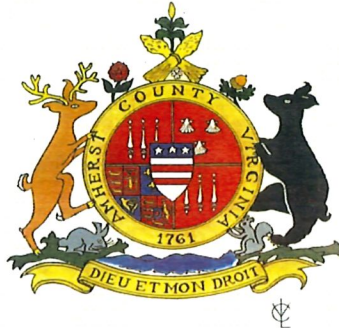


**Board of Supervisors**

Claudia D. Tucker, Chair  
District 2  
L. J. Ayers III, Vice-Chair  
District 3  
David W. Pugh, Jr., Supervisor  
District 4  
Kenneth M. Campbell, Supervisor  
District 1  
Jennifer R. Moore, Supervisor  
District 5



**County Administrator**  
Dean C. Rodgers

**County Attorney**  
Michael W. S. Lockaby

**JOINT MEETING**  
of the  
**AMHERST COUNTY BOARD OF SUPERVISORS**  
and the  
**AMHERST COUNTY SERVICE AUTHORITY BOARD**

**MINUTES**

AGENDA  
**January 4, 2019**  
Administration Building - 153 Washington Street - Public Meeting Room  
Amherst, Virginia 24521  
Meeting Convened - 5:00 p.m.

- I. Call to Order**
- II. Discussion – Sale of Winton Country Club**
  - A. Presentation on Planning and Utilities
- III. Closed Session**
  - A. A closed session, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended, to discuss the performance of Board appointees.
- IV. Adjournment**

**MINUTES**

At a Joint Meeting of the Amherst County Board of Supervisors and the Amherst County Service Authority Board and held at the Amherst County Administration building, Amherst, Virginia, thereof on Friday, the 4<sup>th</sup> day of January, 2019, at 5:00 p.m., the following members were present:

BOARD OF SUPERVISORS and BOARD OF DIRECTORS:

PRESENT: Claudia D. Tucker, Chair  
L. J. Ayers, III, Vice-Chair  
David W. Pugh, Jr., Supervisor  
Kenneth M. Campbell, Supervisor  
Jennifer R. Moore, Supervisor

ABSENT: None

STAFF PRESENT: County Administrator Dean C. Rodgers  
Deputy County Administrator David R. Proffitt  
County Attorney Michael W. S. Lockaby  
EA Clerk to Board Regina M. Rice  
ACSA Director Robert A. Hopkins

**I. Call to Order**

Chair Tucker called the meeting to order at 5:09 p.m.

Chair Tucker advised that a public comment would be added to the agenda that would occur after the discussion of the sale of Winton County Club.

By motion of Supervisor Campbell and with the following vote, the Board amended the Agenda for January 4, 2019 by adding a public comment section as Item II.

AYE: Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell and Ms. Moore  
NAY: None  
ABSENT: None

There was a discussion on the order of presentation by County Attorney Michael Lockaby and ACSA Director Robert Hopkins.

Chair Tucker called for the Board to recess until 5:30 p.m.

Chair Tucker then called the meeting to order at 5:19 p.m. instead of 5:30 p.m.

By motion of Vice-Chair Ayers and with the following vote, the Board amended the Agenda for January 4, 2019 by adding a public comment section as II. and renumbering Discussion - Sale of Winton County Club as III.

AYE: Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell and Ms. Moore  
NAY: None  
ABSENT: None

**II. Citizen Comment**

Chair Tucker opened the meeting for public comment and asked those speaking to limit their comments to three minutes.

Mr. Alan Wood of Madison Heights, Virginia, addressed the Board regarding the sale of Winton Country Club. **(See Attachment A)**

At this time, Chair Tucker asked the County Attorney to opine regarding Mr. Wood's comment that this meeting was not noticed properly.

Mr. Lockaby stated the FOIA Advisory Council advised notice for a special or called meeting is required and that should be three days if practicable, but can be two or one day in specific instances. The Board of Supervisors was given public notice the same time as the public and that was two days in advance.

