

## Josh Janney Government Writing W13

### Frederick supervisors point fingers over 'poisonous' atmosphere at meetings

By Josh Janney

The Winchester Star

**WINCHESTER** — Tensions erupted at Wednesday night's Frederick County Board of Supervisors meeting when Shawnee Supervisor David Stegmaier accused three board members of being antagonistic and in a "power struggle" for control of the body.

The mood became heated when Stegmaier criticized Back Creek Supervisor Shawn Graber, Gainesboro Supervisor J. Douglas McCarthy and Red Bud Supervisor Blaine Dunn for opposing the board's May 12 decision to award Texas-based EF Johnson a contract to replace the county's antiquated public safety radio system. He accused them of being controlling and having a high "level of antagonism and suspicion."

Then Stegmaier was accused of being responsible for the board's toxic environment.

"Mr. Stegmaier, it is unfortunate that you tend to be the one who consistently calls out individual members of this board and causes this type of discord and dysfunction," McCarthy said.

Stegmaier said the new radio system, which will initially cost \$20 million, will save lives and that Graber, McCarthy and Dunn make its replacement seem like a "secondary consideration."

He also accused Graber of encouraging a lawsuit against the county over the radio contract. On June 14, Florida-based L3Harris Technologies Inc. sought a temporary injunction in Frederick County Circuit Court against the Board of Supervisors and the county government seeking to cancel the contract with EF Johnson and instead award it to L3 Harris.

"Supervisor Graber was caught on video at the May 12 meeting mouthing the words 'sue them' to representatives of one of the unsuccessful applicants, who then proceeded to file a lawsuit that delayed the awarding of the contract and the building of the radio system," Stegmaier said.

Judge William Warner Eldridge IV on Aug. 11 denied L3Harris' motion for summary judgment.

Stegmaier said Dunn and McCarthy were "culpable as Mr. Graber's enablers" and accused them of being "complicit in the poisonous atmosphere of this board that, in my view, did not have to exist."

To which McCarthy fired back: “For you to continuously, unprovoked, comment to this body and continue to sow discord while at the same time pretending that you’re a peacemaker — it’s just appalling to me, sir.”

McCarthy argued the board was not given sufficient access to information to select a vendor to replace the radio system. He said most of the board must have felt the same way, as the supervisors ultimately decided not to hire Pennsylvania-based Mission Critical Partners to serve as the project manager overseeing the radio system's construction.

Mission Critical Partners helped develop the county's Request for Proposals (RFP) for a new radio system and facilitated the RFP evaluation and vendor negotiations. Earlier this year, McCarthy, Dunn and Graber had wanted the board to terminate the existing RFP and get a second opinion to evaluate it. They said they were concerned that Mission Critical Partners had offered inconsistent or inaccurate information throughout the process. In July, the board voted to hire Missouri-based Tusa Consulting to be a project management consultant for a price not to exceed \$506,385.

“What you’re referencing absolutely is not the way the government is supposed to work, where supervisors are intentionally kept out of discussions, supervisors are intentionally kept in the dark as to what’s going on to the point where this body unanimously voted to fire the consultant who’s running that program,” McCarthy said. “Obviously, there was something done wrong. We replaced that consultant and we’re moving forward with faith that the new consultant will run this thing right.”

Dunn said that while there were many things he liked about Stegmaier, including his “commendable” marriage of 50-plus years, he said the comments he made about him, McCarthy and Graber were “wrong.” Dunn countered that he and Stegmaier simply had policy disagreement.

Earlier this year, Dunn objected to the county narrowing the choice of radio vendors down to EF Johnson and Motorola. He wanted to keep several potential vendors — including L3Harris — in the conversation, believing it would lead to more competition and the best price.

Graber, who participated remotely in Wednesday’s meeting, said “ditto” to McCarthy and Dunn’s statements.

“The incompetence that was on display there by the supervisor on the end, Mr. Stegmaier, is kind of appalling to me,” Graber said.

In one of his first meetings as supervisor, Stegmaier said he passed a note to Chairman Charles DeHaven Jr. indicating that he was ready to vote on a pending matter. He said he found it

“suspicious” that his note became the subject of a Freedom of Information Act request by Graber.

“Mr. Stegmaier, I did not realize that we were in third grade, because I did ask for a copy of what that note was,” Graber responded. “And I do not think that it’s appropriate to pass notes to the chairman of the board or to any other member of the board to tell them when you’re ready to end discussion and that you want to take the vote now. That is third-grade material, it is inappropriate, and I think you should stop.”

Dunn's wife, Joy, said during the citizen comments portion of the meeting that she was saddened to see such division on the board. She said she and her husband had supported Stegmaier in his unsuccessful bid for School Board in 2019 and helped him campaign for the Board of Supervisors in 2020.

