

**Regular Meeting**  
**Monday July 2, 2012**  
**6:00 pm**  
**Chowan County Public Safety Center**  
**305 West Freemason Street**

Minutes

The Chowan County Board of Commissioners held their regular meeting on Monday, July 2, 2012 at 6:00pm at the Chowan County Public Safety Center. Present: Commissioners Keith Nixon, Jeff Smith, Emmett Winborne, John Mitchener, Ralph Cole and Ellis Lawrence.

Chairman Goodwin came in during Public Comment.

Staff present: County Manager Zee Lamb, Finance Officer Kim Woodley and Board Clerk Susanne Stallings

Vice Chairman Nixon called the meeting to order and led the pledge. Commissioner Mitchener then offered the invocation.

**Public Comment**

Vice Chairman Nixon called for public comment.

William Pikes, a resident of Arrowhead Beach commented regarding the proposed text amendment on the agenda. He stated that if the Board did not approve the text amendment to allow persons to apply for a permit, the Board should shut down illegal residential businesses operating in the county. He stated that currently there are multiple home businesses operating in Arrowhead Beach.

Jennie Droze a resident of Virginia Road stated her support of the applicant and their home occupation. She stated the Dupraws have been an asset to the Albemarle Area Hunters Helping Kids Program and stated her support of their request.

Jon Faulkner a stated he was the President of the Arrowhead Beach Property Owners Association. He stated that the Association has voted to not allow businesses in their community. He stated that Arrowhead is a nice community however he felt that businesses operating in the community were not appropriate

Chairman Goodwin joined the meeting.

Richard Caporal stated that he lives diagonally from the applicant's property. He stated the property has been adversely impacted by noise and insects. He stated that he has lived on the property since 1985 and the conditions have worsened since the applicant moved in.

Barbara Burgess a resident of 103 Choctaw Trail stated that vultures fly over her property and she was scared for her small dog. She stated she did not feel businesses were appropriate in the residential neighborhood

Angela Dupraw a resident of 307 Chinook Trail stated that her application for the text amendment will impact all home based occupations in Chowan County. She stated that her application is not just for her business but to allow other residents to apply to operate a home based business.

Wayne Robbins a resident of Arrowhead Beach stated his concern with the County allowing businesses in residential neighborhoods like Arrowhead Beach.

Vice Chairman Nixon asked for any further public comment, (there was none). Vice Chairman Nixon then passed the gavel to Chairman Goodwin.

### **Consent Agenda**

#### **a. Approval of Minutes**

Attached are the minutes of the April 16, 2012, April 26, 2012, May 7, 2012, May 14, 2012, May 21, 2012, June 4, 2012 and June 18, 2012 meetings for the Board's consideration.

Board Clerk Susanne Stallings noted corrections to the minutes of May 21st (pages 6 and 16) and June 4th page 3. Commissioner Mitchener moved that the minutes be approved with corrections. Chairman Goodwin asked for all in favor, the motion passed unanimously (7-0).

#### **b. Tax Release and Collector's Report (attached)**

Clark, J.	\$111.97	Vehicle Traded
Layton, K.	\$102.50	Vehicle Traded
Proctor, A.	\$346.12	SITUS - Perquimans
Shields, L.	\$237.90	High mileage
Ward, F.	\$119.18	Vehicle Sold

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

#### **c. Budget Amendment**

##### **BA-1112-076**

Lottery Proceeds	\$ 10,435	Increase revenue from lottery proceeds
School Lottery Proj	\$10,435	Increase expenditures for the renovation of two classrooms at John A. Holmes High School. Funds have been expended by Edenton-Chowan Schools.

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d. Budget Transfers

**BT-1112-018**

4190	Land Records	\$1,131	Decrease professional services, office supplies, departmental supplies, travel and maintenance and repair of equipment
4210	IT	\$1,131	Increase professional services relicensing

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**BT-1112-019**

4140	Tax	\$3,990	Decrease postage
	Central Services	<u>4,383</u>	Decrease committee expense, retiree health insurance and contracted services
		8,373	
9820	USDA Reserve	\$8,373	Appropriate deficit in USDA reserves to be current for 6/30/12. Will eliminate notation from USDA

Commissioner Mitchener asked for clarification on item c.

