

A regular meeting of the Board of Members of Rapidan Service Authority was held on December 16, 2021 in the meeting room of the Orange County Airport, Orange, VA.

The meeting was called to order at 2:00 PM. A quorum was established followed by the Pledge of Allegiance.

Present: Members: Coppage, Crozier, Frame, Martin, Williams, Yowell
 Staff: G.M. Clemons, DO Jarrell, MFAS Gaskins
 Attorney: Terry Lynn
 Visitors: Mark Taylor, Jonathan Weakley, Clay Jackson, Media

The agenda for the meeting was adopted on a motion by Coppage, seconded by Williams and approved unanimously.

The minutes of the November 18, 2021 meeting were approved on a motion by Yowell, seconded by Coppage and passed unanimously.

There was no old business and no public comment. No customer requests were presented.

Board comment: Crozier asked the timing on the PALL mobile unit now that it has been delivered. GM Clemons advised that Culpeper VDH had forwarded the review process to the Lexington VDH office. No approval time has been given yet.

Yowell posed a question regarding the status of adding the facility fee back to RSA's bill for Greene County customers. GM Clemons explained that the Greene County Board of Supervisors needed to submit a written request for this to the RSA Board, and, if approved by the RSA Board, RSA would then move towards holding the required public hearing. He further indicated that, as of yet, no such request had been received. Yowell asked if the Greene County Board of Supervisors would be sending that request to the RSA Board, and Martin stated that the County was not anxious to reinstitute the facility fee because they were anxious to withdraw from RSA. Martin further stated that putting the facility fee back in place sends a wrong signal to the community. GM Clemons asked if they were reversing their request from last month. Martin indicated that they were not going to act on the issue at this time. Frame asked if Greene County was going to hold the request in abeyance at this time and Martin responded yes. Crozier stated that Frame was the only Member that had voted against the request at the last Board meeting and that both Greene County reps voted in favor of it. He then asked if the Greene County reps no longer wanted to implement the facility fee at this time. Martin responded that is correct.

Yowell then asked Mark Taylor how things were progressing with the items requested by the VRA for Greene County's withdrawal. Taylor indicated that the County is negotiating for contracts for operations while the mediation continues. Coppage asked where things were with defending the lawsuit if Greene County did not want the facility fee placed back on the bill. Attorney Lynn said that Greene County has filed a motion with the Court to order RSA to put the facility fee back on its bill. As such, despite the fact that the RSA Board has voted to reinstate the facility fee, despite the fact that Greene County's position on the facility fee, as expressed at this meeting, is not to

proceed with putting the facility fee back on RSA's bill, despite the fact that the availability fees were returned to Greene County and despite the fact that the reinstatement of Greene County's representatives to the RSA Board has already taken place, she still must defend RSA in court on these matters on January 11, 2022 as none of the issues have been dismissed from the lawsuit. Some Board members expressed frustration with the perceived incongruity of the County's position. They indicated that they did not feel that Greene County was acting in good faith since they had given them what they requested and yet the lawsuit was still going forward.

The proposed 2022 budget was then presented for discussion. Martin read a statement (attached to the minutes) pointing out the variance in budgeted legal fees for 2021 with the actual fees spent. The 2022 budget includes \$368,100 for legal fees, \$300,000 of which are allocated in Greene County. Martin indicated that Greene County does not feel these fees are fair since RSA has not been successful in its conflict with the County thus far. Martin made a motion, seconded by Williams, that the Board direct RSA staff to adjust the legal fee line item in the budget to be shared among the localities, that they be directed to bring a speedy end to the litigation, and to move forward with the three County Board's agreed withdrawal of Greene County from RSA. Attorney Lynn pointed out that only Greene County could bring an end to the lawsuit. She stated that the only thing that has happened in the lawsuit to date is that the Court, as of yet, has not dismissed the lawsuit. There have been no other findings. The facility fee issue was addressed, the sovereign immunity issue addressed, and at this time we are at the stage where RSA is answering the complaint. The Greene County reps on the RSA Board have been reinstated, the availability fees are going to Greene County and the facility fee has been voted upon. Greene County can dismiss these items from the lawsuit if they choose to do so. Greene County has spent a significant amount in legal fees up to this point. Crozier pointed out that this is a discussion of the budget and the second and third parts of the motion made by Martin are not relative to the budget discussion. Crozier then made a motion that the second and third points be deleted from consideration. Chairman Frame asked if there was a second to that. Yowell seconded the motion. Crozier pointed out that the motion had to be amended by the original maker of the motion. Martin said that he was fine with the proposed change but that Greene County stood by points two and three. Chairman Frame pointed out that the allocations are not being voted upon when the Board votes on the budget – only the total amount is being voted upon. Yowell asked how the allocation for Greene County was determined. GM Clemons and the Chairman explained that when RSA has dealt with an issue connected with one of its systems, that system has historically borne the cost of the legal fees associated with the issue. Yowell asked how the amount for legal fees was determined and stated that he hoped that the legal issue would not drag on much longer. GM Clemons said that the budget was based on what RSA had seen this past year and that RSA would be very happy if it were not all needed. Martin indicated that he would like to see the legal fees split equally between the localities. The motion was clarified before being brought to a vote. The final motion, made by Martin, seconded by Williams, was that the legal fees be split equally between the three localities. The motion failed on the following roll call vote: Coppage, nay; Crozier, nay; Frame, nay; Martin, aye; Williams, aye; Yowell, nay. Crozier made a motion, seconded by Coppage, to adopt the budget as presented. The motion passed on the following roll call vote: Coppage, aye; Crozier, aye; Frame, aye; Martin, nay; Williams, nay; Yowell, aye.

