

Regular Meeting of County Commissioners
Tuesday December 13, 2022 (Regular Day)

The regularly scheduled meeting of the County Commissioners was convened in hybrid format, virtually and in person, at 9:03 a.m. with the following persons in attendance:

Reuben B. Collins II, Esq., President, County Commissioner
Gilbert O. Bowling, III, County Commissioner
Thomasina O. Coates, M.S., County Commissioner
Amanda M. Stewart, M.Ed., County Commissioner
Ralph Patterson, County Commissioner
Mark Belton, County Administrator
Wes Adams, County Attorney
Carol A. DeSoto, Clerk to the Commissioners

Call to Order/Pledge

Commissioner Collins called the meeting to order and began with the Pledge of Allegiance.

Roll Call

A roll call was taken. All Commissioners were present.

Comments

A motion was made by Commissioner Bowling, seconded by Commissioner Stewart and failed, with Commissioners Bowling and Stewart voting in favor to go into closed session for legal advice on a personnel matter that would take place later in this agenda in closed session. Commissioners Patterson, Coates, and Collins were opposed. A roll call of the vote was taken:

Commissioner Bowling-yes; Commissioner Stewart-yes; Commissioner Patterson-no; Commissioner Coates-no; Commissioner Collins-no. The motion failed two (2) to three (3).

Commissioner Bowling then proceeded to read a statement:

“ On Tuesday June 9, 2020 the Board of County Commissioners adopted a policy based on recommendations from outside counsel and that he would read a portion of the minutes.

Commissioner Bowling stated that this is a statement from Commissioner Collins, “The Board of Commissioners have made clear their intolerance for illegal discrimination and harassment directed at County employees. The Commissioners have also made it clear that they will not tolerate bullying directed at County employees. The current Commissioners’ Rules of Procedure do not include a policy prohibiting discrimination, harassment, or bullying by Commissioners. In order to ensure that the Commissioners are held to the same standards as County employees, the Rules of Procedure should be amended to include a policy prohibiting such behaviors. The proposed amendment prohibits discrimination, harassment and bullying directed at County employees by any Commissioner. The amendment also creates a complaint process whereby County employees may bring a complaint of discrimination, harassment and/or bullying to the attention of the County’s Director of Human Resources. The Director is empowered to investigate such matters, and to prepare and present a report of his/her findings to the Board in a closed session.

Under the proposed amendment, the Board is authorized to take remedial actions against a Commissioner found to have violated the policy. Commissioners are also prohibited from retaliating against persons who make good faith complaints of discrimination, harassment and/or bullying.” Commissioner reiterated that this was read by Commissioner Collins.

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Commissioner Bowling went on reading that the next was a statement was by Eric Paltell, Outside Counsel, hired by the Board of County Commissioners. This statement:

“Like County employees, Commissioners are required to refrain from intimidating and disruptive workplace behaviors. Charles County is committed to maintaining an environment where all employees and all others who work here are able to work free from discrimination and harassment in any form. Intimidating, coercive and disruptive behaviors contribute to work errors, can demoralize and intimidate staff, may cause good employees to seek new positions in a more professional setting, and are not reflective of the County’s values. Discrimination and/or harassment by any Commissioner, in any form, will not be tolerated.

Commissioners are also required to refrain from bullying behaviors directed towards County employees and all others who work here. Bullying is a pattern of repeated behavior that a reasonable person would find hostile, offensive, and unrelated to the County’s legitimate business interests. Bullying behavior may take many forms including physical, verbal, or written acts or behaviors. Workplace bullying often involves an abuse or misuse of power. A single physical, verbal, or written act or behavior generally will not constitute bullying unless especially severe and egregious.

Commissioner should also treat each other with respect and professional decorum. While disagreement with other Commissioners may be a normal part of the political process, there is no justification for any Commissioner to harass, defame, or bully another Commissioner.

Any County employee who believes he or she has been subjected to behavior by a Commissioner that violates this policy may file a complaint with the County’s Director of Human Resources. The Director will, in his/her discretion, either engage an outside professional to investigate the complaint or arrange for County Human Resources personnel to investigate the complaint.