Ms. Woodley stated that the project was approved June 25<sup>th</sup> however because of the date of approval, the budget amendment was required for the current year budget.

Commissioner Mitchener asked what time period the projects cover.

Ms. Woodley stated the projects are through June 2012.

Chairman Goodwin asked if the monies have already been spent.

Ms. Woodley stated the schools have spent the monies.

Commissioner Cole asked if this depletes the monies in the lottery fund.

Ms. Woodley stated no, that there are pending projects.

Chairman Goodwin stated he wanted to see the lottery funds spent first before local monies.

Commissioner Cole moved to approve items c and d. Chairman Goodwin asked for all in favor, the motion passed unanimously (7-0).

e. Surplus

Staff requests that the Board declare 13 window air conditioning units, 4 typewriters and misc. furniture and file cabinets surplus. These items are from the county office building and are eligible for auction via Gov Deals.

Board Clerk Susanne Stallings explained the items that were included on a list in the Board packet.

Commissioner Mitchener moved to approve item e.

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

f. Approval of Agreements

Agreements for Board consideration:

- BB&T resolution for deposit account
- Young Williams 3rd and 4th contract amendment for child support services
- Second amendment to Tower Lease Agreement (Verizon Wireless)

Kim Woodley explained that the BB&T resolution allows the county to open a Money Market Account which would gain more than twice the current interest rate.

Mr. Lamb presented a proposed agreement with Young and Williams, the County's contracted child support enforcement agency. He stated that based on changes in the law, the county required amendment.

Mr. Lamb then presented an amendment to the Tower Lease Agreement with Verizon for the tower located at Valhalla. He requested that the Board approve this amendment pending the Emergency Management Coordinator signing off on federal approvals and certifications for the wiring and weight of the new antenna.

Chairman Goodwin asked for clarification on the new antenna and its impact on the tower.

Mr. Lamb stated the wiring would be the largest impact on the tower. He stated he spoke with a Verizon representative and that representative would be requesting the certifications necessary. He stated he would then have Mr. Palmer the Emergency Management Coordinator sign off that the certifications have been received.

The Board asked for more clarification on the contract amendment with Young Williams. Mr. Lamb stated that he has requested that the director of Social Services meet with the Board and provide the information requested.

Mr. Cole moved to remove the Young Williams Contract amendment from the consent agenda until further information is provided by Social Services. Chairman Goodwin asked for all in favor, the motion passed unanimously (7-0).

Commissioner Winborne moved that the remaining item f of the consent agenda be approved with clarification that the Emergency Management Coordinator would verify all federal certifications have been received before execution of the lease amendment. Chairman Goodwin asked for all in favor, the motion passed unanimously (7-0).

**External Board and Committee Reports**

Commissioner Cole reported on the activities of the Health Department Board.

Commissioner Winborne reported on the activities of the Social Services Board.

Commissioner Lawrence reported on the activities of the College of the Albemarle Board.

Commissioner Nixon reported on the activities of the Solid Waste Board and the TDA Board.

### **Planning Items**

a. TA 12-03

The Board will consider of TA-12-03, a text amendment that will define home based business for A-1, R-15 and R-25 zoning tabled from the June 18, 2012 meeting.

Commissioner Nixon move to reconsider the text amendment. Chairman Goodwin asked for all in favor, the motion passed unanimously. (7-0)

Planner, Landin Holland provide the staff report for a text amendment before the Board to establish a home based business use by Special Permit in the R-15 R-25 and A-1 zoning districts. He stated that this text amendment would impact nearly the entire county (approx 98%). He stated that the amendment proposes that any individual that wishes to operate a home based business in these zoning districts would be required to apply for a Special Use Permit and go through a hearing before the Planning Board to determine if use is suitable. He stated that the Planning Board would be tasked with ensuring the individual and their business will not immediately injure the adjoining property values. He stated that currently the ordinance allows for home occupations (businesses that will not impact exterior of a home). He stated examples of the allowed use include examples such as a tax service, real estate office, businesses that have limited traffic, where neighbors would never realize business activity is taking place. He stated that there are several types of business that do not meet that definition.

