

**MINUTES OF THE MEETING OF THE
ROWAN COUNTY BOARD OF COMMISSIONERS
FEBRUARY 4, 2002 – 9:00 AM
J. NEWTON COHEN SR. ROOM, ADMINISTRATION BUILDING**

Present: Steve Blount, Chairman
Gus Andrews, Vice-Chairman
Arnold Chamberlain, Member
Leda Belk, Member

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

Chairman Blount called the meeting to order at 9:00 a.m.

Commissioner Tadlock provided the Invocation and Commissioner Chamberlain led the Pledge of Allegiance.

ADDITIONS TO THE AGENDA:

- County Attorney John Holshouser asked for a Closed Session to obtain direction from the Board on a legal matter concerning Tamara Pounds vs. Rowan County.
- County Manager Tim Russell also asked for a Closed Session for an update on another legal matter and there would be public information with this issue.
- Mr. Russell asked to add an issue on a proposed purchase of property.
- Mr. Russell requested to add a letter to Governor Easley concerning the tight state budget and the impact on the \$95 million in inventory reimbursements. This letter is from the NCACC. Mr. Russell said that it is clear in the letter that the Governor might use the reimbursements to balance the state budget. The NCACC is going on record stating the opposing this action.
- Chairman Blount requested to add an issue concerning a proposed development on Longs Ferry Road.

COMMISSIONER LIAISON REPORTS:

Commissioner Andrews told the Board that the Planning Board has changed leadership and voiced appreciation for the service that Bill Yow has given to this board in the past.

Commissioner Chamberlain invited the Board to go and look at the new Magistrates Office and asked Ken Deal, Director of Administration, if the three-foot hedge would be needed for the parking lot to which Mr. Deal responded that it would.

Chairman Blount told the Board of a recent “Grandparents Rights” meeting, which is a group of citizens working to get rights for grandparents to see their grandchildren.

CONSIDERATION OF THE CONSENT AGENDA:

Commissioner Tadlock made a motion to approve the Consent Agenda as presented. Commissioner Belk seconded and the motion carried unanimously.

The Consent Agenda consisted of the following:

- A. Approval of the 1/22/2002 minutes.
- B. Approved the NC DOT request that McCleave Road Extension be added to the State Secondary Road System for maintenance.
- C. Approved the NC DOT request that Oakland Drive be added to the State Secondary Road System for maintenance.
- D. Approved the NC DOT request that Foxcross Drive and Foxbrook Place be added to the State Secondary Road System for maintenance.
- E. Approved the NC DOT request that Sandalwood Lane be added to the State Secondary Road System for maintenance.
- F. Approved Library materials surplus.
- G. Approved setting a public hearing for Z-01-02 and CUP-01-02 to establish a Manufactured Home Overlay.
- H. Approved setting a public hearing for CUP-02-02 for the operation of a home for teenagers.
- I. Approved Budget Amendments.

PUBLIC HEARING FOR THE SUBMITTAL OF THE APPLICATIONS FOR THE CDBG FOR SCATTERED SITE HOUSING:

Steve Austin from Benchmark informed the Board that this is the second of two public hearings for the allocation of \$400,000 in CDBG funds the county will receive for a scattered site housing project, which will assist in repairs for low income owner occupied single family homes. The goal is to rehabilitate 14 homes and these funds are received every three years.

Mr. Austin explained that the first public hearing addressed the program and the second public hearing will address the actual application. These funds will cover all of Rowan County except the cities of Salisbury and Kannapolis who receive their funds directly from Washington. There is zero percent deferred amortizing loan, which means that, depending on the amount of funds invested in the home, a lean, deed of trust and a promissory note are placed on the property that goes down each year and maximizing out at eight years. No payments are made unless the owners would sell the home while the deed of trust is still active.

In response to a question by Commissioner Chamberlain, Mr. Austin said that Benchmark's fee is ten percent, which is paid out of the loan amount and requires no county match. Mr. Austin emphasized that these are federal funds.

Commissioner Chamberlain clarified that the Rowan County Planning Board is the committee that decides where to spend the money for the entire county. Mr. Austin responded that is correct. Mr. Austin explained the procedures for receiving and reviewing applications and then determining who would be qualified.

