

Regular Meeting  
Monday, July 6, 2015  
**Chowan County Public Safety Center**  
**305 West Freemason St.**  
**Edenton, NC**  
**6:00pm**

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

Commissioner Lawrence was absent.

Staff present County Manager Kevin Howard, Finance Officer Willie Carawan, County Attorney Lauren 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 Nixon then offered the invocation.

**Approval of Agenda**

Commissioner Kehayes moved to approve the agenda. Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

**Youth Summit Introduction**

Charles Moss stated he would be attended the North Carolina Association of County Commissioners Youth Summit to represent Chowan County.

Board members thanked him for the introduction and wished him well.

**Public Comment**

Chairman Smith called for public comment in accordance with NCGS 153A-52.1 he noted that due to the large amount of public that signed up for public comment, that comments would be limited to 3 minutes. He asked if the Board members wished to limit the total public comment time to 45 minutes.

Commissioner Bonner moved to allow 45 minutes on the agenda for public comment. Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

A.O. Roberts 1632 New Hope Road Hertford, NC stated his concern with remarks that were in the Daily Advance regarding a proposal to amend the wind ordinance. He stated the proposed changes are restrictive to wind turbines. He stated his support of a proposed project for wind turbines in Chowan and Perquimans County.

Randy Martin 1604 New Hope Road Hertford, NC stated he felt Chowan should not over regulate the wind projects. He stated that he supported the current wind energy text in the zoning ordinance.

Tom Creedle signed up to speak but asked to withdraw his public comment.

Liz Alons 1848 Paradise Road Edenton, NC requested that the Board of Commissioners consider adoption of the recommended changes to the wind energy facilities ordinance from the Planning Board. She stated that many people feel the current ordinance is too conservative. She stated her concern with the impact on property values, health, noise and decommissioning.

Rob Jackson, 9 Old Fish Hatchery Rd stated that he wished to personally thank the Board of Commissioners for their work in the FY 2015-16 budget and their support of the Edenton Chowan School System. He stated the Commissioners stepped up to the plate and are working to address the needs in the schools.

Clarke Wylde 1647 Virginia Way stated his concern with Apex the developer on the wind energy project. He asked the Commissioners to not be focused on the tax revenues from the development. He stated that Commissioner Winborne stated he did not wish to harm Chowan County. He asked the Commissioners to do the honorable thing and consider the proposed amendments to the zoning ordinance for wind energy.

Gil Burroughs 303 Queen Anne Dr. Edenton stated his concern with remarks regarding proposed changes to the zoning ordinance for setback and noise requirements. He stated that leaves rustling are 25DB and a whisper is 35DB. He stated his support of the current wind energy text.

Lin Bond signed up to speak but asked to withdraw his public comment.

Bill Whichard 201 East King Street Edenton stated the current text for wind energy is not in the best interest of the residents of the County. He stated his concern with the impact of property values and health by the wind turbines. He stated a project of this scale is not a good fit for Chowan County.

Don Giecek, with Apex stated that in 2013 Apex began the process of obtaining permits for a proposed project in Chowan County. He stated that some of the claims being made about the wind project are false. He stated that the turbines would not be placed in the river or in the sound. He stated the proposed area is in Bear Swamp only. He stated the project is a \$500 million investment that could bring \$10 million in property tax over the next 30 years. He stated the developer has not requested monies from the County.

Brian Ferraiaccio 128 Rockfish St Edenton requested that the Board consider the recommendation from the Planning Board to amend the zoning ordinance text for wind energy projects.

Pat Grother 405 East Queen Street Edenton stated she was not opposed to wind energy. She did state her concerns with the proposed height of the turbines and fall zones as well as health

concerns. She stated the Commissioners should at least consider decommissioning concerns so that the cost does not fall on the County or the Town.

Alisa Cale 537 Summerby Rd. Roper NC stated she wished to again ask the Board of Commissioners to keep the current ordinance as it is. She stated that tractors and timber equipment are much louder than the wind turbines. She encouraged the public to tour windmill sites including the turbine at Jeannette's Pier. She stated that her experience with visiting wind energy sites has been pleasant.

