

MINUTES – JANUARY 3, 2012

The Caswell County Board of Commissioners met in regular session at the Historic Courthouse in Yanceyville, North Carolina at 6:30 p.m. on Tuesday, January 3, 2012. Members present: Nathaniel Hall, Chairman, Cathy W. Lucas, Vice-Chair, William E. Carter, Jeremiah Jefferies, Gordon G. Satterfield and Kenneth D. Travis. Also present: Kevin B. Howard, County Manager, Brian Ferrell, County Attorney, and Angela Evans representing The Caswell Messenger. Paula P. Seamster, Clerk to the Board, recorded the minutes.

MOMENT OF SILENT PRAYER

Chairman Hall opened the meeting with a Moment of Silent Prayer.

APPROVAL OF AGENDA

Commissioner Satterfield stated “I would like to make a motion to add an item to the agenda if we could. The item would be a discussion of the previous votes due to the letter we received and the numerous phone calls I have had about the decision that was made by the Board of Elections. If we could discuss this maybe when we are discussing filling the vacancy and get the county attorney’s opinion.”

Commissioner Jefferies moved, seconded by Commissioner Travis to approve the Agenda as amended. The motion carried unanimously.

APPROVAL OF CONSENT AGENDA

Chairman Hall stated “I would like to separate these items A and B because we need to take additional action on Item A. Let’s do Item B first.”

Commissioner Travis moved, seconded by Commissioner Jefferies to approve the Consent Agenda Item B. The motion carried unanimously.

Chairman Hall stated “We will go back to Item A and I will refer this to our counsel.”

Mr. Ferrell stated “Mr. Chairman in review of the December 14, 2011 Special Meeting minutes there is an action of the Board apparently taken in regular session but there is no vote associated with that regular session item, so in order to clear up the process that was followed in the Board’s decision here what I would suggest is that there be a motion to approve the minutes which is the item before you and also a motion to reinstate Ms. Laura Wilson and to have a reprimand in her personnel file which was the apparent action taken by the Board but we just need a vote to that affect.”

Chairman Hall asked “Is everybody clear on that? We took the vote in closed session but we need to have it cleared up in regular session.”

Commissioner Lucas moved, seconded by Commissioner Travis to affirm the decision of the Board as reflected in the December 14, 2011 minutes to reinstate Ms. Laura Wilson's position and to put a letter of reprimand in her personnel file and to approve the minutes of December 14, 2011 special meeting. The motion carried unanimously.

PUBLIC COMMENTS

Chairman Hall opened the floor for public comments.

Mr. J.C. Powell came before the Board and made the following statement:

"My name is J.C. Powell and I am from Providence. I stated on the comment sheet there that I have some concerns about Mr. Battle's votes. I understand he has appealed the decision by the court. Is that correct? Has he appealed his decision by the court?" Chairman Hall stated "I am not aware of that." Mr. Powell continued "My first concern is the one vote margin on November 21st regarding the redistricting plan. There were three votes for and two against and Mr. Battle casted his vote for it. What will happen if this appeal is denied? What will happen to that vote?" Chairman Hall stated "Sir, this is public comments if you have some comments you can make them." Mr. Powell stated "All such votes should be revisited and reconsidered and if this appeal is denied, if he has one, I would like to see this Board vote to require him to pay all monies to the taxpayers of this county after he moved out of this county. I would like to see this Board make a vote on that if his appeal is denied. Thank you."

Mr. John Claggett came before the Board and made the following statement:

"Good evening. My name is John Claggett; I reside at 108 Jaye Lane, Providence, NC.

Recently six months worth of county cell phone records were requested for review. We received copies for various departments with the exception of the Sheriff's Department and the Department of Social Services, and told that even though their cell phones are paid for by the taxpayer we could not review their records due to the sensitive nature of their work. We view that as an evasive excuse by the county due to fear of the potential embarrassment the content those records could offer. We are not seeking confidential information such as account numbers etc. just cell phone records of billing, usage and such which by statute belong to the people.

Of the six months worth of cell phone records for the departments we did receive, not only was over \$500 paid in over usage of the various plans in place, but there is undeniable evidence of personal use. Examples of this are using the instruments during nights and weekends when the advertised work hours for this department is 8 – 5 Monday through Friday, along with texting and calls to and from the "Friends and Family" program.