Mr. John A. Marks, Jr. of Madison Heights, Virginia addressed the Board regarding the sale of Winton County Club. **(See Attachment B)**

Mr. Thomas Fore, Amherst, Virginia addressed the Board stating he has been in the water business for 40 years and served as a previous director on the ACSA Board. He said the Clifford community has had issues in the past with water. He said drilling wells there would impact other people and putting in a waterline would be very expensive.

Ms. Susanna Trefsgar of Amherst, Virginia, addressed the Board and spoke in favor of the sale. She said the County needed to move forward to generate employment and tourism. She would like this to be economic development and an opportunity for a facility for the elderly and assisted living community. She urged the Board to move forward.

Ms. Sabrina Kennon of Madison Height, Virginia addressed the Board as president of the Chamber and a business owner. She spoke in favor of the sale. She asked why this was being rehashed again what had already been put out to the public. She said it was exhausting to listen to the same thing again.

Mr. Jake Campbell of Amherst, Virginia addressed the Board and advised he has lived in Winton Road for many years. He questioned the transparency and how things have been presented. He said in the past 36 years he has seen a number of wells go dry in this area.

Ms. Victoria Hansen, Director of the EDA, addressed the Board and read comments on behalf of the EDA Chairman Calvin Kennon. **(See Attachment C)**

Ms. Penny Haus of Second Stage Amherst, read a letter from the president of Second Stage Suny Monk. **(See Attachment D)**

Mr. Jacob Dalton of Madison Heights, Virginia addressed the Board stating he understood the water issue in Clifford. He believed revenue brought in by Winton would address the business friendliness issue. He implored the Board to sign the contract with Waukeshaw.

Mr. Bob Baxter of Amherst, Virginia addressed the Board and provided research on the potential gallons of water per day the wells on the property produce. He believed too much time had been spent on the “what ifs” and that was very negative.

Mr. Chad Eby of Amherst, Virginia addressed and commented that taking risks is not easy sometimes, but believed what the County was trying to do with Winton was a good thing

The public comment session was closed.

## **II. Discussion – Sale of Winton Country Club**

### **A. Presentation on Planning and Utilities**

ACSA Director Robert Hopkins addressed the Board and said he was in favor of the project, however, his main concern was the way the proposed sales agreement had been put together. He asked that this be put on hold until we have all the information.

Chair Tucker asked Mr. Hopkins to introduce his guest, who was Bevin Alexander, Jr., an attorney practicing in Lynchburg and counsel for the Service Authority.

County Attorney Lockaby said he was unaware of any other legal counsel hired by the Board of Directors than himself.

County Attorney Lockaby presented a PowerPoint “Basic Principles of Public Water & Sewer Planning and Finance”. **(See Attachment E)**

Mr. Lockaby explained the basic points:

Theory of Utility Financing

Theory of Planning

Zoning & Conditions

Why You Draft an Agreement a Particular Way

Opening the Door – Commitment to the Future

The Future - A Lot More Thinking, More Votes

Mr. Lockaby recommended to the Board of Supervisors to remove most of the water and sewer provisions from the agreement because the water requirement for this property appears to be approximately 10,000 gallons per day and that those wells would be more than sufficient.

Mr. Lockaby recommended to complete the draw down tests and assist the developer with any identification of more wells if necessary.

He said the developer will most likely have centralized systems that would not be operated by private water or sewer utility companies.

The Board of Supervisors will have the authority to review those plans as well as the Virginia Department of Health. The Board of Supervisors will have the final authority on non-public systems that serve three or more connections.

Vice-Chair Ayers said that on December 18<sup>th</sup> there was a 3/2 vote by the Board. He was concerned about the open end of this part of the agreement regarding the water and sewer issue.

By motion of Vice-Chair Ayers and with the following vote, the Board voted that paragraphs a. and b. of Paragraph 12 be removed from the agreement. Staff was directed to draft a clause that provides for the County to complete its draw-down studies on the existing wells and assist the developer identifying other wells on site if necessary. The Board takes no other obligations with respect to water or sewer utilities, and that this Board or future Boards will deal with them appropriately based on what they know at that time.

