

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

The Board of Commissioners gathered at the North Carolina Cooperative Extension Service Building from 4:30pm – 5:15 located at 730 North Granville Street. The Board was provided dinner by Extension Staff and volunteers no business was discussed.

The regular meeting was recorded. The audio recording is in the meeting file labeled September 6, 2016.

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

Commissioners Emmett Winborne and Ellis Lawrence were 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 Mitchener then offered the invocation.

Approval of Agenda

Chairman Smith presented the agenda. Commissioner Bonner moved to approve the agenda as presented. 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

Being no public comment, Chairman Smith closed the floor.

Consent Agenda

a. Minutes

Chairman Smith provided the minutes of the July 5, 2016 August 1, 2016 and August 25, 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.

Commissioner Nixon moved to accept the report. Chairman Smith asked for all in favor, the motion passed unanimously (5-0).

Forestry Report

Rob Davis, a representative from the Forestry Service provided the Board with an update on his activities. A copy of the report is in the meeting file labeled September 6, 2016.

Tobacco Free or Smoke Free Regulations

Lisa Phillips with Albemarle Regional Health Services and Pam Diggs with North Carolina Tobacco Prevention Control Branch provided the Board with a report on the health effects of tobacco products and information on neighboring County policies and their tobacco free and smoke free regulations. A copy of the PowerPoint presentation is in the meeting file labeled September 6, 2016.

The PowerPoint highlighted which counties and municipalities are 100% smoke free buildings, grounds and vehicles. Ms. Diggs provided information regarding the health effects of smokeless tobacco including e-cigarettes.

Ms. Stallings noted that currently Chowan County's Government Buildings are declared 100% smoke free (since March 1993 by a policy). Smoking is discouraged at County owned Parks and Playgrounds.

Commissioner Mitchener asked for more information regarding third hand smoke.

Commissioner Nixon stated he would like to move forward to have staff put together information on a tobacco free policy.

Commissioner Mitchener asked if public spaces are included in a recommendation from the health department.

Ms. Diggs stated some communities have adopted tobacco free public areas and public places.

Ms. Stallings noted that the Board has copies of model ordinances that the Board can review or staff can bring a draft ordinance to the Board prior to advertisement of a public hearing.

Commissioner Nixon moved to allow staff to make a recommendation to the Board for which policy would be best for Chowan County excluding public places and then schedule a public hearing.

Commissioner Mitchener asked Commissioner Nixon to consider inclusion of public places in the draft.

Commissioner Nixon stated this can be debated later he stated that could be included for staff consideration.

Commissioner Kehayes asked for clarification

Amended motion

Commissioner Nixon moved to allow staff to make a recommendation to the Board for which policy would be best for Chowan County and then schedule a public hearing.

Commissioner Nixon noted that the Health Department Board has reviewed this information and he feels this is an opportunity to promote health in the County. He stated if the County adopts the ordinance, the Health Department will pay for all of the signage.

Chairman Smith asked for clarification on public spaces.

Ms. Diggs stated these are public places that are enclosed like malls, shopping centers etc.

Commissioner Mitchener asked if public places are privately owned.

Ms. Diggs stated yes.

Commissioner Nixon stated there would be a public hearing to allow the public to weigh in on the proposed ordinance.

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

Water Department Updates

Special Order by Consent (SOC) Valhalla Water Treatment Plant

County Water Supervisor Mickey Watson and County Engineer Bill Diehl provided the Board with information on SOC as proposed by Division of Water Resources (DWR).

Mr. Diehl stated the County has negotiated a SOC to remediate the groundwater. Where the county discharges its waste water into an unlined pond, which is absorbed into the groundwater. He noted the State has ordered the County to stop the discharge. The SOC will fine the County \$5,000 for the violations to date. The fines will stop as long as the County goes forward with the SOC. He stated Diehl and Phillips and Groundwater Management Associates (GMA) which specializes in groundwater remediation. He stated the timetable requires an alternative analysis report that discusses alternative ways to get the wastewater discharge out of the unlined pond. He stated an above ground tank has been suggested but will have to be looked into. He stated that on or before July 1, 2017 a comprehensive site assessment must be completed. He stated a proposal has been provided by GMA to complete a site assessment. He stated this assessment will further delineates the area that was impacted by the ground water and the direction of the ground water flow and outline alternatives to clean the affected areas up. By March 1, 2018 a corrective action plan must also be submitted. He noted the County will be required to submit quarterly reports.

**NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION**

COUNTY OF CHOWAN

IN THE MATTER OF)	
NORTH CAROLINA)	SPECIAL ORDER BY CONSENT
NPDES PERMIT)	EMC SOC WQ S16-003
NUMBER NC0032719)	
HELD BY CHOWAN)	
COUNTY)	

Pursuant to provisions of North Carolina General Statutes (G.S.) 143-215.2 and 143-215.67, this Special Order by Consent is entered into by Chowan County, hereinafter referred to as the County, and the North Carolina Environmental Management Commission, an agency of the State of North Carolina created by G.S. 143B-282, and hereinafter referred to as the Commission:

1. The County and the Commission hereby stipulate the following:

(a) The County holds North Carolina NPDES Permit Number NC0032719 for operation of an existing wastewater treatment works and is permitted to discharge treated wastewater to Pollock Swamp, Class C-NSW waters of this State in the Chowan River Basin. However, the County is not discharging to said outlet in accordance with NPDES Permit Number NC0032719. The County is discharging into a settling basin (borrow pit) and the treated wastewater is infiltrating into groundwater of the State. The County has exceeded groundwater standards at the compliance boundary for Chloride, Iron and Manganese. Compliance will require preparation of plans and specifications for construction and operation of additional treatment works and an alternative means of disposal.

(b) Noncompliance with the Permit constitutes causing and contributing to pollution of the waters of this State named above, and the County is within the jurisdiction of the Commission as set forth in G.S. Chapter 143, Article 21.

(c) The County has secured a grant or has otherwise secured financing for planning, design, or construction of a new or improved waste system and new disposal system which, once constructed and operated, will be sufficient to adequately treat wastewater presently being discharged and the additional wastewater desired to be discharged, to the extent the County will be able to comply with final effluent permit limitations.

(d) Since this Special Order is by Consent, neither party will file a petition for a contested case or for judicial review concerning its terms.

2. The County desiring to comply with the Permit identified in paragraph 1(a) above, hereby agrees to do the following:

(a) As settlement of all alleged violations of NPDES Permit NC0032719 prior to entering into this Special Order by Consent, the County agrees to pay the sum of \$5000.00. A certified check must be made payable to the Department of Environmental Quality and forwarded to the Director of the Division of Water Resources at 1617 Mail Service Center, Raleigh, North Carolina 27699 by no later than fifteen (15) days following the date on which this Order is approved and executed by the Commission and received by the County.

(b) Undertake the following activities in accordance with the indicated time schedule:

- 1) On or before **July 1, 2017**, submit an alternative analysis report for the facility summarizing methods to bring the facility into compliance.
- 2) On or before **July 1, 2017**, submit a **complete** Comprehensive Site Assessment (CSA) in accordance with 15A NCAC 02L .0106 (g).
- 3) On or before **December 1, 2017**, submit complete plans and specifications and any applications for necessary permits or permit modifications to address necessary water treatment plant improvements.
- 4) On or before **March 1, 2018**, submit a Corrective Action Plan (CAP) in accordance with 15A NCAC 02L .0106 (h) to address groundwater violations.
- 5) On or before **July 1, 2018**, begin construction of the proposed wastewater treatment plant and disposal system modifications.
- 6) On or before **January 1, 2020**, complete construction.
- 7) On or before **May 1, 2020**, achieve compliance with all final permit effluent limits and permit conditions.
- 8) **Provide the Washington Regional Office with quarterly progress reports.** Reports are due within 30 days following the end of each calendar quarter. The quarterly reports shall include, at a minimum, documentation of the County's status of operation of the current treatment system and the status of permit modification and new treatment and disposal system construction activities. **The first quarterly report is due prior to October 31, 2016**, and then reports are due as noted above.

(c) The County shall comply with all terms and conditions of the permit. The County shall collect groundwater samples from the three monitoring wells located on the compliance boundary every quarter and have those samples analyzed for Chlorides, Iron and Manganese. The County shall submit the results in the required quarterly progress report. The County may also be required to monitor for other parameters as deemed necessary by the Director in future permits or administrative letters.

