

## **Fire Rescue Ordinance Advisory Committee Meeting Summary**

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**Date:** March 10, 2009

**Attendees:** Ken Boyd, Ann Mallek, Chief Doug Smythers, Chief Dayton Haugh, Bryan Elliott, Chief Dan Eggleston, Annie Kim, Ron Williams (alternate for Dayton), Ambassador Nat Howell

### **Summary of Meeting:**

1. Ken opened the meeting by suggesting that the committee go through comments from the ACFRAB meeting in February.
2. Annie was asked to go through her notes from the ACFRAB meeting, during which the following areas were covered:
  - a. County volunteers. Annie said that the ACFRAB raised comments voiced by the County's volunteers at Monticello and Hollymead that they were not formally recognized as part of the coordinated system in the ordinance and wished to have representation as a member(s) of ACFRAB and/or by incorporation in the definitions and other sections of the ordinance.
    - i. Dayton: does not think that county volunteers need representation at ACFRAB because they already have representation through Dan.
    - ii. Dan: he received comments from one county volunteer recommending that county volunteers be defined at the station and county levels. He thinks it would be important to develop a process for input for county volunteers, but perhaps at an ACFRAB committee level. This particular county volunteer did not suggest that county volunteers be represented by membership on ACFRAB.
    - iii. Doug: Bob Larsen did suggest representation on ACFRAB.
    - iv. Somebody asked how many county volunteers we currently had.
    - v. Dan: we have about 30-40 volunteers. Ann: she is surprised and glad to hear that we have that many.
    - vi. Dan: the county volunteer who wrote him stopped short of saying that he believed a seat on ACFRAB was necessary. Dan envisions that county volunteers would continue to work through their station captains, as they have in the past. It would be somewhat unusual to work otherwise.
    - vii. Ken: in earlier committee meetings, we talked about whether rank and file staff members of ACFR should be on the ACFRAB.
    - viii. Doug: if the goal of ACFRAB is to be a body for all stakeholders, then the County union would need to have a seat and the City of Charlottesville should have a seat.
    - ix. Dayton: if the ACFRAB, under the ordinance, would be advisory to Dan, and the county volunteers were also on ACFRAB, the county volunteers would have a double reporting process. He's also not sure that the county volunteers share the same concerns as the incorporated volunteers. There's

certainly room for input on committees of the ACFRAB and other means, and he would encourage those.

- x. Nat: how about representation on ACFRAB without a vote?
- xi. Dan: the comments he is hearing from the county volunteers are similar to the comments from career staff, who have voiced concern about how their input would be solicited. A process needs to be developed for input in general across the board – for both county volunteers and staff, although not necessarily in the ordinance. County staff or volunteers could, for instance, be placed on a committee for apparatus if that's an area where representation is needed.
- xii. Doug: under the ordinance, would county volunteers cease having the ability to get things done through their station captains?
- xiii. Dan: no, that would still exist. But if we were making policy, we'd reach throughout the organization for views. He thinks that county volunteers are probably more interested in committee work.
- xiv. Doug: that's what the one county volunteer suggested, but not what Bob Larsen suggested.
- xv. Dan: knows that Bob and Chief Bob Brown had a discussion about that issue.
- xvi. Doug: it's just strange to him that the county volunteers would have 2 lines to the career chief – both through the chain of command and through ACFRAB.
- xvii. Bryan: asked Doug if he was saying that the county volunteers should or should not have a seat on ACFRAB?
- xviii. Doug: in this model, he does not see the county volunteers on the advisory board.
- xix. Ann: until they're incorporated.
- xx. Ken: what about acknowledging their existence and their roles in the ordinance?
- xxi. Doug: an example might be the ECC. The ECC is a nonvoting member of ACFRAB. Monticello has been coming and voting on some issues already under the current system.
- xxii. Ann asked for more information about that.
- xxiii. Dan: he believes that in those couple of cases volunteers have come in as substitutes for the captain. He agrees with Dayton and Doug in their assessments. He would like to provide a formal mechanism for input and guidance as we develop policy.
- xxiv. Nat: do the volunteers at the County stations have an organization of their own?
- xxv. Ann: once they do have enough numbers, they could form their own companies.
- xxvi. Dayton: believes that the County will continue to have the same level of career staffing at stations, and that won't change based on the number of county volunteers that may exist at a station.
- xxvii. Ken: is there any plan for county volunteers to eventually hold officer level positions at the stations?
- xxviii. Dan: we do have people who are moving quickly – advancing in EMS and other areas. We could potentially see that in the long-term.
- xxix. Ken: believes it would be good if our county volunteers, as they gain more experience and qualifications, could fill positions that are empty due to career staff attrition.

