

MINUTES – JULY 2, 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 Monday, July 2, 2012. Members present: Nathaniel Hall, Chairman, Cathy W. Lucas, Vice-Chair, William E. Carter, Jeremiah Jefferies, Kenneth D. Travis and N. Kent Williamson. Absent: Gordon G. Satterfield. 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.

PLEDGE OF ALLEGIANCE

Chairman Hall asked the Board of Commissioners and the citizens present to stand for the Pledge of Allegiance.

APPROVAL OF AGENDA

Commissioner Travis moved to amend the Agenda to include a Closed Session, seconded by Commissioner Jefferies to approve the agenda. The motion carried unanimously.

APPROVAL OF CONSENT AGENDA

Chairman Hall stated “Since all the Budget Workshop meetings are not included in here we will leave them open until the next meeting.

Commissioner Lucas moved, seconded by Commissioner Travis to withdraw the Special Meeting Minutes until the June 14th and June 20th meeting minutes are completed. The motion carried unanimously.

The following items were included on the Consent Agenda:

- A. Approval of Minutes of June 18, 2012 Regular Meeting

PUBLIC COMMENTS

Chairman Hall opened the floor for public comments. With no public comments Chairman Hall declared Public Comments as closed.

COUNTY ATTORNEY CONTRACT RENEWAL

Chairman Hall stated “We have in our packets a copy of the contract for our county attorney.”

Commissioner Lucas asked “Chairman Hall can we review what the changes are?” Mr. Ferrell responded “Certainly. The changes reflect some additions to our firm over the last year. When we had this agreement in place before essentially there were two attorneys on staff and we referenced that I would be the primary contact and which I still will be for there have been some changes to simply allow for other attorneys to provide services in Caswell County as needed and as their experiences would dictate. We have added Shelley Eason who has over 30 years of local government experience to our firm; just since June actually she was added to our firm. She worked in the areas primarily of property taxation for Wake County. She handled property tax work for folks all across the state and at this point in time as well. She also has some expertise in government contracting and some areas as well that she gained from a 30 year employment as the deputy attorney of Wake County. We are pleased to have her on board. The contract reflects that you may get the benefit of some of the other experience of some of the other attorneys associated with the firm in addition to myself. We just clarified some of the pronouns, if you will, in the agreement. The financial terms remain exactly the same. The retainer amount is the same. The hourly rate remains the same. The essential terms, if you will, remain unchanged. We did change some pronouns to reflect the additions to the firm. That is all you will find that is different from last year’s version.”

Commissioner Lucas asked “I don’t know if this was included in the agreement last year but it says that is ‘the representation of County from time to time may require the services of an attorney not association with the Firm. It is agreed that when such an event arises, the Firm may refer cases requiring legal services to other lawyers, preferable those living in and with offices located in Caswell County. Such referrals shall be with the consent and approval of the County Manager.’” Mr. Ferrell responded “That was in there verbatim from last year and it remains. We did not have to do that with this Board’s representation at all last year.” Commissioner Lucas continued “What would be an example of that?” Mr. Ferrell responded “An example of that would be a complex litigation with a certain subset of specialty that involves litigation services that may require or be in the best interest of the county to hire a specific firm. That would be the best example that comes to my mind when we would refer work out. If we could find that expertise here that is what we would try to do. If we could not find one here we would find the best person for the job to recommend to you to consider. Of course none of that would happen without the Board’s consent.”

Commissioner Travis moved, seconded by Commissioner Jefferies to approve the County Attorney’s renewal contract. The motion carried unanimously.

DESIGNATION OF VOTING DELEGATE TO NCACC ANNUAL CONFERENCE

Chairman Hall stated “This person has to represent and vote for the county at the annual NCACC conference. The person’s credentials have to be in place before the conference begins.”

Commissioner Jefferies moved, seconded by Commissioner Travis to designate Chairman Hall as the voting delegate for Caswell County. The motion carried unanimously.

APPROVAL OF PROPERTY LIABILITY & WORKERS' COMPENSATION POLICIES

Mr. Howard stated "You have a memo in your packets outlining the renewal of both policies. They are both \$10,000 less than last fiscal year. The coverage is exactly the same as the previous fiscal year."

Chairman Hall asked "Are there any questions for the county manager on the renewal of the property liability and the workers' compensation policies?"

Commissioners Lucas asked "Was this in the budget?" Mr. Howard responded "Yes." Commissioner Lucas continued "The renewal amount is what you included?" Mr. Howard responded "Yes ma'am, the renewal amount plus the discount."

