

## MINUTES – JULY 18, 2013

The Caswell County Board of Commissioners met in special session at the Historic Courthouse in Yanceyville, North Carolina at 5:30 p.m. on Thursday, July 18, 2013. Members present: Cathy W. Lucas, Chair, Kenneth D. Travis, Vice-Chairman, William E. Carter, Larry G. Hamlett, Nathaniel Hall, Jeremiah Jefferies and N. Kent Williamson. Also present: Kevin B. Howard, County Manager and Gerri Hunt representing The Caswell Messenger. Paula P. Seamster, Clerk to the Board, recorded the minutes.

### MOMENT OF SILENT PRAYER

Chair Lucas opened the meeting with a Moment of Silent Prayer.

### ARCHITECT PAYMENT OPTIONS ON DETENTION CENTER

Chair Lucas stated “I guess where we will start with this is the Board is aware, I was told that and everybody is familiar that Mr. Brennan who is the architect has requested payment for the month of June for services that apparently he provided or his firm provided. Kevin if you would like to elaborate on what his request is and how it came to be or give us some information on that.”

Mr. Howard stated “He requested \$24,491.80 for the general conditions which was agreed to at \$13,500 and then it is for hourly time for the architect on the project, office staff and then for David Cruzeturner who has been kind of managing and working on dealing with the delays as far as the contractors go. The total amount is \$24,491.80.” Chair Lucas asked “Kevin may I stop you right there? You said the \$13,500 was an agreed upon amount for?” Mr. Howard responded “General conditions to have Dennis here on site monthly.” Chair Lucas continued “And that was agreed upon when we did the previous months?” Mr. Howard responded “Yes ma’am.” Chair Lucas continued “The \$75,000 for March, April and May.” Mr. Howard responded “Yes ma’am, he told you it would not exceed \$25,000 a month and you all agreed to \$75,000 for a three month period.” Chair Lucas asked “But refresh my memory, was it broken down?” Mr. Howard responded “Yes it was \$13,500 for that and then he would bill hourly for the architect and any other services they had for their time spent.” Commissioner Travis stated “But it was only for three months that we agreed on that.” Mr. Howard responded “Correct. When you agreed you got specific and your motion was specific for three months at \$25,000 a month for a total of \$75,000 because you were told they should be completed by the end of May or early June. I think in meeting in June with Dennis here we asked questions about what was going to happen because that time frame had run out and all you got was he was here. I got this earlier this week.” Commissioner Travis asked “So the other day was the first time you heard about him wanting more money?” Mr. Howard responded “Yes sir.” Chair Lucas asked “When did you receive the notice?” Mr. Howard responded “This actually came while I was out last week but I did not open it up and look at it until Tuesday because I spent most of Monday on the Board meeting stuff. I finally got to talk with Mr. Brennan yesterday and after I talked with him about this and how I could not pay it is when I called Chair Lucas.” Chair Lucas continued “And that was about 3 or 4:00 yesterday afternoon?” Mr. Howard responded “Yes ma’am.”

Commissioner Travis stated "Well the other night what Dennis told us was he was going on with the program." Mr. Howard responded "Yes sir." Commissioner Travis continued "And he probably knew when he was standing there talking." Mr. Howard responded "I don't know if he knew or not. I don't want to say." Chair Lucas stated "But for information purposes Kevin, so once you called me yesterday and gave me the information about the invoice shortly thereafter you called me a second time and told me that Dennis had..." Mr. Howard responded "They had called him and asked him..." Chair Lucas asked "Who called him and how did that come about?" Mr. Howard responded "In the conversation with Mr. Brennan he said I can't be paying somebody to be up there not knowing if I am going to get reimbursed for it or paid for it so he said I am going to have to call him off the job. I was hoping they would give us time to work on it and obviously that did not happen." Chair Lucas continued "So he did not even wait to hear back to see if we would agree or not. He just called..." Mr. Howard responded "Well in my conversations with him I did not know if we would meet before August 5<sup>th</sup> or not but I did say that I would talk with you and see how we would move forward."

Commissioner Hall asked "For clarification for me, when we agreed to pay them the extension for \$25,000 per month that was for what months?" Mr. Howard responded "It was just March, April and May and that was when they came and spoke or by the letter they sent it said they would be finished by the end of May." Commissioner Jefferies stated "That was in the motion." Mr. Howard responded "Right, he asked for \$25,000 a month but you all got specific in the motion and limited it."

