

Regular Meeting
Tuesday, July 5, 2016
Chowan County Public Safety Center
305 West Freemason St.
Edenton, NC
6:00pm

This meeting was recorded. The audio recording is in the meeting file labeled July 5, 2016.

Present Chairman Jeff Smith, Commissioners Alex Kehayes, John Mitchener, Emmett Winborne and Greg Bonner.

Commissioner Ellis Lawrence came in later.

Commissioner Nixon was absent.

Staff present County Manager Kevin Howard County Attorney Lauren Arizaga-Womble and Board Clerk Susanne Stallings.

Regular Meeting

Chairman Smith called the meeting to order and led all in attendance in the pledge of allegiance. Commissioner Bonner then offered the invocation.

Approval of Agenda

Chairman Smith noted an amendment to the agenda to add a budget amendment 1617-001 and to move item number 6 to be after the consent agenda. Commissioner Mitchener moved to approve the agenda as amended. Chairman Smith asked for all in favor, the motion passed unanimously (5-0).

Ms. Stallings noted that after public comment the agenda would need to include a section for personnel within the closed session. Commissioner Kehayes moved to amend the agenda as recommended. Chairman Smith asked for all in favor, the motion passed unanimously (5-0).

Public Comment

Chairman Smith opened the floor to public comment in accordance with NCGS 153A-52.1

Dr. Rob Jackson, Superintendent of Edenton-Chowan Schools thanked the Board for their work with the schools during the FY 2016-17 budget planning process.

Being no further public comment, Chairman Smith closed the floor.

Consent Agenda

a. Minutes

Chairman Smith provided the minutes of May 31, 2016, June 6, 2016 and June 14, 2016 meetings.

Commissioner Mitchener noted some typos in the minutes and asked the Board for their consent for him to make the minor corrections with the Clerk.

The Board discussed that typos may be changed but content may not.

Commissioner Mitchener moved to approve the minutes subject to punctuation and typographical errors being corrected.

Chairman Smith asked for all in favor, the motion passed unanimously (5-0).

b. Budget Amendment
1617-001

Account Code	Description	Old	+ or (-)	New
Revenues				
11-3523-003-00	Intensive Supervision	-	51,747.00	51,747.00
11-3612-486-00	Recreation After School	-	23,319.00	23,319.00
			TOTAL	75,066.00
Expenses				
11-5230-442-00	Intensive Supervision	-	51,747.00	51,747.00
	Recreation After School			-
11-6131-126-00	Salaries and Wages-Parttime	-	11,910.00	11,910.00
11-6131-181-00	Fica Tax	-	864.00	864.00
11-6131-221-00	Food & Provisions	-	720.00	720.00
11-6131-231-00	Educational Supplies	-	340.00	340.00
11-6131-261-00	Office Supplies	-	151.00	151.00
11-6131-291-00	Program Support	-	800.00	800.00
11-6131-311-00	Travel	-	5,734.00	5,734.00
11-6131-390-00	Restitution	-	2,800.00	2,800.00
Total		-	23,319.00	23,319.00
				-

Justification:

Did not have final grant approval at time the FY 20016-2017 budget was adopted.

Mr. Howard provided the information on the budget amendment.

Commissioner Bonner moved to approve the budget amendment as presented. Chairman Smith asked for all in favor, the motion passed unanimously (5-0).

Pembroke Creek Grant

Mr. Howard noted that the Board previously appropriated \$5,000 for a match for the Pembroke Creek project. He noted that staff has requested permission to spend \$1,500 of the remaining monies to hire a grant writer.

Chairman Smith noted that Linda Peterson was present to answer any questions the Board may have. He noted this item was moved up on the agenda because Ms. Peterson has to leave early.

Commissioner Mitchener asked if this is re

Mr. Howard noted the initial request was for a pre-application, he stated now the County needs to hire someone to do the drawings for the project as there is no one in house that is able to do the drawings. He stated that this is for the technical work.

Commissioner Bonner stated his support of the request. He then moved to approve the use of the funds to hire someone to complete the technical drawings.

Chairman Smith asked for all in favor, the motion passed unanimously (5-0).