- xxx. Dan: if we had excess volunteers at 11 and 12, we could potentially move them out to other stations where they are needed.
  - xxxi. Doug: you don't see volunteers at Monticello or Hollymead staffing all hours, with just career staff during the day right now. If they got to that point, would they become an independent organization or would they still be run by the county?
  - xxxii. Dan: he has not thought about it before.
  - xxxiii. Ken: something like this might be a long-term objective if we had that. Ann: felt the same way.
  - xxxiv. Ken: for the ordinance – can we call them County volunteers and have them defined?
  - xxxv. Annie said that's fine.
  - xxxvi. Doug: what about making them nonvoting members of ACFRAB?
  - xxxvii. Dayton: anyone can be on a committee now, regardless of whether they're a member of ACFRAB.
- b. Selection of the Fire and Rescue Chief. Annie said that ACFRAB had raised the question of whether the ordinance should codify the current practice of including the ACFRAB in the selection of a career chief, in the event that Dan left or retired.
- i. Ken and Ann agreed that it's part of the process anyhow and is an important part. We should codify that.
  - ii. Dan: he agrees, and is comfortable with that, as well.
  - iii. Annie: we can insert this in the Fire and Rescue Chief section (6-104).
- c. County Authority over Volunteers' Private Funds/Assets. Annie said that the ACFRAB raised questions about whether the County could seize or encumber monies and/or assets that volunteer companies had from private, non-County sources. She interpreted that concern to mean that even in a situation where the County has not moved to dissolve a volunteer organization, could the County come in and take a volunteer organization's private funds and assets? Annie said that the County could not do this. Short of dissolution proceedings, the County has no authority to seize any private funds or assets of volunteer organizations. In a dissolution proceeding, depending on how the volunteer organization's charter is written concerning the distribution of assets, the County may have some rights to control of assets/funds. Having said this, though, she is not sure how best to reference this in the ordinance, because we have potentially many different areas in which the County has no authority to do something illegal or no authority to take actions, and we can't list all of them in an ordinance.
- i. Dayton asked about the Prince William County situation – didn't the County there seek an injunction? Annie said that the volunteer organization there had been dissolved, and she believed the County had filed a declaratory judgment action asking the court to declare the rights of the parties, including the status of assets. She does not know if an injunction was sought.
  - ii. Doug: so are you saying that the County has no more rights to come in and take private assets/funds from the volunteers as it would over a private entity such as Crutchfield? That is, short of dissolution?

- iii. Annie agreed. Short of dissolution, the County would have no more control over private funds and assets than it would over Crutchfield, although the system as a whole could develop policies that govern all fleet, equipment, etc.
  - iv. Doug: believes that a 501(c)(3) like Seminole has to transfer its assets to another 501(c)(3) for IRS reasons.
  - v. Ron: what about control over privately raised funds?
  - vi. Doug or Dayton: how about §6-104(1)(b)(vii) - system planning on budget?
  - vii. Someone asked: could the system pass a policy prohibiting or requiring the expenditure of private funds in a certain way?
  - viii. Annie: does not think a policy could do that as an express control over the spending of private funds. However, she could imagine a policy might intersect with privately funded equipment. For instance, a policy on standards for turnout gear might have an impact on privately purchased turnout gear. Also, policies could be passed on the use of public funds and publicly funded equipment.
  - ix. Ken: what about inserting “County” before “system” in §6-104(1)(b)(vii)?
  - x. Bryan: or you could say “the expenditure of funds received from County appropriations.”
  - xi. Annie said that we could work in language similar to that.
- d. Impartial Arbitration Board – Annie said that she heard two versions of this idea from the ACFRAB. One was to have an impartial arbitration board serve as an intermediate step of a policy appeals process, instead of the County Executive. The other was to make the impartial arbitration board the final step for an appeal, rather than the Board of Supervisors.
- i. Ken sees that as another layer of bureaucracy that isn't needed.
  - ii. Nat: who would those individuals be?
  - iii. Doug: the issue is that if Dan wants to implement policy that's not liked and the volunteers oppose it, Dan may have enacted that policy in the first place because it came from the County Executive's office, so appealing it to that office would be futile. And if the group of fire chiefs is not expert enough, who could be? The BOS is voted and put in place to make those decisions, but the BOS does not have the expertise of fire/EMS chiefs. The BOS would be similar to a jury in a court case.
  - iv. Ann: the County Executive's office may also be thinking about the will of the BOS when it makes decisions.
  - v. Ken: believes that the ACFRAB will articulate very well all the reasons why a proposed policy is a bad idea and does not think another body needs to say that.
  - vi. Doug: understands that, but going to the administrators doesn't make a lot of sense.
  - vii. Ken: believes that the information will be out there for good decisions to be made on these policies.
  - viii. Ann: doesn't know why an appeal would have to go to the County Executive first, before it goes to the BOS.
  - ix. Annie: there are legal problems with having an arbitration board as a final decisionmaker, rather than the BOS. There is no legal (statutory) authority allowing the BOS to delegate away its authority to an arbitration board as a

