

POLK COUNTY
February 23, 2009
7:00 PM BOARD OF COMMISSIONERS' REGULAR MEETING
R. Jay Foster Hall of Justice
Womack Building
Columbus, N.C.

1. Call to Order – Cindy Walker, Chairperson.
2. Invocation – Commissioner Tommy Melton.
3. Pledge of Allegiance – Command Sergeant Major Ryan D. Whitson.
4. Public Hearing – Call to Order – Chairperson Walker. G.S. 160A – 20 to hear public comment on entering into the installment financing contract in order to finance the purchase of the Carolina Classical School, not to exceed \$1.7 million, to be used for the Senior Recreation Center. Announcement of the Public Hearing was advertised in the Tryon Daily Bulletin February 12th and 19th, 2009.

Sandra Hughes, Finance Officer, reported on the bid received from BB&T at a 3.91% interest rate for fifteen years. She stated that we have 3 loans with BB&T; they are a great bank to work with and the only bid that was received.

Citizen Comments – 1) Pam Doty, Director of the Meeting Place Senior Center, encouraged the Board to go ahead and finance their building. 2) Laura Lynch, Commission on Aging, Region C, encouraged the Board to move ahead. She is very excited that this Board, and the previous Board, saw fit to make this a priority for Seniors.

There was no further discussion. Vice-Chairperson Watson made a motion to close the Public Hearing, seconded by Commissioner McDermott and the motion carried unanimously.

5. Approval of Regular Board of Commissioner minutes for February 2, 2009. Vice-Chairperson Watson made a motion to approve the minutes, seconded by Commissioner McDermott and the motion carried unanimously.
6. Approval of Agenda – Vice-Chairperson Watson made a motion to approve agenda as submitted, seconded by Commissioner Gasperson and the motion carried unanimously.
7. Approval to enter into the installment financing contract for the Senior Recreation Center. Commissioner Melton made a motion to approve entering into the installment financing for the Senior Recreation Center, and also recognized the

true value of our seniors in Polk County, seconded by Commissioner Watson and the motion carried unanimously.

8. Award of bid for the Senior Recreation Center kitchen and renovations. Bids were opened at 4pm on February 23rd. Mr. Whitson handed out the bid sheet comprised of 12 General Contractors, all but two of whom were under the projected budget of \$500,000. It was determined by the Board to take the four (4) lowest bids and get more information such as project experience, company histories, which will help determine the best contractor for the project. The bid tabulation will be sent to the Local Government Commission. Chairperson Watson made a motion to authorize the County Manager and Architects Harris and Cannon to investigate all four (4) bidders - with alternates - and report back to the Board at the March 16, 2009 meeting, seconded by Commissioner Melton and the motion carried unanimously.
9. Award of Jail Roof Bid – County Manager Whitson and Architect Cecil Cannon announced that their selection for the Jail Roof was Guy Roofing. This was not the lowest bid. However, it was the most thorough and complete package. Both Mr. Cannon and Mr. Whitson recommended Guy Roofing, who has agreed to purchase all materials in North Carolina. Commissioner McDermott made a motion to award the bid to Guy Roofing, seconded by Vice-Chairperson Watson and the motion carried unanimously. Commissioner Watson made a motion to approve BA #8 to fund and transfer to the Capital Project fund the amount to repair the Jail roof from the Gas Contingency budget; that budget is currently \$85,386 and this will reduce that to a remaining budget of \$36,486. This motion was seconded by Commissioner Gasperson and the motion carried unanimously.
10. Holland Consulting Planners, Inc. – Justin Hembree, representing Dale Holland, gave a status report on the Comprehensive Land Use Plan. He announced the selection of the name for the Plan, which is Polk County 20/20 Vision. Further information on the specific activities completed, information generated and collected, contacts made, costs incurred, etc., can be found in the Planning Department. The volunteers were commended for their hard work on this board.
11. Subdivision and Zoning Ordinances – Michael Egan, Attorney, and Cathy Ruth, Planner, presented these changes to the Board. Commissioner McDermott requested this item be placed on the agenda. Mr. Egan and Ms. Ruth reviewed several “fixes” to tighten up the Zoning & Subdivision Ordinances. Commissioner Melton, to better understand the Ordinances, had several questions for Attorney Egan. Commissioner McDermott made a motion to send these ordinances with the recommended improvements, as well as additional ones, to the Planning Board (keeping the proposed Mountainside and Ridge Protection Ordinance and Erosion and Sedimentation Ordinance a priority) and report back to the Board in 90 days with a written report. This motion was seconded by Vice-Chairperson Watson and the motion carried unanimously.