Fire Department Grant

Mr. Howard provided the Board with information on a grant that the Edenton Fire Department Chief provided him to purchase AED's for the fire trucks. HE noted that one of the AEDs would be placed on one of the County owned trucks. He noted the grant is a pass-through and does not require a cash match. He stated the purpose of passing the monies through is because the Town was unable to provide the grantor with a letter from the IRS

The Board discussed the number of trucks owned by the County.

Commissioner Bonner moved to approve the request to obtain the grant. Chairman Smith asked for all in favor, the motion passed unanimously (5-0).

Planning Items

Chairman Smith noted that he will not be able to participate in the discussion under this topic that involved the Timbermill project. He noted Rule 13 of the Board allows the Chair to call on the Vice Chair. He noted the Vice Chair is not available. He noted the Clerk or Staff may temporarily conduct the meeting.

Ms. Arizaga Womble noted that Chairman Smith is leaving the meeting table for the discussions.

Hiring of Court Reporter for Timbermill CUP Hearing

Ms. Stallings provided the Board with information from S. Graham and Associates quote for court reporting services for an after-hours hearing. She stated that after contacting local clerks of court, this firm is the only local firm that provides these services. The cost for the service is \$5 per page and \$500 per day. She noted the standard rate is \$4 per page and \$400 per day but the increase is for afterhours. She noted that she will have additional staff that can assist with the court reporting. It was noted the court reporter would provide the services for the Timbermill public hearing.

Commissioner Kehayes moved to hire the court reporter for the Apex CUP application hearing.

Ms. Stallings asked for all in favor, the motion passed unanimously (4-0 Smith did not vote).

Wind Energy CUP Review Proposals

Ms. Womble stated that at the June 20th meeting there were questions regarding the process for hiring an expert. She stated the ordinance does not require the County to hire an expert. She stated the wind energy ordinance (section 8.109(b)(1)(I) stated the applicant shall establish an escrow account in the name of Chowan County in the amount of \$50,000 to be used by the County, and approved by the Board to cover any of the County's expenses related to the project. She stated that it was her understanding that the primary purpose of the escrow account was to allow the County to retain an expert who would aid in the technical review of the application. She stated the language is very broad but the escrow could be used for any expense related to the project. She stated that Ms. Bryant is not at this meeting but at the June 20th meeting she discussed the purpose of the expert with the Board. She stated for any other CUP the County would not bring in an expert for review. She stated that since wind energy is so technical, and not common, an expert would assist the planner in review of the application. She stated there is not a requirement to hire an expert in the County's ordinance. She stated that she spoke with Ms. Bryant on whom she contacted to review the application. She stated that Ms. Bryant stated 5 separate companies were contacted for technical review. She stated that several company referrals were contacted. She noted this is specialized but requires a wide range of expertise.

Mr. Howard stated that this is for services not requiring bids. He stated that advertisement is not required. He stated that local advertising would not be beneficial in seeking expertise. He stated that most persons involved in wind energy are opposed to that or involved in the promotion of that. He stated that of the firms contacted four have performed work for Apex. He stated that HDR does do work for wind energy facilities. He stated that he contacted Wind Energy Analysis. He noted this firm has specialized in sound study and providing testimony on that. HE stated the Board has been provided with two proposals Energy Ventures Analysis and HDR.

Ms. Womble stated that it is difficult to find experts who has not been on one side or the other. She stated the goal is to find one who has never participated on either side is nearly impossible. She stated that with regards to the RFP she provided the Board with a packet of information on contracting statutory requirements and local contracting.

Commissioner Kehayes stated he could appreciate the dilemma of finding an expert who is not on one side or the other He stated that some of the contacts mentioned have spoken to the Board either in favor or in opposition to the application noting that members of the Southeast Wind

Coalition are attorneys for Apex. He stated he feels it is important to find someone who is an acoustical expert and can tell him if the sound information provided by the applicant is good information.

Ms. Womble stated that the expert will tell staff what information is missing or of concern from the application. She stated the expert will review the application for completion meeting the requirements of the ordinance and if the reports. She stated the burden of proof is on the applicant. She stated the Board sits as a judge at the CUP hearing and a judge would not seek evidence. She stated the County pursuing evidence would be inappropriate. She stated the burden of proof is on the applicant and the burden to disprove is on the opponent.

