funding for public education has been moved to the top of the list and, as a re-benchmarking year, there will be additional state dollars for education which will also have an impact on local dollars. Mr. Blount said enrollments have increased while resources have decreased, so there is a definite need for the state to make public education a priority.

Mr. Blount reported that there is a new position statement within the public education priority which addresses a coming change in the Governmental Accounting Standards Board rules related to the apportionment of unfunded liability with the teacher pension plan – and their position is in support of that being shared by both the state and localities instead of simply being carried on the books of the locality. Mr. Blount said this isn't really a budget issue, it's an assignment of liability on the books issue, so it doesn't cost money but will have some impact on localities if they're expected to show all of the unfunded liability on their books.

Mr. Rooker commented that the effect on Albemarle County, when this fully plays out, would be that the County is insolvent, and that would probably hold true for other localities around the state as well. He said the ratings agencies would likely consider this as a factor in bond ratings but the bottom line is, when you are selling bonds and liabilities are in excess of assets, it's not a good thing.

Mr. Blount said the Virginia Retirement System (VRS) has indicated that they don't expect widespread impact, but it is difficult to know what the reaction will be until this is actually implemented.

Mr. Rooker said that normally you don't have to carry items as liabilities on a balance sheet unless there is a legal obligation to pay them, and the localities don't have the legal obligation to pay off an unfunded balance from VRS. He said the Government Accounting Standards Board, however, has determined that they want this to be reflected as a liability.

Mr. Boyd said he sits on the Virginia Association of Counties (VACO) Compensation and Retirement Committee and recently attended the annual VACO conference, and this is a high priority all across the state.

Regarding state mandates and funding obligations, Mr. Blount reported that they spent a lot of time and energy last year into addressing unfunded mandates and cost shifting, and made some progress in terms of having a task force established pursuant to some budget language Delegate Landes put forth on their behalf. He said that task force has been meeting over the past year, with Mr. Foley and him both serving on it – looking at ways to improve the process for determining local fiscal impacts of legislation. Mr. Blount said the task force has recommended a piece of legislation that would authorize the Department of Planning and Budget and state Department of Taxation to also refer bills to the Commission on Local Government. He stated that they're already looking at the bills for potential state fiscal impacts but are essentially putting aside those with potential local fiscal impact, so this would enable them to communicate those to the Commission, which hopefully would result in more opportunity for a closer review of legislation and its potential impacts. Mr. Blount said another recommendation emerging from that group that's tied to this issue is a recommendation to reinstate a previous requirement eliminated in 2010 which require bills having a local fiscal impact to be introduced no later than the first

day of the session. He said this is the priority recommendation of the Unfunded Mandates Commission, and local governments across the state are being asked to adopt resolutions in support the reinstatement of that requirement.

Regarding transportation funding and devolution, Mr. Blount said they are appreciative of the efforts made by the General Assembly and state in the past session and, this year, they've focused attention on restoration of secondary and urban allocations – which have been nonexistent for several years and would likely be the case for several more years.

Mr. Rooker said, while there is some increase in secondary road allocations scheduled, it would get localities back to about 25% of where they were about six or seven years ago – but a high percentage of that new money is being required for investment in unpaved roads, which doesn't leave a whole lot of money for paved roads. He stated that they've asked VDOT how that requirement came about and, at first, they said it was legislative but then said it was a Commonwealth Transportation Board decision. He offered to send legislators an email with secondary road information showing the increase going to unpaved roads, and he added that there are some minutes of past Board meetings with VDOT that should reflect this dialogue.

Mr. Blount asked if they had made reference to the changes made legislatively in 2012 in which there was \$500 million off the top for CTB to put toward certain priorities, which had the percentage for unpaved roads stipulated.

Mr. Rooker asked Mr. Blount to distribute that information to everyone.

Mr. Blount agreed to do so, adding that he hoped the potential shifting of secondary road funding responsibility would not rear its head again anytime soon.

Mr. Blount reported that there are a number of changes related to stormwater from the Chesapeake Bay TMDL program, both from a financial standpoint in support for state involvement, and from a programmatic standpoint. Mr. Blount said, under land use and growth management, the only change in that position relates to potential legislative changes to the definition of "agricultural operations" or "farm operations," pursuant to House Bill 1430 from the last session, which reflected concerns about lessening local authority to provide for the health, safety and welfare of citizens.

Mr. Blount reported that the Comprehensive Services Act (CSA) continues as a partnership between the state and localities, and about 15-17 years have gone by without any increase in administrative dollars for CSA administration, despite increased obligations such as reporting requirements.

