

December 4, 2023

**AT A SPECIAL CALLED MEETING** of the Nelson County Board of Supervisors at 10:00 a.m. in the General District Courtroom located on the third floor of the Nelson County Courthouse, in Lovingston, Virginia.

Present: Jesse N. Rutherford, East District Supervisor –Chair  
Robert G. “Skip” Barton, South District Supervisor – Vice Chair  
Thomas D. Harvey, North District Supervisor  
Ernie Q. Reed, Central District Supervisor  
J. David Parr, West District Supervisor  
Candice W. McGarry, County Administrator  
Amanda B. Spivey, Administrative Assistant/Deputy Clerk  
Linda K. Staton, Director of Finance and Human Resources

## **I. CALL TO ORDER**

Mr. Rutherford called the meeting to order at 10:01 a.m. with four (4) Supervisors present to establish a quorum and Mr. Harvey arrived shortly after.

## **II. NELSON HERITAGE CENTER RENOVATION FINANCING**

Ms. McGarry noted that the Nelson Heritage Center was in the process of renovating their building to accommodate the local health department. Ms. McGarry then reported the following information:

The Millennium Group (Nelson Heritage Center) has submitted a letter requesting that the County enter into a debt subordination agreement between them, the County, and their current lender so that they may proceed with financing of the NHC renovations to accommodate the local Health Department. As you may recall, the County’s deed transferring the property to the Millennium Group contains a reverter clause which states “if the use of the Property as a community center and for recreational and athletic activities should cease, the Property shall revert to the County”. This is the County’s “Interest” as referenced in the agreement. Mr. Payne reviewed the original Agreement and provided his edits; which have been accepted by the lender.

This clause creates a collateral interest which is problematic for NHC’s lender; the purpose of the subordination agreement is to permit the lender to foreclose, if the Millennium Group defaults, and sell the property free of the County’s reversionary interest regardless of whether or not reversion has occurred. In the case of default, the County has the option but not the obligation to pay the debt. The debt being sought is \$1,081,700 and is secured by a Construction Loan Credit Line Deed of Trust, Assignment of Rents, Fixture Filing, and Security Agreement (“Deed of Trust”) which is included in the subordination being requested. The subordination agreement states that subject to the foregoing agreement “the County’s “Interest” shall be unaffected by the Deed of Trust and shall continue as a covenant and restriction on the property.

She noted that Ms. Johnette Burdette was in attendance if the Board had any questions. She also noted that Mr. Payne was present if the Board had any legal questions regarding the request or the document.

Ms. Burdette thanked the Board for their consideration. She also thanked Ms. McGarry for her responsiveness and assistance in the matter. She explained that they had started project a little over a year ago, the before costs and lead times increased. Ms. Burdette commented that it had been an interesting project and they were right at the end. She noted that this item was one of the last pieces needed to have resolution to.

Mr. Rutherford asked about the deed, noting that the County would be omitting its first position, so that the lender had the ability to procure the building in the event the Heritage Center defaulted on the loan. Mr. Payne commented that it was so the building could be sold free and clear in the event of default. Ms. McGarry noted that Resolution R2023-75 had been provided to authorize the County Administrator to execute the Loan, and Deed of Trust Subordination Agreement for the Nelson Heritage Center Renovation Financing.

### **A. Consideration of Subordination Agreement**

Mr. Parr moved to approve **Resolution R2023-75** and Mr. Reed seconded the motion. There being no further discussion, Supervisors approved the motion unanimously (4-0) by roll call vote and the following resolution was adopted:

**RESOLUTION R2023-75  
NELSON COUNTY BOARD OF SUPERVISORS  
AUTHORIZATION TO EXECUTE LOAN AND DEED OF TRUST  
SUBORDINATION AGREEMENT  
NELSON HERITAGE CENTER RENOVATION FINANCING**

**WHEREAS**, the Nelson Heritage Center (Millennium Group Community Facility) is seeking to close on financing of \$1,081,700 for facility renovation related to accommodating the local Health Department, and

**WHEREAS**, the 2013 Deed transferring the property from the County to the Millennium Group Community Facility contains a reversion clause that maintains the County’s continued collateral interest in the property and prohibits the lender from entering into the loan with the Millennium Group Community Facility, and

**WHEREAS**, the lender for said renovation financing and the County seeks to remedy this issue through execution of the attached Loan and Deed of Trust Subordination Agreement;

**NOW THEREFORE BE IT RESOLVED**, by the Nelson County Board of Supervisors that the County Administrator is hereby authorized to execute the requested and attached Subordination Agreement to enable the Nelson Heritage Center (Millennium Group Community Facility) renovation financing.