The investigator or investigators will interview witnesses and review documents and other information as they deem necessary. When the investigation is complete, the findings of the investigation shall be presented to the Commissioners in a closed session. (Commissioner Bowling added, “which they were.”)

The Commissioners shall determine whether any action should be taken against the Commissioner or Commissioners against whom the complaint was made. No action may be taken without the unanimous support of all Commissioners (Commissioner Bowling repeated this line) who are not the subject of the complaint. Remedial actions available to the Commissioners include, but are not limited to, public censure and/or suspension of the Commissioner’s pay for one or more 30-day periods.

Commissioners may not engage in any retaliatory action against any person who brings a good faith complaint against a Commissioner. (Commissioner Bowling repeated this line.) Any act of retaliation shall be deemed a violation of this policy.

A motion was made by Commissioner Rucci, seconded by Commissioner Stewart and passed, with Commissioners Rucci, Stewart, Bowling and Collins present, voting in favor to approve the amendment to the Commissioners’ Rules of Procedures as read. Commissioner Coates was opposed. A roll call of the vote was taken. Commissioner Bowling-yes; Commissioner Coates-no; Commissioner Stewart-yes; Commissioner Rucci-yes; Commissioner Collins-yes. The motion passed four (4) to one (1).”

Commissioner Bowling went on to explain that he brings this up since there will be a closed session item that will be coming up related to County personnel and is counter what he just read. He proceeded with the following statement:

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“Commissioner Collins, I understand that you have called a closed session later today on a personnel matter. It is my understanding that your proposed action is illegal and will subject the county to substantial legal liability and a multimillion-dollar lawsuit. The previous Board took actions in closed session in an attempt to protect the county from this liability and your closed session agenda item is an attempt to undo this protective action. I am requesting a closed session to obtain legal advice from the County Attorney immediately.”

Commissioner Bowling also pointed out that the Human Resources Director was in attendance to provide advice as well.

Commissioner Bowling asked that his colleagues take into consideration based on what he had just read to take into consideration the work environment and potential liability to the County for the proposed action this afternoon.

Commissioner Collins responded to Commissioner Bowling that his request was out of order since you made that initial request for the Commissioners to consider a special closed session and that did not pass.

Commissioner Stewart respectfully requested, based on the Commissioner Collins statement on the minutes read from June 9, 2020 to reconsider the request to go into closed session since she definitely needs legal advisement.

A motion was made by Commissioner Stewart, seconded by Commissioner Bowling (*with comment that the reason is since the agenda was changed yesterday at the last minute to include this and that he did not have the opportunity to make phone calls and seems like you, Commissioner Collins, wants to hide something which is not very professional and reflects poorly on the Board since this is the first meeting of this new Board. Commissioner Stewart added that she, too, was unaware of the change and was brought to her attention late last night and that she did not have the opportunity to review all the documents and prepare for the discussion. She explained that they were all equal partners as a Commissioner that she has the right to seek legal advisement/opinion to this issue and denying the right for legal opinion and should not limit this right and questions what he, Commissioner Collins, is trying to stop*) and failed, with all Commissioners Stewart and Bowling voting in favor to go into closed session so that the Board can have a discussion with legal representation/opinion on the issue added to the agenda. Commissioners Patterson, Coates, and Collins were opposed. A roll call of the vote was taken: Commissioner Stewart-yes; Commissioner Coates-no; Commissioner Bowling-yes; Commissioner Patterson-no; Commissioner Collins- no. The motion failed two (2) to three (3).

Commissioner Bowling continued with his comments. He explained that there is a sitting County Commissioner that had been censured and is voting today. It says a lot that this Board of Commissioners is starting their first meeting hiding something and the public deserves to know that their Commissioner did something wrong.

