

**MINUTES OF THE MEETING OF THE  
ROWAN COUNTY BOARD OF COMMISSIONERS  
March 8, 2000 – 7:00 P.M.  
COMMISSIONER’S MEETING ROOM, ADMINISTRATION BUILDING**

Present: J. Newton Cohen, Chairman  
Steve Blount, Vice-Chairman  
Frank Tadlock, Member  
Arnold Chamberlain, Member  
Dave Rowland, Member

The County Manager, Clerk to the Board, County Attorney and Finance Director were also present.

Chairman Cohen called the meeting to order. Commissioner Chamberlain provided the Invocation and Commissioner Rowland led the Pledge of Allegiance.

**ADDITIONS TO THE AGENDA:**

- Commissioner Blount asked to have the discussion of I-85 before the public hearings. Chairman Cohen stated that there were two public hearings set and he would not change the agenda.
- Tim Russell, County Manager, stated that he would like to seek the approval from the Board to proceed with making the application for the state grant to fund the Pretrial and Substance programs for the fiscal year 2000-2001.

## **CONSIDERATION OF THE CONSENT AGENDA:**

Commissioner Chamberlain moved to approve the Consent Agenda as submitted. Commissioner Blount seconded and the motion carried.

The Consent Agenda consisted of the following:

- A. Approval of the 2/7/2000 and 2/21/2000 minutes
- B. To pass the Resolution to approve the merger of TimeWarner Inc. and America Online.
- C. To set a Public Hearing to establish a new road to be named "Muddy Acres Road"
- D. Budget Amendments

## **PUBLIC COMMENT PERIOD:**

Chairman Cohen opened the Public Comment Period. Those in attendance who wished to address the Board were as follows:

1. Irene Miller spoke to the Board expressing her concerns about Level 3 Communications, and how this situation affects Farmland Preservation and future construction. Ms. Miller explained that she owns a 200 acre tract, which the back portion has no road access. The pipeline has been placed in the middle of this property, which leaves the back portion unusable. In addition, Ms. Miller voiced her concern that crops have been damaged and no one will accept responsibility. Ms. Miller also questioned how this would affect Rowan County taxes. She learned that counties are taxed according to state regulations and that the counties have no input. Ms. Miller asked the Commissioners to take action to protect the residents from future pipeline issues.

Commissioner Blount made a motion to have the County Manager write a letter to the State Legislators, under the Chairman's signature, asking for action to protect the property owners. Commissioner Rowland seconded the motion and it carried by a unanimous vote.

2. Len Beaver explained to the Board that Level 3 had already condemned his property. He encouraged the Board to support the citizens of Rowan County by sending letters to the State Legislators. He stressed that Level 3 is not concerned with the public good, but rather strictly for monetary gain.

3. Harold Campbell offered his congratulations to the Board for not signing with Level 3 and not agreeing with the contract. Mr. Campbell stressed that the taxpayers deserve help from the government.

John Holshouser, County Attorney, explained that Level 3 could not condemn property owned by local governments; therefore, Rowan County is not subject to condemnation. Mr. Holshouser expressed his great concern for the citizens of Rowan County. He stressed that Level 3 has acquired ninety-five percent of the right-of-ways and that it is doubtful that the courts would stop the progress at this point.

Mr. Russell asked if Mr. Holshouser could draw up a document, which the county could give to citizens explaining the law as it related to this issue. Mr. Holshouser agreed.

#### **PRESENTATION OF THE OUTSTANDING COUNTY AWARD TO THE LIBRARY FROM THE NCACC:**

Ed Regan, from the North Carolina Association of County Commissioners (NCACC), presented an award to Director Phil Barton and employee Kevin Cherry, of the Rowan Public Library, for Rowan County's World War II Oral History Program titled "From Rosie to Roosevelt". Mr. Regan informed the Board that staff interviewed over 130 individuals, transcribed a quarter of those interviews and completed an abstract of one year's worth of local war news from the *Salisbury Post*. The library eventually plans to donate copies of the material to the North Carolina State Archives. Mr. Regan stated that this was one of over eighty entries received of which nine awards were given. Mr. Regan also quoted the judges as stating the project is "A unique program we should all appreciate". Chairman Cohen congratulated staff for their accomplishments.