**III. SHERIFF’S DEPARTMENT LEADERSHIP TRANSITION**

A. Consideration of Request to Offer Employee Retention Incentives through December 31, 2023 (Sheriff David Hill)

Ms. McGarry introduced the subject. She noted that the summary and spreadsheet shown on the screen had been updated to include the FICA tax costs. Ms. McGarry reported the following:

Sheriff Hill has submitted a letter requesting the ability to offer employee retention incentives for 20 full time employees. The incentive requested is to provide a pay-out of accrued annual leave time in January 2024, for those employees that “continue providing service without taking their leave before January 1, 2024” so that the department can “maintain a professional service for the remainder of calendar year 2023”.

Per local policy, the County is not obligated to pay out unused annual leave upon a Sheriff’s Department employee’s termination. The Sheriff’s Department has their own leave policy and maintains their own leave records. Included in the packet is a spreadsheet of the current unused annual leave hours of 3,270.5 hours estimated through December and an estimated cost of \$94,728 (**\$101,975 including FICA**) which takes into account the 2% salary increase effective December 1<sup>st</sup>.

There has been consistent vacancy savings fiscal year to date for 3 local positions within the department estimated at \$29,778 each for a total of \$89,334. \$2,703 of this is being used to offset an overage to date in paid overtime costs; leaving an estimated \$86,631 that could be applied to this request. \$56,788 in overall budgetary vacancy savings was the basis for coverage of the pro-rated 2% salary increase the Board approved in November; which took into account these vacancies; however, the other departmental vacancies within the overall budget can absorb this cost.

Things to consider: It benefits the County to maintain law enforcement coverage during the leadership transition. The Virginia State Police may be able to provide some level of coverage. The Sheriff’s Department current 2017 leave policy includes an annual leave accrual cap of 80 hours that can be carried over from calendar year to calendar year. (see included policy) The County has an annual leave accrual policy that has a cap of 2-years’ leave that is paid out upon termination as follows: <5 years: 192 hours (8hrs/mo.), 5-9 years: 240 hours (10 hrs./mo.), and 10+ years: 384 hours (16 hrs./mo.). (see included policy) Any authorized payout should be made to the employees in January 2024 with time worked through December 31, 2023 verified and certified by the Sheriff on time sheets provided to the Finance Department.

Department Vacancy Savings Available: \$86,631	<b>*Corrected to Include FICA TAX</b>
Full Request: \$94,728 (Requires \$8,097 in other funds)	<b>\$101,975 (\$15,344)</b>
2-Year Cap: \$84,495 (\$2,136 balance)	<b>\$90,959 (\$4,328)</b>
80 Hour Cap: \$41,958 (\$44,673 balance)	<b>\$41,616 \$45,015 balance</b>
(see included spreadsheet)	

She noted that the request may be the maximum ask, as some of the employees listed had already vacated their positions.

Mr. Parr asked to confirm that if Sheriff's department had the same policy as the County, it would cost \$90,958.66. Ms. McGarry confirmed that was correct. She noted that based on the request, the cost would be \$101,975. She explained that the \$41,616 cost was based of the Sheriff's Department leave policy, which allows for 80 hours to be carried over from calendar year to calendar year. She noted that if the employee had over 80 hours, it would be capped at 80 hours in the payment column and if they had less than that, the amount was calculated based on the hours they had.

Sheriff Hill noted that the employees highlighted in green did not take leave, noting that was due to the COVID pandemic in 2020. He reported that he had carried over more than 80 hours and they had kept a log to try and get the employees back within the parameters.