Commissioner Stewart added that Commissioner Collins, as a returning President, has the responsibility to ensure that the newer Commissioner is provided legal counsel to understand what was decided in the past. She pointed out that the decisions from the previous Board should not have been shared with the newest Commissioner outside of legal counsel. She continued stating that Commissioner Patterson is not properly prepared to comment or vote on the previous Board decision

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without legal advisement and that your, *Commissioner Collins*, private conversation with him is not enough.

Commissioner Bowling added, that after lengthy investigation from outside counsel, at the expense of the County and all the documentation, that any other employee in any other business would have been fired based on the findings of this investigation. Because it was a Commissioner, they could not be fired. It is wrong and everything the County stands for is ethics and doing the right thing. He will fight for the County employees since we are sending the wrong message from the top. It is not about change in the administration, it is about something that is right and wrong and needs to be done the right way. We are just asking for a discussion and that outside counsel can come and give a legal opinion.

Commissioner Stewart indicated agreement with Commissioner Bowling and was disheartened that Commissioner Patterson was not interested in receiving the legal facts of this matter and that he was not willing to at least hear the facts but would be ok moving forward without all the facts.

Commissioner Bowling questioned Commissioner Collins, asking if the County Administrator and County Attorney would be allowed to be in closed session.

Commissioner Collins responded that it will be personnel matters subject to closed session.

Commissioner Bowling challenged that the Board would be going into closed session with no legal representation, no County Administrator, knowing we have legal documentation and recommendations, and opinions would be opening the County to a multimillion-dollar legal action/suit. Based on recommendations from Human Resources and outside counsel that if you are going to do what he suspects would be opening the County for multimillion dollar lawsuit. This is tax payer money and is a big issue. EEOC and work place harassment is a big issue in Government and that he will not stand for this. Commissioner Bowling indicated that he was not done with this and that he was very angry.

Commissioner Stewart wanted an answer about if the County Administrator and County Attorney would be allowed in closed session as all other closed sessions.

Commissioner Collins responded that not in all situations and that he was not going to respond. He stated that this was a personnel matter. Commissioner Stewart queried who will be present in closed session to which Commissioner Collins stated that he would not be responding.

Commissioner Bowling questioned if they would have legal representation in closed session to which Commissioner Collins reiterated that he was not responding.

Commissioner Collins asked Commissioner Bowling if he was finished with his statement, to which he stated no that he was not. He explained that he was sworn in to serve with integrity and to do the right thing for the County and represent the people of Charles County and will fight for the right thing to do. He furthered that this was wrong and has nothing to hide. He implored that the Commissioner who had done wrong should do the right thing. He will continue to fight for the right thing. It should be a conversation in closed session, but seems like he, *Commissioner Collins*, does not want to hear the truth since it is an inconvenient truth. Someone on this Board did something that was very wrong and is being protected. Again, he stated that if any other County employee did what this Commissioner did,

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they would have been fired and the employee it was done to would have sued. It is about right or wrong. Treating people with respect and doing the right thing.

Commissioner Collins interjected that we should move on and that all of Commissioner Bowling's questions were asked and answered and that he will not be responding.

Commissioner Stewart added as a piggyback on Commissioner Bowling's comments that Commissioner Collins in his role as Commissioner President has the right to set the agenda, however, as a Board of County Commissioners, each Commissioner is equal, and the people expect each Commissioner to do the right thing. She explained that they are requesting legal representation and that he, *Commissioner Collins*, was denying that and that is wrong. She furthered that that is not the leader the people elected. All the Commissioners should want to do the right thing.

Commissioner Stewart addressed Commissioner Patterson explaining that he not voting to go into closed session for legal advisement indicates that he does not want to hear the truth. He does not know what the Board had to endure the last four (4) years and he has the right to know. She stated, "*I will not, not go to jail for any of my colleagues and when I am deposed in any lawsuit I will tell the truth and will not protect anyone up here. I have to go to bed and sleep soundly, and I will because I will always tell the truth.*" It is not about your position, all we are asking is to have a conversation and you, *Commissioner Collins*, are denying your colleagues to have this conversation with legal representation. This is not right and will not be forgotten.

