

POLK COUNTY
November 2, 2009 @ 7:00 PM
BOARD OF COMMISSIONERS' REGULAR MEETING
R. J. Foster Hall of Justice, Womack Building
Columbus, N.C.

PRESENT: Chairperson Walker, Vice-Chairperson Watson, Commissioners Gasperson, McDermott and Melton.

Others in attendance were County Manager Whitson, County Attorney Hix, Attorney Clarke, Clerk to the Board Britton.

1. Call to Order/Welcome – Chairperson Walker called the meeting to order.

Chairperson Walker announced that William McFarlane, Sr., a beloved citizen of Polk County and former county attorney, passed away October 28, 2009.
2. Invocation – Commissioner Melton introduced Morton Poliakof, American Legion Post 250, for the invocation. In recognition of Veterans Day Commissioner Melton honored our distinguished Polk County veterans who were in attendance. Retired Rear Admiral Paul Sutherland, US Navy, Retired Lieutenant General George Axtell, US Marine Corps, William Ray Horne, US Army, Michael Reid, US Army, and Retired CWO Howard Green, US Army.
3. Pledge of Allegiance – Mike Collins, Commander, American Legion Post 250 led the Pledge of Allegiance.
4. Approval of Regular Board of Commissioners minutes for October 19, 2009 - Commissioner Melton made a motion to approve the minutes, seconded by Commissioner McDermott and the motion carried unanimously.
5. Approval of Agenda – County Manager Whitson requested agenda item #8 be moved to 5b. Vice-Chairperson Watson made a motion to approve the amended agenda, seconded by Commissioner McDermott and the motion carried unanimously.
- 5a. Certificate of Appreciation – Chairperson Walker presented a certificate to Polk County employee Lynn Sprague for his organization and work on the Columbus Farm Festival. All the commissioners congratulated Lynn on a great “festival.”
- 5b. 2009 Governor’s Award – Ms. Virginia Perrenod, Coordinator for the Polk County Resource Council, presented the outstanding volunteer awards to Carole Bartol and Bill Wuehrmann. She also announced the winner of the prestigious Medallion Award, which was presented to Mr. Wuehrmann. This

award is presented to only 20 volunteers in the state of North Carolina. Commissioner McDermott congratulated both Carole and Bill for being such wonderful volunteers.

6. Purchase of Lake Adger - Attorney Billy Clarke, Roberts and Stevens, PA, reported he has reviewed the title information provided by Attorney Louis Nanney and he has reviewed the two reports that Northbrook Carolina Hydro, L.L.C., submitted to the Division of Land Quality - one on the seismic stability of the dam and the flood study (AECOM), and one on the cost estimates for the work. He has prepared the resolution and reported that almost all of the conditions have been met and complied with. He reported that there is not a permit to operate a public water supply system but there is a letter being sent from the public water supply section to the Division of Water Quality confirming that the impoundment is appropriate for a public water supply; testing has been done and that is in order. With respect to the title, for some reason three of the tracts that the County is purchasing were never released from a Master Deed of Trust that Duke Energy has with its lender. However, we have received confirmation verbally from Duke that they knew they were supposed to do that 13 years ago and for some reason they did not. They will get it done and they will give us a comfort letter that says they will get it done. Mr. Clarke recommended that Polk County get the comfort letter before closing. The reports have been submitted by Northbrook Carolina Hydro, L.L.C., and the seismic study has been reviewed and approved by the Division of Land Quality; the other one is in but has not been approved at this time, but the Safety Engineer expects it will be approved. With the exception of not having a permit to operate a public water supply system, the conditions have been met. Mr. Clarke stated that I know this Board has had discussions over the water supply, watershed designation issue, and I think you took some action at your September meeting. I also recommend that you adopt the resolution that I have prepared which shows that you have complied with the contract, and it authorizes the County Manager and the Chairperson of the County Commissioners to execute all the appropriate documents to make this closing happen. The current date for closing is either November 14 or 17, 2009.