final decisionmaker. There is also a legal problem with cutting out the County Executive from the appeal process because we have a County Executive form of government under state code, and we cannot take away the County Executive's responsibility and authority for overseeing departments and reporting to the BOS.

- x. Ann: what about having something like a staff report from the County Executive's office accompanying the arbitration board's decision?
- xi. Ron: right now in the ordinance we have 2 steps with the County Executive. Why is that?
  - 1. Annie: we added that after Nat's comment. Nat thought it might be helpful to insert a more informal step (contest) before a formal appeal, so that both parties would have a sense for how things might look on an actual appeal.
  - 2. Ann: but the initial step would give the County Executive's office a feel for the situation.
- xii. Doug: if the policy is not widely accepted and the chief isn't communicating with Bryan, then he's probably going to have problems. Would assume that there would be communications between the chief and County Executive's office.
- xiii. Annie: we can't assume that the County Executive's office is not going to be objective and fair and try to do the right thing.
- xiv. Ken: Bob or his successor would have to feel confident with the policy to move it forward.
- xv. Ron: there still are multiple steps at the County Executive's level.
- xvi. Nat: one of the ideas behind this is that if you let an open dispute circulate for a while, people will find a work-around and try to resolve the dispute. If you move too quickly and cut off the time for this, people will dig in their heels. Having this additional first step creates some reflective time.
- xvii. Ann: is the second paragraph in §6-109 (e) just notice to the County Executive or asking for a decision by him? Annie: it requires a decision by the County Executive.
- xviii. Ken: this builds in informal process and gives both parties an idea about what is going on.
- xix. Doug: if the career chief were to develop a policy that's detrimental to the volunteer system, but in Dan and Bryan's opinion, it's not detrimental, that is the kind of policy that might get appealed to the board. But that's not necessarily parties digging in their heels.
- xx. Dayton: the outcome is not going to change by having another step – we might as well leave the process the way it is.
- xxi. Dan: we need to build confidence in the system working and that it's fair and balanced. He doesn't envision forwarding anything just based on beliefs – evidence and consideration of the facts would be needed.
- xxii. Ken: just leave it as is? Dayton: yes.
- xxiii. Doug: he got a comment from a volunteer that in §6-109 – this gives the BOS the final say in all policies. The volunteer was against this because the BOS has no firefighting experience. Doug is just bringing this to the table. In his mind, matters where there's public funds, he sees the BOS as having the final say.