Chair Lucas stated "One thing that I think is important for the Board to be aware of and I know it came to Kevin and Travis I think you go it as well but the actual contractor has questioned Mr. Brennan and put together some sort of formal action of delay on the project, for the contractor to...please see attached a notice of delay to Brennan's lack of response on the Caswell County Law Enforcement project. Any way they actually..." Mr. Howard responded "I think that all has been settled." Chair Lucas continued "It has been settled?" Mr. Howard responded "Yes ma'am." Chair Lucas stated "But we did not know anything about it. My point is..." Mr. Howard responded "Nothing happened. The contractor and Brennan were exchanging emails and discussions..." Chair Lucas asked "But they worked that out?" Mr. Howard responded "Yes ma'am."

(At 5:37 p.m. Commissioner Hamlett entered the meeting.)

Mr. Howard continued "If you will look at and not to get way to off the subject, in discussions with Chair Lucas yesterday she asked me to find out because Brennan is claiming that they are doing more work than what they are charging us for in trying to get, well not claiming they are saying they are doing more work than what they are charging us for. One in trying to get some of the deficiencies corrected to working on documenting delays and what caused it and then how much we will be able to charge back on those. You have the email which kind of explains what they are doing. There is one example in here that has to do with the ceilings. There are pictures and part of the scope of work." Chair Lucas asked "Did we get copies of that Kevin?" Mr. Howard responded "It was in the email but we have copies out there for you. But if you will look at the pictures, there is one picture of our detention center and the concrete is very rough and during the conversations they were told to come back and sand or grind and get it smoother

several times during the project. Then it got to the point that we could not wait on that and they went ahead and painted and they came back again and tried to say the contractor could not get it as soon as we wanted it in the specs. The next two pictures are of Pamlico and it is a much smoother, much better quality surface than what is in the pictures of our facility so that is one of the things they are working on. What Brennan is claiming is if we alleviated this issue and did it the way it was supposed to be it would cost about \$120,000 to have somebody to come in and grind all the ceilings and get them back to the way it is supposed to be." Commissioner Travis responded "I don't see where this should cost us." Mr. Howard stated "No not us. We would charge the contractor that amount to do it or get some kind of..." Commissioner Travis responded "They should have done it right to start with." Mr. Howard stated "I don't disagree."

Chair Lucas asked "Where does construction management, where is the responsibility there?" Mr. Howard responded "Well they were told in emails and letters and they come back and grinded some and then they would leave so where that responsibilities lies in on the contractors themselves." Commissioner Travis stated "That is just like some of the things that Dennis has brought up like the painting. They wait until they get through painting before they tell them it is not right." Mr. Howard responded "That was not always the case. There are times they were told to make changes and they would start like they were going to do it and then they would quit and continue with how they wanted to go." Commissioner Travis continued "It sounds like we are having to pay for their mistakes."

Commissioner Carter stated "I think we need to hire a construction lawyer to get all this stuff straight. I heard yesterday that the fire hydrant coming out the building there if you have a fire you have to go inside to turn the valve on before you can get water out of it. That does not make sense." Mr. Howard responded "I think the valve would stay on. I will have to look into that but I would imagine..." Chair Lucas asked "Well that brings me to the question of where are we with the inspection process? Are you familiar with where we stand with...?" Mr. Howard responded "It is my understanding with all the local inspections they have been completed or almost completed. There might be a few things left." Chair Lucas asked "And that is coming from Dale is that correct?" Mr. Howard responded "That is correct." Chair Lucas continued "Because I spoke with him this afternoon and he gave me a list just right off the top of his head. He has done no fire inspections." Mr. Howard responded "Well that is because the sprinkler system has not been charged yet." Chair Lucas stated "And the kitchen no test smoke." Mr. Howard responded "That is because they are finishing up." Chair Lucas continued "Or fire inspection in there. The parking lot issue where it does not meet handicap, the ADA, guidelines, what are we doing about that?" Mr. Howard responded "My understanding was he was okay with what he heard out there." Chair Lucas stated "Well he has to have a letter from an engineer and he has not received that letter." Mr. Howard responded "That is forthcoming." Chair Lucas continued "The locking mechanisms on the doors have to be checked. The smoke tight doors within the cells there is an issue with that. Hood system for the kitchen. Fire suppression in the kitchen. Paperwork, he has got to have paperwork on the paint that shows the label of how it is waterproofed in the cells and he has not received any kind of paperwork or a label or anything on that. There was a change in the design of the ductwork in the hallway upstairs penetrating to the and I think Dennis talked about that and it was taken care of Monday night, is that correct?" Mr. Howard responded "I think so." Chair Lucas stated "That has not been, it has to be on the drawing and it has not been placed on the drawing. The boiler certifications that process has not

