

MINUTES

**KING WILLIAM COUNTY
BOARD OF SUPERVISORS
MEETING OF NOVEMBER 21, 2011**

At a regularly scheduled meeting of the Board of Supervisors of King William County, Virginia, held on the 21st day of November, 2011, beginning at 6:30 p.m. in the Conference Room of the County Administration Building, order was called with the following present:

C. L. Schools, Chairman
D. L. Wright, Vice-Chairman
C. T. Redd III
T. G. Smiley
O. O. Williams (arrived at 6:40 p.m.)

T. L. Funkhouser, County Administrator
D. M. Stuck, County Attorney

RE: REVIEW OF MEETING AGENDA

Chairman, Cecil L. Schools, called the meeting to order at 6:30 p.m. and agenda changes were discussed. Item 13a was added under Administrative Matters – Update on Board of Equalization public hearing schedule for December.

There was some discussion of item 12a, the claimant, G. V. Layne may appear before the Board tonight; it was decided the County Attorney will do a briefing after claimant speaks. Mr. Schools said Ms. Morrison was present tonight to speak about item 11b. There was also some discussion of item 11a, Mr. Smiley stated he did not want to see the Board give power away, he feels this item needs more discussion.

The Board recessed and moved to the Board Meeting Room of the County Administration Building to continue the meeting.

Chairman, C. L. Schools called the continued Board of Supervisors meeting to order at 7:00 p.m. In honor of D. L. Wright, Vice-Chairman of the Board, who has served sixteen years as a Board of Supervisor member, Mr. Schools requested that Mr. Wright conduct the meeting as Chairman; Mr. Wright accepted and assumed the seat of the Chairman.

RE: INVOCATION

The opening invocation was delivered by Daniel L. Wright, Board of Supervisor member.

RE: APPROVAL OF MEETING AGENDA

On motion by C. T. Redd III, seconded by T. G. Smiley and carried unanimously, the Board adopted the agenda for this meeting as presented by the County Administrator with one addition; item 13a was added under Administrative Matters – Update on Board of Equalization public hearing schedule for December.

RE: PUBLIC COMMENT PERIOD – SPEAKERS: ONE OPPORTUNITY OF 3 MINUTES PER INDIVIDUAL OR 5 MINUTES PER GROUP ON NON-PUBLIC HEARING MATTERS

Chairman, D. L. Wright, recognized Board-Elect members - Stephen Greenwood, Travis Moskalski and Terry Stone, and Commonwealth Attorney-Elect Matthew Kite, in the audience; he congratulated each one of them and thanked them for attending the meeting. He also extended an invitation to Mr. Moskalski to attend the next Regional Jail Board meeting with him, stating the next meeting is scheduled for the first Wednesday in December.

The Chairman opened the First Public Comment Period.

There being no persons to appear before the Board the Chairman closed the First Public Comment Period.

RE: CONSENT AGENDA

On motion by C. T. Redd III, seconded by T. G. Smiley and carried by a unanimous vote the Board approved the following items on its Consent Agenda:

- a. Minutes of the Regular Meeting of October 24, 2011, as presented
- b. Claims against the County for the month of November, 2011, in the

amount of \$979,732.28 as follows:

(1) General Fund Warrants #75174-75261 in the amount of \$371,593.91; ACH Direct Payments for November, 2011, #1662-1756 in the amount of \$205,172.92; Direct Deposits #15990-16126 in the amount of \$181,454.76; and Electronic Tax Payment in the amount of \$63,254.21.

(2) For informational purposes, Social Services expenditures for the month of October, 2011, Warrants #308890-309021 in the amount of \$32,163.70; ACH Direct Payments #449-476 in the amount of \$29,342.01 Direct Deposits #2642-2660 in the amount of \$31,360.62; and Electronic Tax Payment in the amount of \$10,889.81.

(3) For informational purposes, Circuit Court expenditures for the month of October, 2011, Warrants #75158-75165 in the amount of \$4,807.57; Direct Deposits #727-729 in the amount of \$8,909.60; and Electronic Tax Payment in the amount of \$3,457.64.