1. Nat: they're elected, they're not necessarily experts, but that's the system.
- e. Annie: we also received a comment from a member of the BOS about the documentation going to the BOS for an appeal under §6-109. This supervisor suggested that, on appeal to the BOS, the career chief should summarize the County's position and the ACFRAB position, provide that summary to the ACFRAB in advance, and then ask the ACFRAB whether that summary reflects their position. These should be done prior to sending the appeal documents to the BOS.
  - i. Ron: that would already be part of the paperwork under section (e), which references statements from the career chief and advisory board.
  - ii. Nat: you don't typically have one side writing a position for both sides.
  - iii. Doug: but what about staff support for the paperwork involved in filing appeals?
  - iv. Ann: what about saying there'd be staff support for preparing the record?
  - v. Annie: she envisioned seeing the whole record going up to the BOS on appeal.
  - vi. Dan: staff can provide clerical support but not research time; we don't have resources for that.
  - vii. Ann: we should add a sentence about support.
  - viii. Annie: what about staff "compiling" the record? The ACFRAB would still draft the appeals. Annie said we can define what goes into the record. The committee agreed.
- f. Annie: there were also some statements from the ACFRAB about terminology being problematic, but no specific examples were raised that could be discussed.
3. Fire Company v. Fire Department. Doug said that the ACFRAB also raised the question of whether fire "departments" now need to change their names to "company" because of the definitions section for "fire company." He said he does not think that any names need to be changed.
  - a. Annie agreed that no names need to be changed. This was discussed previously by the committee and she had meant to insert a clarification about departments in the definition of "fire company."
4. EMS Services Required?. Doug said that the ACFRAB also raised the concern about whether fire companies/departments could be forced to provide EMS services. Could Crozet be forced to provide EMS services, for instance? (See para. 12 on page 8 for more).
  - a. Ann: mentioned Annie's statement about the ordinance not forcing department to turn into rescue squad.
  - b. Dayton: what about if policy were made to require EMS at all stations?
5. Doug asked whether §6-104 gives the chief authority to set minimum staffing and response times?
  - a. Ann: response goals would be goals set by the BOS.

- b. Dan: this would be through duly adopted policy.
  - c. Ann: perhaps that could be interpreted to enhance response goals, or cover the implementation of response goals.
  - d. Doug: he could see a policy saying that you must have 3 people on a truck before it leaves the station.
  - e. Dan: sees the issue, but we're a diverse group and we're going to have to work through that.
  - f. Ann: suggested change?
  - g. Dan: he has heard from both Doug and Dayton about response time deficiencies. That's a hard conversation, but we need to have that conversation at some point.
6. Doug asked whether §6-104(3) gives the career chief authority over volunteer chiefs?
- a. Annie: this section 3 only relates to mutual aid (outside County lines) situations.
  - b. Dayton: this is authority by the County Executive.
  - c. Ron: that may be more a function of 6-105. Because it's all subject to system policy.
  - d. Dayton: thinks that the concerned volunteer(s) may have misread that. He reads it to mean just for mutual aid situations.
  - e. Someone suggested replacing "on behalf" to "under the authority." Annie agreed this change could work.
7. Doug asked whether §6-111 means that all junior firefighters have to be FFI certified? He did not read this as such, and thinks the language is coming from state code, but it has caused some folks to think that even junior volunteers who may never run calls have to be NFPA FFI-certified. He also knows that the current county code already has a provision about junior firefighters, so this is a revision.
- a. Annie: we used existing code language but we can add some state code language to make it clearer. The intent is not to say that all junior firefighters must be FFI certified, but simply to incorporate the state code requirements about certification for junior firefighters who want to participate fully in firefighting activities.
8. Dayton said that some volunteers observed that several times during Ken's presentation, Ken responded to concerns by saying it wasn't the "intent" of the ordinance to do such and such, although the volunteers said that "intent" wasn't incorporated in the ordinance.
- a. Ann: how do you clarify that? Which intent?
  - b. Dayton: the volunteer(s) did not say which intent, or where the ordinance language said something contrary.
9. Doug asked if revenue recovery could be accomplished through this one ordinance, or would there need to be a separate ordinance? Everyone said in response that it would need to be done through the passage of another ordinance.
10. Ann suggested, going back to Dayton's earlier comment, what if the ordinance stated that its intent was to clarify the functioning of the existing system? Would that be helpful?