Since then, she said she has been surprised by Stegmaier's votes and his “utter disrespect and hate for some of your fellow board of supervisors.”

“You claim in many things, as far as in your church work, to be a Christian,” Joy Dunn said. “But yet I feel like you are not showing love but you are showing hate.”

Earlier this year, Stegmaier lost the Republican nomination to seek re-election to Josh Ludwig. He then entered the race for the Shawnee District seat on the Frederick County School Board in the Nov. 2 election.

## **Did 3 Frederick County supervisors attend meeting illegally?**

**By Josh Janney**

**The Winchester Star**

**WINCHESTER** — At Tuesday night’s Frederick County School Board meeting, board member Brian Hester accused three members of the Board of Supervisors of illegally attending a meeting at someone’s home to discuss matters related to the school division.

“In my opinion, a few supervisors have made it abundantly clear that they are against the school system,” Hester said. “They have also made it very clear their desires to put a bad light on the great things this school system does and no matter what, they will always have ill will towards the school system. It is what it is. They continually think they know more than the school board about this school system and how it should operate, which obviously isn’t the case. They are failing the county and the children of our school system tremendously by continually trying to undermine everything we do.”

Hester was referring to a meeting that took place on Feb. 27 at Josh and Rani Ludwig's house. The Ludwigs had invited people to their home to learn about and discuss the school division's use of the Deep Equity Program as part of training for its equity initiative to create a level playing field for all students. Several members of the Board of Supervisors have been critical of Deep Equity, with one calling it Marxist and communist.

Three supervisors — Back Creek District Supervisor Shawn Graber, Red Bud District Supervisor Blaine Dunn and Shawnee Supervisor David Stegmaier — attended the gathering at the Ludwig's home, along with several other county residents.

“What I find extremely frustrating is when illegal meetings occur when there are three supervisors present discussing official business outside their normal official meetings, especially when what they are talking about is 100%-related to the school system,” Hester said.

Hester learned about the meeting from concerned constituents and social media posts. He later confirmed the meeting occurred when he personally spoke to Dunn and Stegmaier. He also discovered a Feb. 26 newsletter from Republican activist David Sparkman promoting the meeting. Sparkman's newsletter stated:

“Rani Ludwig is asking for a quick meeting on Saturday (tomorrow) at 2:30 to discuss how to replace our School Superintendent. We know [Republican 33rd District Delegate] David LaRock has decried many of Sovine's decisions on sex education with elementary school kids, and now the material that Supervisor Graber has uncovered of a manual promoting communism being used in our school system has angered many. For location information please call Rani for an invite at [redacted]. No reporters and no Leftists please.”

Graber, Dunn, Stegmaier and Josh Ludwig, who is challenging Stegmaier for the Republican nomination for the Shawnee District seat in the November election, all have said that the purpose of the meeting was solely to discuss Deep Equity and that there was no discussion — to the best of their recollection — of ousting school division Superintendent David Sovine.

At Tuesday night's School Board meeting, Hester said the three supervisors violated State Code by attending the meeting at the Ludwig house.

State Code says all meetings of public bodies shall be open, with [exceptions](#) being provided for authorized closed session meetings for limited purposes. Virginia FOIA [§ 2.2-3701](#) defines a meeting as when three or more members of a public body or a quorum meet to discuss business of the public body.

Frederick County Public Information Officer Karen Vacchio said if more than two members of the Board of Supervisors wish to meet to discuss county business, then it must be a properly noticed public meeting.

“That said, any number of members may be together (say at an event or meeting of another entity) as long as County business is not discussed,” Vacchio said in an email.

Stegmaier said he wasn’t an active participant in the meeting. He said he just showed up to see what would be discussed and to learn more about Deep Equity, which he doesn’t support. He said he didn’t know if supervisors would be there and merely acted as an observer.

“I made certain that I didn’t say anything. I did what I thought was necessary to abide by whatever rules would have prevailed under the circumstances,” Stegmaier said.

Dunn said he didn’t speak during the meeting, which Graber confirmed. They said Graber was invited to give a presentation on Deep Equity and that Dunn was invited to listen. Both Dunn and Graber said the gathering required an RSVP and that they did not expect Stegmaier to be there, as Stegmaier did not RSVP. Both said they were surprised when Stegmaier showed up, and Dunn made a point of not speaking during the meeting specifically because of Stegmaier’s unexpected attendance.

“I was completely caught off-guard,” Graber said. “I had no clue he was coming.”

Dunn said Hester had confronted him about attending the meeting and that he responded: “If a third supervisor shows up does that mean the first supervisor leaves or the second supervisor leaves?” Dunn asked.

Roderick Williams, Frederick County’s attorney, said he does not think the meeting violated state code because Stegmaier attended the meeting primarily as a spectator and was not engaging in discussion with Dunn and Graber.