Albemarle County 2014 Legislative Priorities, Larry Davis.

Mr. Davis reported that the Albemarle County legislative priorities are similar to what the County has presented over the last few years, and they are not asking for any specific bills to be introduced by local legislators this session. He said one area the County would like to emphasize is the local authority for land use, asking that legislation not be adopted that preempts or circumvents local authority, and Wayne Cilimberg and Mark Graham of Community Development would be highlighting a few important issues in that regard. Mr. Davis said the County would also like to highlight the conservation easement programs and requesting continued funding for the Virginia Land Conservation Foundation. He said that money has been important to the County in pursuing the local conservation easement program and, as funding becomes tight, the focus on land preservation becomes very important.

Mr. Davis said the County continues to spend a great deal of money on the CSA, and local impacts are significant, so they ask legislators to keep that in mind as funding comes from the state on that item. He stated that the one area that's been included in the last several elections since the census has been fixing split precincts. He said there are currently three in the northern part of the County that are split between Senator Reeve's district and Senator Deeds' district – involving the Woodbrook, Jack Jouett and Stony Point precincts. Mr. Davis stated that it would be important to the registrar to have those fixed by the 2015 elections if possible, when the state senate seats are up again, because of the challenges in running those polling places. He said there is also a split in the district between Delegate Bell and Delegate Toscano, but he's not certain it can be resolved, however, the County would be most appreciative if it could be solved.

Mr. Davis stated that drug court funding always becomes an issue during the session, as it's an important service provided in localities especially to the Commonwealth's Attorney and police department. He said the County is also requesting continued attention to the composite index, explaining that Albemarle is in a somewhat unique position of being penalized by two components to the index that aren't recognized. Mr. Davis explained that the land use value reduces the County's ability to tax the true value which is a key factor in the composite index. He added that, this year, there is approximately \$18 million of land use value that would otherwise be taxed, which has a significant impact on the ability to pay. He said the other issue is the lack of recognition of the revenue-sharing agreement with the City of Charlottesville, which required the County to pay over \$16 million this year to the City, and that isn't factored into the County's ability to pay for education. Mr. Davis said, between those two factors, a scheme that's supposed to measure ability to pay doesn't truly capture Albemarle County's ability to pay. He stated that they don't know if there will be any bills in this session to address the composite index, but they want to remind the legislators of this issue.

Mr. Wayne Cilimberg addressed the Board, stating that there were some dynamics which led to the introduction of House Bill 1430 last year that were likely related to another locality in the state, and the subsequent on-farm activities working group efforts this year. He stated that his goal was to talk about Albemarle's perspective and how they address issues that are very much what HB1430 attempted to address and what citizens expect of them as a local government. Mr. Cilimberg said the government of Albemarle is "very close to the people," and thus hears from a variety of interests on many issues – and regularly faces contentious land use debates involving various property rights considerations. He stated that the Board strives to strike a balance, and thus must sometimes adjust policy in response to those opposing factions and changing circumstances. Mr. Cilimberg said a long-standing legislative priority for the County has been for the General Assembly not to erode local authority, especially in matters of health, safety and welfare which are areas where county citizens hold them accountable.

Mr. Cilimberg stated that Albemarle's agricultural economy is of vital importance, and there is a long-standing allowance for numerous agricultural and ag-support uses by right in the Rural Areas district, and only those uses with the potential for high impact are subject to special use permit. Mr. Cilimberg said they recognize a priority for agri-business and agri-tourism in the Comprehensive Plan, and residential development in the ag-areas is considered secondary to agricultural use. He stated that the ag-district encompasses about 95% of the County, so there is still a significant rural residential population and potential for land use conflict with agricultural operations. Mr. Cilimberg said there can thus be a natural tension between rural residents who expect relative peace and quiet, and the potential effects of agri-business and agri-tourism such as land disturbance, odors, traffic and noise.

Mr. Cilimberg said, in consideration of those many interests, the County has taken a number of initiatives over the last five years to better provide for agri-business and tourism while protecting the essential health, safety and welfare concerns of citizens. Mr. Cilimberg stated that the County has liberalized use allowances, moving several uses from special use permit to by-right, largely without complaints or issues resulting. He said, on occasion, the special use provisions have allowed them to deal with some rather significant conflicts, often leading to a positive solution. He said the County has only been requiring SPs for large events at farm wineries, has liberalized the allowances for farmer's markets, introduced allowances for farm sales and farm stands by-right in agricultural areas, worked to provide better opportunities for rural home occupations to be by-right, and for bed and breakfasts to be by-right. Mr. Cilimberg said they've also adopted changes to allow more by-right uses in country stores, particularly those that were older and had a longer heritage.

