

An adjourned meeting of the Board of Supervisors of Albemarle County, Virginia, was held on November 27, 2007, at 12:00 p.m., Room 235, County Office Building on McIntire Road, Charlottesville, Virginia. This meeting was adjourned from November 14, 2007.

PRESENT: Mr. Ken C. Boyd, Mr. Lindsay G. Dorrier, Jr., Mr. Dennis S. Rooker, Mr. David Slutzky, Ms. Sally H. Thomas and Mr. David C. Wyant.

ABSENT: None.

OFFICERS PRESENT: County Executive, Robert W. Tucker, Jr., County Attorney, Larry W. Davis, Clerk, Ella W. Jordan and Deputy Clerk, Meagan Hoy.

Agenda Item No. 1. Call to order. The meeting was called to order at 12:21 p.m., by the Chairman, Mr. Boyd.

Agenda Item No. 2. Meeting with area Legislators. Also present at this time were Senator Creigh Deeds, Senator Emmitt Hanger (arrived at 12:34 p.m.), Delegate Rob Bell, Delegate David Toscano, and Ms. Judy Wyatt, Legislative Aide to Delegate Steve Landess.

Mr. Boyd said the Legislators were provided with a detailed list of the initiatives contained in the regional request. Today, the Board would like to concentrate on two items. First is the Comprehensive Services Act; the cost of CSA is spiraling out of control and that is a major concern. In Albemarle County last year there were four cases which cost \$684,000. He knows there is legislation pending to provide additional funds for administrative costs. Albemarle's administrative costs were almost \$343,000 and it was reimbursed only about \$30,000. Another major concern is that there seems to be no control over what vendors can charge and their charges have increased 15 to 20 percent over the years. Although he is not personally in favor of regulating businesses, he thinks there should be some way for the State to initiate contracts with providers.

Mr. Rooker said there is also a concern that additional children with mental health problems might be brought into the CSA program. The cost of that could run into the millions. He asked if there is any plan on the part of the State to do that. He said Mr. Boyd had mentioned the \$300,000+ administrative cost the County is picking up, but that did not include the costs of benefits being paid by the County. Last year the budget for this item was about \$2.6 million. If the mental health change is made, that will impact the budget further.

Mr. Bell said this program has been discussed extensively. Everyone wants to get into CSA because it is a non-capped program as opposed to other types of social services programs.

Mr. David Blount, Legislative Liaison, said one alternative is to look at the funding formulas for the program.

Mr. Bell said unless something is done about the open-ended nature of the benefits, the cost would just be shifted around.

Senator Deeds said this is a more dramatic problem in smaller counties like Greene, Bath or Highland or Allegheny where a couple of extra children throw the whole budget out of skew. He has done these types of cases in those counties and he has never had a juvenile court judge who did not take into consideration the effect of this on a locality's budget. Across the mountain the judges are responsible and only put kids in programs if it is the only alternative available. He said it is a real problem and the State has to do a better job of funding it, but there has to be a better baseline on which to base funding. He does not like the notion of passing a bill to require judges to take cost into consideration.

Ms. Thomas asked Ms. Kathy Ralston, Social Services Director, to comment. Ms. Ralston said the judge does not make the decision about where the child is placed, that recommendation comes from the FAPT Team. It is a team of people from many agencies who decide on a plan for the child. Those people are cognizant of the cost. Because there are not many programs in the State that take these children, and because there is no regulation of vendor rates at the State level, Social Services is at the mercy of those vendors whose rates have increased significantly over the years. Rates go unchecked. When the CSA program began, it was hoped the market would take care of the rates, but that has not happened. Since the juvenile justice laws changed a few years ago, judges decide when Social Services has to take children into foster care. They get many children now who used to be in State facilities, and those facilities don't exist anymore. The laws have changed so judges have to consider the least restrictive alternative. The judges do not have a lot of choices either.