“It becomes subjective to a degree,” Williams said. “... But the fact that two are already there, I don’t think should necessarily preclude a third from showing up and just like any other member of the public just sitting there and being an attendee.”

Williams compared the situation to when several supervisors attend political party meetings, town halls or events like Hob Nob in the Valley. He said it’s OK if more than two supervisors are present as long as they aren’t interacting with each other about county business.

“As long as they are not discussing directly with each other the public business, I don’t see that as a meeting,” Williams said. “Otherwise, you could never have a political event where multiple people from the same body show up. And, golly, we all know those events take place, and I don’t think anybody thinks they’re inappropriate.”

Alan Gernhardt, executive director of the Virginia Freedom of Information Advisory Council, said that if the three supervisors discussed citizen concerns that were strictly about school

business — and not Board of Supervisors’ business — it would not violate state law, as the School Board and Board of Supervisors are two separate entities.

“...Regarding whether one member was merely a spectator while the other two engaged in discussions, if they were only discussing school business, then it would not matter whether one was merely a spectator since the discussion would fall under the exception as described above,” Gernhardt said. “However, presuming hypothetically that they were talking about Board of Supervisors’ public business, then it would come down to a factual determination of whether the third supervisor was part of the discussion or not. Unfortunately, if there is a dispute regarding that issue, only a court could make a factual ruling to settle the dispute.”

Gernhardt later added: “If three supervisors were discussing the county budget set by the Board of Supervisors, including the amount to be provided to the schools, then that sounds like it would be a topic that falls under the Board of Supervisors’ public business. It really comes down to exactly what was discussed, and again, if there is a dispute on the facts, only a court would have the authority to resolve it.”

Megan Rhyne with the Virginia Coalition for Open Government said the way she sees it is that a meeting to talk about a school district program is a meeting to discuss “public business.”

“I do not think the phrase ‘public business’ would be so narrowly construed to mean only that business the public body can directly vote on,” Rhyne said. “The phrase, to me, is broader.”

She continued: “ ... in this case, the school district’s plan to implement any given program will be public business of the county when they talk about whether the county wants to continue funding certain aspects of the school district’s budget. So, when three members of the board got together to talk about what I consider public business, then it should have been treated like a meeting under FOIA, necessitating notice, public access and minutes.”

Rhyne also said the “just an observer” characterization works only in the context of a public forum or an unplanned meeting.

“Finally, even if I am 100% wrong in my assessment, public officials should understand the perception they are creating when they meet outside the confines of a public meeting held in accordance with FOIA,” Rhyne said.

Frederick County Commonwealth’s Attorney Ross Spicer declined to give his opinion on whether the supervisors violated state code. He said even if they did violate it, it would be a matter for civil courts to decide, as it would not be a criminal matter.

“It is clear that the statute is civil in nature; the remedies call for the imposition of ‘civil penalties,’” Spicer said. “As such, the Commonwealth’s Attorney’s Office has no authority to inject itself into a dispute over whether individuals have complied with Virginia’s FOIA statute.

Therefore, I offer no opinion about the propriety of the meeting involving the three Board of Supervisor members you mention. Similarly, since the statute affords only civil remedies, the Sheriff's Office would have no role in investigating any allegations surrounding these matters.”

Dunn and Graber criticized Hester for publicly accusing them of doing something illegal.

“I have not been involved in an illegal meeting, and I don't appreciate people falsely accusing me of an illegal meeting,” Dunn said.

“If Mr. Hester believes that something illegal was done, then I encourage him to go to the appropriate authorities and file charges,” Graber said. “If he doesn't believe that something illegal was done, then he owes us an apology.”

## **Lawmakers reflect on General Assembly session**

**By Josh Janney**

**The Winchester Star**

**WINCHESTER** — Laws to abolish the death penalty, legalize marijuana and address the impact of the COVID-19 pandemic continue to stir debate in Virginia's General Assembly.

Initially, the legislative session was supposed to wrap up this week because Republicans didn't want to extend the session beyond 30 days. However, last week Gov. Ralph Northam signed a proclamation summoning lawmakers for a special session — effectively extending the length of this year's session to its usual 46-day length. The special session began Wednesday.

Del. Wendy Gooditis, D-Clarke County, applauded the extension, saying, “There's no way we could do what we needed to in such a short time.”

Del. Bill Wiley, R-Winchester, and 33rd District Del. Dave LaRock, R-Hamilton, wanted a shorter session. But Sen. Jill Vogel, R-Upperville, said a 30-day session wasn't “realistic.”