Mr. Cilimberg said all of these efforts have provided clarity as to what level of use and activities are allowed without County legislative approval, have provided businesses the opportunity to develop their business models with a greater sense of certainty, have increased the potential for County tax revenues, and there is reduced pressure on landowners to seek alternatives such as subdividing. He stated that their concern with HB1430 and the potential bills that could result from the on-farm working group is that they legislate a statewide, one size fits all approach to what can be very local issues – and would greatly overreach in doing so. Mr. Cilimberg said the bills seem tailored to satisfy special interests in lieu of many divergent interests that exist in ag-areas, commercialize what might be considered farm operations – including activities that are unrelated to farming and the sale of items not associated with bona fide ag-production, increase the potential for land-use conflicts among neighboring properties, expand property rights for some properties at the expense of others, and impose personal liability on the legitimate action of county officials in carrying out their interpretive and enforcement duties under ordinances that have been adopted after public hearings and BOS decisions. He stated that this could potentially tie the hands of government closest to the citizens in exercising local discretion in dealing with land use conflicts that will inevitably occur.

Mr. Cilimberg stated that Albemarle County's requests that the General Assembly not enact this type of legislation, recognizing that local government is best suited to fairly and equitably address these situations in consideration of the many voices of its diverse citizens.

Ms. Mallek said the discussion which kept coming up in the task force meetings was that different communities have different cultures, different desires, and different decisions that need to be made. She stated that one size fits all legislation will not solve the problem, and agricultural people are very concerned that their success will be thrown under the bus if something that happens across the state aggravates neighbors and ultimately affects them. Ms. Mallek said there was lack of unanimity in the task force, which is a good example of the disagreement occurring across the state on this issue.

Mr. Rooker stated that the Castle Hill Cidery situation is a good example of what a locality can do if it has some flexibility and, because there was a SP required for the activity they wanted, the Board was able to fashion conditions which allowed them to go forward with their proposal – and, in the end, also satisfy most of the neighbors who felt they had been assaulted by loud noises during events there. He said a statewide solution cannot take into account the individual characteristics of a property and how it sits within a neighborhood, so hopefully the legislation will not go forward because it really prevents workable solutions from being worked out that serve the interests of all involved.

Ms. Mallek said the legislators may also hear about a bill which would allow undetailed processing on farms, which would mean no restrictions or inspections for "production, processing, or sale" of agricultural products. She stated that she wouldn't want her neighbors to have to put up with onsite beef processing, and this bill truly disturbs her.

Delegate Landes said the reason they're here is because of a "bad actor" that was a locality, and they over-reached and interfered in some aspects with the legitimate operation of a farm business. He stated that the difficulty the General Assembly has is that, when a locality overreaches, they are the arbiter

– so they get pulled into trying to referee and come up with a solution. Del. Landes said, in the past, they have been contacted by a lot by the farm wineries in Albemarle County because of a perceived over-reach, and good solutions have been reached to many of those issues. He stated that Albemarle, Augusta, and Rockingham Counties were all creations of the General Assembly, so they do have the responsibility to be the final arbiter. Del. Landes said he is hopeful that the Farm Bureau and some of the other groups that have concerns about this direction will work with the localities to try to come up with some kind of solution, and he doesn't think that just saying there will be no legislative action is going to be the answer. He stated that this is a result of Fauquier County over-reaching, and the task force was supposed to help come up with a solution.

Ms. Mallek said the task force aired a lot of information, and there was much more to the story than what was told to the General Assembly. She stated the group was disappointed that they weren't able to come up with a nice, clean recommendation.

Mr. Rooker commented that this was one locality out of 137, and they don't want to kill an ant with a steamroller here.

Del. Landes said he agreed with Mr. Rooker, and stated that he would not be introducing a bill, but he was only one legislator out of 100 and, in his estimate, there would probably be a bill that moves forward – whether or not it goes anywhere. He stated that, if a bill starts moving forward, it would be helpful for the Board to weigh in on which aspects of it that might be palatable and which would not.

Mr. Snow asked how important it would be for Board members to show up for some of the meetings related to specific legislation, as they have done in the past. Del. Landes said resolutions let the legislature know where they stand, but it's probably more important to make sure the delegation representing a locality or the localities in a region understands what the position is and what aspects are of most concern.

Ms. Mallek stated her biggest concern is that, whatever the activity is, it should be related to farm production.

Delegate Toscano asked if it was possible to have something large and commercial in the rural areas.