AYE: Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell and Ms. Moore

NAY: None

ABSENT: None

Chair Tucker convened the Amherst County Service Authority Board to order at 6:14 p.m. on January 4, 2019.

AYE: Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell and Ms. Moore

NAY: None

ABSENT: None

### **III. Closed Session**

A. A closed session, pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended, to discuss the performance of Board appointees.

Supervisor Moore moved that the Amherst County Service Authority Board convene in closed session pursuant to Section 2.2-3711(A)(1) of the Code of Virginia, 1950, as amended, to discuss the performance of Board appointees.

AYE: Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell and Ms. Moore

NAY: None

ABSTAIN:       None

Supervisor Moore motioned to come out of closed session and was approved with the following vote:

AYE:            Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell and Ms. Moore

NAY:           None

ABSENT        None

**CERTIFICATION OF CLOSED MEETING**

Supervisor Moore moved that the Amherst County Service Authority Board certify by a recorded vote that, to the best of each Board member's knowledge, only public business matters lawfully exempted from the open meeting requirements of the Virginia Freedom of Information Act and identified in the motion authorizing the closed session were heard, discussed, or considered in the closed session.

Mrs. Tucker	AYE
Mr. Ayers	AYE
Mr. Pugh	AYE
Mr. Campbell	AYE
Ms. Moore	AYE

**IV.   Adjournment**

By motion of Vice-Chair Ayers and with the following vote, the Board adjourned at 6:47 p.m.

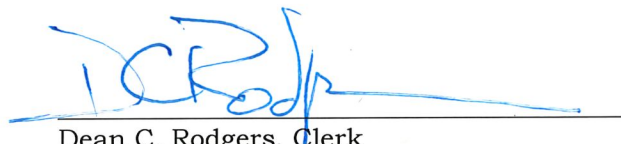
AYE:            Mrs. Tucker, Mr. Ayers, Mr. Pugh, Mr. Campbell and Ms. Moore

NAY:           None

ABSENT        None



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Claudia D. Tucker, Chair  
Amherst County Board of Supervisors



\_\_\_\_\_  
Dean C. Rodgers, Clerk

## Amherst Board of Supervisors

January 4, 2019

Happy New Year!

Alan Wood

297 Berg Drive  
Madison Heights, VA

Thank you for this opportunity to comment.

I have two matters to address.

First, it is a disservice to the citizens of Amherst to conduct this meeting with only two days prior notice. Certainly, you can rationalize that the notice is really longer than two days, but the simple math is that the notice was posted on January 2 and today is January 4. We all know what four minus two equals.

As you saw at your last meeting, there are many citizens who are interested in how Amherst County handles the Winton property. Therefore, why would you want to give as short of a notice as possible? If you believe in transparency and if you believe greater citizen participation in government is desirable, you should embrace measures to achieve such results - especially a much longer notice than what was provided for this meeting. We need to have citizens engaged and participating in their government. I would have enjoyed seeing a large turnout here this evening.

Second, unfortunately I had another meeting which precluded me from attending the public hearing held last month regarding the disposition of the Winton property. I will simply share my observations about the decision at hand rather than go into details about the Agreement.

As the presentation posted states, we have a very knowledgeable County Administrator and very smart staff members. That is good news!

Fortunately, Amherst County is blessed to have a lot of very knowledgeable and highly intelligent citizens as well. You heard from many of these citizens at your meeting last month. What you heard was essentially two themes from what I have gathered from reports: this deal is not a good deal for the people of Amherst and some citizens despair about our stagnant population, our lack of business growth, and lack of tax revenue growth from existing businesses and want to do something – anything – to help.

It is true that we have issues with attracting new businesses and with slow growth. I would suggest that this is not simply an Amherst County issue, but the world many rural counties in Virginia and elsewhere live in. Other actions being taken will help with this. For example, simplifying requirements for conducting business in Amherst County and helping businesses navigate these

4. When one reviews this agreement it appears that most of the commitments fall on the County. Waukeshaw has very few solid commitments. I am not opposed to the selling of Winton, however I am opposed to this agreement because it seems very one sided, and I believe places the County at risk. How much risk will the County be facing, at this time I do not believe anyone knows.