Commissioner Bowling begged Commissioner Patterson, it seems that they have already made their minds up. Commissioner Stewart added that Commissioner Patterson does not know the facts and what the Board had to endure the last four (4) years. She also said, "*that you can quote me, that it was not me and that I always do what I am supposed to do.*"

Commissioner Collins asked since this has been voted on twice already, to move on and allow the process to proceed since you do not know what is going to happen.

Commissioner Bowling stated that if we do not go into a separate closed session and that there are employees relieved of their duties, it is not because of their incompetence or their integrity. They are great County employees. It is because people on this Board did not have the courage to do the right thing.

Commissioner Collins responded that these comments are unprecedented and personnel issue and some of your comments open the County to litigation. Commissioner Collins asked for Commissioner Bowling to please complete his comments since he has allowed him respectfully to speak for over thirty (30) minutes.

Commissioner Stewart again asked for the opportunity to speak with Mr. Wes Adams, County Attorney, about this issue which "*you allowed us to engage in*" even though we are equally elected members of this Board.

Commissioner Stewart then respectfully asked for a five (5) minute recess.

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Commissioner Collins asked for what purpose, to which Commissioner Stewart said she did not need to answer.

Commissioner Collins indicated that taking a break would need to be voted on.

Commissioner Stewart retorted that we never voted on taking a break, to which commissioner Collins stated we never had this type of discussion before. He told Commissioner Stewart that she could take her break but that he was going to continue with the meeting.

Commissioner Stewart again requested a five (5) minute break. Commissioner Collins asked that after the five (5) minute break that we continue with the agenda.

**Break 9:34 a.m. – 9:40 a.m.*

Approval of the Minutes of November 29, 2022

A motion was made by Commissioner Coates, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve the minutes of November 29, 2022.

Announcement

Next Scheduled Commissioner Session(s): January 10 and 11, 2023

Approval Items

Budget Transfer(s) and/or Budget Amendment (s)

Mr. Jacob Dyer, Chief of Budget, Department of Fiscal and Administrative Services; Mr. Sam Drury, Deputy Director, and Ms. Kelli Beavers, Director, Department of Recreation, Parks, and Tourism; Mr. Ray Shumaker, Chief of Codes, Permits, and Inspections, Department of Planning and Growth Management

- *FY2023 Budget Amendment Increase #596 Recreation, Parks, and Tourism*

A motion was made by Commissioner Coates, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve FY2023 Budget Amendment Increase #596 for one hundred and thirty thousand seven hundred and ninety dollars (\$130,790.00).

- *FY2023 Budget Amendment Increase #10195 Codes, Permits, Inspections Services Third Party Contract*

A motion was made by Commissioner Coates, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve FY2023 Budget Amendment Increase #10195 for nine hundred and fifty-nine thousand six hundred and twenty dollars (\$959,620.00).

Change Orders

Mr. Olin Straus, Senior Project Manager-Utilities Division, Mr. Samuel Walter, Program Manager-Utilities Division, Mr. Ed Gorham, Chief of Technical Support-Utilities Division, Mr. Charles Strawberry, Jr., Program Manager, Water & Sewer-Utilities, Mr. Ed Gorham, Chief of Technical Support-Utilities Mr. Bernard Cochran, Deputy Director, Utilities Division, and Mr. Martin Harris, Director, Department of Public Works

- *Change Order #15 Mattawoman Waste Water Treatment Plant (WWTP) Flow Equalization Basin, ITB 20-35*

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A motion was made by Commissioner Coates, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve Change Order #15 *Mattawoman Waste Water Treatment Plant (WWTP) Flow Equalization Basin, ITB 20-35* for four hundred and eight nine thousand five hundred and eighty-five dollars and twenty-two cents. (\$489,585.22).

- *Change Order #7 Charles County Landfill Cell 4A Construction Project*

A motion was made by Commissioner Coates, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve Change Order #7 Charles County Landfill Cell 4A Construction.

