

**MINUTES OF THE MEETING OF THE
ROWAN COUNTY BOARD OF COMMISSIONERS
March 18, 2013 – 6:00 PM
J. NEWTON COHEN, SR. ROOM
J. NEWTON COHEN, SR. ROWAN COUNTY ADMINISTRATION BUILDING**

Present: Jim Sides, Chairman
Craig Pierce, Vice-Chairman
Jon Barber, Member
Mike Caskey, Member
Chad Mitchell, Member

County Manager Gary Page, Clerk to the Board Carolyn Barger, County Attorney Jay Dees and Finance Director Leslie Heidrick were present.

Chairman Sides convened the meeting at 6:00 p.m.

Chairman Sides announced that there was a filming crew outside and he asked everyone to please respect the boundaries of the filming crew as they left the meeting.

Commissioner Pierce provided the Invocation and also led the Pledge of Allegiance.

CONSIDER APPROVAL OF THE MINUTES

Commissioner Barber moved, Commissioner Pierce seconded and the vote to approve the minutes of the March 4, 2013 Commission Meeting passed unanimously.

CONSIDER ADDITIONS TO THE AGENDA

- Commissioner Pierce moved to add a discussion for a request to consider waiving the landfill fees for the Town of East Spencer in regards to the CDC rehabilitation project. The motion was seconded by Commissioner Barber and passed unanimously.

Chairman Sides added the discussion as agenda item #6a.

- Chairman Sides moved to add a discussion regarding the lawsuit filed by the American Civil Liberties Union. The motion was seconded by Commissioner Barber and passed unanimously.

Chairman Sides added the discussion as agenda item #2a.

CONSIDER DELETIONS FROM THE AGENDA

There were no deletions from the agenda.

CONSIDER APPROVAL OF THE AGENDA

Commissioner Barber moved, Commissioner Pierce seconded and the vote to approve the agenda passed unanimously.

1. CONSIDER APPROVAL OF CONSENT AGENDA

Commissioner Barber moved approval of the Consent Agenda. The motion was seconded by Commissioner Pierce and passed unanimously.

The Consent Agenda consisted of the following:

- A. Library Board By-Laws Update
- B. Set Public Hearing for April 1, 2013 for Z 01-13
- C. Audit Contract for Fiscal Year Ended June 30, 2013
- D. Change Order for Airport Hangar for Fire Suppression System and Approval of Revised Project Budget
- E. Proclamation Declaring March 2013 Brain Injury Awareness Month
- F. Request to Extend Queeners Court by 238 feet and Add to State Secondary Road System for Maintenance

2. PUBLIC COMMENT PERIOD

Chairman Sides opened the Public Comment Period to entertain comments from any citizens wishing to address the Board. Chairman Sides took an executive privilege to introduce Attorney Bryce Neier, who had spoken with the Board during Closed Session regarding the American Civil Liberties Union (ACLU) lawsuit against Rowan County. Chairman Sides asked Mr. Neier to address the Board and the community.

Bryce Neier was greeted by a round of applause from the audience. Mr. Neier said he was a private attorney from Fayetteville and an allied attorney with the Alliance Defending Freedom (ADF) organization. Mr. Neier said ADF was a non-profit organization formed in 1994 to defend religious liberty. Mr. Neier said the alliance attorneys were trained in extensive litigation and assisted the ADF in defending lawsuits such as the one filed by the ACLU against Rowan County.

Mr. Neier said he was one of the attorneys that assisted in defending Forsyth County when Forsyth was sued by the ACLU.

Mr. Neier said the Board of Commissioners (BOC) must decide if it wished to defend the lawsuit.

Mr. Neier said he did not agree personally or professionally with the Fourth Circuit opinion in the Forsyth case. Mr. Neier said there were other federal jurisdictions where these types of issues had been litigated and there was a split in the federal circuits.

Mr. Neier said the Rowan County case was not a hopeless case but was a tough case to litigate. Mr. Neier said the pros to defending the lawsuit included preserving the First Amendment rights to freedom of association and freedom to exercise religion. Mr. Neier said, "Your rights don't get checked in when you walk into a city council or county commission meetings." Mr. Neier said sometimes the courts are not right, which was why there were appellate courts and the US Supreme Court.

Mr. Neier said the BOC had some information to gather and decisions to make and he encouraged the public to support the BOC as the citizens saw fit. Mr. Neier asked the citizens not to let the ACLU tell them what to do and to remember the issue was legal, moral and a civic duty. Mr. Neier said there were times when the decision to fight might not be popular, regardless of what the outcome may be.

Mr. Neier said the ADF was a non-profit organization; however, the clients had to pay the costs for depositions and filing fees, etc. as required by the State Bar rules.