Richard Bunch 904 Sandy Ridge Rd Tyner NC thanked the Commissioners for their consideration of the ordinance. He stated his concerns with claims being made by groups in opposition to the wind energy project. He stated that he has had people visit his home making false claims about the proposed project regarding the location of the project and visibility of the project. He stated that the state and federal regulations for these facilities protect land owners.

Chairman Smith called for any further public comment, there was none. He then closed the floor to public comment.

**Consent Agenda**

Chairman Smith then presented the consent agenda.

**a. Minutes**

Minutes of the June 1, 2015, June 9, 2015 and June 15, 2015 (recessed until June 22) meetings for the Board's review and consideration. Ms. Stallings noted corrections to the minutes.

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

**b. Tax Collectors Report and Refund/Release**

Tax Collectors Report through June 30, 2015. Also below for approval are the tax releases.

Bailey, E.	\$120.86	Overpayment
Bass, B.	\$174.58	Overpayment
Banks, J.	\$630.66	Clerical Error – Release

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

**c. Surplus**

Vehicles to be declared surplus and sold on Gov Deals in the late July auction from the Sheriff's Office  
2005 Dodge Durango, 2005 Ford Crown Victoria and a 1996 Ford F-150

Commissioner Nixon moved to declare the items surplus and to authorize the sale of the items on Gov Deals. Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

### **Food Lion Tax Settlement**

Mr. Hosea Wilson, Chowan County Tax Administrator stated that as previously requested by the Board, he has invited Tina Stone with the North Carolina Department of Revenue to answer questions from the Board regarding a tax settlement with Food Lion. He noted that Mr. Travis Isaacs was also present. He stated that his recommendation to accept the settlement as proposed by Food Lion has not changed. He stated that not accepting the settlement would be of little or no cost benefit to Chowan County.

Tina Stone stated that she has been working with Food Lion for several years on similar matters in Counties in NC in an effort to develop a resolution. She stated that Food Lion has been forthcoming with information. She stated that she agrees property that is listed as real property should not be listed as real property. She stated that staffing within Food Lion has changed during this process.

Commissioner Kehayes asked if Ms. Stone is in agreement with the proposal from Food Lion.

She stated yes.

Commissioner Nixon stated that evidence was not submitted by Food Lion until the appeal reached the state level. He asked if this situation also occurred in other Counties.

Ms. Stone stated yes however some of the information was within paper documents and had to be pulled manually by Food Lion which was time consuming. She stated that Food Lion has improved their system for accounting since this appeal.

Commissioner Nixon stated his concern noting that small businesses in the County have to be forthcoming with information.

Ms. Stone noted there were some staffing changes within Food Lion during this process and noted the appeal has been with the Property Tax Commission for several years.

Mr. Isaacs stated this new matrix would be more consistent in determining values across the state.

Mr. Bonner asked if during their work on this appeal, was there any indication that Food Lion misrepresented information or attempted to defraud any counties.

Ms. Stone stated no that was not the case and there was no evidence to support that.

Chairman Smith asked if this will come back when Food Lion remodels the new location in Chowan.

Mr. Wilson stated that this new method would be more uniformed and should reduce any future concerns.

Commissioner Winborne asked if the Town has agreed to the settlement.

Mr. Wilson stated yes, they would benefit from their portion of the settlement.

Commissioner Nixon stated that he was concerned that Food Lion did not have representatives at any of the Board of Equalization and Review appeals.

Commissioner Winborne moved to accept the settlement offer proposed by food lion as follows:

15% of leasehold improvements discovery amount

15% of machinery and equipment

100% of supplies

Applicable penalties and interest from the date of discovery November 11, 2011 the discovery amounts will be rolled forward for the years 2012, 2013 and 2014 with interest but no penalty.

Chowan agrees to accept Food Lion's matrix for real and personal property until the next revaluation.

(\$1,197.30).

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

Chairman Smith called for a 5 minute recess, after 5 minutes he called the meeting back to order.

### **Citizens Petition – Presentation and Excusal from Discussions**

#### **Excusal**

Chairman Smith requested that the County Attorney provide the Board members with new information regarding his participation in matters related to text amendments for wind energy.