#### **PUBLIC HEARINGS FOR CASE Z-01-00, RA TO CBI, JIM DAUGHERTY:**

Marion Lytle, Senior Planner, explained to the Board that Mr. Daugherty is requesting a change in zoning from Rural Agricultural (RA) to Commercial, Business, Industrial (CBI) for a 9.62 acre tract located at the southeast corner of the intersection of Daugherty Road and I-85, which has no direct access to I-85. According to Mr. Daugherty, this request is to "enhance property use and to cover the sign which is already in place". Mr. Lytle explained that the visibility and proximity of the site to I-85 might lend it to future commercial development. This will also address Mr. Daugherty's

concern about making the existing off premise sign along I-85 a conforming use.

Mr. Lytle reminded the Board that since the adoption of zoning text and maps, neither the Planning Board or the Board of Commissioners have approved any request for speculative or open-ended rezoning to CBI. The requested site is bordered to the north and west by CBI zoning and on the south and east by RA zoning.

Mr. Lytle stated that the Planning Board voted unanimously to recommend approval of the reduced area to CBI, which would allow the existing billboard to be a conforming sign. This would be contingent upon clarification of a letter from DOT concerning of rezoning for the express purpose of allowing billboard signs.

John Holshouser discussed the letter from DOT and referenced the case in Davidson County, which was addressed in this letter. Naegle Outdoor Advertising, Inc. was given authority, by area landowners, to erect three billboards on property contiguous to I-85. DOT granted the three permits and then revoked the permits due to the fact that the billboards did not conform to Federal regulations. Mr. Naegle sued DOT and won the suit. This decision was affirmed by an appeal. The Supreme Court also affirmed the lower court's decision. The NC Court of Appeals stated that they did not believe that the actions violated the code of Federal regulations. Mr. Holshouser expressed confusion over where this decision stands politically. In spite of what the courts have said, the Federal Government is stating that funds still might be withheld for those not in compliance with the law.

Mr. Holshouser gave his summation of how this issue will affect Rowan County, in reference to the applications for rezoning from Daugherty and Corriher Beef and Sausage. The Federal Government's main objection was that the action taken by Davidson County was in violation of the code of Federal regulations. Davidson County rezoned the RA district to Highway Use (HU). According to DOT, this meant that the change was for the purpose of billboards. The code reads that state and local zoning action must be taken pursuant to the state's zoning Enabling Statute. Actions, which are not part of a comprehensive zoning plan and are created primarily to permit outdoor advertising structures, are not recognized as zoning for outdoor advertising purposes. Rowan County has adopted a comprehensive zoning plan under the state's Enabling Statute. This Board has to decide if the rezoning of this property is primarily for the creation of outdoor advertising. If these provisions are not violated, then any action the Board takes is proper. Mr. Holshouser stated that with the Daugherty case, since the billboard was already in place and there would be no other new billboards erected, this is

not an issue. DOT states that any action taken, which primarily revolves around creating outdoor advertising, is improper and the federal government could withhold funds.

Commissioner Blount expressed that it appears that the Federal Government wants to control the number of signs and the location of signs on the highways that they financially support; and, if the land is used for commercial use, a sign may be erected. Commissioner Blount stressed that, if the Board approved a rezoning to commercial, the Federal Government could require justification that the rezoning was for the purpose of placing a structure on the property. Mr. Holshouser acknowledged that this was a fair interpretation.

Commissioner Blount asked to look at this situation from a rezoning to an initial zoning scenario and presented the following question: If the decision was made to zone an area in Rowan County all commercial, whether or not it was all suitable for commercial use, and if this zoning was challenged in court, could it then be determined that the county's initial zoning was in error? Mr. Holshouser expressed that since he did not know the limitations of the Davidson County Ordinance, he felt handicapped in answering this question.

Mr. Lytle stated, in response to a question from Chairman Cohen, that commercial property could be used for purposes other than for placement of a building, such as, and a skeet range, a golf course or a commercial fishing pond.