Commissioner Tadlock asked for the procedure for obtaining contractors. Mr. Austin explained that an advertisement would appear in the paper locally and each house is written up as to what is needed to meet HUD standards. Then the job is bid out, with a three-bid minimum response, which are usually local contractors. There are inspections conducted as the project proceeds and services are paid when the work is completed.

Chairman Blount opened the public hearing to consider the CDBG grant for scattered site housing. There being no one present to address the Board, Chairman Blount closed the public hearing.

Commissioner Chamberlain made a motion for the approval to submit the application for the CDBG for the scattered site housing. Commissioners Belk and Andrews simultaneously seconded the motion, which was unanimously approved.

PUBLIC HEARNG FOR SPECIAL CONSIDERATION FOR THE PROPOSED ROAD NAME OF CABOT LANE:

Fredda Greer, from the Planning Department, reviewed with the Board the Special Consideration request for the proposed road name of Cabot Lane. Ms. Greer explained that there has been confusion concerning Holly Avenue, which was brought to their attention by E-911 in September 2001. Notices were mailed to the property owners and Mr. C. D. Goodman said he would work with the petition. Another call was again received from E-911 in January 2002 with concerns about this road. Ms. Greer further explained that notices were mailed to property owners and posted on the road and required public locations.

Chairman Blount mentioned that Mr. Goodman contacted him through a friend and suggested changing the section of the road that connects to Statesville Blvd. and extend

Holly Avenue through the section that staff is recommending to name Cabot Lane. Chairman Blount clarified that this was a curve in the road and not a right angle turn and Ms. Greer added this would also be in the City limits of Salisbury and would be up Salisbury to decide.

Chairman Blount opened the public hearing. Those that came forward to address the Board are as follows:

1. Frank Thomason, Telecommunications Director, stated that the road was originally addressed in 1992 and the three houses in question were treated as a private road. This is a “catch-up” to get this area addressed.
2. Margaret Foster, a resident on the section of the road to be changed, said she agreed with Mr. Goodman. Ms. Foster added that she has resided on this road for fifty years and would “hate” to change.
3. Helen Bivens stated that she resides across the street from Ms. Foster and has lived on this road for approximately 29 years. Ms. Bivens asked if was necessary to have three-digit numbering.

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

Commissioner Chamberlain asked Mr. Thomason if there was any way to keep the current road name and just add digits. Mr. Thomason responded that this would not work because of the current numbering scheme.

Chairman Blount suggested contacting the City of Salisbury to see if they would be willing to consider changing that short section of the road from Statesville Blvd. to another name and if the city does agree, the Board would need to address the numbering of the existing residences.

PUBLIC HEARING FOR THE APPROVAL, IN PRINCIPAL, FOR THE ROWAN COUNTY INDUSTRIAL FACILITY POLLUTION CONTROL FINANCING AUTHORITY TO ISSUE BONDS FOR THE Y.M.C.A.:

John Holshouser introduced John B. Garver, an attorney from the Charlotte firm of Robinson, Bradshaw & Hinson, who is representing the Bond Council. Mr. Holshouser told the Board that the Industrial Facility Pollution Control Financing Authority (IFPCFA) has issued bonds in the past for business purposes and recently the law has changed to give entities like the Y.M.C.A. the opportunity to make application for Industrial Revenue Bonds for the purpose of building the new “Y.” Mr. Holshouser explained that the “cart is a little ahead of the horse” because IFPCFA has met and adopted resolutions. It is appropriated for the Board to support these bonds in principal even before IFPCFA has met. IFPCFA will meet this Thursday to review the proposal and adopt its resolutions. Mr. Garver’s law firm handled the notice for the public hearing and has an affidavit of the publication.

Mr. Garver stated that the project includes a new family Y.M.C.A facility on Jake Alexander Blvd. and renovations to the West Rowan “Y” facility. The Wachovia Bank will finance the project. Mr. Garver explained that the state changed the law last year to allow for the use of special purpose projects to fall within the same IDB financing, which is where the local IFPCFA issues conduit bonds for some other entity to be responsible for the payments. The “Y” falls under this new provision for recreational facilities. Mr. Graver said that Mr. Holshouser has insured that the papers include limitations on the liability of the issuer, this Board and the county. These bonds are not a charge against the credit or taxing power of the county or the issuer. There is no liability to the issuer, its members or this Board and is handled as a conduit financing.