County Attorney Lauren Womble stated that she was requested to review possible conflicts of interest with Chairman Smith and Commissioner Winborne. She stated that she researched with the School of Government particularly NCGS 153A-340. She noted that Chairman Smith has previously disclosed and requested removal from any votes regarding Apex or the wind energy project because of his relationship and ownership in his family farm. She stated that recently a map surfaced showing that potential sites for a windfarm project show land owned by the farm. She stated that her counsel is that the Chairman not vote on legislative matters (text amendments) going forward. She noted that Chairman Smith is allowed to participate in discussions for legislative matters (text amendments) but he may not participate in quasi-judicial discussions (Conditional Use Permit applications) submitted by Apex.

Chairman Smith stated that he has not signed a contract with Apex, and stated he does not agree with the Attorney's recommendation because it deprives residents in his district a vote on the matter. He stated that this conflicts with information he was previously given and this was assigned to Ms. Womble when she was contracted.

Commissioner Winborne asked that Ms. Womble clarify to the public if he has any personal or financial interest in the wind project.

Ms. Womble stated that she has determined that Commissioner Winborne has no involvement or conflict with the wind energy project.

Chairman Smith stated he would accept the recommendation from the County Attorney and would ask to be excused from discussions on text amendments with regards to wind energy projects.

The Board discussed if a vote was needed to excuse Chairman Smith. It was determined that no vote was needed and that Chairman Smith would be excused.

Chairman Smith stated he has not hid his family's business discussions with Apex. He noted that in 2014 he requested that the Board excuse him from discussions on the actual project and Conditional Use Permit.

Ms. Womble stated that was correct and her research agrees with the Chairman's statement.

Chairman Smith handed the gavel to Vice Chairman Kehayes for the petition presentation.

### Petition

Lin Bond presented the Board with a citizen's petition regarding the Planning Board's recommendation to amend the zoning ordinance regarding wind energy facilities. He stated the petition has 645 signatures. Elliot Engstrom an attorney with Civitas Institute stood with Mr. Bond during the presentation. The petition urges the Commissioners to approve the Planning Board's April 2015 recommendations, specifically:

1. Provide a property value guarantee to non-participating property owners within two miles of a property line of a participating land owner.
2. Increase setbacks of 1 mile from the property line of a participating land owner
3. Acoustical standards of 35dBA
4. Meaningful environmental tests
5. An escrow account for the life of the project
6. Adequate decommissioning terms and conditions
7. An opportunity to evaluate the net financial advantages of a proposed wind energy development contracting with independent subject matter experts.

Vice Chairman Kehayes thanked Mr. Bond for the presentation. He stated that due to the absence of Commissioner Lawrence, the Board of Commissioners only has 5 voting members present. He stated that the Commissioners have not taken any action on the Planning Board recommendation. He stated that he felt at some point the Commissioners needed to vote on the matter. He stated he would not make a motion to take a vote to consider the request at that meeting.

Commissioner Winborne stated he did not feel that the Board of Commissioners needed to vote on the matter.

Ms. Womble stated that if the Board wished to take up a vote on the matter, it would have to be to schedule a public hearing to consider the proposed text amendment. She noted that the ordinance has restrictions on the time of year that amendments may be considered unless the Board votes to amend the policy and consider the text amendment outside of the quarterly restriction.

Commissioner Winborne moved to table the discussion for a later meeting.

Commissioner Nixon asked that Planning Board members be invited to the meeting where the matter is discussed. He stated he has some questions for Planning Board members.

Vice Chairman Kehayes asked for all in favor, the motion passed unanimously (5-0) (Chairman Smith excused from voting).

Vice Chairman Kehayes passed the gavel back to Chairman Smith.

### **Debris Contract**

Mr. Howard stated that a selection committee has met and reviewed the RFP for Disaster Recovery Assistance following a Natural or Manmade Disaster. He stated that the Committee has recommended Crowder Gulf to be awarded the Contract. He provided the Board with a bid summary and contract. He noted the County Attorney has reviewed the contract and recommended some changes. He requested that if the Board approved the contract to make it contingent on the changes recommended by the County Attorney.

Chairman Smith noted that he was part of the selection process. He noted that Crowder Gulf scored the best.

Mr. Howard noted that FEMA looks at overall cost and Crowder Gulf was the lowest. He noted that Crowder Gulf has indicated that they agree with the changes recommended.

Commissioner Mitchener asked about the length of the contract.

Mr. Howard stated that it is a 3 year contract with two renewals of 1 year.

