

November 02, 2018

A special called meeting of the Russell County Board of Supervisors was held on Friday, November 02, 2018 at 4:00 pm at the Russell County Government Center in Lebanon, Virginia.

The Clerk called the meeting to order.

Roll Call by the Clerk:

Present:

Tim Lovelace
Carl Rhea
David Eaton
Steve Breeding
Rebecca Dye
Harry Ferguson

Lonzo Lester, Clerk
Vicki Porter, Deputy Clerk

Absent:

Lou Wallace

Invocation by Rebecca Dye followed by the Pledge of Allegiance to the Flag.

APPROVAL OF THE AGENDA

Motion made by David Eaton, second Steve Breeding and duly approved by the Board of Supervisors to approve the agenda.

The vote was:

Aye: David Eaton, Steve Breeding, Rebecca Dye, Harry Ferguson, Carl Rhea and Tim Lovelace

Nay: None

EXECUTIVE (CLOSED) SESSION

Motion made by Harry Ferguson, second David Eaton and duly approved by the Board of Supervisors to enter into Executive (closed) Session to discuss legal issues pursuant to Section 2.2-3711(7) of the Code of Virginia.

The vote was:

Aye: Harry Ferguson, David Eaton, Tim Lovelace, Carl Rhea, Steve Breeding and Rebecca Dye

Nay: None

APPROVAL TO RETURN TO REGULAR SESSION

Motion made by Harry Ferguson, second Steve Breeding and duly approved by the Board of Supervisors to return to regular session.

The vote was:

Aye: Harry Ferguson, Steve Breeding, Tim Lovelace, Carl Rhea, David Eaton and Rebecca Dye
Nay: None

CERTIFICATION OF EXECUTIVE (CLOSED) SESSION

Pursuant to § 2.2-3712(D) of the Code of Virginia 1950, as amended each member of the Board of Supervisors upon the Roll Call certifies that to the best of their knowledge (i) only public business matters lawfully exempted from the open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters that were identified in the motion(s) by which the closed meeting was convened were heard, discussed or considered in the meeting by the Board of Supervisors.

Tim Lovelace - Aye
Carl Rhea - Aye
David Eaton -Aye
Steve Breeding -Aye
Rebecca Dye-Aye
Harry Ferguson-Aye

APPROVAL OF A RESOLUTION PRESENTED BY FRANK KILGORE CONCERNING CWSA

Motion made by Steve Breeding, second David Eaton and duly approved by the Board of Supervisors to authorize the signing of a Resolution by the Chairperson presented by attorney Frank Kilgore concerning the Castlewood Water and Sewage Authority:

RESOLUTION

WHEREAS, the Russell County (a political sub-division of the Commonwealth of Virginia) Board of Supervisors by resolution dated June 4, 2007, approved Articles of Amendment of the Russell County Water and Sewage Authority whereby its name was changed to the "Castlewood Water and Sewage Authority"; and

WHEREAS, the Castlewood Water and Sewage Authority (CWSA) by its Amended Articles of Incorporation (Articles) is made up of six members pursuant to prior acts of the Russell County Board of Supervisors (Supervisors); and

WHEREAS, the current CWSA board members are: Brad Patton (Chair), James Kiser (Vice-Chair), Gary Dotson (Secretary/Treasurer), Darrell Johnson, Darrell Puckett and Jeff Lewis, and

WHEREAS, Virginia Code Section 15.2 – 5113 allows the Supervisors to appoint up to seven members to the CWSA Board due to the Board of Supervisors being expanded to seven members; and

WHEREAS, the Supervisors by this Resolution wish to add a seventh member to the CWSA board to reduce the risks of a tie vote that could hamper much needed improvements to Russell County's overall water and sewer service plans; and

WHEREAS, the CWSA's Amended Articles at Article V provides that "no member of the Authority Board shall be required to be a customer of the Authority or resident of the Castlewood Magisterial District", and

WHEREAS, by Acts of Assembly set forth in House Bill Number 3119, the Virginia General Assembly on March 20, 2007 by unanimous vote adopted the following requirement "...each member of the Russell County Water and Sewage Authority shall be a customer of a service provided by the Authority", a copy of such provision being attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, Acts of the Virginia General Assembly supersede any Articles of Incorporation or amendments thereto approved by the SCC as a matter of law; and

WHEREAS, the Supervisors have been advised by legal counsel that a name change does not negate statutes applicable to the original Russell County Water and Sewage Authority; and

WHEREAS, the Supervisors have reviewed a recent CWSA customer list and find that the following CWSA board members are not customers of the CWSA as of the date of this Resolution, namely: Darrell Johnson and Darrell Puckett; and