Senator Hanger said he has been chairing a commission on this for about two years. The first year they requested JLARC to do a study and make a recommendation about the system. At their last meeting they received comments from localities. They are developing a list of recommendations and have a final meeting scheduled for December 5. He said the State can't afford the system as it is currently being operated. A big driver of cost is reliance on residential placements which are extremely costly, many of them out-of-state. There are not enough vendors for in-state placements. They need to tear down barriers to create reasonable cooperation in order to build the necessary capacity. The Hampton Roads area has developed a good model which allows them to stay away from residential

placements. Even if his commission has to continue for another year, they will try to develop a model where the cost is contained while still providing the services.

Mr. Boyd said there is another item the Board would like to discuss before Delegate Toscano has to leave the meeting. The Board is really concerned about the City-County Revenue Sharing Agreement and the fact that it does not take into consideration the composite index. Delegate Bell discussed a proposed budget amendment that would allow the County's payment to the City to be factored into the composite index.

Mr. Rooker said the County is paying about 10 cents of its real estate tax dollars to the City which amounted to \$13.0 million this year and next year it is expected to be about \$17.0 million.

Ms. Thomas said that means the County is running the government on a 58-cent tax rate, and not the 68 cents which it charges. This agreement with the City makes Albemarle unique in the state.

Senator Hanger said he worked for years to get an adjustment for Highland County, the smallest system in the state. He said Albemarle has the highest composite index of any area he represents. With the swing in leadership of the Standing Committees in the Senate, there is not a lot of sympathy for changing the composite index.

Delegate Toscano said there was a lot of discussion about this at the last meeting and he hopes the people around the table today are committed to making this happen.

Senator Hanger said he would support it as a technical adjustment.

Mr. Boyd said those are the only requests the Board has today. He asked what the legislators think about having children in foster care that should be in the juvenile justice system.

Senator Hanger said people argue that there are too many adults in the State Corrections System that should be in mental health facilities. The collective judgment is that as much as possible should be done earlier rather than later to correct the situations these children have.

(Note: Delegate Toscano left the meeting at 12:46 p.m.)

Mr. Boyd said he agrees with that, but if there are serious offenders, can there not be a mental health element in the corrections system.

Senator Deeds said there were juvenile centers before that pretended the mental health element was in them. If you went to one of those facilities there was not a lot of difference between them and a prison. The changes in corrections reflected the system as it existed. It can be pretended that a mental health element is included, or it can be decided to pay for one. If mental health has to be paid for, the money has to come from somewhere. If you just warehouse people with mental health problems they will get out eventually, and that will create havoc. He was on the sub-committee that wrote the changes in the law in 1994/95. There was such a rise in juvenile crime at that time that they were trying to come up with a response. He has visited facilities and they just warehouse kids like adults are warehoused in the prisons.

Mr. Slutzky said there is a significant cost, but where there are two or three high-cost individuals in a jurisdiction that were randomly allocated to that jurisdiction by fate it distorts the picture for that jurisdiction. Maybe some of the funds could be pooled and for those high-cost cases, those funds could be accessed.

Mr. Rooker asked if that suggestion has come up at the State level.

Senator Hanger said there have been a number of suggestions to reduce or cap local government's responsibility. Also, there is a suggestion to have the State assume a larger portion of the administrative costs now being paid by the locality.

Mr. Rooker said he thinks the idea of capping local government's costs is a good idea. Would private insurance companies look at this if there were a full cap arrangement? If insurance companies were involved, they would probably do a good job of monitoring the expenditure side. Medical insurance companies have a strong interest in monitoring the cost side.

At this time, Mr. Boyd asked Mr. Blount if he would like to speak.

Mr. Blount said he would summarize the priorities in the Regional Legislative Program. The Board has already discussed CSA. The other aspect of this program is the residential service cost. He said the JLARC Report said the cost of the program had not increased dramatically, but there are a lot of ambiguities in the program. However, there is a need to know the rates being charged for provider services, the outcomes they provide and accountability. He said the General Assembly will be faced this year with public education funding, particularly re-benchmarking costs. Land use and growth management is a priority also. He has heard from all of the counties about the impact fees which were approved as part of the Transportation Act in 2007. That legislation needs to be made more workable for the counties.