Position				2% December		Costs 12/31/2023	2 -Year Cap	80 hour Cap
	11/30/2023	12/31/2023	Total Hours	Hourly Rate				
1	320	10	330	43.52	\$	14,362.72	\$ 10,445.62	\$ 3,481.87
2	104	8	112	26.22	\$	2,937.11	\$ 2,937.11	\$ 2,097.94
3	40	8	48	24.24	\$	1,163.29	\$ 1,163.29	\$ 1,163.29
4	128	8	136	31.35	\$	4,264.25	\$ 4,264.25	\$ 2,508.38
5	203	10	213	37.60	\$	8,008.20	\$ 8,008.20	\$ 3,007.78
6	239	10	249	24.24	\$	6,034.56	\$ 5,816.45	\$ 1,938.82
7	90	8	98	24.24	\$	2,375.05	\$ 2,375.05	\$ 1,938.82
8	365	12	377	25.45	\$	9,594.27	\$ 7,329.31	\$ 2,035.92
9	350	12	362	32.48	\$	11,756.60	\$ 9,353.32	\$ 2,598.14
10	8	8	16	24.24	\$	387.76	\$ 387.76	\$ 387.76
11	102	8	110	29.87	\$	3,285.22	\$ 3,285.22	\$ 2,389.25
12	140.5	8	148.5	32.48	\$	4,822.80	\$ 4,822.80	\$ 2,598.14
13	180.5	8	188.5	24.24	\$	4,568.34	\$ 4,568.34	\$ 1,938.82
14	289	10	299	24.24	\$	7,246.32	\$ 5,816.45	\$ 1,938.82
15	138.5	8	146.5	24.24	\$	3,550.46	\$ 3,550.46	\$ 1,938.82
17	84	8	92	24.24	\$	2,229.64	\$ 2,229.64	\$ 1,938.82
18	104	8	112	24.24	\$	2,714.34	\$ 2,714.34	\$ 1,938.82
19	32	8	40	24.31	\$	972.26	\$ 972.26	\$ 972.26
20	185	8	193	23.08	\$	4,454.94	\$ 4,454.94	\$ 1,846.61
	<b>3102.5</b>	<b>168</b>	<b>3270.5</b>			<b>\$ 94,728.15</b>	<b>\$ 84,494.81</b>	<b>\$ 38,659.06</b>
						<b>Including FICA TAX \$ 101,974.86</b>	<b>\$ 90,958.66</b>	<b>\$ 41,616.48</b>

Mr. Harvey arrived during Sheriff Hill's comments.

Sheriff Hill noted that the overall cost as of November 30<sup>th</sup>, was less than what was being projected as some employees had been able to take some leave prior to the meeting date. He reiterated that the individuals highlighted in green were employees who were unable to take leave during COVID years. Sheriff Hill reported that in order to maintain professional law enforcement services through the end of December, he was asking that the Board considering the funding request to keep those in position through the end of the month. He noted that over half of the staff had jobs lined up and resignation notices had been turned in. He commented that it sounded like the vacancy savings would be spread out among other County offices. He asked the Board to consider when there had been vacancies within the Sheriff's department, the individuals working continued to offer a service to the County and its citizens. He noted the figures presented and commented that there was money saved within the Sheriff's budget. Sheriff Hill asked that the Board consider the sacrifices made by the individuals and their families over the past few years. He asked the Board to also consider the services for the citizens through the end of the month.

Mr. Barton asked Sheriff Hill about the debate between the Sheriff's candidates at the forum. Mr. Barton noted that it had been alluded that there was a conflict between the Sheriff's Department and the Commonwealth Attorney's office. He commented that the differences had not been explained. He noted that half of deputies were leaving and asked Sheriff Hill if those differences had anything to do with people leaving. Mr. Barton asked what the differences were, and why they could not be reconciled.

Sheriff Hill noted that would also be a question for Mr. Rutherford as he could not speak for him. Sheriff Hill noted that he had bent over backwards, and had even asked Chair Rutherford what could be done to make things better with his brother. He noted that both offices were independent but they should try and work together, and he commented that he felt they had done that. Mr. Parr and Mr. Rutherford noted that Mr. Barton's questions were not part of the agenda's discussion. Mr. Barton noted that there were deputies leaving and he wanted to know why they were leaving, before he voted on the subject. Mr. Rutherford suggested that Mr. Barton go meet with deputies separately. Sheriff Hill noted there was no Public

Comments period at the day's meeting, so he suggested that the deputies could speak during Public Comments at the next Board meeting on December 12th if they chose to do so.

Mr. Barton noted to Sheriff Hill that he and the new incoming sheriff needed to cooperate with each other. Sheriff Hill agreed. Sheriff Hill noted that with each election cycle, deputies may worry about a new incoming sheriff. He reported that some people had already vacated their positions. He noted that others had jobs lined up and they could vacate their positions at any time. He indicated that those individuals were willing to stay and maintain the level of service through the end of the month, if they could be paid what they had accrued over the years. He noted that the incoming sheriff would be responsible for maintaining service starting on January 1<sup>st</sup>. Mr. Rutherford noted that the highlighted individuals had exceeded the cap due to COVID.