even started for the water tanks...” Mr. Howard responded “For the water heaters, my understanding is the state has come out and done their onsite...” Chair Lucas continued “The Department of Labor because they are over 200 gallons, has that taken place, because he said to his knowledge it had not taken place?” Mr. Howard responded “I think Dennis told us that they had been out to do that. We have not received documents yet that they have been out and looked at it.” Chair Lucas stated “In speaking with him and there was another issue that concerned me, there was flooding in the jail that we were not made aware of. Were you aware of it?” Mr. Howard responded “I was made aware of water coming in the back door. Dennis told you about it at one of the meetings.” Chair Lucas continued “No this was like more flooding than that.” Mr. Howard responded “Water came in the back door during one of the storms.” Commissioner Hamlett responded “That is what Dennis said.” Chair Lucas stated “I understand that but this was like in other places that is my understanding. I don’t think it was just at that back door.” Mr. Howard responded “No it came down the hallway. I mean it came into the building.” Chair Lucas continued “I am just saying we have an issue. That is just information that I got from the inspector. I was trying to gather some information to try to pinpoint where we are in the process.” Mr. Howard responded “Everything he is talking about are things that are being done right now and being completed. The kitchen equipment was just installed. The hood was just finished so he had not been called out to do an inspection on that stuff yet. We had to get the fire hydrant fixed before they could charge the sprinkler system in order to do the fire inspections.” Chair Lucas stated “Okay. Well clear this up for me because this is the punch list that Dennis gave me a copy of. Do you get punch list copies sent to you?” Mr. Howard responded “Sometimes.” Chair Lucas continued “Because that is another question I have, how do you know where we are without getting these punch lists?” Mr. Howard responded “Well usually I walk through with them when they make the punch list.” Chair Lucas stated “Okay because without knowing I mean to me if I had this in hand I would be down there pronto checking behind them and making sure this was being done. On the list to do he has sprinkler system activation awaits repair of damaged fire hydrant. Now that has been done.” Mr. Howard responded “That was repaired this week. It was repaired Tuesday.” Chair Lucas stated “That was done, okay. The integration of the building management system needs to be completed because they are not communicating.” Mr. Howard responded “The electrician is responsible for having the company to come back and do that and that is in process.” Chair Lucas continued “And there is a contract that has been put out to replace the sidewalks that were removed for the lift station.” Mr. Howard responded “Those have been done as of today.” Chair Lucas stated “They are being put in place. Where are we with the lift station? Is it operable?” Mr. Howard responded “As we discussed this afternoon there was testing done today and a part blew out. They had to wait for that part to come in and the plans were to replace that part today. I did not get back with them this afternoon to see if they were finished.” Chair Lucas asked “Who does the testing on it Kevin?” Mr. Howard responded “The contractor was just charging the system to see if it would work.” Chair Lucas stated “Okay.”

Commissioner Carter stated “It is my understanding that the muffin monster and the lift station where it tied into the town’s line was not inspected by the town. I understand they put it in and covered it back up and there was an agreement that engineering inspect that but they did not call. They just covered it back up.” Mr. Howard responded “Well if they did that they will have to dig it back up again.” Chair Lucas stated “You made the comment that you were made aware of several issues yesterday. Would you care to elaborate?” Commissioner Carter responded “Well

that was one of them. When they put the grinder pump and muffin monster was hooked onto the town's sewer according to the town they were supposed to inspect it and they covered it up." Mr. Howard responded "The town never told me about that but the contractor will have to come back out and dig it back up so they can inspect it."