WHEREAS, the Supervisors have also been advised by legal counsel that the appointment of any CWSA board member by the Supervisors when such board member was not a customer of the CWSA is void ab initio and that those board positions are automatically vacated or if any CWSA board member was a customer when appointed but stopped being a customer during his term in office such failure to comply with Exhibit A is a de facto resignation from the board; and

WHEREAS, upon a review of relevant CWSA records and multiple interviews by Russell County officials and legal counsel it is apparent that the CWSA has misspent public funds, misused equipment

controlled or owned by the CWSA, failed to properly maintain its water treatment and sewage disposal systems, failed to act in the best interest of its customers, failed to adhere to state and county procurement procedures and has run up an unsustainable debt due to a lack of financial restraint and accepted accounting practices; and

WHEREAS, it is the finding of the Supervisors that the current CWSA board majority refuses to cooperate with Russell County officials to act in the best interest of its customers, the County, the public and comply with their fiduciary duties and accordingly be it hereby

RESOLVED, that the Supervisors hereby adopt and take the following actions by the vote set forth below:

1. MARVIN PETE BRADLEY, a customer of CWSA, is appointed as an additional CWSA board member, effective immediately;
2. Darrell Johnson and Darrell Puckett are not CWSA customers and accordingly are declared to be ineligible to hold their CWSA board positions and those positions are deemed to be vacant, effective immediately;
3. That the two aforesaid vacated CWSA board positions are hereby filled by the appointments of GUNNER BRADLEY and DAVID JENKINS, also customers of CWSA, effective immediately;
4. That the CWSA chair, Brad Patton, whose leadership is very much appreciated, is requested to convene a special called meeting of the remaining CWSA board members and the three new appointees as soon as possible for the purposes of swearing in the new appointees and to take up the issue of dissolving the CWSA in an orderly manner pursuant to Virginia law in collaboration with its counsel and counsel for the Supervisors to assure that the public health, welfare and safety are protected during any transitions, to assure that the CWSA employees are to be protected from any harassment or undue pressures, to work cooperatively with County officials and its public service authority to consolidate all public water and sewer services and

assume bona fide debts and obligations into one county-wide entity while, in a fair and objective manner, maintaining and retaining the CWSA employees that are committed to serving the public in adherence to best management practices, Virginia law and County policies;

5. That should any CWSA board member removed by this act of the Supervisors contest his removal his legal fees shall not be paid by public funds unless a court of competent jurisdiction orders otherwise; and
6. That should any CWSA board member removed herein contest his removal and be reinstated the Supervisors hereby authorize its special counsel, Frank Kilgore and Joyce Kilgore, to immediately proceed with a removal action against them for cause as provided by Virginia law and to seek damages, fees and costs in behalf of Russell County from them personally if the evidence so supports.

Adopted during a duly called special meeting this the 2nd day of November, 2018, by the Russell County Board of Supervisors by a vote of 5 for and 1 against.

By: _____
Chairman, Russell County Board of Supervisors

Attest:

Russell County Administrator

Exhibit A:

**VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION
CHAPTER 687**

An Act to require members of the Russell County Water and Sewer Authority to be consumers of services provided by the Authority.

[H 3119]

Approved March 20, 2007

Be it enacted by the General Assembly of Virginia:

1. § 1. That each member of the Russell County Water and Sewer Authority shall be a customer of a service provided by the Authority

The vote was:

Aye: Steve Breeding, David Eaton, Rebecca Dye, Carl Rhea and Harry Ferguson

Nay: Tim Lovelace

APPROVAL OF PROCEEDINGS TO BRING CWSA UNDER COUNTY CONTROL

Motion made by David Eaton, second Carl Rhea and duly approved by the Board of Supervisors to authorize Frank Kilgore to proceed with any filing or paperwork needed to facilitate bringing the Castlewood Water and Sewage Authority under the County's control for a period of time adequate to bring the Castlewood Water and Sewage Authority to a financially stable position. And, to create a committee consisting of the County Administrator, Harry Ferguson and Steve Breeding to work with Frank Kilgore and make recommendations to the Board of Supervisors concerning the operation and status of the Castlewood Water and Sewage Authority facilities.

The vote was:

Aye: David Eaton, Carl Rhea, Steve Breeding, Rebecca Dye, Harry Ferguson and Tim Lovelace

Nay: None

APPROVAL OF ADJOURN

Motion made by Steve Breeding, second David Eaton and duly approved by the Board of Supervisors to adjourn.

The vote was:

Aye: Steve Breeding, David Eaton, Carl Rhea, Harry Ferguson, Rebecca Dye and Tim Lovelace

Nay: None

Clerk of the Board

County Administrator