

Regular Meeting
Monday, October 6, 2014
Chowan County Public Safety Center
305 West Freemason Street
6:00pm

Minutes

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

Staff present County Manager Kevin Howard, Finance Officer Willie Carawan and Board Clerk Susanne Stallings.

Regular Meeting

Chairman Nixon called the regular meeting to order and led the pledge of allegiance.

Commissioner Kehayes then offered the invocation.

Approval of Agenda

Commissioner Smith moved to approve the agenda. Chairman Nixon asked for all in favor, the motion passed unanimously (7-0).

Public Comment

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

Steve Karl 219 East Queen St. stated his concern with the status of the dam at Bennetts Millpond. He stated he would like to organize volunteers to remove debris from the dam and clean up the vegetation.

Mr. Howard stated this project is slated to be funded with fund balance monies once the audit is finalized. He stated this would be coordinated by the Recreation Department.

Commissioner Winborne stated he hoped this project would be addressed with the capital projects priority list.

Commissioner Smith recommended that the Manager work with Sterling Baker with the Department of Transportation to address some of the debris removal.

There was no further public comment.

Consent Agenda

Chairman Nixon then presented the consent agenda.

a. Minutes

Attached are the minutes of the July 30, 2014 and September 2, 2014 (Fire Station Study Committee), and the September 15, 2014 regular Commissioner's meeting minutes for the Board's review and consideration.

b. Tax Collectors Release/Refund and Monthly Collections report

Tarkington, L.	\$176.75	Listed in Suffolk VA
Cuppett, D.	\$231.45	% complete of dwelling, incorrect
Rivenbark, J.	\$856.54	% complete of dwelling incorrect
Williams, M.	\$708.75	Listed on another account
Underwood, L.	\$337.50	Disab Vet Exemption, approved by the Board of Commissioners
Andron Properties	\$11,509.87	Board of E&R Reduction
Sears, J.	\$721.43	Board of E&R Reduction
Hodge, D.	\$2,751.08	Error
Riddick, B.	\$110.78	Overpayment
Boyce, R.	\$214.82	Paid by NCHFA
Young, C.	\$106.13	Refund

c. Budget Amendment

BA1415-004 TDA – FYI only, does not require BOC approval

Account Code	Description	Old	+ or (-)	New
Tourism Development Authority:				
51-8150-261-00	Office Supplies	1,100.00	342.00	1,442.00
51-3990-990-00	Fund Balance	(6,000.00)	(342.00)	(6,342.00)
Balanced:		(4,900.00)	-	(4,900.00)
Justification:				
<i>Additional funding needed to purchase office shelving</i>				

BA1415-005

Account Code	Description	Old	+ or (-)	New
Fire Districts				
23-3990-990-00	Fund Balance	(100,703.00)	(7,250.00)	(107,953.00)
23-4340-353-00	Maint. & Repair - Vehicles	12,000.00	7,250.00	19,250.00
		Balanced:	(88,703.00)	(88,703.00)
			-	
Justification:				
<i>Insurance Proceeds received in the prior year</i>				

Chairman Nixon noted that BA 1415-004 is FYI only and will require TDA Board approval.

Mr. Carawan stated that was correct.

Commissioner Smith noted the minutes of the Fire Station Study Committee were approved unanimously by the committee.

Commissioner Kehayes moved to approve the consent agenda as presented. Chairman Nixon asked for all in favor, the motion passed unanimously (7-0).

Planning Item- Public Hearing

Text Amendment

Mr. Howard stated that the Board will consider a proposed text amendment to establish the use of Department Variety or General Merchandise as a special use within the A-1 zoning district for businesses under 10,000 square feet and a Conditional Use Permit for businesses over 10,000 square feet. He stated that this is the recommendation brought forward from the Planning Board and staff after the matter was heard previously by the Board of Commissioners and sent back for another recommendation. He noted that under the zoning ordinance a Special Use Permit is approved by the Planning Board and a Conditional Use Permit is approved by the Board of Commissioners.

Commissioner Smith asked for clarification on the 10,000 square foot rule. He stated he felt it should be 9,999 and under require a Special Use Permit.