Chair Lucas stated "Okay the choice before us right now is to either pay the \$24,491.80 and that will pay for the month of June." Mr. Howard responded "And obviously he will be asking for the month of July." Chair Lucas continued "He will be coming back asking for July." Mr. Howard responded "I would imagine, yes." Chair Lucas continued "And more than likely further than that. What is your recommendation Kevin?" Mr. Howard responded "Well what we have to weigh is we are probably 2 to 3, if we have to have this caveat because the contractors are not cooperating 2 or 3 weeks of work left to be done before testing can start on the state level. Your options are if we don't pay them it sits idle for however long it takes to find another architect to come and be on the project. We could have somebody out here in a week or maybe sooner than that if we could agree on who we wanted to hire and bring in to finish out the project. We have to have an architect. The architect has to sign off on the drawings in order to be the co and inspections done from the state. It is not like we can get rid of one and not have anybody out there."

Commissioner Jefferies stated "You need to talk to them and tell him that he told us that he guaranteed that he would have this thing finished. You know reading this email he acts like he does not have any money. It is just the way I feel that he needs the money up front. Before he quit and then we paid him and he came back. That is what it sounds like he just can't finance this. Do you feel that way or not?" Mr. Howard responded "I feel that way. Obviously I don't know for sure but I feel like they don't have the cash flow to absorb this cost without getting paid for it."

Chair Lucas asked "What is the total amount we have paid Mr. Brennan on this project Kevin? It is over a million dollars right?" Mr. Howard responded "It is just over a million counting the \$75,000 you just paid." Chair Lucas continued "He had gotten a million dollars." Commissioner Hamlett stated "You know what it is. He knows if we don't pay him now when the time is up we are going to drag our feet and we probably will. I would. It has taken 6 months and it is still not open but we can lock the door right now and we will still be in worse shape. Need to move forward with somebody. We need to open this thing up. Where is the performance bond? Did you talk with the lawyer on that?" Mr. Howard responded "The performance bond is for the contractors. The architects and the engineers have an errors and omissions, you have to actually prove that they did something wrong design wise or left something out that added value to the project." Chair Lucas responded "The muffin monster." Mr. Howard continued "And according to Mr. Cruzetuner they come to come terms at least in discussions with the engineer who left that out. We have not got a formal response on that yet but they had admitted to some responsibility in that."

Commissioner Hamlett stated "This paper here I think was a little harsh towards us." Mr. Howard responded "I think frustration is on everybody's level are high. They understand they look bad in this project and their frustrations are up as well." Commissioner Hamlett continued "The boss man should have gotten rid of them and hired somebody else." Commissioner Carter

stated "I think the major problem has been with HM Kerns, the contractor." Commissioner Hamlet stated "For the last few months somebody has been dragging their feet. You can look down there and you will see 2 people or 3 people working." Commissioner Carter asked "Isn't that part of the problem, HM Kerns?" Mr. Howard responded "Kerns is responsible for almost everything left that is to be done with the building itself. All the painting, the lift station that is in their scope of work. In the admin side all that is left is touch up painting." Commissioner Carter continued "It has not been right since the beginning. They needed to do the water and sewer at the beginning."

Chair Lucas stated "Well as far as what we have before us as far as options. We have already discussed and talked about and I think our first conversation about hiring a litigation attorney was in February from our county attorney and we have subsequently interviewed two different firms. I will just run this by the Board to see what the feeling is from Board members. At the point we are we really don't know where we are in the process so we need someone professionally to assess where we are, how to proceed with the process and give us some legal advice on that particular scenario." Commissioner Carter responded "That is the only way you are going to be able to recoup some of the costs." Chair Lucas continued "And as far as dealing with the construction litigation attorneys if it could be presented to them in a way and I know we have gotten hourly amounts from the two that we interviewed but go in with the approach that we need an assessment. We initially need an assessment of where we stand and then we need you to come back and advice us how to proceed. Do we continue to pay Mr. Brennan or do we enter into litigation because I don't think anybody on the Board right now is in a position to even make that decision without some professional advice." Commissioner Carter responded "Well I think that is the only way to get any of our cost back is with a construction attorney." Chair Lucas stated "I think when we met with those attorneys I think I remember one saying that it would maybe take, it would be like a 3 week process to initially gather, I would like for them to take a look at the contracts, see where we stand with the contracts, the liquidated damages how we can go about recouping our liquidated damages, try to figure out where the delays were in the project and come back to us and give us a report." Mr. Howard asked "So we will stop the project until that occurs?" Commissioner Hamlett responded "No, I don't think so." Chair Lucas stated "The project has already stopped." Commissioner Hamlett responded "No it is not. They are working down there now." Mr. Howard started "They are working today." Chair Lucas stated "Well I think Mr. Brennan needs to be aware that we are serious about this. That we are ready to stop the bleeding here because that is exactly what is happening. If it takes one month for these attorneys to get back with us at least he would know we are serious." Commissioner Jefferies responded "The thing you need to realize is it might take a year." Chair Lucas continued "I am not talking about dragging it out Jeremiah; I am talking about an initial assessment, just an initial assessment to tell us where we are and tell us what our options are." Commissioner Hamlett stated "I don't think we need to stop it. We do need to talk to Welch." Chair Lucas asked "How many inmates are confined today, do you know?" Mr. Howard responded "I don't have any idea." Chair Lucas continued "Well you told me the other day you thought it was 8 or 10 federal." Mr. Howard responded "Well we having been running around 10 federal inmates." Chair Lucas asked "Is he at capacity right now?" Mr. Howard responded "I think he is right at it. He might be one or two shy." Commissioner Hamlett stated "I am talking about the people that have been working since January or December that we hired. We need to talk if this thing is going to drag out three more months." Chair Lucas asked "What are you