There are a lot of taxpayers in this county who currently can't afford a nice cell phone plan at all, and some that have to utilize the track phone system and pay as you go, when they can. The cell phones provided by the taxpayer seem to be flaunted by those who consider themselves a privileged few as recent county cell phone issues has illustrated. Trust me I've personally heard it all in conversations and on scanners.

It's obvious to us that county oversight continues to be non-existent and of an uncaring nature. The Caswell County taxpayer deserves a whole lot better than this.

Ladies and Gentlemen of the Board this is waste, abuse and potentially fraud in its purest form. Thank you."

Chairman Hall asked if there was anyone else who would like to speak at this time. Chairman Hall declared Public Comments as closed.

FARMLAND PROTECTION PLAN

Ms. Stephanie Grant stated "Good evening commissioners. You might remember a couple of months ago we came before you about the Caswell County Farmland Protection Plan. At that time you approved the in-time contribution of staff time to work on the plan and in the interim we were to research the consultants that the Piedmont Conservation Council was going to work with. The Piedmont Conservation Council Board was to approve them as well as the Caswell County Farm Bureau. Since then all of that has happened. The Caswell County Farm Bureau also approved a \$2500 cash match in order to make it possible, financially, for us to complete the plan. Today what we brought before you are two main decisions. One is to approve that we move forward with the consultants that the Piedmont Conservation Council and the Caswell County Farm Bureau has approved. Two is to approve the proposed advisory committee that would then oversee and facilitate the plan completion of the consultants. I believe that the proposed advisory committee and the names and qualifications of the proposed consultants were in your agenda packets. We also have the consultants, Jerry Dorsett and Gerry Cohn here. If it is the Board's pleasure they can introduce themselves and tell you about their qualifications."

Mr. Jerry Dorsett stated "My name is Jerry Dorsett and I work with the Soil & Water Districts. I worked with the Caswell district about twenty out of the twenty-five years I worked with the state. For the last six years I have been working around the state with Farmland Protection on preservation issues for the counties, communities and non-profits and that kind of stuff."

Mr. Jerry Cohen stated "My name is Jerry Cohen. I have worked for the past dozen years with several non-profit organizations and currently with the Dairy Cooperative on a variety of different agricultural development and economic issues around the state. I have worked on these Ag development preservation plans in Alamance, Durham and Franklin County as well. I look forward to the chance to work together with you here in Caswell to try to seek out opportunities to keep agricultural profitable and keep families here who own the land."

Commissioner Jefferies moved, seconded by Commissioner Carter to hire Jerry Dorsett and Gerry Cohen and to approve the proposed advisory committee.

Commissioner Satterfield asked "Ms. Grant I know we talked about some type of in-time contribution, what is the cost of this?" Ms. Grant responded "At the last commissioners' meeting the Board approved \$5,000 of in-time staff time from the county extension, soil and water district, as well as the county manager to work with us on that advisory committee."

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

UPDATE ON DEPARTMENT OF COMMERCE GRANT INVESTIGATION

Chairman Hall stated “Ms. Lucas and I met with the Sheriff to follow up on one of the ideas that we had in dealing with this Commerce Grant investigation. The idea was to have the Sheriff’s department to have someone either out of the detective division or someone else to assist us. We met with the Sheriff and one of his officers. We have, I think, six families that are involved. The Sheriff has agreed to contact those families and to get written confirmation as to the authenticity of the signatures. Because of the holidays I failed to contact the Sheriff’s office to see where they were. We anticipated that they would get started last week. Are there any other comments on this?”

Commissioner Lucas asked “Other than Lt. Adkins said something about getting with Paula, did he do that?” Chairman Hall responded “He met with her the next day and he picked up the files. That is the update on where we are with that. As soon as we get information back from the Sheriff’s department I will share that information with this Board.”