(d) No later than thirty (30) calendar days after any date identified for accomplishment of any activity listed in 2(b) above, submit to the Director of DWR written notice of compliance or noncompliance therewith. In the case of noncompliance, the notice shall include a statement of the reason(s) for noncompliance, remedial action(s) taken, and a statement identifying the extent to which subsequent dates or times for accomplishment of listed activities may be affected.

3. The County agrees that unless excused under paragraph four (4), County will pay the Director of DWR, by check payable to the North Carolina Department of Environmental Quality, stipulated penalties according to the following schedule for failure to meet deadlines set out in paragraphs 2(b) and 2(d).

Failure to meet a schedule date.	\$100/day for the first 7 days; \$500/day thereafter
Failure to comply with SOC condition.	\$500/day until condition is met
Failure to achieve compliance with final effluent limitations at final compliance deadline.	\$10,000.00
Failure to submit progress reports.	\$1000.00/violation
Failure to perform and/or submit required sampling in accordance with this document.	\$1000.00/violation

4. The County and the Commission agree stipulated penalties are not due if County satisfies the Division, noncompliance was caused solely by:

- a. An act of God;
- b. An act of war;
- c. An intentional act or omission of a third party, but this defense shall not be available if the act or omission is that of an employee or agent of the defendant or if the act or omission occurs in connection with a contractual relationship with the County;

- d. An extraordinary event beyond the County's control. Contractor delays or failure to obtain funding will not be considered as events beyond the County's control; or
- e. Any combination of the above causes.

Failure within thirty (30) days of receipt of written demand to pay the penalties, or challenge them by a contested case petition pursuant to G.S. 150B-23, will be grounds for a collection action, which the Attorney General is hereby authorized to initiate. The only issue in such an action will be whether the thirty (30) days has elapsed.

5. This Special Order by Consent and any terms, conditions and interim effluent limitations contained herein, hereby supersede any and all previous Special Orders, Enforcement Compliance Schedule Letters, terms, conditions, and limitations contained therein issued in connection with NPDES Permit No. NC0032719.

6. Noncompliance with the terms of this Special Order by Consent are subject to enforcement action in addition to the above stipulated penalties, including injunctive relief pursuant to G.S. 143-215.6.(C).

9. The County, upon signature of this Special Order by Consent, will be expected to comply with all schedule dates, terms, and conditions of this document.

10. This Special Order by Consent shall expire **September 1, 2020**.

For the County of Chowan Board of Commissioners:

Jeffery Smith, Chairman
Print Name and Title of Signing Official

Jeffery A. Smith Date 9-6-16
Signature of Signing Official

Commissioner Mitchener asked what the likely cost for the entire SOC.

Mr. Diehl stated it would cost millions of dollars. He stated \$2 to \$2 ½ million. He stated years ago the original SOC design costs were around \$2 million.

Commissioner Bonner asked for clarification about the timeline.

Mr. Diehl stated a report has to be submitted to the state for alternatives to the plan.

Commissioner Nixon stated that this has been a long process and with different people in offices will change policies of the State. He stated he felt it was important to note that Chowan County has not done anything illegal and has adhered to the state regulations.

Mr. Diehl stated that was correct.

Commissioner Nixon stated the Town has issues and asked if one of the plan alternatives include a shared Reverse Osmosis Plant (R/O) or an authority for shared water.

Mr. Diehl stated that Pasquotank spent over 10 years in just obtaining permits from the State for an R/O Plant.

Commissioner Nixon asked if Chowan has looked into purchasing water from Gates County.

Mr. Diehl stated that Gates County has good water but no large lines to bring the water to Chowan.

Ms. Womble asked Mr. Diehl if based on his experience with regards to #7 is this enough time to draft recommendations (May 1, 2020).

Mr. Diehl stated that he has tried to confirm this with the State, but this SOC is for the Ground Water contamination. He stated that the County's discharge is putting more in the ground water than allowed. He stated his understanding is that as long as the County has stopped putting excess iron manganese chloride by May 1, 2020 that would put the County in compliance. He stated that is enough time but it is not enough time for the ground water to go back to groundwater standards. He stated this concern has been put on notice to the State.

Commissioner Bonner asked if the State could provide a response.