Commissioner McDermott recommended amending the resolution under #4 to include the verbiage clarifying that certain portions of the property need to be released from the Duke Energy Master of Deed Trust, and in the final sentence of #4, prior to closing, the Board will require that the County receive a letter from Duke Energy evidencing its commitment to release any of the property to be acquired by the County which is subject to the Duke Energy Master of Deed Trust. Mr. Clarke agreed to amend the resolution to reflect these recommendations.

Following are additional questions on the lease and sale of purchase.

Commissioner McDermott referred to the lease Sections 6.1 and 6.2 on Page 6 regarding the Premises Insurance. NCACC Risk Pool representative Bob Carruth was available to answer questions. He explained that Polk County is insured for the minimum of \$5,000,000 and the underwriters are waiting on the closing to add the dam to the policy. He will have that price before the closing.

6.9 Waiver of Subrogation – Commissioner McDermott asked Mr. Carruth if that is something they will agree to. He said he would need to study it further but does not think it will be a problem.

20. Attorney Fees - Commissioner McDermott pointed out a discrepancy in the wording of the “prevailing and non-prevailing” parties, which Attorney Clarke cleared up.

Page 9, Section 11.1 Agreement of Purchase and Sale of Property – Commissioner McDermott questioned Attorney Clarke about disposal of toxic materials on the property before the 60's or 70's. She asked if he would suggest, under these circumstances, that we have at least a Phase One walkabout and look and see if there is any evidence of any contamination prior to Polk County taking title to the property?

Attorney Clarke said no and explained his reason. The courts have consistently ruled, even if you disposed of it before 1980, you are still liable and that is one of the few laws that look back like that. He does not feel there is a lot to worry about environmentally with a hydro electrical dam. He said he thinks the County is OK without an environmental investigation.

Following the discussion/report on the resolution, there was a Dam Technical Review presentation on Lake Adger/Turner Shoals by the specialists Clint Shealy, P.E., and Greg Zamensky, P.E., Black & Veatch. I hereby incorporate this report into the minutes and will highlight some key recommendations.

The study revealed approximately \$1.8 million of repairs the dam will likely need in the future but also cautioned that contingency and unit pricing might be low, so repairs could run anywhere between \$2.5 million to \$3.5 million. About \$2 million of repairs could be required by the state over the next four years. Black & Veatch said these repairs were expected, considering the dam is 90 years old. Greg Zamensky, P.E., of Black & Veatch assured the commissioners this opportunity still represents good value and is still a bargain. To build a reservoir of Lake Adger's capacity and a dam would cost more than \$30 million today. Dave Odom, the county's engineer, agreed, having worked on all of Polk County's water projects. He thinks buying the Lake is the best option for Polk County. He said “I just think it's so wise to get this done to supply your water needs for the next 50 to 100 years.”

Black & Veatch advised the Commissioners that they will need to budget annually for maintenance to the dam, with a suggestion of \$50,000 to \$100,000 per year to maintain the structure.

Following is the list of documents reviewed by Black & Veatch:

- Dam Safety Inspection Report, NCDENR, September 2007
- Independent Consultant Inspection, Devine & Tarbell, December 1993
- Dam and Penstock Inspection Report, Kleinschmidt, January 2007
- Seismic Stability Evaluation (MCE), Devine & Tarbell, June 2009
- Seismic Stability Evaluation, Devine & Tarbell, June 2009
- Stability and Remedial Option Analysis Report, AECOM, September 2009
- Probable Maximum Flood Evaluation, AECOM, September 2009

Black & Veatch highlighted the following conclusions:

- Retrofits/improvements required at several locations on the dam – as anticipated.
- Improvement costs could increase to \$2.5M to \$3.5M with proper consideration of recommended contingencies, fees and unit prices.
- Concrete dams require diligent maintenance operations.
- Even with potential for higher costs – dam and reservoir still good value as compared to costs to develop new supply.

Commissioner Melton made a motion to adopt the resolution approving the purchase and lease of property as amended during the question and answer period with Attorney Clarke. Vice-Chairperson Watson seconded the motion.

Citizen Comments – 1) Ted Owens said Lake Adger is a bargain and please move forward with the motion. There will be another drought.

The vote to adopt the resolution carried unanimously.