DISCUSSION FOR FILLING VACANT SEAT

Mr. Ferrell stated “The procedures for filling a vacancy on the board of commissioners is established by North Carolina General Statute 153A-27. In short, what that statute provides is if a vacancy occurs on the board of commissioners, as it has been declared a vacancy on the Caswell County Board of Commissioners for Commissioner Battle’s former seat, the remaining members are tasked with appointing a qualified person to fill the vacancy. To be eligible to fill the vacancy the person must be a member of the same political party as the member being replaced and be a member of the same district. Of course in this case Commissioner Battle was an at-large representative to the Board and so the same district is not a factor in this appointment. In any event, the Board of Commissioners have 60 days from the occurrence of the vacancy, in this case the vacancy was declared at the Board’s last meeting in December, to fill the vacancy. The Board must consult with the local Democratic Party, which was the party of the former commissioner, if the commissioner was elected to a partisan office, that solicitation of the party recommendation does not necessarily have to be followed by this Board but it does have to consult with the local party. After that solicitation the Board has 60 days to fill the vacancy from the day it was declared. To the extent that it is not filled in that 60 day time period the clerk of this Board has an obligation to notify the Clerk of Superior Court who then would fill the vacancy if this Board for some reason was not able to fill it on its own behalf. Your Rules of Procedure also speak to the process for nominating and appointing a person to fill this vacancy and I will point you to, essentially what your rules require for appointment is a nomination process, the exact same as what you go through when you appoint a chairman and vice-chairman. We just went through that exercise at the first meeting in December. There is a nomination process and then a vote process. That is what your Rules of Procedure require so in addition to the state’s statute which gives you the time frames, etc. in what you have to do to fill that seat, your own rules tell you that there is a nomination process for when you are ready to consider names. That is the procedure.”

Chairman Hall stated “Immediately after the December 19th meeting I tried to get in touch with the Democratic Party chairperson. It was three or four days later before I reached her because of

the holidays. I did inform her of the action taken by the Board. She did tell me at that time that it will probably be the first week in January before she could get a board meeting together due to the holidays.” Commissioner Travis asked “Did she give you a time frame on when she would be back with you?” Chairman Hall responded “No, she did not, but I will follow up with her. She said it would be the first week of January before she could get that board together.” Commissioner Travis asked “Was there a written letter sent to her?” Chairman Hall responded “No.” Commissioner Travis continued “Do we need to?” Chairman Hall responded “I don’t think so because she sent me an email prior to me reaching her. She was aware of what their roll was in this process.” Mr. Ferrell added “The statute specifies that the board of commissioners is to consult with the executive committee of the appropriate party so it does not specify that there is a writing requirement. I think you could do that but I think that ‘consult’ is the word the statute uses.”

Commissioner Lucas asked “Are there any requirements in the statutes that govern how the Democratic Party makes their selection?” Mr. Ferrell responded “No, again what the statute says is that the board of commissioners consults with the executive committee of the appropriate party before filling the vacancy and that is all it says. I would assume that the executive board would discuss it but I don’t represent that committee and I don’t know what their processes are but it is that open in the statute. You just have to consult with the executive committee. Again, just to be clear the executive committee will provide you one, two or however many names they so choose as a recommendation but this Board is free to follow or not the outcome of the consultation.”

Chairman Hall stated “I had a thought that I wanted to share with this Board and you might want to consider it. We are working with a 60 day deadline. I was wondering if this Board would consider a special meeting sometime in January to handle this so we can kind of get this behind us.”

Commissioner Carter asked “Do we have another meeting this month?” Commissioner Travis responded “Between this meeting and the next Board meeting we need to handle this. I think we need to get the names before we can schedule a meeting.” Chairman Hall responded “Not necessarily. We moved the date of our next meeting by one day, January 17th.”

Commissioner Satterfield asked “When are we supposed to hear from the Democratic Party?” Chairman Hall responded “I do not have a time. Again, the chair told me that they would probably meet the first week in January. I can communicate with them or with her and tell her that we are planning a meeting for so and so date.” Commissioner Carter asked “Will we be meeting with them?” Chairman Hall responded “No.”

Commissioner Travis stated “I think as soon as you get the information from them we need to set up a meeting immediately after that. If we are not going to use any of their names we will need to go forward to find someone on our own. Is that right? We don’t have to pick any of them.” Mr. Ferrell responded “You do need to hear from them and consult with them but at the end of the day you are right, it is this Board’s decision despite or regardless after that consultation. This Board has an unfettered right to make its own decision.”

Chairman Hall asked “I guess the question is, should we try to plan a meeting before the 17th or after the 17th?” Commissioner Travis responded “If they meet this week, we should be able to meet next week and we may have to meet again.” Chairman Hall stated “I think we would only need to meet once but again that would be up to this Board.”

Commissioner Carter asked “Are we going to have a real long agenda the next meeting?”

Commissioner Travis responded “I think we need to handle this at a separate meeting.”