Ms. Womble stated she would recommend a contingency for staff to go back and clarify "specify" what that understanding is if the Board moves forward with this.

Mr. Diehl stated he has noted his concern with this item in his response however the state did not make adjustments. He stated that the County is not in the position to have the state change this language.

Chairman Smith stated this SOC is with regards to groundwater contamination, not a violation of groundwater.

Commissioner Nixon moved to approve the SOC to allow staff the discretion to negotiate clarification for item 2b7 regarding compliance.

Commissioner Mitchener discussed the ever changing standards from the State which may change during the SOC.

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

Groundwater Management Associates (GMA) proposal for comprehensive site assessment
Mr. Howard provided the Board with information on a proposal from GMA for site assessment. In compliance with the SOC requirements. He asked that the Board approve the quote from GMA based on the current price.

Chairman Smith asked if someone else doing the drilling would help with the cost.

Mr. Diehl stated that supervision would drive up the costs. He stated there are 13 wells involved.

Commissioner Kehayes noted his surprise with the costs.

Mr. Diehl stated he recommends this contractor as this is their specialty. He stated he is not aware of other firms that do this work on a daily basis. He stated these 13 permanent wells will look at water flow and contamination below the aquifer.

Mr. Howard noted the Phase I contract was \$14,900 and the County is under a timeline for the SOC.

Commissioner Kehayes moved to approve the contract with GMA.

MR. Howard noted that the County can put some capital on hold until spring. He stated that monies can be moved within the Water budget. And that \$75,000 was budgeted for the SOC.

Chairman Smith stated he would like to get another well driller contacted to quote the group. The Board discussed the driller (SGI).

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

Mosquito Spraying

Commissioner Kehayes stated that due to recent concerns regarding the Zika virus he stated he has received calls about spraying the Board will discuss the County's participation in mosquito spraying in the County.

Mr. Watson stated that mosquito spraying was halted in 2008 due to the County's financial situation. He stated the machine was on loan to the County from the Health Department. He stated the County has to have permits from DWR to spray. He stated the cost is approximately \$10,000 annually and that was 8 years ago. He stated the machine has to be calibrated in the fall/winter.

Commissioner Kehayes asked if the machine is expensive to repair.

Mr. Watson stated no, it needs cleaning. He stated that spraying has to be complaint driven, investigated and then sprayed if found to be needed.

Commissioner Mitchener and Mr. Watson discussed preventative spraying.

No action was taken on this item.

Planning Items

Request for Tire Clean-up

Ms. Bryant shared that a County resident contacted her office with a request to clean up approximately 2,000 scrap tires at a property located on Center Hill Road. She stated that the property owner offers to provide the labor for the cleanup but is requesting the County pay for the dumpsters to be hauled from the site to the landfill. She noted that there are scrap tire funds from the State that would pay for the disposal of the tires.

Chairman Smith asked if this is normal for the County to supply dumpsters.

Ms. Bryant stated that several years ago there was a cleanup at Arrowhead Beach and the County supplied dumpsters to clean up junk nuisance yards.

Commissioner Nixon noted the grant monies from the State for scrap tires sunset on June 1, 2017. He asked if this will offset the County's scrap tire money now.

Ms. Bryant stated this could be a \$30,000 to \$40,000 disposal cost. She stated that she is unsure if it will impact the County's monies.

Chairman Smith stated that this mess was created by the person making the request.

Commissioner Nixon stated that he feels the County should move on with enforcement and the property owner should pay for the disposal. He stated he is not in favor of using tax payer monies for disposal of these tires.

Commissioner Kehayes stated that this creates not only an eyesore but an insect nuisance.

Commissioner Nixon stated he did not feel it is fair to use taxpayer money to address negligence. He stated he feels the property owner should help pay for this. He stated he would recommend that staff explain what was discussed.

Chairman Smith called for a five minute recess. After five minutes he called the meeting back to order.

Ms. Womble noted that there is a time-line for enforcement once the clock starts allows 35 days from start to the County taking action to abate the property. She stated if a letter is sent out the clock starts.

Ms. Bryant noted that after January 1st the County may not get reimbursed for the disposal. She stated she wanted clarification about starting the nuisance process, or speak with Mr. Monds and not initiate the code enforcement process.

Commissioner Nixon stated he feels the County should move forward with Code Enforcement, and that he will be getting a letter.