Commissioner Nixon asked if businesses operating in the residential neighborhoods, prior to county-wide zoning, were allowed to be grandfathered.

Mr. Holland stated that home occupations that existed prior to zoning were allowed to continue to exist. He added that if someone is operating a home occupation at their residence, the county has no way of knowing. He stated that violation notices are complaint driven. He stated that if the County notices an operating business, the County has an obligation to investigate the complaint. Know

Commissioner Nixon asked if certain home businesses that may have an office at home, such as a painter or drywall business would be considered a home based occupation or business.

Mr. Holland stated that businesses that use equipment, create noise, traffic, or vibrations would likely fall under the definition of a home based business, which if the text amendment is approved, would be required to obtain a Special Use Permit.

Commissioner Winborne asked if agricultural uses are exempt from the ordinance.

Mr. Holland stated that the law protects agricultural uses from the zoning ordinance.

Commissioner Winborne provided an example of an existing candle business in the county. He asked if this use would be considered a home based business, and be required to obtain a permit from the Planning Board under the proposed text amendment.

Mr. Holland stated yes, that the business is operating in a zoning district that does not allow home based business uses under the current ordinance. He stated that the proposed amendment would however allow the business owner the opportunity to apply for a permit to continue to operate his business. He stated the home based business definition is to be interpreted by the Planner under the zoning ordinance.

Commissioner Winborne asked if the Board could pick and choose what zoning districts it would allow home based businesses in.

Mr. Holland stated yes

Commissioner Winborne stated he would prefer to see A-1 taken out of the text amendment. He stated he was of the opinion that the concern regarding the home based businesses appear to be in the R-25 and R-15 zoning districts and not in the A-1 district.

Mr. Lamb asked Mr. Holland that if in his opinion, without this text amendment would new home based business be prohibited, because there is no provision to allow for such under the current ordinance. Some businesses may have existed prior to adoption of the zoning ordinance. Some have been started since zoning.

Mr. Holland stated that was correct. He stated it would be difficult to determine what businesses were operating prior to the county-wide zoning.

Commissioner Smith stated that he agrees with Commissioner Winborne, he stated he felt the Board should allow home based businesses in the A-1 zoning district, but he did not feel a home based business is appropriate in a residential neighborhood like Arrowhead Beach.

Commissioner Mitchener asked if a Special Use Permit could be reviewed annually and how often the permits are reviewed.

Mr. Holland stated that permits can be reviewed annually, he stated that the permit is attached to the use and conditions are determined on a case by case basis.

Commissioner Nixon stated that he thinks R-15 and R-25 zoning areas are too heavily populated to allow such a text amendment. He stated that based on his research county wide zoning was put in place to protect residential properties from the development that was coming to Chowan County. He stated he felt it was the Board's role to protect residential properties. He stated that there are many areas in the A-1 zoning district that have multiple road frontage lots and are densely populated. He stated that he felt some areas of the county should be looked at for rezoning. He stated that in 2005 home based business was discussed during the planning of county wide zoning he stated that the Board and staff spent the years of 2004 through 2006 having community meetings to study facts. He stated that at one of these meetings, home based

businesses were addressed and the decision was made to not include the definition in the ordinance. He stated he felt he owed protections to the property and homeowners. He stated that while he supports home based businesses he feels that home based businesses should not be allowed in densely populated residential areas and recommended that staff look into reviewing and amending the zoning map.

Commissioner Mitchener asked if staff could look into reviewing the zoning map.

Mr. Holland stated that he would recommend sending the map to the Planning Board to address concerns and bring back their recommendations to the Board of Commissioners.

Commissioner Mitchener stated he would like for the map to be reviewed. He noted that there have been concerns with Mediacom about coverage based on population on some county roads and felt there are dense areas of the county that may need to be rezoned.