Commissioner Travis moved, seconded by Commissioner Williamson to approve the Property Liability and Workers' Compensation Policies. The motion carried unanimously.

PROPOSAL AND CONTRACT APPROVAL FOR SOLID WASTE COLLECTION, TRANSPORTATION AND DISPOSAL

Mr. Howard stated "As discussed at the last meeting we sent out 9 RFP and we received 2 back. First Piedmont is the current provider for this service. The lowest bid was \$462,371.13 from First Piedmont. The contract is included. The only change in this year's contract is we usually have to pay for open tops, well we actually used our own in the past, but in this contract they will lease the open tops at no cost. They will deliver them to a convenience site and pick them up at no charge. We will only have to pay the tipping fees. That will actually save us about \$17,000 in our budget this year that we would have had to buy open tops with."

Commissioner Lucas asked "Did the county attorney have a chance to review this?" Mr. Ferrell responded "I did and the agreement is the same as the previous agreement that the county entered into. The provisions are legally sufficient and it is a better contract than I have seen from lots of vendors. I don't have any legal concerns with the form of the agreement except to add a pre-audit certificate which is typically something that is left off but administration will work on that when it comes to signature."

Commissioner Travis stated "We will still have to have open containers if someone wants to rent one." Mr. Howard responded "We are sufficient and should be able to cover that."

Commissioner Travis asked "Aren't we supposed to be buying some new ones?" Mr. Howard responded "Yes we have money in the budget for that. Tim and I will have to talk about that to see if we need them or not. We won't need to replace as many as we would have. Normally when the compactor goes down we put an open top in until it gets fixed or at Christmas we put an extra open top out over the weekend. Those we will not have to pay for. They will be free." Commissioner Travis continued "I understand what you are saying but we have three for \$17,000 in the budget." Mr. Howard responded "Tim and I will have to discuss if we need those or not." Commissioner Travis stated "The ones that will be free will be for the convenience centers and the ones for Christmas." Mr. Howard responded "Correct."

Commissioner Lucas asked “Do we know how many the county owns currently?” Mr. Howard responded “Not off the top of my head, no ma’am. I will have to check. I can get that for you.” Commissioner Lucas continued “What will happen to the ones that we have?” Mr. Howard responded “If we can still use them we will use them for the ones that folks rent from us. Some of them came off line because they were in bad shape. Those are being turned in for scrap.” Commissioner Travis stated “A lot of people rent these things when they are remodeling and things like that.”

Commissioner Travis moved, seconded by Commissioner Jefferies to approve the contract with First Piedmont in the amount of \$462,371.13. The motion carried unanimously.

FACILITY USE POLICY

Mr. Howard stated “The policy is back in your packets with changes mentioned by the Board. I think Mr. Ferrell has some info on the tobacco portion of the policy if there are any questions on those.”

Chairman Hall stated “The changes have been made from the last time we met and discussed this. Are there any other comments or questions on this policy before counsel speaks?”

Mr. Ferrell stated “In conjunction with your discussion at the last meeting on the policy it was noted that the provisions in the proposed policy that prohibit the use of tobacco and not just lighted or smoked tobacco but also other forms of tobacco in facilities for those folks that take advantage of this Facility Use Policy. There is also a prohibition of bringing weapons into the county facilities that would be used as part of this policy. There were questions raised about both of those items. I provided some information in your packet about the evolving nature of the State’s regulations of lighted tobacco primarily and the changes in legislature over time on the counties’ ability to regulate smoking in building and grounds. I am happy to talk with you in more detail about that. I also provided you some limited information on the evolving landscape on firearms on public grounds and public facilities as well. The policy essentially goes a little bit further than any existing county ordinance or Health Department rule in the case of smoking. My view is that is okay because this policy does not have the force of an ordinance where you would have criminal penalties associated with it. Rather it is a policy that applies to the folks that want to take advantage of the use of public facilities. For instance let’s just take a look at the tobacco issue county employees are going to be charged with the facility fee essentially cleaning up after these events. With chewing tobacco it is messy. So if the notion is that the folks taking advantage of the use of county facilities use chewing tobacco it is in that policy, the county does not have an ordinance that goes that far or a Health Department rule that goes that far and if it wanted to explore that it could do that. As far as the firearm regulation goes it goes a little further. The county has a very limited firm ordinance relating to the display of firearms and ammunition for sale. Because there is a preemption issue of firearms at the state level my recommendation for the policy is to simply say to the extent not otherwise prohibited by law weapons are going to be prohibited on county property. It gets away from any preemption issue and lets state law that precedence which it already does and you can amend the policy slightly to state that. I think the firearms issue will be addressed to meet the issue moving forward. I will be happy to talk about the specifics of either of those in more detail if you would like.”