Senator Deeds said when this was discussed at the earlier meeting Mr. Blount indicated that Chesterfield County would be the leader on this one.

Mr. Blount said Chesterfield had an ordinance drawn up and it went before their Planning Commission. About 18 people spoke in opposition, so the Commission unanimously recommended denial of the ordinance. Their Board now has the ordinance set for a public hearing this week. Most people do not think it will be approved in its present form.

Senator Deeds asked if other localities are looking at this legislation now.

Mr. Blount said there may be others. He understands staff in Prince William is putting together something for its Board to review in the spring. He knows Stafford County adopted a provision under the old legislation and is now trying to figure out what to do, if anything.

Ms. Thomas said someone is also working on a model ordinance. Mr. Davis said VDOT had a consultant through Virginia Tech who was to develop an ordinance. He has not seen any ordinance yet.

Ms. Thomas said the High Growth Coalition decided to have a forum to talk about it and to their surprise it was oversubscribed. There was tremendous interest and it was promised that the model ordinance was being worked on.

Mr. Rooker said the legislation does not make it easy to do anything that is effective. One problem with the Chesterfield ordinance is that the fees would be imposed at the time of subdivision instead of when the building permits were requested.

Senator Deeds asked if that was caused by the State legislation or the Chesterfield ordinance. Mr. Davis said the State legislation allows the fee to be determined at the time of site plan or subdivision plat. If there were existing lots prior to adoption of the ordinance, those would not be subject to the fees, whereas, if property had to be subdivided and there was a site plan, the fee would apply. In Albemarle County in the rural areas there are probably 8,000 parcels of 50 acres or less already subdivided, and they would not be subject to the impact fee.

Mr. Rooker said that is an inequitable situation in that the cash proffer system enables the locality to obtain cash proffers on rezonings. Often those rezonings are taking place in the urban development areas that the Legislature is now requiring counties to have; Albemarle has had urban development areas for a long time. There is no mechanism for putting together a comparable impact fee against development where the county does not want development, i.e. the rural areas. He thinks the legislation should allow an equitable impact fee that is uniform.

Mr. Blount said this item was discussed last year. The counties in this region would like to have a fee for more than transportation, for other infrastructure that is impacted by development.

Mr. Boyd said the only reason this legislation was passed was because the Governor wanted it this way, and he put through an amendment to the Transportation bill. He does not think an impact fee will be allowed for anything other than roads.

Mr. Slutzky said he thinks there is some value in having individual members stand up and say whether they are supportive of an equitable strategy for managing growth, or not. If the voters don't like that, they have a chance to react. Right now, sticking it on the Transportation bill is limiting in terms of public discourse.

Senator Deeds said putting the impact fee in an individual bill is limiting because it would go to the same committees that killed it in the past, and to the same people who don't mind taking a position and would take the same position again unless the way proffers are done could be reformed so there would be no double charging.

Ms. Thomas said there would be no double charge because what would be included and the impact fees could be delineated.

Senator Deeds said the best indication that builders would go against impact fee legislation is the fact that no one has been able to figure it out yet. People think it will inhibit building, but it clearly will not.

Senator Hanger said he has been on both sides of the issue, so can speak with some authority. Impact fee authority was given to Planning District 8 some time ago, but it was done in such a way that it made no sense for them to give up the flexibility they enjoyed with proffers. There needs to be a more meaningful debate about the whole issue of growth management and tie it into Transportation planning in order to reach the right conclusions. He was part of a small group a few years ago that attacked the proffer system as being out of control. He does not know that it should be attacked further, but it could be refined. There is a need to do something meaningful with by-right lots. That is what gives rise to impact fees as opposed to proffers. If that could be reached with the proffers, there would be no distinguishable difference between proffers and impact fees.

Mr. Rooker agreed.

Mr. Slutzky asked if there is any chance that would happen.