Ms. McGarry commented that the two requests being considered that day were coming from two separate pots of money, so they were not competing requests for funds. Mr. Parr asked about list of employees. Sheriff Hill noted that some of the 20 were not vacating, the list included all employees who had accrued time on the books. Mr. Parr asked how many intent letters the Sheriff had from the list of 20. Sheriff Hill noted that about 50 percent from the list were leaving as of the current date. He noted that number could increase. Mr. Parr noted there was a constant ebb and flow with other offices. He commented that there were people vacating their positions to come work in Nelson.

Mr. Parr stated that he did not know of any other Board member who had been more supportive of the Sheriff's Department over the last four years other than him. He noted that he did not appreciate the position the Board was being put in. He commented that they should not wait to make plans when things happened, they needed to have plans in place for things in advance. Mr. Parr commented that he thought they were making plans after the fact and it should have been addressed sooner. He stated that he did not support the full plan, but he would consider it if Finance could provide what numbers to show what the two-year cap would look like for those employees who were leaving. He commented that he would love to see some numbers if they used the County's plan for those individuals who were leaving. He noted that he did not support full plan as they would not do that for a County employee.

Mr. Rutherford asked about the two-year cap number. Ms. McGarry noted that the two-year cap was the County's policy. Mr. Rutherford asked if there was any payout when a deputy resigned. Ms. McGarry indicated that deputies did not receive pay for their leave when they resigned. Sheriff Hill also reiterated that they did not get paid out for their leave, noting that the State Compensation Board forbid payouts. He noted that while they could not provide a payout, they did work with departing deputies when they could, to allow them to request time off and they would then work their last day.

Mr. Reed asked Ms. McGarry if it was possible to defer until the regular December Board meeting. She noted she was unsure how Sheriff Hill felt about that, but they could do whatever the Board desired. She also commented that they could gather any additional information that the Board may want. Mr. Reed suggested there could be an opportunity for public comments if they waited until the December 12th meeting.

Sheriff Hill indicated that he could work provide more up to date figures that would exclude those that had already vacated. He noted that the downfall of waiting, was that there were people who could vacate immediately. Mr. Reed commented that he was in support of the two-year cap, noting it offered parity with County policy and it provided a great degree of support for those who had served. Mr. Reed noted that the reason people left employment was always a deeply personal decision.

Mr. Barton noted his comments had nothing to do with being against the subject, rather it had to do with something else. He commented that he felt supportive of the deputies in Nelson County. Mr. Barton indicated that he would support voting on the two-year cap, would be fair to do. Mr. Rutherford noted that the number was less from there, noting that some had already vacated. Ms. McGarry noted that the payout for January was at the end of the January on the regular pay cycle.

Mr. Reed made a motion to provide a two-year cap payout on accrued vacation hours, in accordance with the County's policy, to Sheriff's office employees vacating their positions as of December 31, 2023 who work through the end of December with the time to be paid out with the January payroll, and those employees remaining on staff after December 31, 2023 would not be paid out for their time.

Ms. Staton asked whether those that would continue to accrue and stay beyond December 31, 2023 would then be capped at 80 hours for the calendar year as in the Sheriff's policy. Sheriff Hill explained that the 80 cap was there because the prior policy allowed people to have thousands of hours built up. He noted that when those employees vacated, they thought they would be receiving a payout. He commented that the Sheriff and the County could work together for the Sheriff to adopt the County's personnel policy, which he noted was much better than the Sheriff Department's policy. He recommended that if the County personnel policy were adopted for the Sheriff's Department, they should withdraw the grievance procedure portion because including it took away the Sheriff's ability to hire and fire at will.

Mr. Rutherford returned the motion made by Mr. Reed. Mr. Parr seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

The Board took a brief recess.