Chairman Blount opened the public hearing for the discussion of this project. There being no one present who wished to address the Board, Chairman Blount closed the public hearing.

Chairman Blount stated that many citizens were questioning the need for funds since there has been a successful fundraising campaign by the “Y” and the fact that they had raised approximately \$9 million. Chairman Blount explained that most of the fundraising has been in pledges and cash is needed in the bank before a construction project can begin. Mr. Graver said that there were two benefits to this type of financing:

1. Money is available from the bank to build the project while the pledges from individual people are coming in.
2. While waiting for the pledges to come in, there is a lower rate of interest with this type of financing. Therefore, the “Y” pays less money and can also invest some of the funds at a higher rate of return.

Commissioner Andrews questioned the funds going to the West Rowan “Y.” Jamie Morgan, from the “Y,” answered that approximately \$250,000 out of the \$10 million will be used for the West Rowan “Y” for heating and air conditioning and to replace the existing roofing system. Commissioner Andrews also asked about the bubble in the swimming pool and Mr. Morgan responded that the bubble is still there.

Commissioner Tadlock made a motion to approve this issue. Commissioner Belk seconded and the motion passed unanimously.

REVIEW AND APPROVAL OF THE ORTHOPHOTO CONTRACT FOR GIS:

Marion Lytle, from the Planning Department, gave the Board a handout replacing the amounts on the contract listed in the Board’s packets.

Adrian Rollans, GIS Coordinator, told the Board that the proposal is for the replacement of the 1994 Rowan County Orthophotos. This project was put out to bid and five bids were received. The price of the recommended contractor is less than the contractor for the project in 1994 and a better project is expected. Staff is recommending:

- Aero-Dynamics, Corp. for total contract amount of \$323,274.00

Chairman Blount questioned if this was within the budgeted amount for the project. Mr. Lytle responded that \$400,000 was budgeted and the recommended bid is well under that amount.

Commissioner Chamberlain asked about the delivery schedule to which Mr. Rollans responded that it would be a year. Mr. Lytle explained that they need to “fly it” by March 15th to get the best sun angle and also no obstructions from leaves. The City of Salisbury is anticipated to approve their part of the contract.

Commissioner Andrews made a motion to approve the recommended bid. Commissioner Chamberlain seconded and the motion passed unanimously

APPROVAL OF THE APPLICATION FOR THE BULLETPROOF VEST PARTNERSHIP GRANT FOR 2002:

Tim Bost, from the Rowan County Sheriff’s Department, informed the Board that this request is for a routine request through the Bureau of Justice Assistance for application for the Bulletproof Vest Partnership Grant for 2002. The amount of funding varies and Rowan County has historically received from \$1,500 to \$4,000 of the County’s matching portion. This is part of the ongoing program to get vests for officers that do not have them or for replacements. The County’s match is 50% and it is recommended to use the drug asset money as a source.

Commissioner Chamberlain asked if officers are required to wear these vests to which Major Bost responded that it is the policy for officers to wear a vest. Commissioner asked the results if an officer is caught not wearing a vest. Major Bost responded that it is “pretty much a scolding” and that no one has been suspended for not wearing a vest.

Commissioner Andrews made a motion to approve the request. Commissioner Chamberlain seconded and the motion passed unanimously.

Commissioner Chamberlain commented and wanted to make public that the Sheriff’s Office has been very busy and has worked well with the City Police Department, referencing the recent murder of Mr. Frink on Ellis Street. Commissioner Chamberlain stated that the City Police did the arresting and the Sheriff’s Department “broke the case” as far as the lead and the identification of the shooter.

PRESENTATION BY ROWAN INFORMATION AND REFERRAL ON AN UPDATE OF THE AGENCY:

It was recommended that this presentation be rescheduled, due to a family crisis situation.

CONSIDERATION OF ASSIGNMENT OF C.P.&L.’s LOCATION ASSISTANCE AGREEMENT:

Mr. Holshouser referenced the letter included in the Board's packets from CP&L stating that they had assigned its location agreement, which they have the right to do. Mr. Holshouser continued to state that the 'Consent and Agreement,' also included in the packets, goes one step further because they are assigning the location agreement to a bank for security for financing, which is Chase Manhattan and is referred to as the Collateral Agent in the agreement. Mr. Holshouser explained that this agreement basically says that we will not discontinue honoring our relocation agreement unless certain things occur. Rowan County certifies in this document that the county is a legitimate public body and has the authority to sign these types of agreements and that no person or entity has filed an action against us to prevent us from allowing this agreement to be assigned. This agreement is a draft. The county is allowing the location agreement to be assigned to Chase Manhattan Bank and also agreeing that upon their notification to the county, any payments made by Rowan County in accordance with this location assistance will be made to Chase Manhattan Bank.

