

VIRGINIA: At a Business Meeting of the Board of Supervisors of the County of Patrick, held at the Patrick County Veteran' Memorial Building on Monday, March 14, 2011 at 6:00 p.m.

PRESENT: Roger Hayden, Chairperson; Lock Boyce, Vice – Chairperson; Crystal P. Harris, Ron Knight, Karl Weiss Board Members

STAFF PRESENT: Tom Rose, County Administrator; Alan Black, County Attorney; and Geri Hazelwood, Assistant to the County Administrator/Clerk; Donna Shough, Finance Officer; Department heads and Constitutional Officers.

Others present were: Nancy Lindsey, The Enterprise; Tom Bishop, Patrick County Chamber of Commerce, Richard Rogers, WHEO

Mr. Chairperson called the meeting to order.

Rev. Robert Belcher gave the invocation.

The Board recited the Pledge of Allegiance to the Flag, led by Karl Weiss had a moment of silence in honor of U.S. military serving here and abroad and for the two deputies shot and killed in Buchanan County.

On motion by Lock Boyce seconded by Ron Knight the meeting agenda was approved as presented.

Voting Aye: Boyce, Knight, Harris, Weiss, Hayden

Voting Nay: None

On motion by Lock Boyce seconded by Crystal P. Harris the minutes for February 28, 2011 were approved as presented.

Voting Aye: Boyce, Knight, Harris, Weiss, Hayden

Voting Nay: None

Update on the Shooting Range, Sheriff Dan Smith;

Patrick County Sheriff's Office



Daniel M. Smith, Sheriff

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**SHOOTING RANGE OPTIONS
PRESENTED TO THE PATRICK COUNTY BOARD OF SUPERVISORS
MARCH 14, 2011
PRESENTED BY SHERIFF DAN SMITH**

Dehart Park, Woolwine, Virginia

- Pros: Remote location, county owned land.
- Cons: Strong public opposition, costly excavation/construction. See attached letter of opposition from Woolwine Dehart Park Committee

Current jail/sheriff's office location

- Pros: County owned land, convenient location
- Cons: Strong public opposition, violation of Town Zoning Ordinance (See attached letter from town attorney), close proximity to nursing home, cost associated with construction/excavation

Current Firing Range

- Pros: Convenient location, no cost, already in use, safe and accommodating
- Cons: Strong citizen opposition from nearby residents, noise

The following organizations have cordially extended an invitation to our agency to use their land to conduct firearms training:

VFW Post on VFW Road

- Pros: Remote and convenient location
- Cons: County does not own land, therefore construction/excavation of facility would be legally questionable, unknown citizen support/opposition and cost of construction/excavation

Rotary Field, Stuart Rotary

- Pros: Convenient location
- Cons: Public opposition when the range was located there twelve years ago, violation of Town Zoning Ordinance, county does not own land, therefore construction/excavation of facility would be legally questionable, cost of excavation/construction


Other citizens in the county have graciously offered an invitation to the sheriff's office to conduct firearms training on their private land. While the invitation is generous and thoughtful, the fact remains that the county would not own or lease the land and would not have autonomy over the area to be used for training. If the Board is insistent upon moving the range, it would seem to me that land would have to be purchased or leased to give the sheriff's office unrestricted use.

To all interested parties,

The Woolwine DeHart Park Committee does not want the shooting range to be relocated on Park property. During the last year a dedicated group of volunteers has built an impressive trail system here. The "main loop" consists of an existing skidder road, and is suitable for hiking, and with more vertical clearing it can be used for horseback riding. Many "single track" loop trails connect with the main trail, with mountain biking being the main purpose. We feel confident that the trail system will see lots of use as it has already brought lots of the mountain biking folks in. In the future there may be hikers, picnickers, runners, bikers, and horseback riders on the trail system at any time of the year. As these trails traverse the *entire* park, we feel that a shooting range would be in conflict with these interests. There would be no locations suitable for a shooting range in the "developed" portion of the park (ball fields & picnic shelter area), as this area is much utilized and is also traversed by a paved walking track.