“[Northam's proclamation] was sort of a workaround to get the 45-day session because we couldn't reach an agreement,” Vogel said. “And I'll be honest with you, that's OK with me. We are here to accomplish a very rigorous legislative agenda and that can't be jammed through in 30 days. We are not finished. The budget isn't finished. We can't leave having failed to accomplish one of the most critical components of this deliberation, which is the budget. And so, while I fully appreciate all of the arguments that have been made about 30 days, I am also super practical and realistic and understand that we are here to actually make good decisions.”

LaRock said he hopes Republicans can “limit Democrats in the special session, as they seek to further impose their destructive agenda on the people of the Commonwealth.”

Vogel said the top two priorities of her constituents are re-opening schools and distributing COVID-19 vaccines, and she is continuing to push for that in the Senate. She said the high point of the General Assembly session for her so far is the passage of Senate Bill 1303, which requires each local school division to make virtual and in-person learning available to all students by choice of the student’s parent or guardian. The bill passed the Senate with bipartisan support and a 26-13 vote.

Some of the most notable and controversial bills still being debated include a ban on the death penalty, legalizing marijuana, expunging criminal records and reducing the number of SOLS test required in schools and taxing Paycheck Protection Program loans. Bills abolishing the death penalty have passed both the House and Senate, although the two legislative bodies will still need to hash out the differences between the two bills.

Gooditis has had several of her bills pass the House of Delegates, including one that provides that individuals engaged in providing domestic service are not excluded from employee protection laws and the Virginia Workers’ Compensation Act.

“That would benefit so many of the people who take care of our littlest, our oldest, our sickest,” Gooditis said. “They deserve to have the rights and the care, as do all of us.”

LaRock and Wiley opposed her bill.

Another Gooditis bill, which passed with broad bipartisan support, requires local departments of social services and licensed child-placing agencies to involve in the development of a child’s foster care plan the child’s relatives and fictive kin (people treated like family members who are not related by blood or marriage) who are interested in the child’s welfare. The bill requires that a child 12 years of age or older be involved in the development of his foster care plan. Under current law, a child’s involvement is mandatory upon reaching 14 years of age. Gooditis really appreciated that the bill allowed “fictive kin” to be included as options, noting that some of the best caregivers aren’t always related to the child.

“Just in the last decade, I’ve known quite a number of families who have done that, whether being handed a newborn baby by someone who is a substance abuser and knew she was not able to raise a child to taking in an LGBTQ kid who, when the kid came out to the parents, was no longer welcome in the home,” Gooditis said. “So fictive kin are a really important category of children who must be cherished.”

None of the bills introduced by LaRock passed the committee stage. During the 30-day session, LaRock introduced legislation that would give parents who wish to homeschool their children or

send them to private school an individual, nonrefundable tax credit — a move that he argues would make alternatives to public school more financially feasible. LaRock had introduced similar legislation in previous years, though he has said he has faced opposition from teachers' unions.

LaRock also introduced a resolution reaffirming that the COVID-19 vaccine remains voluntary as well as legislation to prevent people from being fired or having their access to school blocked for refusing to take the COVID-19 vaccine, legislation to prevent a fetus from being dismembered during an abortion and legislation to place limits on the executive emergency orders carried about by the governor and to reduce the penalty for violating emergency orders to a \$100 per violation.

“Unfortunately, there was a ruthless hyper-partisan treatment of most proposed Republican legislation,” LaRock said. “None of my legislation was given the courtesy of discussion on its merits. Democrat leadership in the General Assembly has been focused on letting criminals out of prison [referring to a bill eliminating mandatory minimum sentences], piling more useless regulations on struggling businesses, legalizing marijuana while giving convicted drug offenders preference for newly marijuana market licenses, taxing PPP funds that saved small businesses, closing faith-based adoption agencies, and putting union boss power and profits ahead of frugal use of transportation funds.”

In January, LaRock was stripped of a committee assignment by House of Delegates Speaker Eileen Filler-Corn for signing a letter urging former Vice President Mike Pence to nullify Virginia's certified presidential election results. Voter fraud claims, which LaRock has promoted, have been rejected by election officials and the courts, including the conservative majority Supreme Court.

One of Wiley's bills passed the House — HB 2337, which provides an income tax subtraction for the military retirement income received by a veteran who has been rated with a 100 percent service-connected, permanent, and total disability.

“Regarding the special session, we knew this is what was going to happen from day one,” Wiley said of the session being extended. “But it was important to make the point that, while people can't be in the people's House in person [due to meeting virtually because of COVID], we need to be circumspect in what we do. What has disturbed me this session is the fact that Democrats seem to be putting criminals ahead of police and victims in all sorts of ways — the death penalty repeal, the mandatory minimum repeal, and a host of others. Nonetheless, I'm proud that we were able to work as a caucus to stay on Governor Northam until he began to turn around the COVID vaccine program. It's still got a long way to go, but we're not stopping until he gets it right. We're also preparing to give teachers a much-needed raise.”