Commissioner Carter asked “What is the time frame we have? Is it until the end of February?”

Chairman Hall responded “We have until sometime in the middle of February.”

Commissioner Satterfield stated “Mr. Chairman, it just looks like to me that it would be best for you to communicate with the executive committee and find out exactly when they are going to give a recommendation and then you have the clerk to call us. I don’t know how we can sit here tonight and set a meeting date, we may meet the 16th and they may not meet until the 17th or whatever. It looks like to me that we need to have a date from them before we can set a meeting on when they can give us some type of recommendation.” Chairman Hall responded “That is fine. I just wanted to get the feeling of the Board. That is a good way to go about it. I will communicate with them again and then I will have Ms. Seamster to get in touch with all the Board members.”

DISCUSSION ON PREVIOUS VOTES

Mr. Ferrell stated “I understand the amended agenda item was to discuss the ramifications of the recently declared vacancy on the prior votes of this Board. My high level view is the votes of the Board as recorded in its official minutes are the votes and the decisions of the Board to the extent that this body would like further input on my legal analysis that is appropriate for me to provide to you in Closed Session under the Attorney/Client privilege section to the open meetings laws. If you are interested in a closed session on that topic we need a motion to have that closed session. The high level view is the votes as recorded in the minutes of the Board are the votes as stand now of record.”

Commissioner Satterfield asked “I just have a question. Mr. Attorney I am going to read from a previous meeting a quote from you and see if maybe your opinion has changed or maybe you have talked to someone else, if you did, then say it was not your opinion. You said ‘According to the North Carolina Constitution, it says the following persons are disqualified from office and that includes any person who is not qualified to vote for that office. So with the voter registration challenge being sustained by the Board of Elections ... a commissioner would be disqualified from holding office subject to the appeals process. Based on that disqualification he would not have the ability to receive the privileges and benefits of that office according to the Constitution even during the pendency of the appeal.’” Mr. Ferrell responded “I don’t think anything I said is inconsistent with my prior statement that you just read.” Commissioner Satterfield continued “My next question to the attorney, Mr. Chairman, is this still your opinion sir or have you discussed this with other people in government and so forth or anyone?” Mr. Ferrell responded “Again, you have one opinion in a letter that has been expressed to you from the School Board’s attorney, I believe. You have one attorney’s opinion. There are other attorneys opinions of which I am familiar. Again, if this Board wants my legal analysis of this

issue that analysis is best provided to you in closed session under the Attorney/Client privilege exception to the open meetings laws under 143-318.11(a)(3).” Commissioner Satterfield stated “I would like to hear his opinion Mr. Chairman. If we have to go into closed session to get it that is where I would like to hear it, I guess.” Chairman Hall responded “Why don’t we do this then, why don’t we put the closed session at the end of the agenda. When we get to the end of the agenda we will need a motion to enter closed session for attorney/client privileges.”

PRIVILEGE LICENSE DISCUSSION

Mr. Ferrell stated “Mr. Chairman at the last meeting there was some discussion about the proposed Privilege License Ordinance. There was particularly a question raised about some information that was provided to the Board by the Tax Assessor about some businesses being taxed in other jurisdictions and that list of businesses seemed quite more inclusive than the list I provided to this Board. I am reporting to the Board about my review of the prior information that was provided to you, unfortunately it is as I figured. What was provided to you was a long list of taxes that cities are permitted to impose. In particular, in your prior materials you had some information from the City of Roxboro and that was a few pages in length versus possibly a page and a half of businesses that the county can tax. The list you have that we prepared in relation to the ordinance is similar to some of the other information in that same item. Although there was a longer list of ordinances for Nash County and New Hanover County which is much abridged from what a city such as Roxboro is able to tax. You also asked me to look at the purpose behind your privilege license discussion, at least the way I understand it, which was to get a good listing of the commercial enterprises operating within Caswell County. In thinking about that and how other counties address that question, in my view with connection with your land use efforts that are pending and forth coming, there is a tool that is often used called a zoning compliance permit. Essentially this requires that any business operating within the county register with the planning department zoning administrator to say here I am, this is what I am doing and get a compliance permit. You don’t have the ability to do that now. Of course we are working right now on updating your land use management ordinances and potentially implement zoning but should you get that step a way that many counties address this issue is through this zoning compliance permit process. That is an avenue as you move forward to have a tool to identify which businesses are operating. That information can, of course, then be provided to the tax department for the taxation of commercial businesses, business property. That is one tool that other counties are using but the analysis of what business counties are allowed to tax you have seen is consistent with the statute. Of course it is much less expansive than the opportunity the cities have for taxation of privilege license taxes. That is the update from the last meeting on that item.”