Chairman Hall asked “How do you suggest moving forward on smokeless tobacco?” Mr. Ferrell responded “Again because this is a policy that does not have the force of an ordinance I think that legally speaking let’s just talk about what the remedies would be if someone violated the policy. The remedy would be essentially you would not get to use the facility in the future or you ask them to stop. That is the remedy. I think as the memorandum from the School of Government in your packet points out the state has come further than the current county regulations are. The county could do more to regulate smoke tobacco. The State has not stepped into the fray about smokeless tobacco. There is no specific authority that gives the county, that I could find, the ability to regulate smokeless tobacco. There is the general police power which says that county government can act to protect the health, safety and welfare to its citizens so to the extent that this Board felt under its police power and jurisdiction for the benefit of its citizens it could do that. The Health Department is usually on the fore front of those such efforts but the county could certainly do that if it wants to. Setting the expectation in the policy that it is a tobacco free zone again because you are not going to have an enforcement problem the policy is just that it is a policy and the remedy is you cannot use the facility again if you violate it. I don’t have a problem with you getting out a little bit ahead of the county’s ordinance on smokeless tobacco but you could go further if you wanted to. You could look at an ordinance as it pertains to smokeless tobacco and have policing power associated with it.”

Commissioner Lucas asked “How do we police this?” Mr. Ferrell responded “There will be proctors or county employees if you will that will be attending these events for the most part.” Mr. Howard added “With these employees being there they will make sure that these policies are being followed. Now there like he just said are no teeth in this to enforce this policy other than not allowing the person to use the facility again.” Mr. Ferrell stated “Ultimately if it became a repeat problem and people are not listening there is the trespass authority ultimately if you had a person that totally refused to comply with the policy. That is the ultimate remedy if you will. Again this is a privilege, you are granting the folks the right to use these facilities and if they don’t comply with the policies then the manager is recommending to the Board that they don’t get the benefit of that.”

Commissioner Lucas asked “We talk about the distinction of tobacco products but we allow alcoholic beverages with the approval of the county manager. Is that correct?” Mr. Ferrell responded “That is right and that could be a policy debate if you want it to be.” Chairman Hall stated “I assume if we move forward with this policy we will have some problems. I think we should ask the Health Department to take another look at the county tobacco policy. We have not had any major problems in this building with smokeless tobacco. I do think personally it is a health hazard.”

Commissioner Carter asked “Are you talking about smokeless tobacco at events or are you talking about employees that dip or chew tobacco at work?” Mr. Howard responded “This policy is specifically for whoever rents the facility.” Chairman Hall responded “That is why I stated that we may need to get the Health Department involved because it does not address employees or staff.” Commissioner Lucas asked “Is that addressed in the personnel policy?” Chairman Hall responded “I don’t think so. I don’t think it is addressed in anything.”

Commissioner Travis asked “What about the school policy?” Chairman Hall responded “The school policy is mandated by state policy. There is not tobacco products allowed at all on their property.” Commissioner Travis continued “I think this policy for the buildings should be the same for the employees.” Chairman Hall responded “I agree that is why we are discussing it.” Commissioner Travis stated “We need to address it both ways and be done with it.” Chairman Hall responded “Should we try to do that through the Health Department with their rules or through the Board?” Mr. Ferrell responded “There was an advantage in years past to address smoking regulations through the Board of Health due to some legislative language about what Health Departments could do, that has changed recently. The smokeless tobacco would be something enacted upon by your police power jurisdiction which would take commissioner actions specifically. I know of at least one jurisdiction that has smokeless tobacco prohibition I don’t think many counties do but I can certainly get you some information on that if that is what you are interested in doing. There is a way to say on the tobacco piece to say tobacco shall be used in accordance with county policy, Health Department rules and any ordinances related so you could move forward with the Facility Use Policy and then you would revisit another day the tobacco portion of this policy or even the firearms portion of this policy. I am also going to add in Section 5.2. vii. that we language ‘weapons of any kind except as otherwise permitted by law except those used by civil and military law enforcement officers’ just to make clear that we are not getting in front of the state law preemption issue on the weapons ban. That would be my recommendation at that point if you wanted to move forward.” Chairman Hall stated “We should take counsel’s advice. We can deal with the policy now and deal with the other two issues at a later date.”