The GM reported that the Stanardsville project discussed at the previous meeting was in progress and was approximately half-way complete. Regarding the road boring job in Madison that Coppage asked about last month, they are locating this week and hopefully will begin the job soon. Regarding finances, RSA continues to be in decent shape. The GM passed on the staff's thanks for the frontline bonus. He informed the Board that MFAS Gaskins had provided financial disclosure forms and mileage reimbursement checks for each of them and that there were hams for each of them to pick up as they left. RSA staff wishes the Board a Merry Christmas!

Attorney Lynn reported that mediation had occurred – there is no resolution yet – and that there is a hearing scheduled in January, 2022.

Crozier asked that another look be taken at the allocation of the legal fees to determine if there was a more appropriate way to divide them. Yowell suggested that RSA might check with its auditors, Robinson, Farmer & Cox, to see how this type of thing has been handled in the past. He also suggested the possibility of establishing a policy that would require RSA staff to come to the Board before spending funds if they are far out of line with the budget. He emphasized that his intent was not to have the Board involved in daily operations, however.

A motion to adjourn was made by Coppage at 2:41 PM; the motion was seconded by Crozier and passed unanimously.

Chairman

Comments from Bill Martin/Greene County, 12/16/2021

We are being requested to support next year's Operating Budget with a statement from General Manager Clemons that says, "Staff has prepared the FY 2022 Proposed Operating Budget continuing to use the same general budgetary assumptions as have been used in past years."

This is not true, at least for one budget line item.

Last year's budget request, FY 2021, requested \$119,600 for "Legal/Bond Fees."

As a side note, Mr. Williams and myself, Greene County's appointees to this Board, were not permitted to vote on that budget. Why? This board voted to take our votes and our voices away. This action was taken after this board breached its agreements with Greene County and terminated agreed-upon fees used to pay down debt that Greene County assumed from RSA.

The court has stated that the fees are legal. The court has continued to side with Greene County on six different rulings, most recently the overruling of RSA's latest demurrer (and its three counts) this past Monday. RSA's legal track record in these matters is glaringly poor. By my count, RSA is 0 for 6 before the court. The court has gone so far as to say that RSA is dealing with Greene County "in bad faith."

Now, if we look at the ACTUAL expenditures for FY 2021, as noted in this month's board packet, for expenditures through November 2021, the expenditures to date under the "Legal/Bond Fees" line item for FY 2021 is \$411,206, a variance from the budgeted amount of \$301,573.

This is outrageous. I don't recall staff ever coming back to this board and asking for an increase in the budget. They just kept spending. And this board permitted it to happen.

This year, the proposed budget request for FY 2022 is asking for \$368,100 for "Legal/Bond Fees." And, to our dismay, RSA is billing Greene County \$300,000 of this \$368,100?! In what world is this fair?

If this amount were to stand, that would be a total of over \$800,000 for the two years, once we know the final invoice for this month, December 2021. Again, simply outrageous.

It would be different if the legal cause was just, righteous. Or if RSA's legal outcomes were positive. They aren't. The court is ruling against RSA at each turn. It's batting average, if you will, is 0.000.

The extraordinary \$800,000 legal expense was caused entirely by actions that others on the RSA Board took over Greene County's urgent objections. We asked them not to take the action. We asked them to reconsider the action once they had taken it. The majority chose this course with no support from Greene County. Demanding that Greene County pay for the legal defense of the outrageous misdeeds of the majority is without equity or fairness. The proposed budget reflects no good faith between the majority and Greene County. I can't help but wonder what the court would think of this action.

I request that this Board direct staff to adjust the Legal Fees line item to a sum that: 1) is shared between the localities, 2) directs a speedy end to the litigation, and 3) moves forward with the action that the Boards of Supervisors of Orange, Madison and Greene have agreed to – the withdrawal of Greene County from RSA.

Finally, I request that this statement be made part of the minutes of this meeting. Thank you.