SOLID WASTE STUDY

Mr. Howard stated “In your packets you have a proposal from the Piedmont Triad Regional Council which is formally the Piedmont Council of Governments to provide a solid waste study. Their study would do three things actually. First they will look at our current sites to see how the current locations are laid out and how they match up with current population trending and growth in the county. The second part of the proposal is they will look at our hauling costs and if we could save money by doing it in house versus the way we are now. The third component of

the proposal is to look at a county provided curbside pick-up countywide. The reason I asked for this is this is something that we cannot do in house with our staff and the resources that we have. What this will allow us to do is to take that and in conjunction with this we will do two RFPs. One on how we provide services now and then a county privatized curbside pick-up RFP and get all of this information into you by April or May for the budget process so we can take a large scale look at our solid waste and how we provide it and see what is the best way to go for the future.”

Commissioner Travis stated “This \$9,250 that we are talking about spending here, my opinion right now is we need a shed to stop that trash from blowing everywhere over there. If we are going to do recycling over there we need to spend some money over there to have a building to keep the trash up.”

Commissioner Lucas asked “Kevin, what was your comment about doing it in house?” Mr. Howard responded “Some counties actually provide a curbside pick-up. In house means it is provided by county employees. That is just something for us to look at. Usually privatized is cheaper when it comes to doing the curbside pick-up. It will give us a better look at the in house versus a RFP to get private providers to provide the same service. Each house would have a roll out cart and we would pick up countywide versus folks taking it to the convenience sites.” Commissioner Lucas continued “Has the population shifted so much that some of these sites would need to change?” Mr. Howard responded “That is what this study would tell us. If you look at it with the naked eye possibly not, this would give us a more in depth look at that.” Commissioner Lucas stated “It is my understanding now for door to door pick-up with the vendor that we currently do business with it is about \$76 every three months and that is utilizing their containers. You get dollars off if you don’t use their containers. That is significantly more than our user fee right now.” Mr. Howard responded “What we would hope to look at is providing it to every house in the county and that would be a cost savings. In some cities there is an actual cost of \$10 per month per household because of the total size of contract cost.” Commissioner Lucas continued “What are we paying currently?” Mr. Howard responded “I don’t have the number on top of my head.” Commissioner Lucas stated “I mean for the contract with them.” Mr. Howard responded “We are paying the hauling costs and then we pay a tipping fee cost.” Commissioner Lucas asked “That contract is up in June?” Mr. Howard responded “June 30th.”

Commissioner Jefferies asked “Do we need to send this out for bid?” Chairman Hall responded “I think the idea is that it would go out. The study would show the best way to go. We may find out that curbside pick-up is feasible and it may not.” Mr. Howard responded “This is something that has been discussed several times over the last year or so by this Board to at least look into.”

Commissioner Travis stated “There is no way that we can do all the house pick-ups all over the county. You can’t make people do this.” Mr. Howard responded “What would happen is instead of the county providing convenience site service, we would provide curbside pick-up service. We would contract that service out.” Commissioner Travis stated “They have that option now.” Commissioner Travis stated “You are talking about moving these sites to a more central location. You can hardly get anyone to take one now.” Mr. Howard responded “That is what you have to decide as part of the process. That is what this process will show. It will show if how we are

doing it now good enough or do we need to get more involved in it. This is what we discussed during the budget process. This Board discussed this, not me.” Commissioner Travis stated “I don’t want to spend \$10,000 for nothing. That is the way I see it.” Mr. Howard responded “If nobody wants to change then...” Commissioner Travis continued “The lot that the Sheriff’s department has cars in is full of beer cans, paper and everything else.” Mr. Howard stated “We were asked during the budget process to have a study done and to try to do one in house. We can’t do a study justice in house because we don’t have the staff to do it. So I contacted an organization to have the study done. This is just a proposal to have something done but it is up to this Board.”