Sincerely,

Woolwine DeHart Park Committee

ANDREW KAHLER, TREASURER




COPY

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November 15, 2010

Alan H. Black, County Attorney
P.O. Box 1076
Stuart, Virginia 24171

HAND DELIVERED

Mayor
James C. McHone

Re: Town Firearms Discharge Ordinance;
Town Zoning Ordinance

Vice-Mayor
Jason Turner

Dear Alan:

Council Members
Dale Firebaugh
Patsy Musick
Richard Puckett
Ray Weiland

The County of Patrick owns certain lands it acquired from EMI, and on part of which lands it is constructing the new Patrick County Jail. You have asked me to consider whether the Town Firearms Discharge Ordinance or the Town Zoning Ordinance would have an impact on the installation of a firing range for the Patrick County Sheriff's Office.

Town Manager
T. Terry Tilley

Of course, my opinion is not the final or definitive one, depending on the context of any question arising under these ordinances. Given that these are laws "on the books," your opinion as County Attorney, the Commonwealth's Attorney's opinion, and—in the case of the Zoning Ordinance—the views of the Zoning Administrator, the Town Planning Commission, Town Council, and the Board of Zoning Appeals may all be important before a court would or could decide such impact.

Clerk/Treasurer
Susan C. Slate

With that qualification, I can advise you that in my opinion, the Town Firearms Discharge Ordinance would not affect use by Sheriff's Office sworn personnel acting as directed by the Sheriff of Patrick County. Section B (i) of the ordinance exempts "Any law enforcement officer in the performance of his official duties." "Law enforcement officer" has been defined by statute and case law as any officer having the general power of arrest. I regard "official duties" as being, generally, whatever activity has been assigned by the Sheriff, a state trooper's sergeant, or other relevant law enforcement authority. So, I do not regard the Firearms Discharge Ordinance as an impediment to the use or installation of a firing range for use by law enforcement.¹

Supt. Water & Wastewater
M.C. (Pete) Slate, Jr.

Town Attorney
Christopher A. Corbett

¹This exemption would seem not to apply to non-law enforcement personnel using a range within town limits. If a handgun safety class were to be taught at the range, or the 4-H Shooting Team were to utilize it, a precondition would seem to be obtaining a permit from the Town Manager per Section C of the ordinance.

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Mr. Black
November 15, 2010
Page 2

However, it seems to me that installation of a firing range within town limits would not be permitted under the Town Zoning Ordinance.²

I do not have a plat of the County property on which this range would be installed. However, it appears that this land is zoned either Heavy Industrial (HI), or a mixture of HI and Rural Residential (R-1). Under either classification, a firing range is not a permitted use. However, under each classification (Sections 3.1.3 and 3.10.3) there is a special permit use for "Public or governmental buildings and uses, including schools, community centers, fire and rescue stations (volunteer or otherwise), parks, parkways, and playgrounds."

Obtaining a special use permit is controlled by the procedures set forth in Sections 6.8 *et seq.* of the Zoning Ordinance. It involves submission of plans to the Zoning Administrator, review by and report from the Planning Commission, one or more public hearings, and action by Town Council.

However, I do not believe that the special use permit procedure for public uses set forth in the zoning ordinance is broad enough to cover a firing range. Case law interpreting zoning ordinances, as well as Sections 1.7 *et seq.* of the ordinance, would restrict a planning commission or a governing body from granting a special use permit under the ordinance as presently worded. A firing range is simply too different, qualitatively, from the public uses mentioned to allow issuance of a special use permit.

Therefore, in order to allow a firing range, Town Council would have to amend the Zoning Ordinance. This would involve, again, a reasonably formal application, review by the Zoning Administrator and the Planning Commission, public hearings, and advertisement, and notice to adjoining landowners before Council could act on the proposed amendment.

Please let me know if the foregoing is not sufficiently responsive to your inquiry. With best regards, I am

²The Town Zoning Ordinance can be viewed on the Town's website.