In conclusion, Mr. Neier said even though he lived in Cumberland County, he was still from North Carolina and would support Rowan County. Mr. Neier said differing opinions should be respected and people had the right to be heard.

Mr. Neier's comments were followed by a round of applause.

At this point, Public Comment period resumed and the following individuals came forward to address the Board:

- John Burke spoke in opposition to the Board opening meetings with sectarian prayer.
- Dorothy Earle spoke in support of the Board opening meetings with sectarian prayer.
- William McCubbins spoke in support of the Board opening meetings with sectarian prayer.
- Larry Wright spoke in support of the Board opening meetings with sectarian prayer.
- Jason Josey spoke in support of the Board opening meetings with sectarian prayer.

- Pastor Bill Godair spoke in support of the Board opening meetings with sectarian prayer and presented a \$10,000 check for the County's legal defense.
- Larry Jones spoke in support of the Board opening meetings with sectarian prayer.
- Melanie Earle spoke in support of the Board opening meetings with sectarian prayer.
- Robert Trice spoke in support of the Board opening meetings with sectarian prayer.
- Keith Miller spoke in support of the Board opening meetings with sectarian prayer (provided the board with a handout).
- Stanley "Rick" Freeborn spoke in support of the Board opening meetings with sectarian prayer.
- Patsy Melton spoke in support of the Board opening meetings with sectarian prayer.
- Ronnie James spoke in support of the Board opening meetings with sectarian prayer.
- Joe Teeter spoke in support of the Board opening meetings with sectarian prayer.
- Veleria Levy spoke in opposition to the Board opening meetings with sectarian prayer.
- Geoffrey Hoy spoke in opposition to the Board opening meetings with sectarian prayer.
- Ronald Young spoke in support of the Board opening meetings with sectarian prayer.
- Ben Davis spoke in support of the Board opening meetings with sectarian prayer.
- Chuck Hughes spoke in support of the Board opening meetings with sectarian prayer.
- Patrick Powell spoke in support of the Board opening meetings with sectarian prayer.
- Boyd Powell spoke in support of the Board opening meetings with sectarian prayer.
- Pamela Perry spoke in support of the Board opening meetings with sectarian prayer.
- Constance Johnson spoke in support of the Board opening meetings with sectarian prayer.
- Steve Perry spoke in support of the Board opening meetings with sectarian prayer.
- Glen Vanhoy spoke in support of the Board opening meetings with sectarian prayer.

With no one else wishing to address the Board, Chairman Sides closed the Public Comment Period.

Chairman Sides called for a recess at 7:26 p.m.

Chairman Sides reconvened the meeting at 7:40 p.m.

ADDITION

2a. DISCUSSION REGARDING LAWSUIT FILED BY THE AMERICAN CIVIL LIBERTIES UNION

Chairman Sides said the Board had met in Closed Session prior to the current meeting with the County Attorney, as well as with Attorney Bryce Neier to discuss how the Board would proceed with the lawsuit filed against the County by the American Civil Liberties Union (ACLU).

Commissioner Barber moved that the Rowan County Board of Commissioners seek legal defense in its efforts in the lawsuit against the ACLU. The motion was seconded by Commissioner Pierce and passed unanimously.

Commissioner Pierce moved that the Chairman be the lead point person and contact person for the attorneys and all parties involved in the lawsuit. The motion was seconded by Commissioner Barber and passed unanimously.

Chairman Sides said due to time constraints for the Board's response to the filing of the lawsuit, the Board would make a decision in the next few days as to which law firm would represent Rowan County. Chairman Sides said there were firms that had offered their services free of charge; however, it would not mean the lawsuit would be free. Chairman Sides explained that expenses would be incurred and there was also the possibility the County would have to pay the legal expenses of the Plaintiffs if the County were to lose the case. Chairman Sides said the vote of the Board meant the County was prepared to spend county dollars to defend the County in the lawsuit, should it be necessary.

3. QUASI-JUDICIAL PUBLIC HEARING FOR CUP 02-13

Chairman Sides read the Chairman's Speech (Exhibit A) and declared the public hearing for CUP 02-13 to be in session. Chairman Sides said the hearing would focus on an application submitted by Cassidy Benfield to subdivide a two-acre parcel in the Commercial, Business, Industrial (CBI) zoning district on Tax Parcel 134-054 located at the 1000 block of Daugherty Road.

The Clerk swore in those wishing to provide testimony in the case.

Senior Planner Shane Stewart reviewed the Staff Report (Exhibit B) and also provided a power point presentation (Exhibit C), which depicted the site and surrounding area.

Mr. Stewart reviewed the Conditional Use Criteria contained in the Staff Report (Exhibit B).