Chairman Hall asked “Is there any reason why we cannot or have not put some type of storage facility at the landfill?” Mr. Howard responded “No sir. We can put it in the budget for next year to have something installed out there next year.” Commissioner Travis stated “We are going to have to do something if we are going to do the recycling. It looks awful over there. If it were not for the trees the trash would be all in the road.” Mr. Howard responded “There is nothing to hold the trash in.” Commissioner Travis stated “We might need to do this first before doing this proposal.”

Chairman Hall stated “I raised the question fellow commissioners, is this an either or situation. I have seen the trash out there. I don’t see an either or situation, I think we need to take care of it.” Commissioner Travis stated “I think we need to take care of the problem with the trash before we do this right here. I am not saying not to do the study but I think we need to take care of this first.” Chairman Hall responded “I agree. I am throwing this out there because we are in January, if we don’t do something now at the next budget process we will have to wait another year, that is why I asked if this is an either or situation.”

Commissioner Travis moved, seconded by Commissioner Lucas to have the county manager to get a price on what it would cost to put a building up to take care of the trash.

Chairman Hall asked “What size building?” Commissioner Travis responded “I don’t know what size they need. You will have to talk to Mr. Smith about that. It needs to be a building that will take care of what is needed over there.”

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

Chairman Hall stated “The county manager will get us quotes on a building to handle the recycling.”

Commissioner Travis asked “Did we budget for this in the last budget?” Mr. Howard responded “No sir but we have sufficient funds to cover it in the budget.” Commissioner Travis stated “What bothers me about this is and I know that these dump sites need to be more centrally located but what bothers me is if we spend the money to do this and we can’t get anyone to take it what have we done.” Chairman Hall responded “That is what the study will tell us. If I recall going back to the budget sessions we had some discussions and we asked about a study and now we are at the point of doing a study.”

Commissioner Travis asked “What are they going to do, go house to house to see which people want household trash pick-up?” Mr. Howard responded “The initial cost would be based on 100% participation on houses we can get to, to pick up the trash. There are some houses that you cannot get a garbage truck to due to the driveways, how far they are off the road, conditions of some roads but the cost would be based on say 95% participation.” Commissioner Travis stated “So in other words not everybody would have to go to household trash pick-up.” Chairman Hall responded “What he said was not everyone would be able to.”

Commissioner Lucas asked “My question is under the \$6500 amount where it says apply GIS analysis and cost factors from another similar county run solid waste operation, does that mean they are going to use mapping from another county?” Mr. Howard responded “If another county provides it in house they would take their cost and apply it to our situation to give us an ideal cost on what it would be to do it in house. The GIS map is what they will do with the first study. They will do an analysis in the first study and apply it in the second study.” Commissioner Lucas continued “We basically have a transfer station now.” Mr. Howard responded “Yes but typically we are not considered a transfer station because we have the roll off there. It is not handled the same way a transfer facility would be.” Commissioner Lucas stated “It is my opinion that we don’t need this study at this point in time.” Mr. Howard responded “If we don’t want to change, we don’t.”

Commissioner Travis stated “I don’t see that many people in Caswell County would want trash pick-up in front of their houses.” Chairman Hall responded “I don’t think the issue with doing the study is on how many people want it. Sometimes people do not know what they want until you give them an option. The option on how much it is going to cost, what it would do for the county, how much of the use cost it would take based on the drop off points we currently use. I think in doing these kinds of studies you would need to be at least four or five years ahead to try to figure out what you would need. If we wait until we get to a point the cost may be an issue or we may get in a hurry and we won’t have all the information we would need. I think that is the idea but again it is up to this Board.”

Commissioner Carter asked “Where would the money come from?” Mr. Howard responded “Solid Waste Fund.”

Commissioner Jefferies moved, seconded by Commissioner Carter to allow the county manager to do a study on the Solid Waste. The motion failed by a vote of three to three with commissioners Lucas, Travis and Satterfield voting no.

Mr. Howard stated “Are we to proceed for the budget process for next year to keep the operation that we currently have? Are we to do an RFP based on what we are doing right now?” Chairman Hall responded “Yes.”

COUNTY MANAGER'S REPORT
County Project Updates
Pelham Water Tank

Mr. Howard stated "They are continuing to paint. They are way ahead of the completion date which is in April."

Update on Capital Improvement Projects

Mr. Howard stated "At the last meeting you asked for an update on the capital improvement projects, in your packets there is a breakdown of where the money has been spent so far and how much is left in that fund for this fiscal year."