Chairman Goodwin stated that he did not feel the County should pick and choose areas where it allows for home based businesses. He stated the county should have zoning in place, but allow it in everywhere to give the applicant the opportunity to prove if the use would have a positive or negative impact on the neighborhood. He stated his concern with the Arrowhead Beach Property Owners Association issuing business permits to the residents and then asking the county to stop the business use. He stated that reports of him using the services of the proposed business were incorrect adding that he was not for or against the proposed home based business in Arrowhead Beach. He stated that people should have the right to apply for a permit to operate a home business and added that some permits (under the text amendment) would be approved, and some would not.

Commissioner Mitchener asked if the Board is able to amend the ordinance if the county zoning map is revised.

Mr. Holland stated that the Board can amend the zoning ordinance and map at any time.

Commissioner Mitchener moved that the Board approve the text amendment as presented.

Commissioner Winborne stated his appreciation of the work the Chairman had done. He stated he agreed that the County has work to do and stated that there is blame to go around. He stated he would prefer that the Property Owners Association settle their issues with homeowners instead of requesting that of the County handle it. He stated this was done after the Association approved the business permit. He then urged the commissioners to vote in favor of the text amendment.

Mr. Lamb stated that there have been questions in the media regarding the need for a Board member to recuse themselves from a vote on this matter. He stated that the law does not allow a Board member to recuse themselves. He added that a Board member has a duty to vote unless he is allowed recusal by a vote of the Board. He stated that a Board member can only be recused when there is a legal or financial conflict of interest, otherwise the Board member has an absolute duty to vote.

Chairman Goodwin noted that the Planning Board approved this text amendment unanimously. He stated that the Board of Commissioners was voting on a text amendment, not the functioning of a specific business.

Commissioner Nixon stated that the Board of Commissioners are policy makers not enforcers. He stated enforcement is a responsibility of staff. He stated that he trusts the Planning Board but noted that many people were involved in drafting the county wide zoning ordinance. He stated that there has only been one application for home based business and did not see a high demand for the text amendment. He stated that he would stay with his vote from the last meeting.

Chairman Goodwin asked for all in favor of the motion, the motion failed (3-4 Nixon, Smith, Cole, and Lawrence).

b. TA 12-04

The Board will consider of TA-12-0, a text amendment that will amend the Chowan County Animal Control Ordinance. Second vote required from the June 18, 2012 meeting.

Mr. Holland provided information from the staff report on the proposed text amendment.

Commissioner Winborne asked about the leash law in the county, he stated that based on the ordinance, this applies to these breeds of dogs in the rural part of the county. He stated he was not aware the leash law applied to the entire county.

Mr. Lamb stated that in the county, the dogs on a property can have electronic collars, be in a pen and do not have to be leashed. He stated that if the dogs are off the property county wide they will have to be leashed (these specific breeds).

Commissioner Mitchener asked if signage of the vicious breeds could be required on the property to identify that a breed determined to be vicious is located there.

Commissioner Winborne asked if this applies to hunting dogs.

Mr. Holland stated that hunting dogs are exempt from this ordinance. He stated that if a dog bites, the case would be handled by an Animal Control Officer. He stated the officer would have to investigate and label dog appropriately. He stated that by nature of breed are deemed potentially dangerous and the language in the proposed ordinance revision matches that of other towns and counties in the state.

Commissioner Smith moved to accept the ordinance revision as presented. Chairman Goodwin asked for all in favor, the motion passed unanimously (7-0).

Rezoning – schedule public hearing

Mr. Holland stated that Meryl Bunch is requesting a public hearing be scheduled for the August 6<sup>th</sup> meeting. The request is for a rezoning of six parcels of land.

Commissioner Nixon moved to schedule the public hearing as requested. Chairman Goodwin asked for all in favor, the motion passed unanimously (7-0).

### **Young Williams- Contract Amendment**

Mr. Lamb called on the DSS Director Clifton Hardison to provide more information on the contract amendment.