Commissioner Kehayes asked what the Board is allowed to use technical experts for.

Ms. Womble gave an example of an environmental study. She stated an expert would review a study would look at the study and say if this study meets the ordinance requirement and if the study is complete. She stated that the Board would decide the weight of the science provided to them through the expert witnesses.

Commissioner Kehayes stated if this is pro or con or true or false.

Ms. Womble stated the expert will look at the report and say if this is the report that is required and if it is complete or incomplete. She stated the expert is not the person who will prove or disprove the evidence. She stated if the County wanted to study sound or flicker etc. that would not be done during the quasi-judicial process. She stated that was determined when the ordinance was adopted.

Commissioner Mitchener asked if the Board is allowed to ask for more than one expert.

Ms. Womble stated that the language in the ordinance is broad with what the funds may be used for and it is the Board's discretion on who they retain.

Commissioner Winborne stated if there are issues brought up during the process such as flicker and sound or birds will the expert look at these issues?

Mr. Howard stated that these issues are environmental but he is unsure what is involved.

Ms. Womble stated the burden of convincing the Board that the requirements are met are on the applicant. She stated the County has said within the ordinance this is an allowable use within the County. She stated that County driven studies should have been brought on when the ordinance was written. She stated the requirements are there and now the question is "has the applicant met those requirements". She stated the Board decides yes or no whether they have met the requirements of the ordinance when they hear the application. She stated the Planner does not compare the science.

Commissioner Mitchener stated that the question of property value has been discussed. He stated that literature has been provided from EVA on the values.

Ms. Womble stated the county carries no burden on proving or disproving any of the information provided by the applicant.

Commissioner Bonner asked if staff has a recommendation on who to bring in.

Mr. Howard stated that Perquimans County is hiring a planning firm as a consultant.

Commissioner Kehayes asked if staff has a recommendation.

Ms. Womble stated that in speaking with Ms. Bryant, she understood Ms. Bryant to recommend HDR. With regards to the resources she cannot speak to what Ms. Bryant is looking for in reviewing the application.

Mr. Howard stated he agrees with Ms. Womble. He stated that after looking at this extensively he has not found anyone that is unbiased. He stated that the County has tried to stay in the middle of the road. He stated that HDR has more engineering staff. He stated that if the Board wants to interview the firms, he can set up interviews.

Ms. Womble stated that on several occasions she has spoken with Ms. Bryant about the needs for neutrality to find someone who has done both and make very clear the role of the expert.

Mr. Howard stated that he spoke with both firms regarding interviews and they are available.

Ms. Womble stated that the Board may interview firms but it is the Board's decision to decide who they want to hire.

Commissioner Winborne asked if the expert will review and make a recommendation.

Ms. Womble stated the expert will determine if the application is complete.

Commissioner Winborne moved to hire HDR to provide technical review of the CUP application for utility wind energy facility application review and commence work as soon as possible.

Ms. Stallings noted there is a motion on the floor and called for any further discussion.

Commissioner Winborne noted that Commissioner Lawrence has joined the meeting.

Mr. Lawrence approached the Board table and joined the meeting.

Mr. Lawrence stated he apologized for being late.

Ms. Womble asked how long Mr. Lawrence was present.

Ms. Stallings noted that Mr. Lawrence was in the back.

Mr. Lawrence stated he was present during the discussions.

Mr. Howard stated that staff has a responsibility to move forward however due diligence must be done. He stated he was not pushing the time frame but the County needs to move forward in a timely manner.

Commissioner Winborne asked if there is an opinion on the time frame.

Ms. Womble stated the County should move forward in a timely fashion with any application. She stated there is some caution to moving with excessive delay however interviews can be done timely. She stated she cannot instruct if the Board is moving too quickly or too slowly.

Mr. Howard stated that in discussions with Apex there is an expectation of the public hearings being held in late August.

Commissioner Bonner asked if staff can set up interviews.

Mr. Howard stated he has some dates that both firms are available next week.

Commissioner Winborne stated he did not see the help of interviewing. He stated that if the Board was going to ask questions about the ordinance or setbacks, he stated that the questions would not be specific.

Ms. Womble stated the Board's questions in an interview would be based only on the firm's experience and expertise and cannot be specific to the application.