- *Use of Board of County Commissioners' Community Support Fund for Martin Luther King, Jr. Prayer Breakfast Sponsorship*

Ms. Crystal Hunt, Chief of Staff, and Ms. Julie Bryson, Assistant Chief of Staff, Office of the Commissioners

A motion was made by Commissioner Coates, seconded by Commissioner Patterson and passed, with all Commissioners present, voting in favor to approve a one-thousand-dollar (\$1000.00) sponsorship for the Martin Luther King, Jr. Breakfast from the Community Support Funds, using two hundred dollars (\$200.00) per Commissioner allocation.

Closed Session

At 9:52 a.m., Commissioner Coates made a motion, seconded by Commissioner Patterson and passed, with Commissioners Coates, Patterson, and Collins present, voting in favor to move into Close Session where all or a portion of this session may be closed pursuant to Section 3-305(b)(1) of the General Provisions Article of the Annotated Code of Maryland to discuss personnel issues. The reason for going into closed session is to keep personnel information confidential. **Commissioners Bowling and Stewart Rucci were opposed.* A roll call of the vote was taken: Commissioner Coates-yes; Commissioner Stewart-no; Commissioner Bowling-no; Commissioner Patterson-yes; Commissioner Collins- yes.

Discussion Before Moving into Closed

Commissioner Stewart called for a point of order to question what emergency occurred that the agenda was changed yesterday evening.

Commissioner Collins responded that all agendas are subject to change and will not explain reasons and would not repeat or clarify.

Commissioner Stewart reviewed the Maryland Open Meeting Act, requiring at least twenty-four (24) hours' notice for publishing unless an emergency. She furthered that Commissioner Collins did not give her or his colleagues any notice of the change. That is why she asked what emergency occurred and believes that Commissioner Collins is in violation of the Maryland Open Meetings Act.

Commissioner Bowling reread the statement from the Board of County Commissioners Policy and Procedures:

"Commissioners may not engage in any retaliatory action against any person who brings a good faith complaint against a Commissioner. Any act of retaliation shall be deemed a violation of this policy."

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Commissioner Bowling then asked, Mr. Wes Adams, County Attorney, Office of the County Attorney for Charles County that if an employee that has filed a complaint against a Commissioner for discrimination is terminated in closed session, and that said Commissioner participates in the vote, would this be in violation of this policy.

Mr. Adams responded that this would be a question of fact. It would be viewed as retaliatory if a Commissioner who is precluded to vote, due to a decision of the majority of the Board, and then votes on the employment of that employee, would be in contradiction of the majority decision of that vote. After a finding of discriminatory action took place, immediate remedial action was taken by the majority of the Board to prohibit that Commissioner to engage in any personnel issues related to or would impact that employee.

He explained to Commissioner Patterson that this independent investigation was completed by outside counsel, who was on the House Ethics Commission under President Obama, interviewed multiple witnesses including the Board of County Commissioners and reviewed hundreds of documents and emails, the investigation concluded that the Commissioner had discriminatory behavior against the employee of the County and the response to that finding was an unanimous vote by the other four (4) Commissioners to prohibit that Commissioner to participate in any personnel issue related to that employee. The purpose behind that action was to protect the County from liability. If this Board were to remove that remedial action it could be seen and argued that the Board members that affirmatively vote for that action, understanding that there was a finding of discrimination, could be argued that it would subject the Commissioners to personal liability and subject the County to substantial liability.

Mr. Adams stated that as County Attorney he is to advise and protect the County's interest and to the extent given to the Commissioners.

Mr. Adams advised that to protect the County and the Board of County Commissioners that only four (4) members of the current Board can vote on this personnel contract. That is the only legal authority the Board has at this time. He also stated that the action from the previous Board did not terminate with the election and is still in place and carries over to the new Board. There is legally only one (1) contract that the Board of Commissioners have authority related to employment.

Commissioner Bowling summarized the same findings and stated that if the Commissioner that was sanctioned voted related to this employee's contract would be a violation of the law.