Mr. Hardison stated the question about genetic testing came about when the County went under contract. He stated that recently the state rules changed regarding reimbursement. He stated that the State of North Carolina previously was paying and claiming reimbursement for genetic testing, he stated that later the state decided not to pay 34% of the cost. He stated that after discussions with Young Williams, he learned that the State drafted the money from the county. He stated that after talking with Young Williams, he made it so the county did not lose the \$\$\$. State says the county has He stated that in the future the county will receive the bill for testing, the county will pay the bill, and the following month will receive reimbursement from Young Williams the 34%. He stated the remaining 66% will come from federal monies.

Chairman Goodwin noted that the 34% is collected in the courts.

Commissioner Cole moved to approve the contract amendment as presented. Chairman Goodwin asked for all in favor, the motion passed unanimously (7-0).

### **Recreation Endowment Fund Resolution**

Commissioner Nixon shared information on an endowment approved by the Recreation Advisory Board. He stated that in 2008 when the County made cuts the Recreation Board decided to create an endowment to raise monies. He stated that the Board has selected the North Carolina Community Foundation, because they offered the Recreation Board the opportunity to open an endowment for \$10,000. He provided the Board with information on the endowment. He stated that the endowment is named after Robbie Laughton (the previous long time recreation director) as an appreciation for the work he has done for Chowan County. He stated the endowment has raised the minimum requirement of \$10,000. He stated that the Recreation Board can only draw 5% of the balance per year to supplement the recreation department budget. He stated that in the past few years the endowments have shown an 8% return. He stated that he feels that the endowment is a win-win situation for the Recreation Department and the County Board of Commissioners. He stated the resolution allows the Recreation Advisory Board, by a majority vote to designate where the monies are spent.

Commissioner Winborne stated he currently serves on the Recreation Advisory Board and supports the endowment and resolution. He stated the monies will be spent only to benefit the Recreation Department.

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

BE IT RESOLVED that Chowan County, North Carolina, by and through its Board of County Commissioners, does hereby request and authorize establishment of a Designated Endowment Fund in its name, on its behalf and for its benefit by the North Carolina Community Foundation, Inc. (NCCF), pursuant to the Agreement signed by Chowan County Community Funds, and affiliate of the North Carolina Community Foundation and NCCF to establish the Robbie Laughton Recreation Endowment for Chowan County Fund with the purpose of providing support for the Chowan County Parks and Recreation Department (the "Endowment"). The Designated Endowment is to be owned and managed by the NCCF as provided by said Agreement and held by the NCCF as a component fund thereof; and,

BE IT FUTHER RESOLVED that Chowan County, North Carolina, by and through its Board of County Commissioners, hereby authorizes NCCF and its officers and agents to accept contributions to the said Designated Endowment Fund on its behalf, and further authorizes its own members of the Board of County Commissioners and/or Chowan County staff to execute and deliver to NCCF any instruments or documents necessary or useful to effect the authorization, establishment, use and continued maintenance of such Designated Endowment Fund and further agrees to use the distributions from the Endowment for the purpose of providing support for the Chowan County Parks and Recreation Department as determined by a majority vote of the Recreation Advisory Board.

### **Timely and Important Matters**

Mr. Lamb noted the Tax Audit program has been under attack in the General Assembly specifically regarding business audits, he stated that it is his understanding that a compromise was reached. He stated the County can continue to do the audits for another year, but not again for a two year period.

He stated that he has awarded mowing to two different vendors, Four Seasons and All Seasons.

He stated that he awarded elevator contracts for Public Safety Center and the Courthouse. He added that he has forwarded information to the Library regarding the elevator contract and the library board will consider entering into it.

He stated that the FSA offices have notified him that they will be moving out but there is no move out date set. He stated the Public Defender Office will be moving to Elizabeth City, however, they have not moved out yet and will be held over for a couple more months in Chowan because the space is not available in Pasquotank yet. He stated the county did not budget \$900 per month, but the landlord has agreed to rent the space month to month. He stated that Pasquotank may request monies for housing in Elizabeth City.

Being no further business before the Board, the meeting was adjourned.

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Edward C. Goodwin, Chairman

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Susanne Stallings, Clerk