Mr. Holshouser questioned the section referring to what would happen if Chase Manhattan had to take over the project and assume operations of the plant. Mr. Holshouser quoted the following from the contract:

“provided however that the liability shall not include any liability for claims of Rowan County against the company arising from the company's failure to perform during the period prior to which Chase Manhattan took the project over.”

According to Mr. Holshouser, this default would occur if CP&L failed to pay taxes and Chase Manhattan would not be responsible for claims occurring before they took over. Mr. Holshouser voiced concern because of the indications that Rowan County is forgiving taxes, which is not the case. These taxes are a lien on the land and whether Chase Manhattan pays them or not, we can still foreclose on the tax lien. Mr. Holshouser said he would talk with the Chase Manhattan attorneys for clarification on this concern.

Mr. Holshouser said this is a means for additional financing on behalf of Rowan County Power, LLC, which is assuming the obligations of CP&L and also is a standard “attornment agreement” which basically says that Rowan County cannot stop the payments under the relocation agreement unless several things are done:

1. Notification to Chase Manhattan that Rowan County Power, LLC did not make a payment. Rowan County must give Chase Manhattan an opportunity to “cure” that by making the payment.
2. If Rowan County Power, LLC goes into bankruptcy and the courts put out an order preventing them from making payments, as long as they are trying to “cure” the default, Rowan County cannot shut down the relocation agreement.

Mr. Holshouser noted that the agreement is subject to the laws of New York, but procedures can still be filed from Rowan County.

Again, Mr. Holshouser stated that this document is not the final document, but only a draft and there are many documents involved in this process, which Mr. Holshouser is

required to give a legal opinion on them even though Rowan County does not need to sign them. Mr. Holshouser will bring the draft document back to the Board in the final form for a signature.

Chairman Blount added for clarification that Rowan County Power, LLC pays Rowan County the taxes first and then Rowan County reimburses Rowan County Power, LLC for the incentive agreement and Rowan County does not put any money up front. Mr. Holshouser acknowledged that this is correct.

Mr. Russell commented that Rowan County Power, LLC could make this assignment without permission from Rowan County. Mr. Holshouser added that with this agreement, Rowan County is agreeing to work with Chase Manhattan, which is what Chase Manhattan is wanting.

In response to concerns addressed by Commissioner Andrews, Mr. Holshouser said that he would have everything “completed digested” before he returns to the Board and would also do a memo which addresses any concerns.

Commissioner Chamberlain asked that since this agreement could be executed without Rowan County’s consent and if it is not normal to hold Chase Manhattan liable for taxes that caused the default to begin with, would Mr. Holshouser be comfortable in deleting this from the package. Mr. Holshouser responded “no” and referred to a letter from Mr. Kanya, from CP&L, stating the CP&L assigns the relocation assistance agreement to Rowan County Power, LLC, which they have the right to do. However, they do not have the right to tell Rowan County where to make payments or to agree to finance arrangements.

Mr. Holshouser stated the closing could possibly be this week and that he would deal directly with the Clerk and Chairman Blount.

Chairman Blount will assume authority to sign the documents based on Mr. Holshouser’s recommendation.

ENCROACHMENT ON COUNTY PROPERTY FOR CONSTRUCTION OF ARLINGTON STREET EXTENSION AT NEW WAL-MART SITE:

Mr. Russell explained that a previous Board of Commissioners had granted permission many years ago to the City of Salisbury to encroach on the easement to extend Arlington Street.

Greg Greene, of Environmental Services, stated that the developer is asking for permission to perform the fieldwork and the construction on the property. Mr. Greene explained that when the deeds are transferred, right-of-way agreements would need to be signed by the county. Mr. Greene described the tract to be approximately 3 acres and 800 feet long, and mostly floodplain.

Mr. Greene responded to a question from Commissioner Chamberlain stating that no buildings, and only the street, would be constructed in the floodplain.