Commissioner Collins pointed out that it was an argument, nothing has occurred, and that Bowling was making legal arguments, to which Commissioner Bowling questioned why we would put the County in that position of trying to fire the victim.

Commissioner Stewart explained that once Mr. Adams makes the Board aware of the legal implications, then there is a level of personal responsibility as a Commissioner. The Board is subject to the laws. No one who works for the County should be discriminated based on their race, sexual orientation, religious, or political affiliation or other protected categories.

Commissioner Bowling pointed out that the County is being hypocritical to support DEI (Diversity Equity, and Inclusion) if the action is taken.

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Commissioner Bowling and Stewart requested legal representation in closed session and Human Resources in closed session.

Commissioner Collins stated that it has to be the majority of the Board to determine if there will be legal representation of the County Attorney in closed session.

Commissioners Bowling and Stewart insisted that the County Attorney be in closed session to which Commissioner Collins said that this will not happen. We are the policy makers, and we have security. Commissioner Bowling retorted who would not want the County Attorney and Human Resources in closed session related to a personnel issue unless you are hiding something.

Commissioner Stewart queried Commissioner Collins that even though the employees were not named, but if the employee the specific Commissioner was sanctioned about, then that Commissioner would need to be excused from the conversation. That was a legal fact, and your refusal to allow the County Attorney to stay in closed session yet you allowing that sanctioned Commissioner to stay in closed session, opens you , *Commissioner Collins*, to personal liability.

Commissioner Collins stated that he was willing to accept that.

Commissioner Bowling asked for clarification that Commissioner Collins was not going to allow the Commissioners Bowling and Stewart to have the County Attorney present in closed session as requested but would allow the Commissioner who was sanctioned for discrimination to be in closed session for the personnel discussion, to which Commissioner Collins responded, “yes.”

Commissioner Bowling retorted that you, Commissioner Collins opened the County for a lawsuit.

Summary Closed Session Items

At 10:16 a.m. the Commissioners went into closed session.

3-305(b)(1) Personnel

Present: Commissioners Collins, Bowling, Coates, Stewart, and Patterson, Wes Adams, Carol DeSoto, Alexis Blackwell, and Eric Paltell

Commissioner Collins began with requesting the removal of an employee.

Commissioners Bowling and Stewart called for a point of order. Commissioner Stewart stated that this Board has no authority to remove this employee.

Ms. Alexis Blackwell, Director, Department of Human Resources, stated that only the County Administrator can make personnel decisions related to employees of the County based on the terms of his contract.

Commissioner Collins than indicated that they would move on to the next motion related to another employee.

Commissioner Stewart interjected that the other Commissioner who was sanctioned needed to leave the meeting and asserted that Commissioner Collins knows that this is true since this was a Board action that was approved four (4) to one (1) and he voted in favor of as well. She also indicated that Commissioner Patterson, being the

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newly elected Commissioner needs to be made aware of all the legal information related to the Board decision about this Commissioner not being allowed in any discussion or decision related to this employee's employment.

Mr. Adams, County Attorney, Office of the County Attorney Offered his legal opinion and advice.

Ms. Blackwell read the description of the investigation and findings from June 9, 2020.

Mr. Eric Paltell, Outside Counsel, provided his opinion and advice.

Several motions were made that were deemed illegal or failed.

A motion was made by Commissioner Bowling, seconded by Commissioner Stewart and passed, with all Commissioners present, voting in favor to have the employee on leave until January 10, 2023 until Commissioners Bowling and Stewart file a declaratory judgement against the other three (3) Charles County Commissioners to determine a Commissioners authority on voting on certain employment actions based on the Charles County Board of Commissioners decision on June 9, 2020; the individual Commissioner ...would have the ability to have legal representation along with the Board of Commissioners and Commissioners Bowling and Stewart.

At 1:03 p.m., a motion was made by Commissioner Bowling, seconded by Commissioner Stewart and passed, with all Commissioners present, voting in favor to end Closed Session and adjourn.

Carol A. DeSoto, Clerk to the Commissioners

Reuben B. Collins, II, Esq., President