7. Adult Day Care – Mr. Whitson explained the change order cost for grading increase from \$36,000 to \$50,000. Commissioner Gasperson made the motion to approve the change in the grading contract from \$36,000 to \$50,000, seconded by Vice-Chairman Watson and the motion carried unanimously.
8. County Provided Space Columbus, Polk County, NC – NCGS 15-209 - Accommodations for Probation Offices. It has become necessary to put a no cost lease in place for all of the space that Polk County provides to the

Department of Correction. Commissioner Gasperson made a motion to approve the lease, seconded by Commissioner McDermott and the motion carried 3-2 (Watson and Melton opposed).

9. Housing Solutions – Working issues team updated. Cathy Ruth, Planner, Kipp McIntyre, Economic Development Director, and Commissioner Gasperson were present. Mr. McIntyre gave a PowerPoint presentation on community involvement and will report back at the November 16, 2009, Board meeting on individual working groups. Jim Edwards, Katherine Smith and Susan Welsh have agreed to serve on the Task Force.
10. Hazardous Mitigation Update – Cathy Ruth, Planner, and Sandra Halford, Emergency Management, were present to provide the update and answer questions. This emergency plan was created in 2005 and is required by the State to be updated by January 2010. A PowerPoint presentation was shown and will be incorporated into the minutes. A copy of the update will be filed in the Clerk's office when approved.
11. Tax Refund Request – Melissa Bowlin, Tax Collector, requested \$8,018.19 in tax refunds for September. Commissioner Gasperson made a motion to approve the request, seconded by Commissioner McDermott and the motion carried unanimously.
12. Board Vacancies (Vote) - Economic Development Commission; 2 vacancies, 2 applications - Craig Hilton and James "Allen" McCullough, Jr. Vice-Chairman Watson made a motion to approve both applications, seconded by Commissioner McDermott and the motion carried unanimously.

Board Vacancy (Review) Tryon Board of Planning & Adjustment: 1 application, 1 vacancy (County appoints one seat to the Board) - Litchfield Carpenter.
13. Financial Narrative – For the month ended September 30, 2009. Mr. Whitson gave a financial update and it is filed in the County Manager's office.
14. Recycling Trailers for Schools:

Budget Amendment – Between Funds – To transfer unspent funds provided by Polk County for the Sunny View Addition Project to the Solid Waste Fund for the purchase of the trailers. (Transfers between funds that exceed \$5,000 must have Board approval.) Commissioner Melton made a motion to approve the transfer, seconded by Commissioner Gasperson and the motion carried unanimously.

Project Budget Ordinance – Sunny View School Addition – On 11/2/09 the project was reduced \$17,000 and this amount is to be transferred to the Solid Waste Fund for the purchase of 2 additional trailers. Commissioner Melton

made a motion to approve the ordinance, seconded by Commissioner Gasperson and the motion carried unanimously.

Budget Amendment #11 – Between Funds - To transfer unspent funds provided by Polk County for the Sunny View Addition Project to the Solid Waste Fund for the purchase of two trailers. Commissioner Melton made a motion to approve the ordinance, seconded by Commissioner Gasperson and the motion carried unanimously.

15. Budget Amendment #8 - \$29,695 Recreation addition to increase revenue and expense for the estimated after school program costs and revenues with the difference funded by the Recreation Donation Fund. Pgs. 23, 24
16. Citizen Comments on Non-Agenda items – There were none.
17. Commissioner Comments – Each Commissioner was happy to have passed the resolution to move on with the closing of Lake Adger. There will be expenses and it is important to start planning now.
18. Closed Session - Personnel – G.S. 143-318.11(a)(6). Commissioner Melton made a motion to go into Closed Session, seconded by Vice-Chairperson Watson and the motion carried unanimously.
19. Return to Open Session – No action was taken
20. Adjourn – Commissioner Melton made a motion to adjourn the meeting, seconded by Commissioner Gasperson and the motion carried unanimously.

ATTEST:

POLK COUNTY BOARD OF COMMISSIONERS:

Anne Britton
Clerk to the Board

Cindy Walker
Chairperson