Commissioner Bonner moved to accept the contract with Crowder Gulf contingent on the attorney review and agreement with changes. Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

### **No Wake Zone Buoys**

Jim Brock, representing the Arrowhead Beach Property Owners Association requested that Chowan County endorse two (2) no wake signs for a canal in Arrowhead Beach to allow NC Wildlife to enforce the no wake zone. He provided the Board with a letter from the property owners association as requested at the last Commissioner's meeting.

Commissioner Winborne asked who is responsible for maintaining the buoys.

Ms. Stallings noted this cost is absorbed by the County. She also noted that if the Board wishes to consider the request, the Board of Commissioners would be required to schedule a public hearing for a later meeting to consider the request and then forward the application to NC Wildlife.

Chairman Smith stated that at a previous meeting the Board was informed that the buoys will only be approved if needed for safety.

Commissioner Winborne stated that nothing in the letter from the Property Owners Association mentions safety.

Chairman Smith stated that he did not want to hold a public hearing if this was not a request based on safety concerns.

Ms. Womble stated that the statutes that allow for the installation of no wake zones gives NC Wildlife the authority under “rules on water safety”. She stated that it would be essential for the Commissioners to make this determination if a public hearing is held.

Commissioner Nixon moved to table the matter to allow the Homeowners Association to work with Emergency Management. He stated he did not see the point in scheduling a public hearing if the County knows the application would be denied by NC Wildlife.

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

### **COA Lighting**

Chairman Smith stated that COA has requested that the Board consider a request to add additional lighting at the Edenton-Chowan campus. He noted that COA is requesting that monies from the COA Capital Improvement Fund be used for this purpose.

The Board discussed and it was determined the request came from COA after discussions with some Commissioners at a previous budget meeting.

Commissioner Bonner stated that he felt if COA requested the monies, they have determined there is a need for lighting on the campus.

Mr. Howard noted that COA would bring quotes back at a later time.

Commissioner Nixon stated he was concerned with the request because it was not in the original capital request. He stated that he felt the Board should not dictate the campus needs to the college. He stated his concern with the lack of information regarding the height of the light poles.

Commissioner Mitchener asked about safety concerns at the campus.

Commissioner Bonner stated that there have been some concerns but the Board has to rely on the information coming from COA. He stated that he agreed the height of the poles should be addressed.

Commissioner Winborne stated that this project was not a priority in the original capital request.

Commissioner Mitchener stated he has walked the campus and felt that lighting is a need.

Commissioner Kehayes stated that he felt it was important to address any safety or security concerns at the campus. He stated he felt that lighting would deter crime.

Chairman Smith stated that if the request was not important enough for the original capital request, he did not feel a Commissioner should add it.

Commissioner Nixon stated his concerns with using the monies that are available as a result of savings from relocating the campus from the Food Lion Shopping Center. He stated he would like more information on the crime statistics at the campus. He stated that several of the buildings on the campus need a lot of work also.

Commissioner Winborne moved to deny the request to install additional lighting. Chairman Smith asked for all in favor, the motion failed (3-3 Bonner, Kehayes and Mitchener).

Commissioner Mitchener moved to request that COA obtain three bids and report back to the Board their timetable for installation. Chairman Smith asked for all in favor, the motion failed (3-3 Nixon, Smith and Winborne).

### **USDA Lease**

Mr. Howard stated that USDA has requested that the Board of Commissioners approve a 12 month maximum "standstill agreement" to secure the space USDA occupies at the Ag Extension Building. He stated that this would accommodate the office space for another year and allow time to review the existing lease.

Commissioner Nixon moved to approve the standstill agreement. Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

### **Planning Board Appointment Procedure**

Planner Elizabeth Bryant stated that at the June 15, 2015 meeting the Board requested additional information regarding the proposed map for appointment of Planning Board members. She stated that the Board has been provided with a map that highlights landmarks for the ETJ Boundary and the dividing line for district "A" and "B" to run south of Rockyhock Road. She noted the Board has also been provided with two maps showing the current appointee's residency and term limits on the Planning Board.

Commissioner Winborne requested that the Clerk read the motion from the last meeting regarding the appointment of Planning Board members.

Ms. Womble noted the Clerk would need clarification on a timetable for implementation.