- a. Dayton: there was a comment at the ACFRAB meeting that this ordinance just codifies a system that doesn't work.
  - b. Ken: recalls that he said "intent" in response to issues like taking over volunteer organizations.
  - c. Doug: what if the ordinance said that the intent is not to take over the system?
    - i. Ron: not sure that it gets you anything.
    - ii. Dayton: those are just nice words. We sort of have words to that effect already in the ordinance.
    - iii. Ann: read aloud part of the purpose section.
    - iv. Dayton: he doesn't have a solution to that.
11. Doug also read comments about the ordinance not going far enough to recognize volunteer organizations as independent organizations, tax-exempt status, etc.
12. Annie asked for clarification on the EMS services piece discussed earlier (see para. 4 of these notes).
- a. Ken: doesn't think the system would do this, we'd have to have collaboration, but he also doesn't think the ordinance should say that the system can't do this.
  - b. Ron asked if that would prevent them from writing policy that requires this?
  - c. Ann: ACFRAB could bring an appeal to the BOS if a policy requires this.
13. Doug raised the ACFRAB comment about §6-104(4): developing a policy to contest decisions by fire and rescue chief. This seems to imply that the chief could discipline volunteers, although a separate section (§6-105) says that discipline is a volunteer, station-level duty.
- a. Ron agrees that this is problematic and there's a potential conflict here.
  - b. Annie: what about clarifying the section to make clear that chief has residual authority even if it's not spelled out in policy. Again, the intent is not to take away the volunteers' ability/authority to discipline at the station level, but to give an outlet in case the fire chief or other county staff had to take an on-scene action to remove a volunteer from the scene because the volunteer chief had not taken action. Annie is concerned that maybe we have not been explicit enough about this residual authority. After taking Dayton's suggestion about moving the policy pieces under section 1 with the word "by" preceding it, one could read this section to mean that policy development and implementation are the only ways in which the career chief would provide oversight and management. Perhaps something like "including the following responsibilities" should be added.
    - i. Dayton raised that §6-104(5) gives a general ability to exercise powers authorized by state code, whatever that may mean.
    - ii. Ken: how about something like, the chief shall provide oversight and management over the system functions "as not spelled out in policy"?
    - iii. Dayton thinks that the chief's authority is already clear to him, but maybe you could clarify it. He thinks that under this ordinance the chief could tell someone at a station that he can be a member but can't run or operate.
    - iv. Dan: there's a difference between what you're authorized to do and what you should do.

14. Doug: Fred had the same question about junior firefighters that he raised earlier. The ordinance should just make clear that if junior firefighters want to participate fully, they need to be certified at that level.
- a. Dan: Crozet has a cadet program; they don't run on calls; people below 16 are not leaving the station. Dayton asked whether there are DOL problems with that? Dan thinks that it's okay but said to Crozet that they should seek legal advice if concerned.
15. Dan: career staff had asked whether a cross-sectional group of career staff could have input in ACFRAB committees?
- a. Ann: that's already the case in some current committees.
  - b. Doug: how does that affect overtime?
  - c. Dan: we'd manage the overtime issue. This comes from some of the captains. Because career staff help to make volunteer stations successful, they want to help with the process.
  - d. Annie: §6-107 could say that county staff, as appropriate, could be part of ACFRAB committees.
16. Ann: what about adding a statement regarding stewardship as a responsibility of the fire and rescue chief? We have that on the volunteer side, in §6-105.
- a. Annie: that would have to be explained as meaning only "system level."
  - b. Ann: what about managing staff at his department level and stewardship?
  - c. Annie: thinks that could just raise more concerns about the County's intent than help, from the volunteer's perspective.
  - d. Bryan: that's a part of the job description.
  - e. Nat: said something about the purpose section already doing that.
  - f. Ann: said something about the problem of career staff sometimes self-dispatching.
  - g. Doug: we wouldn't want to have something as detailed as self-dispatching in the ordinance.
  - h. Dan: this is why we need a structured process. If it's on his side he needs to run it down and fix the problems. If it's a department member who self-dispatches, then the volunteers need to tell him and he'll fix it.
17. Ken: do we need the March 24 meeting? That would be before the ACFRAB meeting.
- a. Annie: will get out amended ordinance within 2 days. So we don't need the 24<sup>th</sup> unless there are large problems.
  - b. Dayton: may only need a meeting after the next ACFRAB meeting.
  - c. Doug: what do we want from ACFRAB?
  - d. Ann: just to see if they are happier with the ordinance.
  - e. Annie: April 17 is the deadline for the May 5 meeting.
  - f. Ann: let's do it as a night meeting for May 13 for public hearing to permit a wider attendance. Ken and others agreed.