Sincerely yours,

Christopher A. Corbett
Town Attorney

CAC/cmh
cc: T. Terry Tilley, Town Manager
The Honorable James C. McHone, Mayor

The Board had discussion and asked that an independent party do a decibel check at the 4 – H Shooting Range. The Board asked the Sheriff if the Shooting Range was what he needed for proper training of his officers, and the Sheriff replied, yes, it has been used for the proper training of officers for 12 yrs.

Mr. Chairperson opened the public comment period.

Mr. Jack Horton, Mayo River District; spoke of the unemployment rate being up and high energy costs.

Mr. Danny Foley Sr., Mayo River District; redistricting, and reducing the tax rate.

Mr. Charles Vivier, Blue Ridge District; apologized for his actions at a prior meeting, He spoke of the reassessment up and coming and stated that an account needed to be set up in preparation for it.

Mr. Chairperson closed the public comment period.

The Board members thanked Mr. Vivier for his suggestion.

On motion by Roger Hayden to establish a reassessment saving fund for 2015 and allocate \$100,000.00 from the contingency fund and rebalance the budget seconded by Ron Knight with an amendment to the motion with no increase in tax to do it and carried (continued until after public hearing)

Public Hearing on an Ordinance Titled Cross Connection

The Board took comment from the citizens. Among those speaking were Mr. Jack Horton, and Mr. Charles Vivier. There was much discussion between Mr. Knight and Mr.

Vivier with concerns to whether an ordinance is needed with the policy that the PSA already has in place.

On motion by Lock Boyce to adopt the Cross Connection Ordinance as written and presented seconded by Ron Knight and carried unanimously.

Voting Aye: Knight, Boyce, Harris, Weiss, Hayden

Voting Nay: None

The Board took a break from 7:50 – 8:10 pm

Mr. Knight asked Mrs. Tatum, County Treasurer if she had any comments concerning setting up a savings fund for the upcoming reassessment.

Mrs. Tatum stated that she had no problem setting aside a separate fund for the reassessment. The last time the reassessment was covered in two separate tax years as a “sinking fund”.

Mr. Weiss was concerned that if we reinstate the School’s 5%, and we take out \$100,000.00 of contingency then we will be left with \$50 – 53,000.00 for 2012.

On motion by Crystal P. Harris to table until the School’s final budget has been presented before establishing a sinking fund seconded by Lock Boyce and carried unanimously.

Voting Aye: Knight, Boyce, Harris, Weiss, Hayden

Voting Nay: None

The Board discussed with Mr. Black the issues with the current payment of spay and neutering, and reclaim fees for the Animal Pound. Mr. Black recommended forming an ordinance.

On motion by Lock Boyce to schedule a public hearing on the Dog Pound Ordinance the second Monday in April at 7:00pm seconded by Mr. Knight and carried unanimously.

Voting Aye: Knight, Boyce, Harris, Weiss, Hayden

Voting Nay: None

The Board discussed the changes to the meals and lodging tax. Mr. Black stated that the Patrick County ordinance calls for five percent for Patrick County in lodging tax. Four percent is to be spent on tourism and one percent on the administration of this tax. According to Mr. Black it is not in conflict with the State code. We would have to have a public hearing in order to amend our current ordinance if the County decided to go back to the State code which gives two percent to administration of tourism and three percent to be spent on tourism. The State code equals 60% to be spent on tourism and 40% to be spent on the administration of tourism. The County ordinance equals 80% for tourism and 20% for tourism.

The lodging facilities are not in favor of going back to the State code but rather staying with the County ordinance.

On motion by Lock Boyce to hold a public hearing on the second Monday in April at 7:30pm to amend the current ordinance Transient Occupancy Tax to two percent of the five percent collected goes to the general fund three percent of the five percent will go to the promotion of tourism.

Motion dies for a lack of second.

Mr. Black stated that there would be a meeting to discuss redistricting lines on Thursday at 3:00 pm. He recommended a public hearing on such the second Monday in April.