Commissioner Nixon moved to approve a policy that follows the staff recommendation and approval of the recommended appointment area map and to have a policy to appoint 2 members from area "A", 2 from area "B", 2 from area "D" and 1 from area "C".

Commissioner Winborne stated his concern with appointment of a member from the Town of Edenton. He stated that the Town has its own governing zoning ordinance.

Ms. Bryant noted that the Town Planning Board has two members from the County that reside within the ETJ. She noted that individuals that reside within the ETJ are governed by the Town zoning ordinance but do not receive Town services.

Commissioner Nixon stated he felt the staff recommendation was a good compromise. He stated that if Chowan County were to have another municipality established in the future this policy could create a problem, but at this time he felt it was a good choice.

Chairman Smith stated that the argument of being a County taxpayer as a Town resident was not a good argument. He stated that he owns property in other Counties but is not allowed to vote on matters in that County because he is not a resident. He stated he felt residency is the best way to handle appointment.

Commissioner Mitchener stated he felt the proposal was fair and could be changed in the future if needed.

Commissioner Bonner stated his support of the staff recommendation.

Commissioner Kehayes stated his support of the recommendation.

Chairman Smith asked for all in favor, the motion passed (4-2 Smith and Winborne).

### **External Board/Committee Report**

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

Commissioner Kehayes reported on the activities of the mental health board.

Commissioner Nixon reported on the activities of the health department board. He requested that the Finance Officer begin keeping up with the solid waste billing.

### **Manager's Report**

County Manager Kevin Howard updated the Board on the following matters:

- Pembroke Creek renovations, final phase of the construction begins in July
- The Hotel Hinton is scheduled to close on Wednesday

### **Timely and Important Matters**

### Planning/Enterprise Committee

Commissioner Winborne requested that the Committee schedule a meeting in July or August.

### Planning Board Appointments

Ms. Stallings noted that at the next meeting she would bring applications to the Board of candidates with the intention to appoint one member from area B and one member from area D. There was no objection.

### Convenience Sites

Commissioner Kehayes asked if staff could look into installing hand sanitizer stations at the convenience sites.

### Planning Discussions

Chairman Smith stated that he did not appreciate being characterized publically as a bad person with misinformation being stated publically about his involvement with the windfarm project. He stated he makes a living as a farmer, with or without windmills. He stated he wanted people to know he did not appreciate the characterizations being made of him. He stated that the County is about to celebrate its 350<sup>th</sup> anniversary he appreciated the work of all the leaders that came before him and those that lead currently.

Commissioner Mitchener stated his support of Chairman Smith.

Commissioner Nixon stated he would like staff to make a video to give a history with facts about the windmill project. He stated that both sides of the windmill argument have sent out biased information. He stated he is not swayed by the revenues mentioned by Apex in their presentations. He stated the Chairman has been forthcoming all along about his involvement with Apex and stated he felt the public should be given the facts.

Ms. Womble stated she wanted to clarify that Chairman Smith has not been guilty of any misconduct, her recommendation was based only on his relationship to the property.

### Baseball Playoffs

Chairman Smith noted that Chowan County has some 9-10 year olds that are participating in the little league tournaments. He stated he had the schedule and invited the Commissioners to look at the dates and if they are able, attend the games to support the youth.

### Closed Session

Commissioner Nixon moved that the Board go into closed session, in accordance with NCGS 143-318 (11) (a) (5, 6), personnel and contract negotiations. Chairman Smith asked for all in favor, the motion passed unanimously (6-0).

The minutes of the closed session are sealed.

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

**Amend Agenda**

Commissioner Bonner moved to amend the agenda to consider a lease between Chowan County and Gateway Community Health Center and to discuss payment to PNC for the sale of the Hotel Hinton.

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

**Gateway Lease (Free Clinic)**

Commissioner Nixon moved to approve a lease between Chowan County and Gateway Community Health Center, for the space they currently occupy at the Northern Chowan Community Center for a period of one year, July 1, 2015 through June 30, 2016.

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

**Payment to PNC – Marketing of Hotel Hinton**

Commissioner Mitchener moved to pay Preservation North Carolina (PNC) the amount of \$7,500 for the marketing fee (6%) as allowed by statute.

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).

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Jeffery Smith, Chairman

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Susanne Stallings, Clerk