Mr. Stewart reported that the Board of Commissioners had amended the Zoning Ordinance in 1999 to require all divisions of land in the CBI district, which permit both residential and non-residential uses, obtain a conditional use permit to evaluate the request. This provides the Board an opportunity to consider potential large residential developments in areas with available infrastructure relative to the potential commercial/industrial opportunities.

Mr. Stewart said Planning Staff recommended the Board allow Staff to develop an amendment to the Zoning Ordinance that would require only major subdivision (lots or new public street dedication) obtain a conditional use permit for division in the CBI, Neighborhood Business (NB), and Institutional (INST) districts.

Mr. Stewart said the request complied with all standards of the Zoning Ordinance. Mr. Stewart also provided the Board with sample Findings of Fact (Exhibit D).

With no one else sworn to provide testimony in the case, Chairman Sides closed the public hearing.

Commissioner Barber moved the development of the property in accordance with the proposed conditions will not materially endanger the public health or safety. The motion was seconded by Commissioner Pierce and passed unanimously. FACT: The proposed subdivision will utilize an existing driveway connection to Daugherty Road which, according to NCDOT policy, will not require a residential driveway permit based on the division being between immediate family members.

Commissioner Barber moved that the development of the property in accordance with the proposed conditions will not substantially injure the value of adjoining or abutting property, or that the development is a public necessity. The motion was seconded by Commissioner Pierce and carried unanimously.

FACT: No material evidence was presented suggesting this request would injure property values.

Commissioner Barber moved that the location and character of the development in accordance with conditions will be in general harmony with the area in which it is located and in general conformity with any adopted county plans. The motion was seconded by Commissioner Pierce and carried unanimously.

FACT: Although this property is located within a large CBI / HI zoned area, it is dominated by the Corriher Beef and Sausage operation and surrounding agricultural use.

FACT: While this property is located within close proximity to a regional node at Old Beatty Ford / I-85 and within the I-85 highway corridor overlay, this request

maintains the non-residential zoning designation while allowing a new family lot directly behind a cluster of six (6) residences.

Commissioner Pierce moved, Commissioner Barber seconded and the vote to approve CUP 02-13 passed unanimously.

4. PUBLIC HEARING FOR FY 13-14 HOME APPLICATION

Planning and Development Director Ed Muire said the FY 2013-14 HOME application for submittal to the City of Concord was due March 22, 2013. Mr. Muire said the County proposed to use the funding for rehabilitation assistance to 3 owner-occupied homes and offer down payment assistance to 3 first-time homebuyers. The program offerings are only available to residents of the non-incorporated areas of Rowan County.

Mr. Muire said in addition to the application, Staff suggested the Salisbury Community Development Corporation (CDC) be selected as the program administrator. The CDC currently administers the County's FY 2012-13 program.

Chairman Sides opened the public hearing to receive citizen input regarding the FY 2013-14 HOME application. With no one wishing to address the Board, Chairman Sides closed the public hearing.

Commissioner Pierce moved to authorize the County Manager to sign the application, to select the Salisbury CDC to administer the HOME 2013-14 Program and authorize the County Manager to negotiate and sign the contract for such. The motion was seconded by Commissioner Barber and passed unanimously.

5. PUBLIC HEARING AND CLOSE OUT OF RDH PROJECT

County Manager Gary Page said in the spring of 2008, Rowan County applied for grant funding in the amount of \$400,988 to construct a new waterline to the RDH Tire Company in Cleveland, NC. Upon the grant award from CDBG, the waterline was completed in October, 2008 and given to the Salisbury-Rowan Utilities (SRU) system for expansion and maintenance.

Mr. Page said in 2008, RDH Tire proposed to expand their plant facilities and add twenty (20) new positions; however, an economic recession hit for which the country, state and Rowan County had not recovered. During the past four (4) plus years, the company has been unable to add any new positions.

Mr. Page said the North Carolina Department of Commerce has requested the County close-out the CDBG project, and refund \$210,988. Mr. Page asked the Board to consider approval of the budget amendment in the agenda in order to close-out the project. As much as no additional jobs were realized, SRU was able to extend their service lines for the potential of future growth.

Chairman Sides opened the public hearing to receive citizen input for close-out of the RDH Project. With no one wishing to address the Board, Chairman Sides closed the public hearing.

Commissioner Barber moved approval of the budget amendment as requested and to close out the RDH CDBG Waterline Project. The motion was seconded by Commissioner Caskey and passed unanimously.