saying Larry?" Commissioner Hamlett responded "I am just saying we need to talk to Mr. Welch about, we don't need to keep those people down there if they are not working." Chair Lucas continued "He has already told us that they are busy. That they are doing things, I mean during the budget, didn't he report that to us? We never got a clear answer."

Commissioner Hall stated "He said that. I will tell you the problem I have with this. We have been jacked around and jacked around and jacked around and if we don't have what it takes to talk to Mr. Brennan business to business, I would not pay him a dime. Every time we come to this point he should at minimum have one of his chief representatives here and not through an email. We paid him a million dollars and this is a part of the jack around process. I would not pay him another dime until we hire a litigation attorney. As far as talking with Mr. Welch there is nothing to talk about just lay the people off because we don't know when this project is going to be completed now. We really don't so we need to make a business decision."

(At 5:57 p.m. Commissioner Williamson entered the meeting.)

Chair Lucas stated "Commissioner Williamson we are discussing what our options are as far as paying the \$24,491.80 to Mr. Brennan or stopping the project and hiring the construction litigation attorneys for an assessment, just an initial assessment of where we are, what our liquidated damages could be, have them review our contracts and tell us where we stand. I know the two attorneys that we did talk with in the interviews, the hourly rates were like \$50 difference I think but I don't know if it would be prudent to set a minimum amount that the Board would set aside for that purpose." Commissioner Hamlett responded "Can't do that either." Chair Lucas continued "Well he said three to four weeks." Commissioner Williamson stated "I think he said once we get into talking and he got into the project then he could give us an idea on what it would take." Chair Lucas stated "But not to go into a full contract signed with them. What we are talking about is maybe to have an assessment initially and let them advice us."

Commissioner Williamson stated "The only thing that I am not in favor of is stopping the project. I think we need to allow the county manager to go in and keep this project moving on the areas that he can move it in. It seems like that Brennan is playing a game to me. We gave him ample opportunity to go ahead and finish this project. We tried to work with him from my sight but at this point I am in agreement with going on and hiring a lawyer but at the same time I don't think that we should just call a stop on the project. If there is something that we can do while we are getting into this litigation without the county manager then I think that we need to forward with it if it is no more than getting to the point where our administration can get into the building." Mr. Howard responded "The only concern with that is you have to have an architect of record for the project. If we no longer employ Mr. Brennan I am not sure how much Mr. Dale would let us continue with the project because he needs certain information. He needs to know that they are doing certain things during the project."

Chair Lucas stated "I think that Mr. Brennan needs to know that we mean business and if we shut the project down that would certainly claim his attention I would think." Commissioner Williamson responded "If we shut it down? He has already basically shut it down." Chair Lucas continued "But if we don't come forth with money." Commissioner Williamson continued "I agree with that part but at the same time I still think that we need to be in there doing what we