Commissioners Blount and Rowland agreed that a building could be placed on the Daugherty property. They disagreed on the Corriher Beef and Sausage property. Commissioner Blount stated that a building could not be placed on the area requesting rezoning. Commissioner Rowland stated that all the property around this area, which is owned by the same person, is zoned CBI and he could see no reason not to zone this area CBI to match the property around it.

Commissioner Tadlock made reference to the first paragraph of the last letter received from DOT, which is dated March 3, 2000 and addressed conditional use zoning. This paragraph states that conditional use zoning is when a parcel of land adjacent to interstate and federal highways is rezoned from non-commercial/industrial use to commercial/industrial use and specifically lists outdoor advertising as the only allowable use.

Commissioner Blount made reference to a letter dated December 6, 1999 from David McCoy, Secretary of DOT. In this paragraph it emphasizes that

states failing to control outdoor advertising could be subject to a ten percent loss of federal-aid highway funding. Commissioner Blount cautioned that DOT places the responsibility of changes in rezoning in the hands of local government.

Chairman Cohen opened the Public Hearing to entertain comments.

1. Jim Daugherty, applicant requesting rezoning, stated that he plans to put a commercial building on the site adjacent to his residence and wishes to have approximately 3.5 acres rezoned to CBI. This property has access to three roads and wants to be able to use it for commercial use
2. Darryl Kluttz, a Rowan County citizen, read from a statement he wrote addressing the Daugherty and Corriher Beef and Sausage rezonings. He explained how the decisions to rezone to CBI could affect the progress of the I-85 widening project and, in turn, taxpayers and also the possible loss of federal money. He cautioned, that if the Commissioners rezone any land along a federal highway, with the purpose of allowing outdoor advertising, the Federal Highway Administration would not consider this to be consistent with maintaining effective control of outdoor advertising. Mr. Kluttz also questioned rezoning of these areas with no plans for future development.

There being no further comments, Chairman Cohen closed the public hearing.

Commissioner Chamberlain made a motion to approve Mr. Daugherty's request to rezone. Commissioner Rowland seconded the motion.

Commissioner Blount continued to voice his concern that the rezoning was for the purpose of the placement of signs and the complications this could cause with the federal government.

The motion passed by a 4/1 vote with Commissioner Blount voting no.

**PUBLIC HEARING FOR CASE Z-04-00, RA TO CBI, CORRIHER BEEF AND SAUSAGE:**

Commissioner Tadlock left the Commissioner's Meeting Room for this public hearing, since he is affiliated with the company requesting the rezoning.

Mr. Lytle informed the Board that David Roberts, agent for Corriher Beef and Sausage, is making a request to rezone a 5-acre tract from RA to CBI. This area to be rezoned is surrounded on three sides by CBI zoning and is also landlocked. The request is to bring this land into the same zoning. Mr. Lytle stated that the area is on a floodplain, but about 3 acres of the land “probably” could have a structure placed on it. The planning board voted, with a 7/3 vote, to approve the rezoning pending a favorable response from DOT.

Chairman Cohen opened the public hearing to entertain comments.

1. David Roberts, agent for Corriher Beef and Sausage, explained to the Board that Corriher Beef and Sausage acquired this property about 18 months ago. The land is mostly open pasture with a billboard on site. The reason for the request is to bring all this property into the same zoning classification and there are no plans to build on this tract at this time.
2. Darryl Kluttz addressed the Board and read from a portion of the handout he gave to the Commissioners concerning Frank Tadlock. Mr. Kluttz also cited the February 16, 1998 zoning grant and the June 6, 1999 decision of the County Commissioners to reduce the spacing between billboards. Mr. Kluttz cited that Commissioner Tadlock would eventually have 14 billboards on his property if this rezoning were passed. Mr. Kluttz explained that if this area was zoned CBI (CUD), this would allow this area to be used for development, and would not allow any outdoor advertising and would not risk losing 20 million dollars in federal funding. Mr. Kluttz informed the Board that the State DOT and Federal Highway Administration are closely monitoring the decision, which the Commissioners will make. Mr. Kluttz asked the Board to abstain from all land rezoning along all federal highways until a county billboard policy could be created.

Commissioner Blount pointed out that Commissioner Tadlock did not take apart in the vote to minimize the spacing of the billboard signs.