Ms. Mallek said, in the original legislation, there was to be no regulation, and there was a big argument at the task force level about limitations – with a large contingent appointed to the task force who wanted no regulation at all.

Del. Toscano asked why the landowner didn't have a cause of action that they could take to the courts and remedy it through those means, as opposed to bringing it to the General Assembly.

Mr. Davis said there actually was litigation.

Del. Toscano said losing in the litigation phase makes it even worse than “bad facts,” because it's a bad court decision on top of that.

Mr. Rooker said it also must be recognized that similar bills which restrict local authority might not necessarily generate those people who oppose the legislation to show up at the General Assembly. He stated that they show up at BOS hearings and, when something becomes very contentious, the ratio is usually about 50 to 1 – and the Board attempts to assign conditions that mitigate the main problems which might result. Mr. Rooker said voters aren't necessarily the people who are showing up asking them to do something, and the vast majority of people do not want to see the rural areas become overly commercialized.

Ms. Mallek said they know that their property rights should have just as much standing as the person who lives next door and stands to profit from an enterprise.

Ms. Dittmar said, under the Planning District priorities, the legislators were requesting additional tools under “Land Use and Growth Management,” and she asked what tools they were asking for.

Mr. Blount stated that they talked extensively about impact fees, and there is currently authorization for a road impact fee that can be levied, but also impact of development fees to address needs for schools, libraries, recreational facilities, etc. He asked Mr. Rooker to speak to the “adequate public facility” ordinances that have been in the works for a number of years, and ones which attempt to determine if the infrastructure is in place to support a development that is approved and brought online.

Mr. Rooker said, generally speaking, when that argument fails by citizens that raise it with respect to a particular application – such as roads not being able to support a development – they can't really believe that localities can't deny proposals based on the lack of public facilities to handle the impact that will occur. He stated that citizens generally believe that localities have that tool, but they don't. Mr. Rooker said Albemarle has been discussing the proffer policy, and most localities of this size in reasonably urbanized areas have some kind of cash proffer policy in place for rezoning – but it is a very imperfect tool, as it assigns costs to new properties without consideration of existing ones. He stated that uniform impact fees on all building permits would be much, much smaller and fairly distributed, and the purpose of cash proffers would still be able to address the contribution of new development for the increased cost of infrastructure that it creates.

Mr. Cilimberg said the irony is that there's 5% of the County designated for development, and they've been fairly successful up to now as that's where many of the rezonings are occurring, whereas activity elsewhere has no associated costs.

Ms. Palmer stated that one of the issues encountered with water authorities is the need to take care of aging infrastructure, and that burden falls on existing rate payers. She stated that, with new development, connection fees help cover the cost of new infrastructure but there are limits. She said there are American Water Works Association best practices in place that they would like to follow, but Virginia law is not compatible with those so that would be an excellent place to start.

Mr. Mark Graham addressed the group, stating that they already have the Chesapeake Bay TMDL information in their legislative priorities, but he wanted to explore in more depth three points related to implementation. Mr. Graham said, in some ways, the process is inadvertently punishing localities that have voluntarily undertaken water quality initiatives in the past because, through the Watershed Implementation Plan, they have created a 2006 baseline for determining where reductions should be measured from. He stated that all of the measures that localities voluntarily undertook before 2006 would not be credited and, almost 20 years ago, the Secretary of Natural Resources was asking localities to voluntarily undertake water quality initiatives – promising that Governor George Allen would not support any unfunded mandates. Mr. Graham said there is now a mandate, but those earlier volunteer measures are going to end up costing them.

Mr. Graham stated that they are mandating the most expensive part – the urban stormwater – and are still not dealing adequately with many of the other parts. He said, as an example, the agricultural component in terms of the pollutant runoff into the Bay is generating three times the sediment and nitrogen as what they're getting from the urban stormwater. Mr. Graham said the agricultural resource management plans just went into effect in November, but those are still voluntary measures with no mandates – and are very much tied to the assumption that there will be state matching funds for some of those Best Management Practices (BMPs). He stated that, if they're doing the most expensive thing with the urban stormwater management then, pound per pound, those practices cost 10 to 100 times what the agricultural BMPs do. He said the agricultural component has not been adequately funded at the state level and they won't get the results in the Chesapeake Bay that are being anticipated.