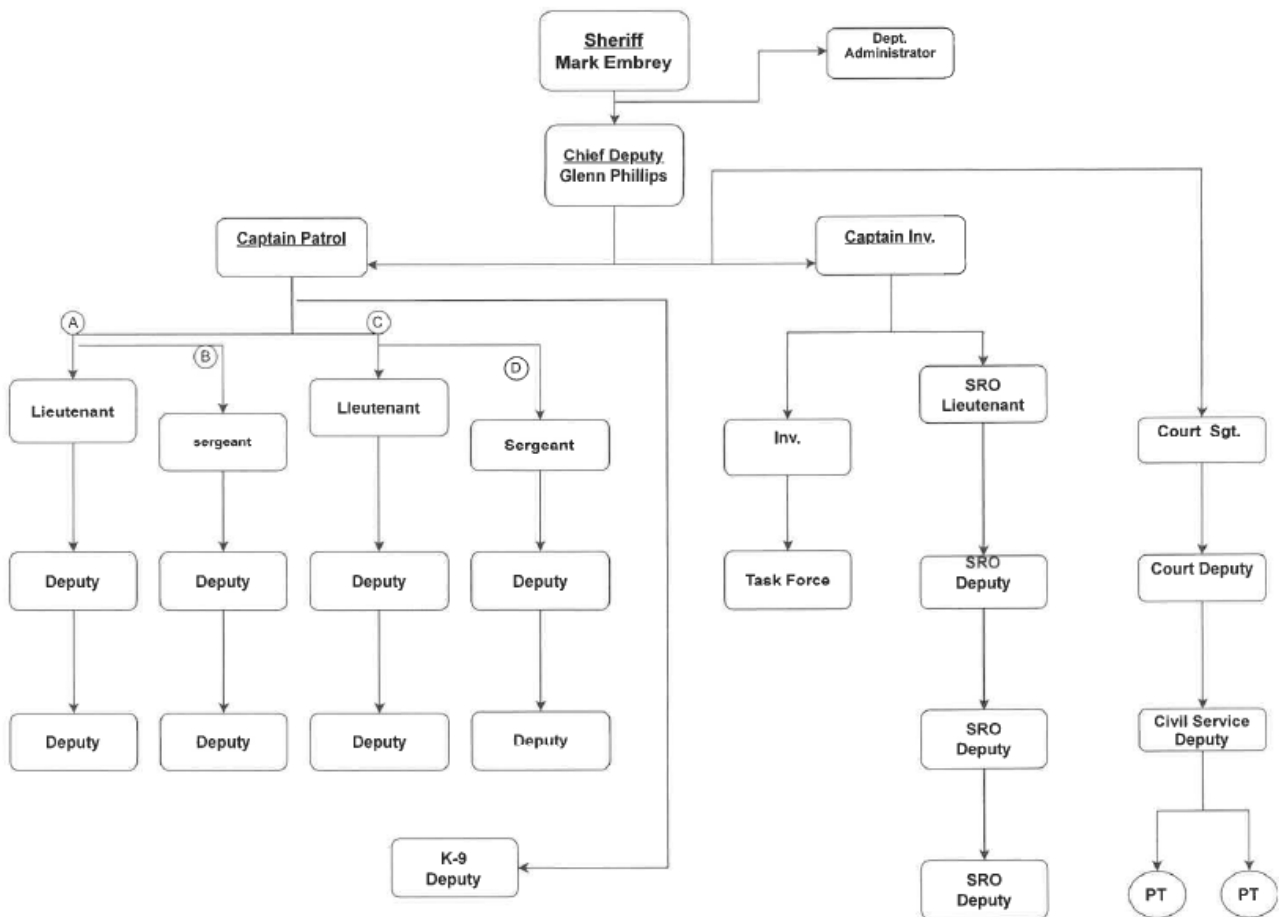
B. Consideration of Request to Utilize Existing Local Salary Supplements as of January 1, 2024 (Sheriff-elect Mark Embrey)

Ms. McGarry introduced the following:

Sheriff-Elect Embrey has submitted a letter requesting authorization to utilize existing local salary supplements within the current Sheriff’s Department budget as of January 1, 2024; in order to reallocate those funds to secure staffing for existing positions. Staff estimates the local funds available for this purpose to be **\$110,362**. Sheriff –Elect Embrey was advised by staff to ensure that employee salaries are at least equivalent to the minimum of the positions’ assigned pay band in the County’s pay plan and per State Code, that they are equal to or greater than the State Compensation Board salary for the position. He is also requesting an additional \$29,000 to accomplish his desired restructuring of the Department.

Ms. McGarry noted that the \$29,000 was salary only, so there would be associated benefit costs with that, of 20.46 percent. She reported that the total annual cost of Sheriff-Elect Embrey’s request would be \$34,933. She indicated that the pro-rated amount for the remainder of the fiscal year would cost \$17,467. Ms. McGarry noted that recurring Contingency funds within the currently appropriated General Fund Budget would likely be the source of funds to cover this request as it would be an ongoing expense.