Chairman Smith stated that this property may not belong to the person who created the nuisance.

Commissioner Kehayes stated that if the property owner drags his feet the County has to move forward. He stated he feels the County should move forward with the enforcement.

Land Use Plan Update

Ms. Bryant provided the Board with four proposals for updating the Edenton-Chowan County Land Use Plan. She stated the proposals range from \$15,000 TO \$100,000. She stated she met with representatives from Code Wright, Holland Consulting, Clarion and Stewart. Ms. Bryant stated that a group met and interviewed each of the companies and found all to be equally qualified.

Commissioner Nixon asked what staff recommends.

Ms. Bryant stated she felt the group feels good working with the low bidder, Code Wright or second low bidder, Stewart. She stated that some items were left out of Code Wright's proposal however these things will be added and adjust the cost some. She stated the majority of the cost is in writing the zoning code.

Commissioner Nixon asked how much over the bid would this cost.

Ms. Bryant stated it would not change the cost much, it will remain close to the original bid amount.

Commissioner Nixon stated he feels it is important to keep the Board involved in this process. He stated that recently the Commissioners were asked to consider a bicycle plan and were not involved in the planning.

Ms. Bryant stated that each proposal consists of a steering committee and it will include members of the Board of Commissioners, Town Council and others with specialty areas of expertise. She stated these committees will meet quarterly. She noted she will provide periodic updates to the Board on the progress of the plan.

Commissioner Nixon moved to accept the bid from Code Wright. Chairman Smith asked for all in favor, the motion passed unanimously (5-0).

Ambulance Purchase

EMS Director Colin Ryan provided the Board with updated information for consideration regarding an ambulance purchase.

Mr. Ryan provided the board with updated information on a pending ambulance purchase. He stated that the Board approved a purchase of \$57,000 of a used ambulance. He stated this used ambulance has additional equipment left on it than what was previously quoted. He stated this ambulance will have a stretcher lift. He noted it is a 2012 Dodge 5500 from Cherokee County. He stated this body will be removed and remounted and painted. He stated that an ambulance with all of these features would cost the County approximately \$165,000 and there is a savings of \$100,000 to the County.

Chairman Smith noted that he is requesting an increase of \$8,000 from the purchase amount previously approved by the Board.

It was noted that Cherokee County trades all of its ambulances to North Western.

Commissioner Kehayes moved to increase the purchase amount by \$8,000. He amended his motion to state to allow EMS to spend \$65,000 on the new ambulance.

Commissioner Nixon noted these monies will be coming from fund balance.

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

External Board/Committee Report

Chairman Smith asked for any external board and committee reports. There were none.

Manager's Report

County Manager Kevin Howard will update the Board on any pending matters.

Alcohol on County Property

Mr. Howard noted that his office has received a request from a renter at Swain Auditorium to serve alcohol at an event. He stated that there is a policy that allows the manager discretion to approve the request, but there is an ordinance on file that doesn't allow the consumption of alcohol on County owned property. He asked the Board if they prefer to amend the ordinance in any way to allow the request.

Ms. Womble noted that if the County wishes to allow the consumption of alcohol on County property, the existing ordinance is a law and it would need to be amended.

The attorney and the Clerk discussed the timeline for advertisement of a public hearing to amend the ordinance.

The Board discussed the liability of allowing the sale or consumption of evidence.

Commissioner Mitchener moved to amend the ordinance. He then withdrew his motion. He moved to instruct staff to bring a formal ordinance draft to the next Board meeting and schedule a public hearing.

Commissioner Nixon discussed the properties leased by the County.

Ms. Stallings noted the existing ordinance discusses properties owned or occupied by Chowan County.

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

Timely and Important Matters

Shepard Building

Mr. Howard noted renovations to the Shepard Building are moving forward.

Closed Session

Commissioner Bonner moved that the Board go into closed session, in accordance with NCGS 143-318 (11) (a) (3, 4 and 5) attorney client consultation, contract negotiations and personnel.

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

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 (5-0).

Adjourn

Being no further business Commissioner Mitchener moved that the meeting be adjourned. Chairman Smith asked for all in favor, the motion passed unanimously (5-0).

Jeffery Smith, Chairman

Susanne Stallings, Clerk