School of Government Workshop

Mr. Howard stated "I asked about attending a School of Government workshop on Community Planning and Zoning. The cost for that is \$175 for each attendee. If you are interested please let me know so we can get you signed up. We will be going February 17th. It will be held in Chapel Hill."

Mr. Howard stated "I have one other item that is not listed. At the last meeting you heard from Mark III. They provided a proposal for the county to add a HSA, Health Savings Account, plan as another option for employees for their health insurance. I have scheduled it to be on the next agenda for discussion and then they will be back to answer any questions that you may have. Would you rather have that at a regular meeting or at a separate meeting so you can focus on that one item?" Chairman Hall responded "Regular meeting."

CLOSED SESSION

Chairman Hall moved, seconded by Commissioner Jefferies that the Board enter into Closed Session to preserve the Attorney/Client privilege (NCGS 143-318.11(a)(3)). The motion carried unanimously.

REGULAR SESSION

Commissioner Jefferies moved, seconded by Commissioner Travis to resume regular session. The motion carried unanimously.

Chairman Hall stated "Counsel had two questions that he asked us about so he could start working on his research. The first thing is, do we want to address those votes?"

Commissioner Travis asked "On the redistricting do we know if we can readdress this issue?" Chairman Hall responded "He has given us his opinion. I think what he is going to do, if we move forward, is to find out the ramifications during his research." Commissioner Travis continued "What I am trying to say is what if we spend all this money to get him to research it to

change it and we can't change it, what have we done." Chairman Hall responded "That is a valid question." Commissioner Travis stated "I don't think you can answer that question tonight without doing some research on it to answer it." Mr. Ferrell responded "You are correct." Commissioner Travis stated "I am not going to try to get you to say that you will guarantee it because you cannot guarantee it right now." Mr. Ferrell responded "No commissioner I cannot guarantee it." Commissioner Travis stated "I can't see us sitting here spending ten to fifteen thousand dollars if you know it is nothing we can change. Even though someone could contest this thing we are going to have to spend some money on it. If there is nothing you can do what are we going to do then?" Mr. Ferrell responded "Good question." Commissioner Travis stated "Before you can say that you want to contest this stuff here you have to know if it is even legal to do it." Mr. Ferrell responded "It is the classic chicken and the egg argument of do you do the research and get some information to help to inform the decision but the decision may be that research that you did is a nullity because you can't change anything anyway." Commissioner Travis asked "Is this something that you can make a few phone calls about to find out if you can even change it?" Mr. Ferrell responded "This is not a phone call exercise, no sir."

Commissioner Lucas asked "How will you go about determining if this is even allowable?" Mr. Ferrell responded "The basics of legal research is, you start with the statutory law that is available, look and see what it contains. You take that and see how that has been interpreted by case law. If you can't find it in case law you go and look for opinions and third party resources that are available, law review articles, etc. and you get the best legal analysis you can of the issues and analyze the issue the best you can based on the resources available." Commissioner Lucas continued "But didn't you say that the constitution already says you cannot do this but once? Did I understand you correctly?" Mr. Ferrell responded "On the specifics of redistricting is what you are saying, no what I am saying is the statutory process in North Carolina that allows for redistricting is very specific about when and how you can do it. Prior to redistricting in the commissioners races there has to be a finding made that there is a substantial inequality amongst the districts. One question that you raised by a revisit of that vote is what is the impact of the prior action of the Board in approving a redistricting resolution. So you have a redistricting resolution in place now that was approved by the Board. If you revisit that how do you legally revisit that decision given that you have already approved a redistricting plan?" Commissioner Lucas stated "That is what Commissioner Travis was asking. Is there a phone call that can be made to the Department of Justice to inquire as to whether this has ever happened before?" Mr. Ferrell responded "That is a federal question. That is a preclearance question. The statute that I was referencing is a state statute and so where I could request the opinion of the Attorney General's office, I could request such an opinion. The timing of that, I don't know how long that would be but I could request their opinion on the review of the reconsideration of the redistricting. I could certainly request that opinion from the Attorney General's office."