Commissioner Kehayes asked for clarification on the type of use this amendment would cover.

Ms. Stallings stated this use is specific to Department Variety or General Merchandise.

Commissioner Winborne noted the Board previously discussed taking out the Special Use criteria all together.

Commissioner Smith moved to open the floor for the public hearing. Chairman Nixon asked for all in favor, the motion passed unanimously (7-0).

Chairman Nixon called for public comment, there was none.

Commissioner Smith moved to close the public hearing. Chairman Nixon asked for all in favor, the motion passed unanimously (7-0).

Commissioner Kehayes stated he felt the Board of Commissioners should have the final say in these types of projects.

Commissioner Bonner stated he concurred with Commissioner Kehayes.

Commissioner Smith stated he felt the Board should give the Planning Board some authority. He stated that serving on the Planning Board previously, he knows that the Planning Board puts a lot of thought into their decision making. He stated he did not feel the Commissioners should have to approve every small store or business that is developed in the County.

Commissioner Mitchener asked if DOT will still have review of the proposed project.

Mr. Howard stated yes, DOT would have to issue the permit for highway access.

Commissioner Bonner stated that after hearing Commissioner Smith's comments he would change his position on the matter.

Commissioner Winborne stated he was torn on the matter. He stated that the Commissioners represent the entire County and that is represented in the selection of the Planning Board members being from all areas of the County. He stated he did not want to stop the progress of the proposed business and would be voting in favor of the text amendment.

Chairman Nixon asked Mr. Howard to provide examples of the types of uses that require a Special Use Permit in the ordinance.

Mr. Howard stated that Amusement Parks, Fairs, Country Clubs, Golf Course, Convenience Stores and Food Stores are all covered under the Special use Permit process.

Chairman Nixon stated his concern is with public safety. He stated that he would like to see how other counties with zoning handle these matters. He stated that after hearing the Special Use Permit examples he is more comfortable with the text amendment as recommended.

Commissioner Smith moved to approve the text amendment as presented.

The Board discussed the statutes regarding approval of an ordinance or ordinance amendment, noting that a unanimous vote is required at the first reading. If the vote is not unanimous, the matter must be addressed at a second meeting.

Chairman Nixon stated he felt that not enough information was provided at the last meeting where the amendment was discussed. He stated he was more comfortable with it now.

Chairman Nixon asked for all in favor, the amendment passed unanimously (7-0).

Recreation Item – Pembroke Creek

Recreation Director Jason Petersen and Soil and Water Conservation representative Mark Powell provided the Board with bids for the Pembroke Creek Access Improvement Project.

Mr. Powell stated he sent out 5 bid packets and received bids from three of the contractors. He noted the bids do not include the proposed piers. He stated these bids cover the bulkhead, improvements to the parking lot, handicapped access and replacement of damaged decking. He noted the total grant is for \$150,000. He noted the low bid from C&W Grading is \$108,595. He stated he felt the project could come in at budget when the second phase begins. He noted that the other two bids Earthshakers Marine LLC (\$132,100) and Sawyers Marine (\$141,650) were not recommended.

Chairman Nixon asked if the County would have to return the grant monies if the project comes in under budget.

Mr. Powell stated no.

Commissioner Kehayes asked for clarification on the width of the pier.

Mr. Powell stated that 4 feet meets the minimum requirement.

Commissioner Smith asked if staff recommends the low bidder.

Mr. Petersen stated yes. He stated that while the low bid for the first phase is a little higher than what was estimated, he felt there were ways to cut the costs to make the piers for the second phase work within the grant budget.

Chairman Nixon asked if staff was familiar with any projects done by C&W Grading.

Mr. Powell stated he was not aware of specific projects but the contract is well known in the area.

Chairman Nixon asked if any local contractors bid on the project.

Mr. Powell stated Waff Contracting was provided with a bid packet but did not bid.

Commissioner Bonner moved to approve the bid from C&W Grading in the amount of \$108,595.

Chairman Nixon asked if Mr. Petersen was comfortable with the bid from C&W.

Mr. Petersen stated he was comfortable and would look for ways to save on the bid to keep the costs down for the second phase.

Chairman Nixon asked for all in favor, the motion passed unanimously (7-0).