Senator Hanger said he thinks there is a chance, but it will not happen easily. The homebuilder industry has a significant lobby in the General Assembly. Members sometimes try to avoid being on record as suggested by Mr. Slutzky just for that reason. In order to accomplish something, they do not want to get people mad at them for no reason.

Mr. Blount said transportation has been discussed, but the format put into place last year in terms of revenues for local government, still needs refinement.

Mr. Rooker said he had a handout about transportation funding (on file in the Clerk's Office). He said he actually took this information off of the website for *Charlottesville Tomorrow*. He explained the chart and said funding is down dramatically from where it was ten years ago. He said it is a stark, visual picture.

Mr. Boyd agreed.

Mr. Rooker said he had an additional handout concerning unfunded mandates (on file in the Clerk's Office).

Mr. Blount said resisting unfunded mandates was the thrust of the Planning District's priorities. He said even little things have an impact on the operating budgets of the smaller, rural counties.

Mr. Rooker said the chart shows about \$17.5 million in unfunded mandates from a year ago for only local government. If education were added in, those unfunded mandates would total approximately \$35.0 million. CSA is a large part of that number, and there are many other items in the Social Services category. The County has to fund positions in order to meet Federal requirements to get matching funds, and the State is not providing adequate money to pay administrative expenses to obtain the Federal dollars. For the "No Child Left behind Act" he had asked the Schools to put together a list of the unfunded mandates for that program, and it is about \$1.2 million each year.

Mr. Boyd asked if any Board members had a matter to discuss.

Ms. Thomas said the Governor appointed her to the Chesapeake Bay Local Government Advisory Commission. She said increasingly it falls into what is seen in other unfunded mandates. The Federal Government used to pay for large public works. At least 75 percent of the cost for the Crozet Sewer Inceptor was paid by the Federal Government. That is not done anymore. The Chesapeake Bay agreement is requiring Albemarle/Charlottesville to make an extensive upgrade to its sewer treatment plant. The State is actually doing well in getting its sewer treatment plants in line with the requirements, but land use can defeat all of that. When the Board asks for enough ability to handle its land use and developments and stormwater, it is talking about the Chesapeake Bay even if it is not mentioned. The way stormwater runoff is handled, and the way development is handled, will either ruin everything else being done to protect the Bay, or they will be augmented. People are working really hard and doing expensive things to keep pollution out of the Bay. Recent studies show that land use can defeat all of those efforts if it is not kept under better control. Conservation easements are important in getting riparian easements and other easements to protect the Bay, and to meet the Governor's goal of getting 400,000 acres under easements. All of these things tie together and are not just isolated things. She thanked Senator Hanger for his work on this committee.

Senator Hanger said he had worked on this for a while. He and Senator Deeds worked on this a few years ago; some underpinnings of the current program are a product of what started in 1999. Last week he was told a computation error of 120,000 acres was made in 1999 because some land in West Virginia was counted in the number for the goal for the Chesapeake Bay set aside. Even so, he thinks Virginia will meet its goal. He asked if the TDR program is working well in Albemarle County.

Ms. Thomas said it is; landowners had to develop a certain level of trust in the program, and they have now. There are more applicants than there is money for the easements; these are family farms.

Mr. Slutzky said the MPO has been actively exploring the idea of creating a regional transit authority. They looked at a number of administrative strategies for commingling interests and it seems the regional transit approach had a lot of support. They did not want to pursue legislation this Session without going through the appropriate public input process. He said it will be a year before asking all of the legislators to give permission to do this. If some other county indicates an interest in such legislation this Session, the MPO would like to know about it so they can scramble and get in on it.

Senator Deeds said the ugliest part of the whole transportation authority debacle is that the General Assembly told Hampton Roads they had to raise the money for such an authority. It puts local government under the "eight ball" of raising the taxes or fees or whatever it takes to get the money. It is not the right approach at all. The General Assembly should have the guts to do it from a statewide perspective.