In closing I would like to publicly thank Mr. Hopkins of the Amherst County Service Authority for his presentation on December 18<sup>th</sup>. He certainly highlighted some important points for consideration and brought a new dimension to the discussion.

Thank you.

Board of Supervisors Meeting on January 4th, 2019  
Discussion on Winton Agreement Regarding  
Water Sewer Planning Presentation

Good evening members of the Board. My name is John A. Marks, Jr. and I reside at 225 Clark Street in Madison Heights, VA.

It is my understanding that the agreement with Waukeshaw regarding the sale of Winton, which was approved on December 18, 2018, has not been changed, and the County plans to proceed with the agreement. Based on that understanding I would make the following comments:

1. The Item Summary for this Water Sewer Planning Presentation makes the following statement "The agreement does not commit the ACSA to any present or future actions." I believe that statement to be incorrect. Section 12.a. of the agreement commits ACSA "for proper maintenance and servicing of the wells." Section 12.b. of the agreement, dealing with sewer, states "the County shall facilitate acceptance of the system by the Amherst County Service Authority for permanent maintenance and operation." These certainly sound like commitments to me.
2. Throughout this discussion about water and construction of a water system the response to who will pay has always been the Purchaser would buy enough water to pay for the debt service. That is not what the agreement states. The agreement states the Purchaser will buy "water sufficient to fulfill its planned needs." That is not the same thing. Who picks up the remainder of the debt service if the Purchaser's needs and the debt service needs do not match?
3. During the discussion on December 18<sup>th</sup>, Mr. Rodgers, in discussing the water system, stated that the ACSA would borrow the money. The ACSA rate structure is based on planned ACSA projects for coming years, such as borrowing money for the upgrade of the Graham Creek Dam, improvements to the pump station on the river and a new intake on the James River. To arbitrarily say the ACSA would borrow the money without accessing the impact on rates appears somewhat shortsighted.



## **EDA Chairman Calvin Kennon Winton Remarks 1-4-19**

1805 Winesap Rd. Madison Heights

As part of your economic development team, I feel the EDA brought you a viable answer to a difficult question. We hoped to bring many potential options but as was stated in last months meeting, there was one viable option. This option does include a way forward as far as the water and sewer situation. After the meeting in December, I did understand that this decision required much thought and leadership. I understand that the water situation is complicated, but as the County Attorney has explained, in the agreement with Waukeshaw, the County holds all the leverage to act in its own discretion regarding utility planning and financing and the County and Service Authority holds all the legal enforcement authority.

It is my opinion that you made the only logical decision from an economic perspective. We simply cannot allow Winton to fail and we have one current option for a sale. If we pass on this offer then the County must pay off the Winton Country Club's debt and the County has to take of the property at great cost. Why would we do this if we have a developer who is addressing these pressing issues as well as bringing new jobs and investment into the area? If we as citizens are to pay off that debt, then surely we must sell the property to cover this cost. I would rather use the developers funds versus the citizens funds.

I ask that you to confirm your previous decision to execute the sales agreement with Waukeshaw that allows the development to proceed.

# Second Stage | Amherst

*A non-profit initiative supporting creativity and community*

December 16, 2018

To: Amherst County Board of Supervisors and audience

From: Suny Monk, President, Second Stage Board of Directors

Subject: Comment for the public hearing on the purchase of Winton Country Club by Waukeshaw Development

Thank you for allowing my letter to be read at this meeting. I hoped to attend in person but because of weather-related rescheduling of a Second Stage board meeting I'm unable to join you.

I'm writing to encourage the Board of Supervisors to sell Winton Country Club to Waukeshaw Development and I'd like to remind you of an approach to community development that underscores my opinion. It's called Creative Placemaking; a strategy of leveraging local development that has proven successful for small towns and huge cities worldwide.