(4) For informational purposes, Comprehensive Services Act Fund expenditures for the month of October, 2011, Warrants #75166-75173 in the amount of \$18,663.00; and ACH Direct Payments #1657-1661 in the amount of \$17,616.00.

(5) Tax Refunds for the month of November, 2011 in the amount of \$1,046.53.

c. Adopted the following Resolution #11-41 – Adoption of FY12-13 Budget Calendar:

**RESOLUTION #11-41
Adoption of the
FY12-13 Budget Calendar**

WHEREAS, it is necessary for the Board of Supervisors to adopt a FY12-13 Budget Calendar; and

WHEREAS, the proposed dates and times for the FY12-13 Budget Calendar are as follows:

<u>Date (Time):</u>	<u>Purpose:</u>
Friday, January 6, 2012	Budget Requests Submittal Deadline
Friday, March 9, 2012	Draft Budget Delivered to Board of Supervisors
Friday, March 23, 2012 (8:30 a.m.)	Work Session - Draft Budget
Thursday, March 29, 2012 (6:30 p.m.)	Joint Dinner Meeting with School Board to Review Draft School Budget – Hamilton Holmes Middle School
Wednesday, April 4, 2012	Publication of Public Hearing Notice - Proposed Budget and Tax Levies
Monday, April 16, 2012 (7:00 p.m.)	Public Hearing - Proposed Budget and Tax Levies
Monday, April 23, 2012 *	Adoption of Budget and Tax Levies and Appropriation of Funds

* Regular April meeting of the Board of Supervisors

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of King William County, Virginia, does hereby adopt the above listed dates and times, as the FY12-13 Calendar, for budget preparation and adoption.

Adopted this 21st day of November, 2011

Those members voting:

C. T. Redd III	Aye
T. G. Smiley	Aye
O. O. Williams	Aye
D. L. Wright	Aye
C. L. Schools	Aye

RE: PRESENTATIONS TO THE BOARD

a. VDOT Matters – Sean Trapani, Residency Administrator – Staff from VDOT was not in attendance; item will be added to the agenda for the December Board meeting.

RE: APPOINTMENTS

No appointments this month

RE: OLD BUSINESS

a. Consideration of Resolution #11-38 – Authorizing the County Administrator to Accept Deeds Conveying Real Property or Interests Therein to King William County – the Chairman called for any questions or discussion from the Board on Resolution #11-38.

Mr. Smiley said he will not be returning as a Board member, he feels this resolution takes power away from the Board in things they are responsible for. For instance if a piece of real estate is presented to the County for purchase or to sell, although the resolution says it can't be done, if the resolution only referred to right of ways, and that type of thing, he wouldn't have a problem with it; he would like to see the resolution changed and not refer to buying, selling or conveying real estate.

On motion by C. T. Redd III, seconded by C. L. Schools, with the following vote the Board adopted the following Resolution #11-38 A Resolution Authorizing the County Administrator to Accept Deeds Conveying Real Property or Interests Therein to King William County:

**RESOLUTION #11-38
A RESOLUTION AUTHORIZING
THE COUNTY ADMINISTRATOR TO
ACCEPT DEEDS CONVEYING REAL PROPERTY OR
INTERESTS THEREIN TO
KING WILLIAM COUNTY**

WHEREAS, §15.2-1803 of the Code of Virginia provides that no deed purporting to convey real estate to a county shall be valid unless accepted by the County; and

WHEREAS, that statute also requires that such acceptance appear on the face of the deed or on a separately recorded instrument and be executed by a person authorized to act on behalf of the County; and

WHEREAS, the Board of Supervisors wishes to authorize the County Administrator to act in its behalf in accepting deeds conveying real property or any interests therein to the County; and

WHEREAS, the Board of Supervisors does not authorize the sale of any property and such authorization would occur by separate approval(s) of the Board of Supervisors; and

WHEREAS, the Board of Supervisors expects the County Administrator to inform the Board of Supervisors at least thirty (30) days in advance of any conveyances of a non-routine nature (e.g., not a utility easement or utility parcel),

NOW THEREFORE, BE IT RESOLVED by the King William County Board of Supervisors this 21st day of November, 2011, that the County Administrator be, and he is hereby, authorized to act on behalf of King William County in accepting any and all deeds purporting to convey any interest in real estate, whether conveyed to the County or to the Board of Supervisors or to any sanitary district or other authority of the County, and that the County Administrator is authorized to evidence such acceptance by signing a statement of acceptance appearing on the face of any and all such deeds or by signing a separately recorded instrument, provided that any such deed or instrument is approved as to form by the County Attorney or other qualified attorney selected by this board.