Chairman Hall stated “We need to get a committee to do the rest of the policy. We need to get 3 members of this Board to be on the committee.”

Mr. Howard stated “I just wanted to point out that the current fees for the recreation and this building were also included in here.”

Commissioner Lucas stated “Reading through these materials there seems to be a distinction between smoking and smokeless tobacco. It does not address any other type of tobacco product other than lighted tobacco.” Mr. Ferrell responded “You are exactly right.” Commissioner Lucas continued “Giving you the opinion that it is nowhere identified.” Mr. Ferrell responded “You are exactly right.” Commissioner Lucas asked “Does it address it anywhere?” Mr. Ferrell responded “Not where I could find it. So again we would not be able to point to a specific enabling legislation like we have with lighted tobacco to regulate in certain buildings, etc. It would need to be done under the general police power ordinance. No, smokeless tobacco is not specifically addressed.”

Commissioner Travis moved, seconded by Commissioner Williamson to approve the Facility Use Policy as written except for the areas on addressing tobacco and use general counsel’s recommendation on firearms.

Mr. Ferrell stated “The County does have certain smoking prohibitions in place right now.”

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

2012 URGENT REPAIR PROGRAM AWARD

Mr. Howard stated “I just wanted to make the Board aware that we received an Urgent Repair for \$75,000 to address 14 homes. What this program does is it allows up to \$6,000 on each home to address if the heating and air conditioning is out or if they need a new roof or individual needs for each house.”

Chairman Hall asked “When was this awarded?” Mr. Howard responded “May 29th.” Chairman Hall continued “Can you bring back to this Board the current policies and procedures?” Mr. Howard responded “Sure.”

Commissioner Lucas asked “Has this been advertised?” Mr. Howard responded “This program does not require advertisement.” Commissioner Lucas continued “How do folks know about it?” Mr. Howard responded “Oh you are talking about the folks that use it. I will have to bring this back to you. I have this one and another one in my head and I don’t want to tell you something wrong. This is for basically the folks who are on our list already that have a specific need but I don’t want to tell you something wrong. I will bring that back at the next meeting. We have the scattered sites coming up pretty soon and that is a totally different program.” Commissioner Lucas asked “Is there a time frame?” Mr. Howard responded “We have to have everything turned into them by August 31st.”

Chairman Hall asked “What is the grant time frame?” Commissioner Lucas added “To be completed and turned back in?” Mr. Howard responded “We have until August 31st to turn in all the documentation they have asked for. We have a year and a half to finish the work.” Commissioner Lucas asked “There is no advertising to the public for this?” Mr. Howard responded “There is but I can’t remember if it was before the application or after it.” Chairman Hall stated “That is why I want to see the policies and procedures on this.”

Chairman Hall asked “Is there any action to be taken on this?” Mr. Howard responded “No sir unless you do not want to accept the grant.”

COUNTY MANAGER’S REPORT Courthouse HVAC

Mr. Howard stated “At the last meeting we were talking about contracting with what the Department of Commerce has put into place for local governments. There was information that was sent out to the iPads on Thursday or Friday. I did not have the information until after the packets went out. I have a meeting with them next Monday to discuss this. The only drawback I see with this program is they have a timeline in here of when you start this process and when it goes out to bid and they recommend about a year’s time to do that. We are talking about doing this with the HVAC at the courthouse in which we all know has issues. It has been in place for over 30 years now. I didn’t know if the Board would want to wait that long to come back with this project or to get more information before you make that decision.”

Chairman Hall stated “I was at the courthouse today and I was told that the courtroom was about fifty some degrees and in other areas the heat was coming on. We don’t need that kind of stuff

going on.” Mr. Howard responded “There were issues Friday with the AC going out and we actually had folks come in on Saturday to repair that. I don’t think it was fifty degrees it may have felt like 50 degrees because we had the building set at 69 or 70 degrees. I can bring a report on the problems we are having with that system to the next meeting as well.” Chairman Hall continued “I talked with three or four ladies over there that were wearing sweaters and they were cold. We need to fix the unit. We don’t need to wait a year. We will lose money if we wait another year to replace that unit.”