Creative Placemaking is simple. It is the approach to community planning that grows from the ground up; it focuses first on PLACE. Placemaking would cause us to ask: what are the County's assets that can be applied to make our community distinctive, attract economic growth and MAKE our communities better. It's about looking at our region and its people, our small and large businesses, our built and natural environments, and maximizing those aspects of our PLACE to improve the lives of not just the current community members but also those who might visit or move here in the future.

I hope you are saying to yourself, well, that makes perfect sense... Amherst has a lot to offer, I like that idea. Here's the twist; Creative Placemaking includes the word CREATIVE. If we think creatively we must look past the easy answers, we need to ask ourselves what ELSE can we do for the County, how can we bring something new to our community, something everybody would like but haven't thought of yet. Something that puts a new twist on the way we've done things before; something that will generate revenue and excitement. We need to take a risk, if necessary. I suggest that repurposing Winton into a multi use facility that meets a wide variety of community needs and brings in new attractions and new people is a good thing for everybody.

You backed the Creative Placemaking approach when you helped establish Second Stage. Second Stage founders hoped to make the best use of what we already have and to expand on those resources by adding new ideas... and I suggest that repurposing the Amherst Baptist Church into a center for creativity and community is proving to be a good idea. It has given new life to a beloved architectural asset, brought new entertainments, events and activities into our lives and provides new ways for people to come together to enjoy one another and celebrate what we value and share as citizens of Amherst County.

Let's get on board with Dave McCormack and his team; let's welcome new uses for Winton, one of our treasured historic properties. Let's work toward an even more attractive and vital Amherst. Let's polish our little gem of a community so that it attracts the best new people and ideas.

I applaud the good work now being done in this county and those who have made it happen. Thank you, Ms. Tucker, the Supervisors and County staff for your leadership.

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# BASIC PRINCIPLES OF PUBLIC WATER & SEWER PLANNING AND FINANCE

BOARD OF SUPERVISORS OF AMHERST COUNTY/ACSA BOARD OF DIRECTORS  
JANUARY 4, 2019





## BASIC POINT

- You currently hold all the leverage to act in our discretion. County and ACSA hold all the legal enforcement authority here.
- Agreement sets goals and opens the door to further decisions on how to achieve goals.
- The more we agree to at this point, the more we tie ourselves down.
- We are not agreeing to any particular planning or zoning action, any particular financing option, or any particular utility option (or even agreeing that one is necessary). *We cannot constitutionally agree to particulars on these.*
- We are trusting ourselves to be smart in the future.





## MY BACKGROUND (WHY IT'S WORTH LISTENING TO ME)

- Worked on construction, reconstruction, or financing of 12+ systems in last five years.
  - Smallest—well-fed neighborhood system with well and small tank.
  - Biggest—\$50 million project for tens of thousands.
- Worked on several major water & sewer service and rates cases in last 10 years.
- Editor of chapter on *Public Utilities* in the *Local Government Attorney's Handbook*, standard reference on Virginia local government law.

# THEORY OF UTILITY FINANCING

- Water and sewer systems are very capital-intensive, very long-lived assets.
- Capital outlay is typically financed by a combination of customer contributions, equity, and bond financing.
  - Customer contribution: Anything the customer builds to specs with own funds and gives to the utility for it to operate and maintain. Most new subdivisions, for instance, contain significant customer contributions.
  - Equity: For localities, funds from locality (seed money) made back through revenues from increased tax values. For private utilities, raised by stock issues; money made back with return on equity built into rates set by State Corporation Commission. Can be anywhere from 0% to 50%, typically.
  - Bond financing (DEBT): Bonds (typically 30-year; can be 50-year in some cases) paid back by the rates and charges of the system. NOT PAID BY TAX FUNDS.
- Financial advisors are **ESSENTIAL** to your success in finding options to solve problems. But your primary resource for advice assessing options is Stacey Wilkes (who is very smart).