Adopted this 21st day of November, 2011

Those members voting:

T. G. Smiley	Nay
O. O. Williams	Aye
C. T. Redd III	Aye
D. L. Wright	Aye
C. L. Schools	Aye

b. Consideration of Resolution #11-39 – Bridging Communities Regional Career and Technical Education Center in New Kent County – the Chairman recognized Dr. Mark Jones, Superintendent for King William County Schools, and Ms. Kathy Morrison, King William County School Board Member, and asked if either would like to come forward to provide a few comments about the Bridging Communities Regional Career and Technical Education Center. Further he acknowledged the Board reviewed a recent letter, from Ms. Morrison, with details of the program. He also added Mr. Schools attended a meeting recently, in New Kent, regarding the Center.

Ms. Kathy Morrison stated this project has been in the works for approximately eight years, it started as an idea in 2003, has progressed into a reality. New Kent County had a building they were considering renovating to house a career and technical school, regional support is needed to help in this effort. Continuing she said

this resolution gives the New Kent Board of Supervisors a show of support in this effort; the school system will be financing through their operating budget. Hopefully within a couple of years students will not have to travel to the Richmond Technical Center in the City of Richmond; they will be able to attend the Center in New Kent to a much safer environment and a higher quality CED Program. The support of the idea of the Center from the King William County Board of Supervisors is very much appreciated. The hope is for this idea to become a reality, with expected opening of the Center in the fall of 2012. Ms. Morrison said she is available for questions.

Mr. Redd asked for clarification if a board will be formed that runs the Center made up of representatives of school board members from each locality. Ms. Morrison answered in the affirmative, further stating it has been done like this since 2006. The Regional Advisory Council has appointed school board members from each of the localities, along with superintendents, and recently finance directors have been a part of the meetings; it will be run very similar to the Governors School model.

Mr. Smiley asked for clarification as to whether this program is only offered to counties, and further asked if the Town of West Point is participating. Ms. Morrison said the Town of West Point is welcome to participate, they have been approached several times about the project; hopefully the location of the Center and the programs that will be offered will encourage them to join in the effort.

On motion by T. G. Smiley, seconded by C. T. Redd III, and carried by a unanimous vote the Board adopted the following Resolution #11-39 Bridging Communities Regional Career and Technical Education Center in New Kent County:

**RESOLUTION #11-39
Bridging Communities Regional Career and Technical Education Center
in New Kent County**

WHEREAS, King William County's future economic growth is tied to the youth of this county; and

WHEREAS, King William County Schools offers excellent academic programs for students but has limited opportunities in Career and Technical Education Courses; and

WHEREAS, King William County's unemployment rate is 6.3%; and

WHEREAS, 7.2% of King William County's residents are in poverty; and

WHEREAS, the Bridging Communities consortium of school divisions began discussions of a Regional Career and Technical Center in 2004; and

WHEREAS, the member school divisions have researched viable career options and surveyed students' interests; and

WHEREAS, the Southern Association of Colleges and Schools (SACS) endorsed the Bridging Communities Program in their review of King William County Schools; and

WHEREAS, an opportunity has arisen to partner with New Kent County Schools, King and Queen County Schools, Charles City County Schools, and Middlesex County Schools in the development of the Bridging Communities Career and Technical Education Center in New Kent County; and

WHEREAS, King William County Schools believe that students participating in the classes offered in these programs will enter the workforce and earn salaries that are above the average; and

WHEREAS, the programs offered will lead to occupations that are likely to be lifelong careers; and

WHEREAS, these students are residents of King William County and many will reside here as adults with their families,

NOW, THEREFORE, BE IT RESOLVED, that the King William County Board of Supervisors strongly supports the Bridging Communities Regional Career and Technical Education Consortium; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the King William Board of Supervisors strongly supports King William County Schools' participation in a Bridging Communities Regional Career and Technical Education Center in New Kent County.