can do even if it is nothing but finding out the areas of getting another architect but we need to not say that we are going to stop the project.” Chair Lucas stated “That is what the attorney would inform us on what to do.” Commissioner Hall stated “My perspective is that is a terminology. What I am suggesting is at this point without legal advice I would not pay Brennan another dime. If he walks then what you are suggesting is let’s find another architect and get somebody working.” Commissioner Williamson responded “Okay from my understanding he has already walked. Am I wrong?” Chair Lucas responded “He will come back if we pay him.” Commissioner Williamson continued “No, no, no he has already walked. He has left the project so I am saying if he has walked off the project let’s go find other options and the game is over with let’s do what we can do. Let’s get our county manager in there and let him talk and bring us these suggestions in of what we can do from the inspectors or whatever needs to be done but let’s not say that we stopped the project. Let’s not pay him the money. Find us another architect and move on and then let our lawyer take care of it. We stood by him and gave him the money to go on and do this job. We just don’t need to stop.” Commissioner Carter responded “I agree with you I don’t think we need to stop. I think once we hire a construction lawyer I think they are going to find a lot of things that were not done right.” Commissioner Travis stated “It has already stopped.” Chair Lucas responded “Yes it has stopped.” Commissioner Hall stated “I think that is the terminology. We are using different terminology.”

Chair Lucas asked “Commissioner Williamson you are not saying deal with Brennan anymore?” Commissioner Williamson responded “I am saying deal with the lawyer.” Commissioner Travis stated “But Kevin cannot take it further by himself.” Commissioner Williamson responded “I am not saying he can take it forward by himself but he can tell us what we need to do or what is left or at least have a check list on at least what is going on. We got a check list supposedly.” Commissioner Travis stated “But we don’t know if that is right or not?” Commissioner Williamson responded “Exactly.”

Mr. Howard stated “My recommendation would be to go back to other architects we have talked to when we were in this process. We looked at them and research them and I can bring those names back to you and bring them in to talk to you. It is going to be a process.” Chair Lucas responded “And Mr. Brennan just gets to walk away from the project well he has already walked away but other than taking him to court...” Mr. Howard responded “Other than taking him to court there is no other option with him to get any...” Chair Lucas stated “Okay well I will entertain a motion to...” Commissioner Williamson stated “And one thing if he had of came back to us on June 1<sup>st</sup> or June 30<sup>th</sup> that would have been a different picture but he is going to wait until his man walked off the job.” Commissioner Travis responded “That man stood there the other night he knew. He said he was going to take care of that water issue over there and now we are going to have to fix it.” Chair Lucas responded “Well the agreement was it did not matter what it cost get it fixed so it has to be fixed.” Commissioner Travis stated “Cathy I understand that but he stood right there and said he would do it.”

Commissioner Carter stated “I kind of agree with Mr. Hall when Mr. Brennan would not come and meet with this Board or one of his representatives but just to send an email that is not business.”

Chair Lucas stated "I think we need to hear from the litigation attorneys as to what our options are. We can sit here and talk about it and debate it but until we have some professional advice I think that is the direction we need to head."

Commissioner Hall stated "One of the options is if they walked off is we have to hire somebody because we all recognize this project is too far gone to walk away from the project. We have been jacked around. We have been had and they have been playing us month by month by month. We need to make a decision and hire the attorney and then start going after the people that his assessment says is guilty and that is the ones we take to court."

Chair Lucas asked "I guess the best thing to do is to contact Brian Ferrell and have him contact the two attorneys and talk with them about an initial assessment?" Mr. Howard responded "You will have to hire one before they will do that." Commissioner Travis stated "We need to decide which firm we want." Commissioner Jefferies responded "There you go."

Commissioner Carter moved, seconded by Commissioner Hall to contact and hire Mr. Neil Yarborough as a construction litigation attorney on the detention center project.

Chair Lucas asked "Was he the \$250 an hour or the \$300 an hour?" Mr. Howard responded "He was the one that did Onslow County." Chair Lucas continued "Do we need to put any conditions on the terms of his hiring for a certain designated period of time to perform a certain function?" Commissioner Hall responded "Let's get passed the motion of hiring somebody and then once we get that we can discuss it."

Upon a vote of the motion, the motion carried by a vote of six to one with Commissioner Travis voting no.

Commissioner Travis stated "I liked the second the best myself."