# THEORY OF PLANNING

- Your Comp Plan is the Board of Supervisors' tool to set service areas and sequencing of expansion. See *Board of County Supervisors of Roanoke County v. City of Roanoke*, 220 Va. 195 (1979). No public utility facility may be constructed or authorized unless it is in substantial accord with the Comprehensive Plan.
- Comprehensive planning is a *non-delegable legislative function*.
- Service areas and the "Holding Out Rule": If the Board of Supervisors designates a service area, the water and sewer authority may have an obligation to serve. It is settled that investor-owned utilities have such a duty in SCC-certificated service area absent a "valid utility-related reason." Case law is unsettled on whether and to what extent government-owned utilities have a similar duty in BOS-designated service areas, but several circuit court and SCC cases indicate that they likely do.
- The benefits of a Water Authority—moves the locality out of SCC service area jurisdiction.
- Other methods of financing infrastructure for small, confined communities: Community Development Authorities (CDAs) and Service Districts.



# ZONING & CONDITIONS

- Zoning and special exceptions are *non-delegable legislative functions*.
- Our PUD Ordinance is a special exception ordinance. SE uses have greater impacts and BOS imposes conditions. May impose any condition that meets the *Nollan/Dolan* test: Must have “essential nexus” with development and “reasonably correlate” with the impact to mitigate. Basic rule:

The legislature (i.e., the BOS) may require certain uses, which it considers to have a potentially greater impact upon neighboring properties or the public than those uses permitted in the district as a matter of right, to undergo the special exception process. Each site is to be examined by public officials, guided by standards set forth in the ordinance, for the impact the use will have if carried out on that site. Although the uses in such special exception categories are permissible under the ordinance, such permission is to be granted subject to such limitations and conditions as public officials may impose in order to reduce the impact of the use upon neighboring properties and the public to the level which would be caused by those uses permitted as a matter of right. *Board of Supervisors of Fairfax County v. Southland Corp.*, 224 Va. 514 (1982).

- BOS's decisions on special exceptions will be upheld if they are “fairly debatable.”
- Lucky to have very experienced and talented planning staff to guide you through this. Jeremy Bryant is a very talented planner.





## WHY YOU DRAFT AN AGREEMENT A PARTICULAR WAY

- Don't state the obvious. No need to say the sky will still be blue, or that no one will flap their wings and fly.
- If there is a legal requirement, be careful stating it, especially if it is subject to change. Be concerned about vested rights.
- Don't give away non-delegable legislative functions. Hold back as much discretion as you can.
- Make it as certain as it can be, but no more.

## OPENING THE DOOR—COMMITMENT TO THE FUTURE.

- A development performance agreement lays out *expectations and commitments*. Usually, the things involved will be laid out separately and legally enforced separately.
- Zoning: PUD Zoning will be required. Section 14 of the Agreement will be superseded by *non-delegable legislative function* of zoning. Enforcement will be through *zoning enforcement*. This is a matter of great discretion for the BOS, and little-to-no discretion for developer.
- Utility Planning & Financing: Will be determined, at appropriate time, by the BOS and BOD, as a *non-delegable legislative function*. We *commit* to finance and construct a water system if it is necessary (it won't be, any time soon). *Waukeshaw contracts* to finance and build a sewer system to *ACSA standards, whatever those are* and give as a customer contribution. This is a matter of great discretion for the BOD, and little-to-no discretion for developer.
- Rates: Will be set, charged, and enforced as *non-delegable legislative function* at the appropriate time. This is not a matter of agreement or choice. This is a matter of little-to-no discretion for developer.

## THE FUTURE—A LOT MORE THINKING, MORE VOTES

- BOS will need to take several votes in the next one to three years to make this work. Most of them are *non-delegable legislative votes* where you have great discretion to act in any reasonable manner.
- Lots of details need to be filled in through studies and planning.
- *We hold all the cards.*
- Why would Waukesha make the deal? Because Amherst has shown itself to be trustworthy. People just don't do deals with localities that aren't.