Chairman Hall asked "What would be the rationale for requesting an opinion to review it?" Commissioner Lucas responded "Well the question was could it be done according to the constitution." Mr. Ferrell responded "I will tell you what a former mentor told me, the Attorney General's office provides opinions just like lawyers provide." Commissioner Lucas stated "I think due to the unusual circumstances it would certainly warrant..." Chairman Hall asked "What was unusual?" Commissioner Lucas responded "The fact that we have had a commissioner removed from office." Mr. Ferrell added "It is unusual in county government to

have this type of vacancy. I would venture to say that this is unusual.” Commissioner Lucas continued “And not just with that one vote but with all votes.” Mr. Ferrell stated “As part of this research if you wanted to revisit it, it is something that I could certainly explore. What is the take from the Attorney General on whether they could see a reconsideration of the redistricting is even possible. We can certainly solicit that as part of the package. I would certainly want to provide you with my own independent analysis to go along with that but that could be a piece of information if you wanted it we could solicit that.”

Chairman Hall stated “I guess to kind of get our arms around this, let’s start with the research question there with counsel. Do we want him to proceed to do research to get answers to the questions that we raised?”

Commissioner Satterfield moved, seconded by Commissioner Carter to have the county attorney to do research to get the answers to the questions the Board raised.

Commissioner Travis asked “Before we vote on this are we talking about reviewing all the votes from July until now?” Chairman Hall responded “Right now we are just talking about authorizing him to do the research on the questions asked.” Commissioner Travis asked “So we are going to do the research to find out what we can do and what we can’t do. Is that what you are saying?” Mr. Ferrell responded “I will provide you with a legal opinion on the consequences on revisiting the decisions.” Chairman Hall stated “Counsel will do the research and he will look at case law and then he will tell us based on his opinion what the consequences are either way.”

Commissioner Satterfield stated “It just looks like to me Mr. Chairman is what we are going to do it pay the attorney to give us an opinion, which is what he has already done tonight. Whichever way we go we are probably going to be involved in some type of lawsuit. Whether we do or whether we don’t. That is basically what probably is going to happen. If we revisit it and something is changed we are probably going to be facing a lawsuit. If we don’t we will probably be facing a lawsuit. So I guess you need to do the research anyway.” Mr. Ferrell responded “Let me just say that no lawsuit has been filed to my knowledge. I don’t know of any pending lawsuits. Whether or not there is a subsequent challenge may or may not be but right now I know of no pending action or lawsuit. Of course, should there be a lawsuit legal fees are guaranteed.”

Commissioner Carter stated “This has been thrown on Mr. Battle about the redistricting but it is just as much the whole board. I told Paula that I would not be here at the meeting because I had to attend a conference and Commissioner Satterfield happened to get sick. There were only five commissioners here. The redistricting had been put off one time before because a commissioner was not here and I think it should have been put off until all seven commissioners were here. I don’t think we would be having this problem with redistricting and now it is being put all on Mr. Battle.” Chairman Hall responded “I understand. I will give my comment on this. How you think about certain decisions are based on our personal beliefs. We can argue one way or another but most of us will not change our minds on our personal beliefs. The Board has an agenda. The agenda goes out according to our laws 72 hours before the next meeting. We voted three times on redistricting. The first time the motion failed four to three. The second time it failed because of a tie vote and each time we put it on the agenda for the next meeting. Whether

the commissioners are absent or present that is their personal business but we have to address what is on the agenda. That is my feeling about that. I don't think we should be revisiting it.”

Commissioner Travis stated “On this information that we are asking him to get does not mean we are going to revisit it. We are finding out the options. We have not made a motion to revisit anything.” Chairman Hall responded “You have not but I can see the only reason we are talking about it is because someone wants to revisit it.”

Upon a vote of the motion, the motion carried by a vote of four to two with Commissioners Hall and Jefferies voting no.

ANNOUNCEMENTS

Commissioner Carter stated “I know we have a regional library meeting on the 11th, Kevin will you explain this.” Mr. Howard responded “The library board will be discussing the MOU for operations. There are some things that the libraries will be sharing in that one year transition after it dissolves, June 30th. The library board will be meeting to discuss that next Wednesday. The attorney and I will both be attending that meeting to represent the county as part of that discussion.”

The clerk gave the commissioners their iPads and explained how they will be receiving their agendas.

ADJOURNMENT

At 8:55 p.m. Commissioner Jefferies moved, seconded by Commissioner Travis to adjourn. The motion carried unanimously.

Paula P. Seamster
Clerk to the Board

Nathaniel Hall
Chairman