Mr. Rooker said what the MPO is talking about is a little different. They are talking about Albemarle and the City of Charlottesville and potentially UVA in the future running a bus system. There would need to be multiple local government participation in the bus system. A couple of years ago, Williamsburg merged James City County, York County, Williamsburg and Historic Williamsburg bus systems and created a regional authority, but legislative authority would be needed to provide bus service

through a central authority. At this time, Albemarle contracts with Charlottesville to provide bus service in the County. Eventually, it is possible that Greene and Fluvanna counties might participate.

Mr. Wyant said conservation easements, TDRs, the ACE Program and protecting the rural areas are all tied together; they are all important to protecting the water supply. In looking at the unfunded mandates on the list Mr. Rooker handed out concerning sanitation and waste management, it makes him think about recycling. He said "we are burying our children in trash." Everyone needs to be progressive and think about the future and how solid waste is handled. He said the Board has already talked about transportation today, but it needs to keep in mind infrastructure. There has to be some way to get people out of their automobiles. With the cost of gasoline going up, transit will be critical. Concerning roads, it is not just maintenance. To build new infrastructure it will require a major investment. In talking about the CSA Program, he is wondering if the money being put into the at-risk child is being done at the wrong time. Should these children not be identified earlier? Are there a higher percentage of children at-risk than there used to be? Is there something that could be done upfront? What needs to be done so as not to have to put a lot of money in at the end of a program?

Mr. Slutzky said he thinks adding a banking provision to a TDR Program would be valuable to any jurisdiction. TDR Programs will only work if there is a legitimate market for the transferred rights. Having banking would go a long way toward enhancing the market. If that comes in front of the Legislature this session, he thinks the Board is in favor.

Mr. Boyd said at this time he would like to ask each of the Legislators what they have gotten from this meeting.

Senator Hanger said this has reinforced the fact that they need to address the CSA Act, so he will focus on that. He said the Commission may have to be continued, but it will have some recommendations. Also, he will focus on land conservation. He thinks Albemarle County has been a leader in this area in terms of getting the TDR Program in place and then facilitating conservation efforts through the tax preservation credit. He said the issue of mandates is huge and will have to be addressed at the State level and the Federal level as well. They need to get significant waivers for the "No Child Left behind Act" or get Virginia out of the program. There would be a significant loss of Federal revenues if that were done, but he thinks Virginia might be better off to "take the hit" and move on.

Senator Deeds said last year the Commonwealth Transportation Board said that more than 38.6 percent of the State's bridges and tunnels were structurally deficient. There is a major investment problem that has to be addressed. Beginning in 1980, the country began to cut the size of the Federal government and the responsibility for paying was passed to the State for many functions and then to the localities. That is the root of the mandate issue. People's expectations about the provision of government services were not changed. There are a couple of issues in terms of responsibilities that need to be worked out. As to Mr. Wyant's point about early investment in children, that will be a big issue this Session. The State spends over \$200.0 million each year on children who repeat a grade in school. Most of the time, those children are held back in grades K-3. They are going to talk about investing \$75.0 million in pre-K education this year. Some people think that investing money in four-year olds will prevent having to spend that money in future years by repeating grades in school. Beyond that, he thinks the General Assembly Session will be dominated by the opportunity to make significant restructuring of the whole mental health system. He is glad the Board reminded him about the conversation with the School Board about the composite index and the CSA Program. Those issues have been on the table since Pete Gieson was a legislator and carried the CSA legislation in 1993. A lot of the things were debated even before creation of the program. Pete Mullin was convinced this was the way to provide services to at-risk children, and the focus had to be on the children, and someone had to figure out a way to pay for it.

Mr. Bell said there are a lot of hard choices to make about the CSA issue. If \$71,000 is being spent on each child, that money could be used in a more effective way. As to the TDR issue, he thinks they could come up with a banking arrangement, although he is not sure everyone is optimistic about that.

Mr. Boyd thanked all the legislators who attended this meeting today.

Agenda Item No. 3. Adjourn. With no further business to come before the Board, at 1:35 p.m. the meeting was adjourned.

Chairman

Approved by the
Board of County
Supervisors

Date: 03/05/2008

Initials: EWJ