Commissioner Bonner asked the clerk to re-read the motion on the floor and interview.

Ms. Stallings noted the motion is to hire HDR to provide technical review of the CUP application for utility wind energy facility application review and commence work as soon as possible.

Commissioner Mitchener asked if the motion could be amended to include interviews.

Ms. Womble noted the motion would have to be rescinded and not amended.

Commissioner Winborne called the question on his motion.

Commissioner Lawrence asked Ms. Stallings to re-read the motion.

Ms. Stallings hire HDR to provide technical review of the CUP application for utility wind energy facility application review and commence work as soon as possible.

She then asked for all in favor, the motion passed (3-2 Kehayes, Mitchener).

Ms. Stallings declared a five minute recess.

After the recess, Chairman Smith called the meeting back to order.

Commissioner Lawrence stated he has questions regarding the last vote.

Ms. Womble noted that Chairman Smith would need to be excused.

Chairman Smith left the meeting table and passed the gavel to the Clerk.

Commissioner Lawrence stated there have been some concerns regarding his participation in the last vote. He stated he would like to rescind his vote as he is under the assumption there is a problem with him voting. He asked for legal opinion.

Ms. Womble stated that the Commissioners have a duty to vote when they are present. She stated if a Board member is present they have a duty to vote. She stated this is why she asked Commissioner Lawrence if he was present for the full discussion and how long he was there. She stated that if he wishes to rescind your vote, you can ask to do so however this requires unanimous consent by the Board to do so. She stated or Commissioner Lawrence could make a motion to reconsider the vote. She stated the rules allow for this by someone who voted in favor of the motion.

Commissioner Lawrence moved to rescind his vote.

Ms. Womble discussed the two procedural options.

Commissioner Lawrence stated his concern with any liability on the County by him voting.

Commissioner Bonner stated that Commissioner Lawrence is obligated to vote if he is present.

Commissioner Lawrence discussed a motion to change his vote from yes to no. He stated he would like to strike his previous motion. He stated he would like for the Board to consider the previous vote.

Commissioner Winborne stated his concern with the concern of liability. He asked the attorney if she sees anything out of the ordinary.

Ms. Womble stated each Board member has a duty to vote. She stated someone may or may not litigate.

Commissioner Bonner stated he feels Commissioner Lawrence did what he is obligated to do.

Ms. Womble asked for clarification on Commissioner Lawrence's motion.

Commissioner Lawrence stated that if the attorney has not indicated there was a problem with him voting he stated he would like to withdraw all of his motions and rescind all motions.

Ms. Stallings then turned the gavel back over to Chairman Smith.

Land Use Plan Contract

Mr. Howard stated the County is required to initiate a contract with the state so the grant will not be rescinded. The County is in the process of hiring a company from the RFP process. He stated that if the bids are too high the Board is not obligated to enter into the contract to update the Land Use Plan, they can get out of the contract.

Commissioner Mitchener moved to approve the resolution as presented. Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

RESOLUTION AUTHORIZING LOCAL GOVERNMENT EXECUTION OF LOCAL PLANNING & MANAGEMENT GRANT CONTRACT

MINUTES OF A REGULAR MEETING OF THE *Board of Commissioners of Chowan County*, North Carolina.

A regular meeting of the *Board of Commissioners of the County of Chowan* was held in the Chowan County Public Safety Center, the regular meeting place, on Tuesday, July 5, 2016. There were 6 *Commissioners* present.

The *Board* was advised that a proposed contract between Chowan County and the North Carolina Department of Environmental Quality (DEQ) for Local Planning & Management grant funds was presented for the project known as Chowan County/Town of Edenton and discussed; that, under the terms of the said contract

BE IT RESOLVED, BY THE *Board of Commissioners of Chowan County*:

- 1) That a contract between the *Chowan County* and the North Carolina Department of Environmental Quality be and the same is hereby approved.
- 2) That the Manager and the Clerk be and they are hereby authorized to sign and execute the said contract for and on behalf of Chowan County and forward the same to the North Carolina Department of Environmental Quality.
- 3) That upon final execution, a copy of said contract be filed with the minutes. Upon motion of *Commissioner Mitchener*, said resolution was passed unanimously.