Mr. Graham stated that his third point relates to the Virginia Stormwater Management Plan (VSMP), which now has a compressed timeline. Mr. Graham said the County is concerned that the DEQ can't provide the necessary support to successfully implement the program. He stated that they are undergoing some changes to the regulations as they have found problems and are trying to address them, and part of that included pushing back by one month the deadline by which local governments must submit a draft program to the state – but they didn't extend the deadline on the other end of it. Mr. Graham said localities must submit an ordinance, and the County's draft, 76 pages long, represents at least a few hundred hours of staff time. He stated that they plan to submit the draft to DEQ by the January 15 deadline, and hopefully they will turn it around in a few months, but there are questions as to whether DEQ is adequately staffed to be able to provide that kind of turnaround. Mr. Graham said the person they're submitting it to is also going to have to review the ordinances of 32 other localities, on top of their regular job duties. He stated that he doesn't think they'll have the time to provide the level of support needed to know that the program is being set up correctly on a local level. He said his hope is that the July 2014 deadline would be flexible enough to allow DEQ sufficient time to provide adequate support, and that deadline is entirely state-determined at this point.

Ms. Mallek said, in the last day of adopting the state program at VACO, Larry Wells from Augusta brought forth an amendment to the floor to request a 12-month delay for implementation.

Mr. Graham said the July 1, 2014 is a statutory requirement.

Mr. Blount said localities must have their ordinance in place by that date.

Del. Toscano asked if they were requesting legislation to be presented to change that deadline.

Mr. Davis said the County's understanding is that the bill is going to be introduced by others, but they definitely want the legislators' support.

Mr. Blount said the request for a one-year delay is also included in the regional program, and there were a number of other issues related to this identified by VACO so there may be numerous bills or perhaps one comprehensive bill.

Mr. Graham stated that another reason for the extension is that localities are still finding problems with the regulations.

Senator Reeves said there would be a hearing the following day in the Senate hearing rooms for the Rappahannock River Basin Commission that would address the DEQ staffing issue, as well the effectiveness and efficiency of the implementation.

Mr. Blount mentioned that a number of the VACO items were initiated by the Rappahannock River Basin Commission.

Mr. Graham said, as part of the stormwater management program, the Board had given direction to ensure the program be supported through fees, and he has just recently done calculations showing that

it would slightly more than double the fees that developers pay in dealing with water resource issues in the County.

Legislator's Priorities and Sponsorships/Questions and Answers, Legislators.

Del. Landes stated that, as they go through the process, he is hopeful that Mr. Blount and others will keep an eye on legislation moving forward, adding that legislators don't always see bills until they come out of committee which is part of the challenge. He said legislators would do the best they could from a budget standpoint and a local government standpoint and, regardless of what the issues are, it's best to have a game plan and not just assume that nothing would occur on a particular item. Del. Landes noted that Albemarle has five legislators representing them – versus more than 20 from Fairfax – so it's important to have support from other localities.

Ms. Mallek said one of the tricky things for the Board is figuring out when to intervene and when to step back and let things play out.

Sen. Reeves stated that he had never seen some of the bills, such as the farm bill, noting that his office would be carrying 30 bills this session. He asked that they let his office know as soon as possible if there are concerns about a particular measure, as this year would be "fast and furious" in the General Assembly. Sen. Reeves asked for as much advanced information as possible on a particular bill so they have time to work with a petitioner to let them know they're going to encounter some resistance.

Del. Bell added that giving them even a couple of days would be helpful so they have time to assess the information and talk to fellow legislators about items.

Del. Farris said his aide, Aaron Tilton, was present at the meeting and would be available to them in the event they contact his office. He stated that he has great confidence in Delegate Toscano even though he might not always agree with him, adding that he is an honest person in the legislature. Del. Farris said he would also like to know as soon as possible if the County has a problem and which would give him sufficient time to consult with other legislators and do research.

Ms. Eppard thanked the Board for having them at the luncheon, and echoed the legislators' requests to have as much advanced notice as possible – as well as requesting that they follow up after bills are in the pipeline. She said, if they don't hear from localities again, they're going to assume that they're OK with where things stand on a particular issue.

Del. Bell said what they need to hear is what's unique to Albemarle, as officially as possible, because they are already hearing from VACO and Mr. Blount on regional and broad issues. He asked that they also remain current if they are publicizing a bill, as aspects of it may change in session. Del. Bell said the General Assembly's public website is the best source for current changes, and it includes subcommittee votes, amendment changes, etc.

Mr. Rooker said the problem the Board sometimes encounters is that they only meet twice per month, so they may not have the most updated information.

Del. Bell said it would be helpful to know exactly what it is they like and don't like about a bill.

Adjourn.

With no further business to come before the Board, the meeting was adjourned at 1:32 p.m.

Chairman

Approved by Board
Date: 03/05/2014
Initials: EWJ