On motion by Lock Boyce to hold a public hearing for redistricting on the second Monday of April at 7:30pm seconded by Crystal P. Harris and carried unanimously.

Voting Aye: Knight, Boyce, Harris, Weiss, Hayden

Voting Nay: None

Mr. Black asked Mr. Chairman to sign the easement as presented. He stated that he needed to obtain an easement of take. Mr. Boyce offered to help obtain the easement of take.

Mr. Hayden referred to a statement made by Mr. Boyce on March 2, 2011 which offended Mr. Hayden.

On motion by Lock Boyce to reveal the discussion during executive session concerning the Chairman, Vice – Chairman at the January meeting.

Mr. Knight stated that he would abstain; there is a reason for having executive session to discuss personnel, real estate, and legal matters, to keep those things there. If people have been misled, then it has already been discussed.

Motion dies for a lack of second.

Mr. Hayden referred to the letter given to the BOS.

Mr. Black stated that the letter is confidential. The letter was threatening litigation, litigation against the County. It was asked if it was against both the Board members and County. Mr. Black stated yes.

Bills, Claims, Transfers

The Board had discussion, Mr. Rose and Mrs. Shough answered questions for the Board concerning the bills.

On motion by Karl Weiss seconded by Crystal P. Harris and carried 4 to 1

Voting Aye: Knight, Harris, Weiss, Hayden

Voting Nay: Boyce

Continuation of budget discussion

The Board continued the discussion of the County budget. They discussed whether to put the 5% cut back into the School budget, the County debt service, the selling of the former Sheriff department with the intent to investigate all options.

On motion by Lock Boyce to leave the 5% cut in the School budget pending the School's final budget seconded by Ron Knight the vote is as follows:

Voting Aye: Boyce, Knight

Voting Nay: Weiss, Hayden

Abstain: Harris

We cannot advertise for public hearing on the budget.

On motion by Karl Weiss to leave the School board budget with the 5% cut seconded by Lock Boyce and carried:

Voting Aye: Boyce, Knight, Weiss

Voting Nay: Hayden

Abstain: Harris

Advertise the County budget for FY 2011-12 and set the tax rate

On motion by Lock Boyce to advertise the County budget for FY 2011-12 to go to public hearing and to set the tax rate on Wednesday, March 30, 2011 at 6:00pm seconded by Ron Knight and carried 4 to 1.

Voting Aye: Boyce, Knight, Weiss, Hayden

Voting Nay: Harris

The Board will not meet on the 28th of March.

Executive Session

On motion by Ron Knight seconded by Lock Boyce to go into executive session to discuss Personnel Matters 2.2 – 3711 (A)(1)Board appointment

WHEREAS, the Patrick County Board of Supervisors has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance with provisions of the Virginia Freedom of Information Act, and
WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive meeting was conducted in conformity with Virginia law,

NOW, THEREFORE, BE IT RESOLVED that the Patrick County Board of Supervisors does hereby certify that, to the best of each member's knowledge, only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board,

BE IT FURTHER RESOLVED that the Patrick County Board of Supervisors does hereby certify that, to the best of each member's knowledge, only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies.

Roll Call:

Knight – aye

Boyce - aye

Harris- aye
Weiss- aye
Hayden- aye

RECONVENE

On motion by Ron Knight seconded by Lock Boyce the Board reconvened from executive session where only Personnel Matters 2.2 – 3711 (A)(1) a Board appointment were discussed and carried unanimously.

Voting Aye: Knight, Boyce, Harris, Weiss, Hayden
Voting Nay: None

ACTION ITEMS:

On motion by Ron Knight to appoint Mrs. Twyla Neil as an at large member to the Patrick County Planning Commission seconded by Lock Boyce and carried unanimously.

Voting Aye: Knight, Boyce, Harris, Weiss, Hayden
Voting Nay: None

Adjourn

On motion by Lock Boyce seconded by Ron Knight to adjourn until Wednesday, March 30, 2011 at 6:00pm and carried unanimously.

Voting Aye: Knight, Boyce, Harris, Weiss, Hayden
Voting Nay: None