Commissioner Chamberlain voiced his concern that there is a conflict of interest, since Mr. Kluttz is an employee of DOT and that he would disregard the comments he made before the Board. Commissioner Chamberlain strongly expressed that he would not do anything that would interfere with highway funds and at the same time would not infringe on someone's legal rights.

There being no further comments, Chairman Cohen closed the public hearing.

Commissioner Blount stated that any citizen has a right to come before the Board.

Commissioner Chamberlain stood by his decision to disregard the comments made by Mr. Kluttz.

Commissioner Rowland made a motion to approve the rezoning since the property is completely surrounded by CBI zoning and owned by a commercial establishment. Chairman Cohen seconded the motion.

The motion passed by a 3/1 vote with Commissioner Blount voting no.

Chairman Cohen called for a recess at 9:15 p.m.

Chairman Cohen reconvened the meeting at 9:30 p.m.

#### **TO GRANT/DENY A WAIVER REQUEST FOR FSW-1-00:**

Ed Muire, from the Planning Department, reviewed with the Board a family subdivision waiver request from Mr. Joseph Cowan, son-in-law of Mr. Espie Wilson. Mr. Wilson owns a 10.5-acre tract located at Amity Hill Road. The request is to allow a two-acre lot to be conveyed to a cousin of Mr. Wilson, which is a deviation from the definition of a family subdivision found in Section 21-9 of the Rowan County Subdivision Ordinance. Staff recommended approval of the waiver request.

Commissioner Rowland made a motion to approve the family subdivision waiver. Commissioner Tadlock seconded and the motion carried unanimously.

#### **DISCUSSION OF CODE OF CONDUCT:**

Mr. Holshouser reviewed with the Board that he had spoken with Fleming Bell, from the Institute of Government concerning the Code of Conduct presented to the Commissioners. Commissioner Chamberlain made a recommendation to adopt the Code of Conduct and to include the Rowan County appointed boards, which serve as an advisory board, and also recommended to ask the policy policy-making boards to adopt the Code.

Commissioner Blount and Commissioner Rowland, after questioning many sections and wordings in the document, discussed the concept of adopting the Code of Conduct “in spirit” only. Commissioner Chamberlain explained the difficulty in putting together a “perfect” document.

Commissioner Chamberlain made a motion to adopt the Code of Conduct as printed. Commissioner Tadlock seconded the motion.

Commissioner Blount stressed that the Code be adopted “in spirit”.

Commissioner Chamberlain expressed that the Code was to show people that the governing body takes their actions seriously and sets an example for the county.

The motion carried a unanimous vote.

**ACCEPTANCE OF THE OFFER TO PURCHASE THE RIGHT-OF-WAY FOR THE EAST INNES STREET CORRIDOR:**

Mr. Russell reviewed with the Board the proposal from the DOT to acquire a right-of-way along the East Innes Street corridor at the new Health Department. Mr. Russell recommended that the Board accept the offer for the purchase of the right-of-way in the amount of \$13,250.

Commissioner Blount made a motion to accept the offer. Commissioner Chamberlain seconded and the motion carried unanimously.

**ADDITIONS:**

Mr. Russell asked the Board to approve proceeding forward with making the application for the state grant to fund the Pretrial and Substance programs for the fiscal year 2000-2001.

Commissioner Blount made a motion to approve the application. Commissioner Chamberlain seconded and the motion passed unanimously.

**BOARD APPOINTMENTS:**

The Board approved the following board appointments:

**Criminal Justice Partnership Board:**

1. Rose Cox was appointed to fill the unexpired term of Wayne Kinney which is to expire 6/3/2000

**Adult Care Home Community Advisory Committee:**

1. Mary Fortin was appointed to serve an initial one-year term.

Spencer Planning Board:

1. Herman Beaver was re-appointed to this board.

Spencer Board of Adjustment:

1. Betty Miller was re-appointed as an alternate to this board.
2. Irene Goodlett was appointed to fill the remainder of the term of Walter Goodlett, Sr.

There being no further business, Chairman Cohen adjourned the meeting.

Respectively Submitted,

Rita K. Foil  
Clerk to the Board