6. CONSIDER APPROVAL OF PROPOSED REVISIONS TO FUNDING POLICY

Chairman Sides explained that in the past, questions had arisen as to whether certain agencies were subject to both the Open Meetings Law and Public Records Laws. Chairman Sides said in an effort to resolve any future conflicts, he was suggesting implementation of the following proposed revisions to the County's current Funding Policy for Boards, Agencies or Non-Profit Organizations:

As a board, agency, ~~or~~ non-profit organization, or volunteer fire department (VFD), which receives an amount of \$5,000.00 or more in voluntary funding, ~~or~~ membership fees or property taxes in any fiscal year from the Rowan County Board of Commissioners, we agree to abide by the following policies:

I. ~~If not already subject to the North Carolina Open Meetings laws,~~ We agree to be subject to the North Carolina Open Meetings laws as cited in the North Carolina General Statutes, Chapter 143, Article 33C, and more specifically stated as North Carolina General Statute § 143-318.9 through North Carolina General Statute § 143-318.14. ~~w~~We agree to publish, in a newspaper of general circulation in Rowan County, at least once per year, a schedule of our regular meeting dates and times. The notice shall be a minimum size of 3 inches by 5 inches and a request shall be made to the newspaper that the notice appear in a section other than the classified section. The notice shall contain a clear statement that the general public is welcome to attend such meetings, except for executive sessions as permitted in the North Carolina General Statutes. All special called meetings will be appropriately noticed.

II. ~~If not already~~ We agree to be subject to the North Carolina Public Records laws as cited in the North Carolina General Statutes, Chapter 132, and more specifically North Carolina General Statute § 132-1 through North Carolina General Statute § 132-10. ~~w~~We agree to make available the following documents within 30 days of a formal written request by any (1) duly elected and currently sitting County Commissioner:

- a. Financial documents to include profit/loss statements, itemized revenue and expenditure statements, and detailed invoices as requested.
- b. Minutes of regular and special meetings.
- c. Financial audits, if performed as a regular part of accounting practices.

d. All other documents, as requested, which would allow for a complete and thorough review of any and all financial transactions.

The Rowan County Board of Commissioners reserves the right to request a financial audit of any board, agency, or non-profit organization, which receives \$25,000.00 or more in funding in any fiscal year.

III. We agree to provide bi-annual reports to the Rowan County Board of Commissioners, either in person or in writing, justifying the appropriation of County funds. These reports shall be provided within 30 days of the end of the 4th and 2nd quarters of each fiscal year. If the report is to be made in person, the Clerk to the Board shall be contacted to schedule a presentation during a regularly scheduled Board meeting.

IV. We agree that it shall be considered a conflict of interest to appropriate any funds for the purpose of contracting for either services or the purchase of goods from any currently sitting board member, UNLESS:

a. The Rowan County Board of Commissioners is notified in writing of the conflict in advance of approving the expenditure stating: (1) the nature of the conflict, (2) the amount of the contract being considered, and (3) the actual benefit of the contract and reasons therefore; and

b. The Rowan County Board of Commissioners is given an opportunity to comment.

Failure to disclose such conflicts, or to abide by all other terms of this agreement, will result in an automatic loss of funding for subsequent fiscal years, and any remaining unpaid portion of the current fiscal year appropriation.

Agency: _____

Signed: _____ Date: _____

CEO, Board Chair, Agency Director, VFD Board of Directors Chairman

Signed: _____ Date: _____

Chairman, Rowan County Board of Commissioners

Commissioner Pierce moved to approve the proposed revisions as submitted. The motion was seconded by Commissioner Barber and passed unanimously.

ADDITION

6A. REQUEST TO WAIVE LANDFILL FEES FOR TOWN OF EAST SPENCER

Commissioner Pierce said the Town of East Spencer was in the process of a revitalization project. Commissioner Pierce asked the BOC to consider waiving the landfill fees for the first 10 houses taken down in the process. Commissioner Pierce thanked those responsible for the cooperative effort for the common good of the whole county.

Chairman Sides moved to approve the request. The motion was seconded by Commissioner Barber.

Upon being put to a vote, the motion on the floor passed unanimously.

7. CONSIDER APPROVAL OF BUDGET AMENDMENTS

Finance Director Leslie Heidrick presented the following budget amendments for the Board's consideration:

- Finance – To budget for the move of consoles (hardware and software) to the new E-911 Facility - \$25,248
- Finance – To budget revenues and expenses for the electronics management fund distribution for FY 2013 - \$7,397

Commissioner Mitchell moved approval of the budget amendments as presented. The motion was seconded by Commissioner Pierce and passed unanimously.

8. ADJOURNMENT

There being no further business to come before the Board, Commissioner Barber moved to adjourn at 8:01 p.m. The motion was seconded by Commissioner Mitchell and passed unanimously.

Respectfully Submitted,

Carolyn Barger, CMC, NCCCC
Clerk to the Board/
Assistant to the County Manager