Commissioner Hall stated "Now the conditions." Chair Lucas responded "Okay conditions of..." Commissioner Carter stated "Well we can get those until he does his assessment." Chair Lucas responded "What he initially said when we interviewed with him was it would take, he thought he could have an assessment in 2 to 3 weeks and that is reviewing the contracts. We need to be specific with and I guess the lawyer would determine what the assessment would include." Commissioner Williamson stated "I think everything else is attorney/client privileges. We need to sit down in attorney/client privileges." Chair Lucas responded "Well Mr. Yarborough needs to be at the August 5<sup>th</sup> meeting." Commissioner Hall stated "We don't want to make too many assumptions. They came and expressed an interest. We need to let them know now that we are very much interested and I think it would be appropriate for either you or Brian to contact them and say that the Board would like to engage in their services and we would like to sit down and talk." Chair Lucas stated "I do know this much as of this morning in talking with Brian about another issue he did tell me that Mr. Yarborough had contacted his office yesterday to see what direction we were going to head or if we had discussed it any further." Commissioner Hall responded "Well that is a positive. Well let's give him a call." Commissioner Carter asked "Do we need to get Brian to give Mr. Yarborough a call tomorrow?" Commissioner Travis responded "We don't need Brian to do it. Why would we pay him to do

something that we can do ourselves?” Commissioner Hall stated “I think the Chair can give him a call.” Commissioner Travis continued “And I don’t think we need to wait until the first meeting in August. I think we need to get started on this immediately.” Chair Lucas responded “Okay set the date for the meeting.” Commissioner Travis stated “You have to talk to the man to see if he is interested in the job before you set a meeting.” Commissioner Hall stated “Let’s say he is. Let’s move on to the next step what is the earliest date?” Commissioner Travis responded “The quickest we can get him here. I don’t see delaying the meeting.” Commissioner Hall stated “The chairman will talk to him and get some good times.”

Mr. Howard asked “Apparently our contract with Brennan has ended, do you want me to start contacting other architectural firms?” Chair Lucas responded “I think we need to hold off until we talk with the attorney. I mean that is my opinion.” Commissioner Hall stated “There is nothing wrong with him getting other architectural firms.” Mr. Howard stated “My thought process is to limit the time that we are shut down and that limits the amount of time the contractors can say well you delayed this project. The contractors can say you did not have an architect for a month so that is a month you can’t blame me for the building not being open.” Commissioner Hall responded “I agree with that. We can’t hold the contractors responsible.” Commissioner Travis stated “I think you need to be checking.” Chair Lucas responded “But we can still work with the contractors. We have individual contracts with those contractors. We are just letting Mr. Brennan go.” Mr. Howard responded “But what I am saying is...” Commissioner Hamlett added “If Woodrow finds out he can shut it down.” Commissioner Travis stated “You can’t run that place down there without one. I am telling you, you can’t.” Commissioner Hamlett asked “Is that place locked up at night time?” Mr. Howard responded “Yes.” Chair Lucas stated “Let’s get a firm answer on that. What is the legality of having the architect in place? If we have unusually circumstances like we have and have unusual issues.” Commissioner Travis stated “We need to do things legally.” Chair Lucas responded “Are you suggesting that I am not going to do it legally? I don’t know what the law says; I would like to find out what the law says before we make assumptions.” Commissioner Travis stated “Kevin has done told you one time. We have to have one down there.” Chair Lucas responded “I would like to see the law that says that or where it is written so.”

Commissioner Williamson stated “We still have Mr. Brennan as our architect. We don’t have a man from his firm on the site.” Mr. Howard responded “I don’t think Mr. Brennan will consider that.” Chair Lucas stated “He has breached his contract with us.” Mr. Howard responded “We can feel that way and I understand that and I don’t disagree with you but until a judge rules in a civil lawsuit we will never know.” Chair Lucas asked “Who says that the architect, who would come...the inspections department through the state or local inspections?” Mr. Howard responded “The local inspector. If we are required to have an architect to design a building of this size I think we would have to have one on the site.” Chair Lucas continued “And our architect has breached his contract through no fault of any person here. We are still going to be held responsible.” Mr. Howard responded “Well you have to have an architect, the state does not care, they want to make sure the building is built correctly.” Chair Lucas stated “There has to be an exception to that...” Mr. Howard responded “I highly doubt it.” Chair Lucas continued “There has to be some exception when your architect has breached his contract.” Commissioner Carter stated “The best thing to do is to get Mr. Yarborough here so he can advice us on what we

need to do whether it is on the architect or whatever we need to do. Get him here next week and let him tell us what to do.”

Chair Lucas asked “Okay there is another issue, what about the staff at the detention center?” Commissioner Hamlett responded “Let them keep working. They are going to shut it down so it is not going to make any difference.” Commissioner Jefferies asked “With the architect gone do we need to change the locks?” Mr. Howard responded “He turned the keys in when he left. They were turned into Tony Durden.” Commissioner Carter asked “Who turned the keys in?” Commissioner Travis responded “Dennis.”