Proposed Animal Control Emergency Operations Plan

Mr. Howard noted he was providing the Board with an FYI copy of a proposed Emergency Operations Plan for Animal Control as previously requested by the Board. He stated he wanted the Board to review and provide comments on the draft.

Chairman Nixon asked if a pet shelter location has been identified.

Mr. Howard stated that the Emergency Manager and Animal Control Officer are working on that plan.

Chairman Nixon asked who will staff the shelter.

Mr. Howard stated it would be Animal Control and Animal Shelter staff.

Chairman Nixon stated he wanted the plan to clarify who is responsible for the shelter operation in the event of its activation. He asked the Board members to provide their comments to the manager and asked the manager to bring back a final draft at a later meeting.

Resolution – Opposing the Proposed Changes to the Rule Defining “Waters of the US”

Mr. Howard stated that he recommends the Board consider a resolution to oppose the proposed changes to the rule defining the “waters of the US”.

Commissioner Kehayes moved to approve the resolution as presented.

Commissioner Smith stated he felt the resolution was very important and thanked the manager for bringing it forward. He stated that he recently attended a meeting and a comment was made that even puddles of water (anything that floats a leaf) could be considered “Waters of the US” or the State of North Carolina.

Chairman Nixon asked for all in favor, the motion passed unanimously (7-0).

WHEREAS, the Clean Water Act (the "Act") defines and regulates waters that fall under federal jurisdiction, which are known as "Waters of the U.S.;" and

WHEREAS, the Act requires a partnership between federal, state, and local governments to achieve the objectives of the Act, improving and maintaining water quality; and

WHEREAS, local governments, as a regulator and permittee, have assumed an ever-increasing share of the costs towards achieving those objectives; and

WHEREAS, the U.S. Environmental Protection Agency ("EPA") and U.S. Army Corps of Engineers ("Corps") have proposed changes to the rule defining Waters of the U.S. that could significantly increase the cost and regulatory requirements for local governments and, ultimately, the costs for local residents and businesses; and

WHEREAS, the proposed rule has no prescribed limits to federal jurisdiction and does not clearly define what waters are to be regulated by the federal government; and

WHEREAS, the proposed changes effectively remove the case-by-case determinations of Waters of the U.S. using the "significant nexus" test and replace the test with physical characteristics, such as the presence of high water marks, and connectivity to current Waters of the U.S. By merely meeting the requirements of the new definition, a significant nexus is found and the body of water becomes subject to the Act; and

WHEREAS, the proposed rule modifies the current definition of "other waters" and "adjacent waters" in such a way that there is uncertainty as to how these proposed definitions would impact local governments; and

WHEREAS, the changes to the rule could cause manmade ditches and storm water runoffs to be considered Waters of the U.S., which once defined as a Water of the U.S., would subject them to the Act and could increase costs to local governments; and

WHEREAS, the proposed changes do not include the provision of federal funds to offset the additional costs to local governments and, thus, would divert resources from other essential public services; and

WHEREAS, the United States Congress has written a letter to the EPA and Corps requesting that the proposed changes to the rule be withdrawn until further analysis can be completed; and

WHEREAS, the National Association of Counties has produced a policy brief on this issue and has encouraged local governments to publicly make comments concerning the proposed changes to the rule ; and

WHEREAS, the U.S. Conference of Mayors has publicly opposed legislation to expand federal jurisdiction under the Act if it is not accompanied by federal funding.

NOW THEREFORE, BE IT RESOLVED, that Chowan County opposes legislation or changes that would further expand federal jurisdiction under the Act; and

BE IT FURTHER RESOLVED, that the U.S. Conference of Mayors, in its Resolution to Ensure that Municipal Concerns are Addressed in Clean Water Act Regulations, including the definition of "Waters of the U.S.," requested certain provisions be made if any changes to the rule were made. And, that the Chowan County Board of Commissioners agrees that any changes to the rule should include the following provisions, which are sincere concerns for local governments:

- Separate municipal storm sewers will continue to be regulated and permitted under Section 402 of the Act and will not be considered Waters of the U.S.; and
- Water delivery, reuse, and reclamation systems and facilities will not be considered Waters of the U.S.; and
- Ditches, streams and other drainage features that protect and ensure the operation of public infrastructure will not be considered Waters of the U.S.; and
- Wastewater treatment systems and all associate infrastructure will not be considered Waters of the U.S.; and
- Any proposal to regulate waters within a floodplain, riparian, or any other general area must include a specific definition, including the specific boundaries, of the floodplain, riparian, or other area subject to the rule; and
- The rule must include sufficient clarity and specificity to better inform regulators and permittees, and to minimize the potential for litigation.