Sheriff-Elect Embrey explained that the organizational chart created for functionality. He noted that a lot of individuals were leaving the agency and there may be concerns in the community, but he commented that he had certified law enforcement officers coming in to fill those positions. He wished those deputies leaving the best of luck in their endeavors. He noted that the organizational chart had been designed for flow, functionality and effectiveness so that they could better serve the citizens of Nelson County. Mr. Embrey explained that there were currently 27 allotted deputies to the Sheriff’s Department, those that were Compensation Board funded and those that were County funded. He noted that he was not asking for any new positions outside of the 27. He explained that he was making a model to provide rank structure and have working flow.



Mr. Embrey noted that based on the current pay study, and the structure of the current department, there were three (3) Lieutenant positions already funded. He showed the two (2) Lieutenant positions under Captain Patrol and the School Resource (SRO) Lieutenant on his organizational chart, which made up the three (3) Lieutenant positions that were already funded. He explained that he was asking for two (2)

Sergeant positions. He noted that these were key positions, and first line supervisors. He reported that based on the pay study, the minimum salary of \$57,214 for the Sergeant position. Mr. Embrey indicated that he was asking for the bare minimum, not to exceed that amount, for two (2) positions at that rank. He reiterated that he was not asking for additional positions, he wanted to create rank and wanted to increase funding to meet the mark. He showed the Court Sergeant position on the chart and noted that he wanted to bring the pay up for the individual taking the position, to create uniformity across the board. He explained that he wanted the Sergeants on patrol, and the Court Sergeant to have equal rank and equal pay.

Mr. Embrey explained that there was one additional position under Patrol. He noted that they had one Captain position already and he noted that he wanted to create rank and have a Captain position. He reiterated that it would not be a new position, it would be a position at rank within the parameters of what Nelson County had for allotted positions. He explained that he wanted to bring up pay from a currently vacant Compensation Board position, to increase pay to the minimum on the pay study, to ascertain the Captain pay. He noted that the \$29,000, and Compensation Board reallocation would allow them to increase the salary to bare minimum for the positions. He reiterated that they were looking to move up the Court Sergeant's position to equivalent pay of the two (2) Sergeants positions in Patrol. He noted that the Lieutenant positions were already funded and already staffed. He discussed the Captain's position and the current vacancy, noting that he wanted to bring up funding to be able to ascertain the bare minimum salary from the pay study. He noted that they had one Captain position over Investigations, and they were not changing that. He noted that the ranking was about functionality and structural stability.

Mr. Rutherford asked if they needed one motion or two to address the request. Ms. McGarry noted it could be one motion with two parts. She noted that the consideration was to allow Mr. Embrey to use the existing salary supplements and reallocating those, and providing for the additional request of \$34,933 to accommodate the restructuring of the department.

Mr. Reed asked for clarity on the Captain of Investigations, and the Investigations and Task Force chain of command. Mr. Embrey explained that the Task Force would be the Drug Task Force, that would be affiliated with the JADE task force out of Charlottesville. He noted that the Investigator position would be a potential second Investigator, who would alleviate a lot of the workload from the Captain of Investigations.

Mr. Barton commented that he did not want the Board to micromanage, noting that Mr. Embrey won the job and the Board needed to support him. Mr. Barton commented that it did not matter to him who the Sheriff was, as long as he served the people of Nelson County, and he noted that he knew Mr. Embrey would do so.

Mr. Barton moved to approve the request from Sheriff-Elect Embrey to reallocate the existing local salary supplements within the Sheriff's budget and an additional \$34,933 to help accomplish Mr. Embrey's desired restructuring of the Department. Mr. Barton stressed the importance of Sheriff Hill and Mr. Embrey cooperating. Mr. Reed seconded the motion. There being no further discussion, Supervisors approved the motion unanimously (5-0) by roll call vote.

#### **IV. OTHER BUSINESS (AS PRESENTED)**

The Board had no other business to discuss.

#### **V. ADJOURNMENT**

At 11:03 a.m., Mr. Parr moved to adjourn the meeting and Mr. Reed seconded the motion. There being no further discussion, Supervisors voted to approve the motion by vote of acclamation and the meeting adjourned.