I, *Susanne Stallings* Clerk of the Chowan County Board of Commissioners North Carolina do hereby certify that the foregoing is a true copy of so much of the proceedings of the *Board of Commissioners* at a meeting held on *July 6, 2016* as related to the contract between the *Chowan County* and the North Carolina Department of Environmental Quality, relative to the *Land Use Plan Update* for the *County of Chowan*, North Carolina. WITNESS my hand and the corporate seal of the said *Chowan County*, North Carolina this the 5th day of July, 2016.

Abandoned Mobile Home Grant Proposals

Mr. Howard presented the Board with contractor proposals (Deadline was July 1, 2016) for the Abandoned Mobile Home Grant. He noted one bid was from C&M Development \$5,800 and

later modified to \$4,500 per unit. A bid from Bagley Tree service in the amount of \$4,999 per unit.

Commissioner Winborne noted his concern that the bid from C&M Land Developing was reduced. Both bids were submitted on June 30, 2016.

Mr. Howard stated that he was not sure why the bid changed, but when the project was re-bid the bid could be amended at any time.

Commissioner Winborne asked if the contractors were given the bid information at the June meeting.

Mr. Howard stated he was not sure but that document would have become a public record.

Commissioner Lawrence discussed the total cost and the grant amount.

Mr. Howard noted this is for 7 units in the county and one in the town.

Mr. Howard noted that if the Board does not hire a contractor, staff will need to be instructed on how to proceed.

Commissioner Kehayes moved to approve the low bid from C&M in the amount of \$4,500 per unit. Chairman Smith asked for all in favor, the motion passed (5-1 Winborne).

Emergency Management Annual Report

EM Director Cord Palmer provided the annual Emergency Management report on the past years activities by Emergency Management Coordinator Cord Palmer. A copy of the report is in the meeting file labeled July 5, 2016.

Catfish Letter

Chairman Smith provided the Board with a letter of support to be forwarded to the North Carolina Congressional Delegation in support of Senate Resolution 28 regarding Catfish inspections requesting it be reversed from USDA inspections to FDA inspections.

Commissioner Mitchener moved to approve the letter as presented and authorize the letter to be forwarded to the North Carolina Congressional Delegation. Chairman Smith asked for all in favor, the motion passed unanimously (7-0).

External Board/Committee Report

Chairman Smith asked Board members to report on the activities of the external boards to which they have been appointed.

There were none.

Manager's Report

County Manager Kevin Howard stated he was quoted in the News and Observer in the previous week about the proposed tax values of wind turbines in Chowan County. He provided the Board with a spreadsheet on the proposed valuations. A copy of the spreadsheet is in the meeting file labeled July 5, 2016.

Mr. Howard noted he will be on vacation the week of July 20th.

Timely and Important Matters

Chairman Smith asked if there were any timely and important matters.

Commissioner Lawrence Travel

Commissioner Lawrence noted he will be traveling some in the coming months.

Commissioner Winborne land ownership in Timbermill project

Commissioner Winborne stated there have been sever statements publically that he and his brother own land trust or a transmission line that is affiliated with the proposed Timbermill wind project. He stated these statements have been on Facebook and other publications. He stated he has asked the County attorney to look into this. He stated that these statements are untrue and they need to stop making these statements immediately.

July 18th meeting cancelled

Ms. Stallings noted this meeting is cancelled

Jack

Chairman Smith asked how Jack is doing.

Joey Tynch

Chairman Smith congratulated Chowan County native Murray Joey Tynch III who was recently Rear Admiral in the US Navy.

Fireworks

Commissioner Winborne thanked the Optimist Club for the great fireworks show.

Reception

Commissioner Mitchener and Chairman Smith attended a reception for Jan Sedgwick a Council person from New Zealand who was visiting the Town of Edenton.

Closed Session

Commissioner Bonner moved that the Board go into closed session, in accordance with NCGS 143-318 (11) (a) (5 and 6) contract negotiations and personnel.

Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

The minutes of the closed session are sealed.

Commissioner Kehayes moved to come out of closed session. Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

Adjourn

Being no further business Commissioner Bonner moved that the meeting be adjourned. Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

Jeffery Smith, Chairman

Susanne Stallings, Clerk