Adopted this 21st day of November, 2011

Those members voting:

T. G. Smiley	Aye
C. T. Redd III	Aye
O. O Williams	Aye
D. L. Wright	Aye
C. L. Schools	Aye

RE: NEW BUSINESS

a. Claim Against King William County – G. V. Layne Contracting, Inc. – Resolution #11-42 – the Chairman asked for any comments from Board members; there being none he invited Mr. Layne to come forward with any comments.

Gary Layne, President of G. V. Layne Contracting, Inc., operations located in Beaverdam, VA, spoke to the Board of his opposition of proposed Resolution #11-42.

Mr. Layne stated Saymar Custom Homes, a developer within the County, and contracted with the County, was granted a license by the County to extend the County's water infrastructure to Saymar's proposed developments. After review and approval by the County, G. V. Layne Contracting, Inc. was contracted by Saymar to provide water to Marle Hill Section IV. After pipe installation was complete and a

pressure test was satisfied, witnessed by the County, the development was foreclosed upon, and subsequently G. V. Layne was awarded a judgment against Saymar for \$607,991.20.

Continuing Mr. Layne stated Saymar provided a letter of credit for \$309,903.75, as surety to the County they would fulfill and complete their obligations, allowed by the County, for Marle Hill Section IV. Mr. Layne said on June 8, 2011, the County received all of these funds drawn from Saymar's account; G. V. Layne petitioned the County on September 21, 2011, to release said funds to him.

Mr. Layne said he received a copy of a letter addressed to the Board of Supervisors from the County Attorney, dated November 15, 2011. The letter states the County Attorney's opinion and recommends the claim of G. V. Layne be rejected; primarily because Marle Hill Section IV and conditions of final approval of the plat, of which these monies pertain, were independent of the work of G. V. Layne. Mr. Layne said he feels there are errors in some of the statements that distort the circumstances, and ultimately misinform the Board of Supervisors, and he hopes to clarify them.

Mr. Layne referred to the topic of paragraph two, of said letter, the construction plan of the work of G. V. Layne Construction, the paragraph says the plans do not show construction details for areas within the subdivision of Marle Hill Section IV, however, sheet C10 shows the road network of Marle Hill Section IV and the termination of the water line at station 108 plus 109 is labeled "locate and connect to existing water line for Marle Hill Section IV".

Mr. Layne said paragraph three, of said letter, discusses the subdivision plat of Marle Hill Section IV, the last sentence says the subdivision plans did not include plans for any offsite water facilities. Contrary to this statement sheet 1 of 21 states water for the subdivision is from the County. Additionally sheets 4, 6 and 11 delineate and call out the easement used by G. V. Layne Contracting when connection was made within the subdivision.

Continuing, he said the next to the last paragraph of said letter references the contract between the County and Saymar and states, "by the terms of the agreement the County had no responsibility or right to review and approve firms hired by Saymar, and others, to complete the water extension"; this is clearly an oversight by Mr. Stuck

and mischaracterizes the relationship by G. V. Layne Contracting and the County, in accomplishing the extension of the County facilities. Per the contract between Saymar and the County, Saymar was responsible for, "entering into all necessary agreements and ensuring that those agreements are with County approved contractors and subcontractors".

Mr. Layne said the credentials of G. V. Layne Contracting were scrutinized by the County ahead of them granting G. V. Layne Contracting permission to work on their facilities. Once approved, G. V. Layne Contracting, attended a pre-construction conference that involved County Administration, County Public Works, and County Planning; all work was in full view to the County, at all times, and continuously inspected by the County.

Finally, Mr. Layne said G. V. Layne Contracting is not, in any way, asking for County funds to pay this developer's bill, the funds G. V. Layne Contracting is asking to be released are from the account of Saymar; further stating these funds are not tax payer dollars, nor can they be used as such.

The Chairman called for questions from Board members.

Mr. Williams asked the County Attorney to advise the Board on the questions brought before them from Mr. Layne.