BE IT FURTHER RESOLVED, in opposition to the proposed change to the rule defining "Waters of the U.S.," the Chowan County Board of Commissioners encourages citizens to write letters to the EPA, E-mail the EPA, or post comments to the Federal eRulemaking Portal, in the manner described below:

Letters, including the original and three copies, may be sent to:

Water Docket, Environmental Protection Agency Mail Code
2822T
1200 Pennsylvania Avenue NW Washington, DC 20460
Attention: Docket ID No. EPA-HQ-OW-2011-0880

E-mails may be sent to: ow-docket@epa.gov. Please include EPA-HQ-OW-2011-0880 in the subject line of the message.

Comments may be posted online at: www.regulations.gov.

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imply follow the instructions for submitting comments.

BE IT FURTHER RESOLVED, that the Chowan County Board of Commissioners encourages other local governments to pass similar resolutions.

BE IT FURTHER RESOLVED, that copies of this Resolution be sent to the Town of Edenton within Chowan County and to federally elected officials that represent Chowan County.

This Resolution Concerning Clean Water Act Regulations and U.S. EPA's Definition of "Waters of the U.S." has been adopted this 6th day of October, 2014.

External Board/Committee Report

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

Commissioner Bonner reported on the activities of the Recreation Advisory Board.

Commissioner Kehayes reported on the East Carolina Behavioral Health Board, noting the Board is discussing a consolidation with Coastal Carolina Behavioral health adding an additional 5 counties to the group.

Commissioner Smith reported on the activities of the Fire Study Committee.

Chairman Nixon reported on the activities of the Health Department Board.

Manager's Report

County Manager Kevin Howard updated the Board on the following:

- The Northern Chowan Community Center will open the gym on October 7th.
- Trees at the Public Safety Center have been identified and tagged for replacement.
- The Animal Control Truck was recently involved in an automobile accident. He noted the director is utilizing the Animal Shelter truck. He provided the Board with cost estimates for purchasing a replacement truck. He noted the insurance company is paying \$8,962.43 for replacement of the truck. He stated the County is looking to spend around \$7,000 to replace the truck. He stated that there has been some public interest in purchasing the wrecked truck. He recommended that the Board authorize the truck to be surplus and sold on Gov Deals Auction.

Commissioner Bonner moved to surplus the wrecked Animal Control Truck and allow staff to sell the vehicle on Gov Deals. Chairman Nixon asked for all in favor, the motion passed unanimously (7-0).

Timely and Important Matters

Railroad Spur behind Public Safety Center

Ms. Stallings noted the Railroad Company contacted the County and stated they were not interested in selling the property.

Vacancies

Ms. Stallings noted she is advertising vacancies on various Boards including the Planning Board and Nursing Home Advisory Committee to cover some vacancies.

Noise Ordinance Amendment

Ms. Stallings noted that the Sheriff has inquired about updating the Chowan County Noise Ordinance and that it may be back before the Board in the future for consideration.

EMS

Chairman Nixon asked for an update on EMS.

Mr. Howard noted the expenditures were \$112, 009 and the revenues were \$99,000. He stated that he did not have the information with him to tell the Board what had been billed and was remained unpaid by Insurance.

Emergency Services Banquet

Ms. Stallings noted she has tickets for sale for any Board members interested.

Candidate Forum

Chairman Nixon noted that there is a candidate forum scheduled for October 9th at the Public Safety Center.

Adjourn

Being no further business, Commissioner Mitchener moved to adjourn the meeting. Chairman Nixon asked for all in favor, the motion passed unanimously (7-0).

D. Keith Nixon, Chairman

Susanne Stallings, Clerk