Commissioner Carter asked “Wasn’t that in the capital fund last year?” Mr. Howard responded “There is funding in there for that. We discussed getting estimates from an engineer and I received the estimates to design the system and to handle the bidding for \$100,000. That is half the estimate we received to install the equipment.” Commissioner Carter continued “Why do we need to get an engineer?” Mr. Howard responded “State law addresses that.” Mr. Ferrell added “State law sets thresholds for contract sizes and certain systems that require engineers for certain projects. The life safety systems threshold is exceeded by the scope of this project. The notion is they want to make sure that if you are spending this much public money that it is designed correctly. That is essentially the policy behind the state law that sets money thresholds for when you need to get an engineer involved in a project of this size.” Mr. Howard stated “This policy that I proposed allowed us to go around that. The companies that are involved in this would do an RFP and hire a company that has an engineer on staff. It is exempt from the state requirements.” Mr. Ferrell added “Exempt is not quite right; it is built into the project. You actually do quite a bit of auditing and engineering in this energy savings contract process. It is not exempt it is just added into the financing part of it. The benefit of the energy savings contract is rather than having a significant capital outlay you essentially finance over time the improvements with the money you saved in energy cost. It just shifts having an initial capital outlay of a lump sum for engineering and a lump sum for improvement costs to a financing over time that is finance by the energy savings. That is the benefit, if you will, to the county.”

Chairman Hall stated “From a practical standpoint if we would have spent \$100,000 on an engineer 20 or 30 years ago we may not have this problem now. We have probably spent over \$100,000 by dragging this along. We have to look at the practical side of it. My think is we don’t want to wait a year or a year and a half. We need to find someone to put that system in. We need to get this done.”

Commissioner Carter stated “I would like the county manager to get further information.” Chairman Hall responded “We know the system is broke. We need to get it fixed. State law requires that we get an engineer. Can you move forward with this pretty quickly?”

Commissioner Jefferies moved, seconded by Commissioner Carter to authorize the County Manager to hire an engineer to move forward with the HVAC at the Courthouse. The motion carried by a four to vote with Commissioner Lucas and Travis voting no.

Historic Courthouse Repairs & Painting

Mr. Howard stated “I did receive a list of contractors from the State’s Historic Preservation Office and I called those. Two of them were interested so I sent the RFPs off to them. I had one

local contractor that approached me about the RFP. I hope to have estimates on this building at the first meeting in August.”

ANNOUNCEMENTS AND UPCOMING EVENTS

- A. Joint Meeting w/Town of Milton, Town of Yanceyville and Board of Commissioners – July 12, 2012 @ 7:00 p.m. at The Thomas Day House
- B. NACo Annual Conference in Pittsburgh – July 13-17, 2012
- C. Farmer Lake Board Cook Out – July 17, 2012 @ 6:00 p.m.
- D. NCACC Annual Conference at Raleigh Convention Center – August 16 – 19, 2012

Commissioner Carter stated “I am glad we made it through the storms this weekend. The fire departments in the county were actively busy Friday night. There were trees and power lines down and several people had buildings that caught on fire. One person in particular had his tractor burn up in his shed that was struck by lightning. Friday night was pretty active for all the fire departments and the emergency personnel in the county and I would like to commend all of them. I think they did an outstanding job.”

Chairman Hall stated “I was approached by a local citizen who stated that a movie was being made in the town of Madison. The citizen wanted to know what we could do to attract a movie to come here. They said we have just as much if not more than Madison. I told them that I would contact the North Carolina Film Commission to see what we have to do to be more attractive.” Mr. Howard responded “I get inquiries from time to time if we have sites that fit their descriptions. I do send them pictures and stuff. We can look into that so that we can become more active. We do have movie studios here that they could use.” Chairman Hall continued “I looked up their website and they do have a place to put local pictures on. There were two pictures from Caswell County. One was of the rock quarry on Stephentown Road and the other was of Farmer Lake. This is something we need to look at. I will talk to them about it. We do need economic development in the county.”

CLOSED SESSION

Commissioner Carter moved, seconded by Commissioner Travis that the Board enter into Closed Session to preserve the Attorney/Client privilege for Triumph, LLC versus Alamance-Caswell LME, Alamance County and Caswell County (NCGS 143-318.11(a)(3)). The motion carried unanimously.

REGULAR SESSION

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

ADJOURNMENT

At 7:55 p.m. Commissioner Jefferies moved, seconded by Commissioner Williamson to adjourn.
The motion carried unanimously.

Paula P. Seamster
Clerk to the Board

Nathaniel Hall
Chairman