The County Attorney said he disagrees with Mr. Layne's interpretation of some of the documents referenced. The key point of which he references, and why he feels the claim is invalid, is the letter of credit which Mr. Layne seeks to benefit from was posted for improvements within the development of Marle Hill Section IV; those improvements are specifically referenced in the terms of the letter of credit. The Board is aware the successor owner of the property is now Union Bank and Trust. The line of credit was drawn a few months ago because of a failure to complete those improvements within the development. One issue that arises should the County pay the claim to Mr. Layne; the County would be subject to considerable liability to Union Bank and Trust for using the money that is for their credit. There is a beneficiary of the letter of credit, and that is the County, the applicant was Saymar, the issuer is Union Bank and Trust, none of these three parties are Mr. Layne. In his opinion, considering the law of Virginia regarding letters of credit, the letter of credit was simply not posted

for the project that Mr. Layne constructed. The County Attorney said he understands Mr. Layne's desire to be compensated; it is unfortunate he was not paid by the developer.

Board approval for the water agreement Mr. Layne refers to, mentioned briefly in the said letter has not been located. County staff has reviewed minutes, going back two years, and has not found where the Board approved this agreement. There is clear case law in Virginia and the County Administrator is not authorized to enter a contract like this without Board approval. There is question whether the contract the County entered with Saymar was even a valid contract; but assuming it was there was no provision in the contract for letters of credit to secure the contractors. There was a requirement for a surety of some type to secure the County that the project would be completed, that surety, along with a number of other requirements of the contract, were never addressed by the developer. Saymar breached the contract with the County in several ways and they never completed performance. While Mr. Layne put the line in that was pressure tested there were a number of other things that were required by the contract, to be done by Saymar, Saymar contracted with Mr. Layne to do some of those items, not all of them necessarily, the County was not a party to the contract between Saymar and Mr. Layne.

Again Mr. Stuck said he understands Mr. Layne's attempt to recover these funds, he confirmed Mr. Layne is correct the funds did not come out of the County Treasury. Further explaining once the County receives the funds, they are in fact County funds, the funds have a committed purpose, which is for improvements within the subdivision, not for improvements outside the subdivision. He said this is his opinion and this is why he has given the Board this recommendation.

Continuing he said with regards to the specifics of the plans, he reviewed the plans closely; there are some general references and some easements shown on one of the plans. Mr. Stuck said he went to the Court and researched the case to view the exhibits filed with the pleadings, the County records don't reflect all aspects of the agreements and associated contracts and his recommendation to the Board is based on known evidence.

Mr. Smiley asked for clarification of whether this claim should be before the Board of Supervisors for a decision or if it should go before an arbitrator to hear both sides.

The County Attorney said this is a Board decision to the extent the statute provides that when a formal claim is made to the County there are special procedures, review of the claim and itemization of claim. In this case the amount of the claim is straight forward, it is understood what Mr. Layne is asking for; he feels the form of it, in terms of itemizing, was not necessary. The statute requires the County Attorney to advise the Board on the validity of the claim and if the County Attorney feels the claim is not valid, or is not in proper form, he is to inform the Board. If the County Attorney has opined the claim is invalid, and if the Board so chooses to proceed to approve Mr. Layne's claim, the County Attorney has the statutory duty to appeal the decision to the State Attorney General. The Attorney General must review the Board's decision and further procedures are required by state law.

In this case, Mr. Layne previously filed a suit, he named the County as a defendant, he raised these issues in the Court, and ultimately he withdrew or non-suited the case against the County. That doesn't mean anything regarding why he non-suited the case, it simply means he has the right to bring the case back within a certain period of time. One of the arguments in the case was he had not gone through this formal claim process first. The second primary argument and almost the same reason for the County Attorney's recommendation of denial, Mr. Layne was seeking to recover from the letter of credit in that suit and that is not a letter of credit issued for that purpose. The County Attorney believes it is very unlikely this money would be subject to a claim by a contractor who was not involved in the specific project for which the County accepted the letter of credit. These letters of credit are used to protect the citizens of the County, people who buy lots in the subdivision, and to ensure improvements will be finished. The water extension contract required a letter of credit or a bond for the extension project. There is no legal requirement that the County require a guarantee for such extensions. Even though the contract required a surety, the County for whatever reason, did not require surety to be posted. The lack of surety for the water line project, the apparent lack of Board authorization of the water

line extension agreement, and the specific terms of the letter of credit for Marle Hill Section IV are the basic reasons for the County Attorneys recommendation against paying this claim.