Mr. Russell explained that the property was acquired through foreclosure and has no value due to being in the floodplain.

Commissioner Andrews made a motion to allow the encroachment as requested. Commissioner Tadlock seconded the motion and the motion carried unanimously.

BOARD APPOINTMENTS:

Rowan County Nursing Home Advisory Committee:

Virginia Graves was unanimously reappointed to serve on this committee on a motion made by Commissioner Chamberlain.

Ann Johnston was unanimously appointed to serve on this committee on a motion made by Commissioner Chamberlain.

Salisbury-Rowan Human Relations Council:

Ellen Harkey was unanimously reappointed to serve on this council on a motion made by Commissioner Belk.

Aundrea Vickers, Katherine Bias and Hazel Marie Sofley were unanimously appointed to serve on this council on a motion made by Commissioner Tadlock.

Zoning Board of Adjustments:

J. Max Kent, Raymond Coltrain and June Showfety were unanimously reappointed to serve on this Board on a motion made by Commissioner Tadlock.

Piedmont Behavioral Healthcare Board:

Commissioner Chamberlain acknowledged the resignation of C. Kenneth Ingram and stated that Mr. Ingram needed rest and also acknowledged that June Showfety, who was recently appointed, has been a “killer” on this board. Ms. Showfety serves in the attorney slot and Mr. Ingram was an at large member.

Town of Rockwell Planning Board.

Jean C. Puckett was unanimously appointed to replace Barbara Gallimore to serve on this board on a motion made by Commissioner Chamberlain. Ms. Gallimore resigned her position.

ADDITION – LONGS FERRY ROAD ISSUE:

Chairman Blount informed the Board of a public comment issued at the previous Planning Board meeting where citizens were voicing concerns about a proposed mobile home park being developed on Longs Ferry Road next to the Crane Cove Subdivision. The citizens were voicing strong opposition to the negative impact this development would have on the surrounding area. The Planning Board recommended issuing a moratorium on this proposed subdivision.

Chairman Blount said that he did not think that a moratorium would be the correct action to take. The citizens are continuing to work on this issue and Ms. Rabon, the developer, is aware of these concerns. Both groups are urged to come together and work out the concerns.

Commissioner Chamberlain agreed with the comments from Chairman Blount and asked to make the record straight on the following concern. Commissioner Chamberlain stated that the “Board of Commissioners did not instruct Commissioner Chamberlain to tell the Planning Board to forward this to us with a recommendation of putting this under a moratorium. I was using that as an example.” Commissioner Chamberlain added that on this case it is obvious that there are vested rights and looks to be too late.

PUBLIC COMMENT PERIOD:

There was no one present for the public comment period.

ADDITION – PURCHASE OF PROPERTY:

Mr. Russell presented the Board with a copy of an offer to purchase two parcels of property adjacent to Sloan Park. The property contains a house, a mobile home and approximately 1.94 acres and according to the County Assessor, is well within the appraised value of \$79,000. Mr. Russell explained that this would present a means of controlling the property along Sloan Park and recommended purchasing the property from Don Smith and his wife.

Commissioner Chamberlain made a motion to approve the purchase. Commissioner Belk seconded and the motion passed unanimously.

ADDITION – LEGAL ISSUE:

Mr. Russell informed the Board that last week a Federal US Judge ruled on a motion in the Bennet vs. Rowan County case, which is a lawsuit where 17 county employees at EMS filed a suit under the Fair Labor Standards Act (FLSA) stating Rowan County is in violation of compensation under the “fluctuating work week” schedule. Ken Deal, Director of Administration, handed out information, which stated that the Judge ruled in favor of Rowan County for one of the two issues being addressed. This ruling stated that the county *is* entitled to use the fluctuating workweek method in calculating pay. Mr.

Russell told the Board that staff needed direction on the second issue, which the employees states that while under the fluctuating work week, the county did not pay them for the hours that they worked.

Mr. Russell said that this ruling was a victory for Rowan County and hopefully the second issue will be resolved quickly prior to the court hearing the case the later part of February.

Chairman Blount declared that the Board would go into Closed Session at 10:10 am to address two legal concerns.

Chairman Blount reconvened the meeting to Open Session and there being no further business, Chairman Blount adjourned the meeting at 10:30 am.

Respectfully Submitted,

Rita K. Foil
Clerk to the Board