(At 6:15 Commissioner Hamlett left the meeting.)

Chair Lucas asked “Are we going to address the staff or...?” Commissioner Hall responded “Well personally as vague as this is and the fact that we have people that have been on board for 6 months now I think we are at the point that we need to lay them off.” Chair Lucas stated “They have been on since September of last year.” Commissioner Williamson stated “I don’t think we can make that decision. We are going to have to talk with our Sheriff on that part of it. I am just saying we need to talk with our Sheriff because we don’t need to be assuming things.” Commissioner Hall responded “I am not assuming but here is my rationale. Here is my thought process. We hire whenever it was let’s say September we hired 8 or 10 people to come in and start training to be ready to open the structure come either 1 of December or 1 of January.” Chair Lucas added “So that there would be no delay.” Commissioner Hall continued “Now we are almost at 1 of August and we know it is going to be a couple more months delay. Those people are not doing the work. There are no inmates there. We have to mitigate the costs.” Chair Lucas responded “If our liquidated damages are \$1000 per contract and we have how many separate contracts, a \$1000 a day for 3 days for one contract that is \$30,000 for one contract.” Mr. Howard stated “But not all, some contractors will claim that they were delayed by Kern or whoever. I couldn’t finish the locks because this part was not done. I am just saying you are not going to get a thousand dollars per day from every contractor.” Chair Lucas stated “At this point we don’t know what that additional staff is costing us per month.” Commissioner Williamson responded “Right. We don’t have any information.” Chair Lucas continued “But we do know it is an expense that we have.” Commissioner Williamson responded “The Sheriff is working them in and doing other things with them to fill their time by not running up extra pay. I think we just need to talk with him.” Commissioner Carter stated “I do too.” Commissioner Williamson stated “And I am in agreement with you Mr. Hall as far as we do need to cut but we can’t sit here and make those decisions.” Chair Lucas responded “He already told us when he was here during the budget that he had placed them and they were working but that does not mean...” Commissioner Hall stated “The problem I am having is you have an old building designed for 10 people to work. You have a new building designed for 20 people to work. The new building is not open and you have 20 people standing around working. I don’t care what they are doing staying busy but they are not doing work that is beneficial past the training now they are not doing work that is beneficial to the county. If we training on 3 or 4 months of training and now we have 7 or 8 months of training then it is time for us to take a look at that cost. I don’t know how much it is but I know our officers make maybe \$30,000 a year maybe or \$2500 a month times 10 people. That is a lot of money and that is not going to come out of the liquidated damages. That is coming out of the general fund.”

Commissioner Travis asked "Has there been any overtime been paid into the jail since all of those people have been down there?" Mr. Howard responded "I couldn't tell you off the top of my head. I know there was some at one point in time but I am not sure." Commissioner Travis continued "That should not be happening." Commissioner Carter stated "I think we need to talk with the Sheriff." Commissioner Travis responded "The Sheriff don't take care of these people. The jail takes care of them." Commissioner Carter continued "The Sheriff is responsible for them." Commissioner Travis responded "No, A.D. Rainey is responsible for the jail." Commissioner Carter asked "Well who does A.D. Rainey work for?" Commissioner Jefferies responded "He works for the Sheriff." Commissioner Travis stated "Well I will guarantee you that A.D. will be the one to come and talk to you about it. We should not have had any overtime down there this whole year."

Chair Lucas stated "But then the other issue was the security person. They could have very easily handled courthouse security. We should not have had to talk about that."

Commissioner Hall moved, seconded by Commissioner Travis to meet with the Sheriff as soon as possible to discuss handling the excess personnel that we have on hand until the new jail is opened. The motion carried unanimously.

Commissioner Williamson moved, seconded by Commissioner Jefferies to give the authority to the county manager to look at options for a new architectural firm based on the advice we get from the litigation attorneys.

Commissioner Travis asked "What do you mean by that Kent to have somebody capable of doing the job and willing to do the job if we do need them?" Commissioner Williamson responded "Exactly."

Upon a vote of the motion, the motion carried unanimously.

ADJOURNMENT

At 6:22 p.m. Commissioner Jefferies moved, seconded by Commissioner Travis to adjourn the meeting. The motion carried unanimously.

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Paula P. Seamster  
Clerk to the Board

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Cathy W. Lucas  
Chair

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