Mr. Redd asked for clarification regarding surety's purpose for the work inside of the development, not on the main line.

The County Attorney stated a copy of the letter of credit is provided in the Board packet and the wording is very specific as to the plat approval and the plans for this water extension are another matter altogether.

Mr. Williams gave some history of this project, stating the original water supply was supposed to come from Marle Hill Section III, a large well was installed to supply the water, and then they wanted to use County water.

On motion by C. L. Schools, seconded by C. T. Redd III, and carrying a unanimous vote the Board adopted the following Resolution #11-42 to deny the claim against King William County, made by G. V. Layne Contracting, Inc:

RESOLUTION #11-42

**A Resolution Denying the Claim of
G. V. Layne Contracting, Inc.**

WHEREAS, G. V. Layne Contracting, Inc. submitted a claim against King William County dated September 21, 2011, in the amount of \$309,903.75; and

WHEREAS, the Board has reviewed such claim in accordance with the procedure set forth in §15.2-1245 of the Code of Virginia, and has received the County's Attorney opinion that the claim should not be allowed; and

WHEREAS, the Board has provided an opportunity to the claimant to present its case for allowance of its claim,

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of King William County this 21st day of November, 2011, that the claim made by G. V. Layne Contracting, Inc., dated September 21, 2011, be and it hereby is denied.

Adopted this 21st day of November, 2011

Those members voting:

D. L. Wright	Aye
T. G. Smiley	Aye
O. O. Williams	Aye
C. T. Redd III	Aye
C. L. Schools	Aye

Mr. Wright and Mr. Smiley initially voted nay. At the time of voting by Mr. Williams, he asked for clarification of the resolution and asked if voting nay means the

County is going to pay the claim. Upon clarification that a majority nay vote would be disapproval of a resolution to deny claim and a separate resolution approving claim would need to be carried by majority, Mr. Wright and Mr. Smiley both rescinded and changed their vote to aye. Mr. Smiley stated he is voting aye so the claimant can go to court to try and recover his money.

**RE: ADMINISTRATIVE MATTERS – TRENTON L. FUNKHOUSER,
COUNTY ADMINISTRATOR**

a. Update on Board of Equalization – Public Hearing Schedule for December - The County Administrator, at the request of the Board, said he is publicly announcing the County has posted several notices in the newspaper, a formal hearing notice will be posted, as required by the Code of Virginia, that the Board of Equalization will conduct another round of hearings on December 7, 2011, 9:00 a.m. until 3:00 p.m. Further he said several property owners have already called and scheduled a meeting with the BOE, during the meeting they can present evidence contesting their property assessment. He also announced the telephone number for the Board of Equalization is 769-4225.

The County Administrator also reminded everyone the Board of Supervisors meeting in December is early due to the holidays, meeting is scheduled for December 12, 2011.

**RE: PUBLIC COMMENT PERIOD – SPEAKERS: ONE OPPORTUNITY OF 3
MINUTES PER INDIVIDUAL OR 5 MINUTES PER GROUP ON NON-PUBLIC
HEARING MATTERS**

The Chairman opened the Second Public Comment Period.

There being no persons to appear before the Board the Chairman closed the Second Public Comment Period.

RE: BOARD OF SUPERVISORS COMMENTS

All Board members thanked citizens for their participation at the monthly Board meetings. Several Board members wished everyone a Happy Thanksgiving.

Mr. Williams thanked citizens for voting for him to serve another four year term.

Mr. Wright thanked Mr. Schools for the privilege of conducting the meeting as Chairman.

RE: ADJOURNMENT OF MEETING

There being no further business to come before this Board, the meeting was adjourned at 7:35 p.m. on motion by C. T. Redd III, seconded by O. O. Williams, and carried unanimously.

Those members voting:

C. T. Redd III	AYE
D. L. Wright	AYE
T. G. Smiley	AYE
O. O. Williams	AYE
C. L. Schools	AYE

COPY TESTE:

D. L. Wright, Chairman
Board of Supervisors

T. L. Funkhouser,
County Administrator
Clerk to the Board