12. Financial Report – Sandra Hughes updated the Board on the financial picture of the County. The County has collected 95.3% of its tax revenues this year compared to 93.5% collected at the same time last year. Sales tax revenues are down, with the November sales tax received in January being \$236,376 - down \$134,583 from last year's November sales tax. The fund balance is \$5,144,200 or 22.7% of the general fund expenditures.
13. Commissioner Melton made a motion to go into Closed Session – Attorney-Client privilege. G.S. 143. 318. (a)(2), seconded by Commissioner McDermott and the motion carried unanimously.
14. Return to Open Session.
15. Water – (a.) White Oak water line contract addendum and Escrow Agreement. County Attorney Hix discussed the amendments to the addendum that he will update. The contract price has changed to \$359,505 because it is minus the master meter. Part 1 of payment from escrow is \$179,752.50 and due no sooner than August 31, 2009, and no later than September 2, 2009. That payment will be made by the Escrow Agent and needs no other approval. The interest shall be held by the Escrow Agent and, if the remainder of the contract is not paid, the County will get the interest. If balance is not paid at completion the water valve will not be opened.

Vice-Chairperson Watson made a motion to approve the addendum with the recommended changes made by Attorney Hix and to allow the County Manager to let the bid for Phase 2 once a signed contract is received from White Oak, seconded by Commissioner Gasperson. Commissioner comments:

Commissioner McDermott - I don't intend to vote in favor of this contract. But, first I want to say that I do want the White Oak development to succeed. I want that to be absolutely clear. I do want that development to succeed. I do not want to stand in the way of it; but just as much I want to protect Polk County and its taxpayers. I don't think the original contract did that. I don't think the amendments proposed here tonight do that even as changed if it becomes changed. I think it was very important that during the meeting back on November 3, 2008, the previous Board determined it was very important (and astute for Vice-Chairperson Watson) to ask for security for the payment for the water line, and for the County Manager to suggest a letter of credit. And that was to have been a condition precedent to entering into this agreement and going forward with it. It's been about four months and still no letter of credit or its equivalent has come about. What we have now is a proposal that half of the contractor's cost of putting in the White Oak pipeline, the line along Sandy Plains Road, has been put into an escrow account, but just half of it. That isn't to be paid regardless how quickly the line is put in until August 31, 2009, at the earliest. I don't think that is adequate protection for the citizens of

Polk County. It should be the full amount. Because otherwise what White Oak is asking Polk County to do is to provide an interest free loan with no security. Yes, they have the 50% now but no security for the other 50% of that contract price, and that doesn't take into consideration Polk County's engineering fees, permitting fees and other sorts of things citizens of Polk County are picking up. I understand that White Oak is a very substantial taxpayer, and we appreciate that very much and that, in and of itself, is a reason why I want White Oak to succeed. But the rest of the citizens of Polk County need to be taken good care of as well. And that is why I feel we need to have an escrow account of 100% of the contract price or a letter of credit or something that guarantees that full amount so that Polk County does not have to carry the risk of a problem that might result in non-payment. Thank you.

Vice-Chairperson Watson – The Board that voted on the original contract was fully aware that payment made by White Oak reimbursing the County for the construction of this line was not to be received until on or after August 31st. We went into that contract willingly. The only thing I had suggested was that since we were not going to be reimbursed until the end of the contract it would be a good idea to have some security. A credit letter was suggested. We felt that was the only option the County had at that time. The credit letter has not been provided. However, as an alternative to that, the developer has placed funds in escrow and has provided us with this amendment. There are considerations. Commissioner McDermott makes a great case. But I have yet to see any construction contract of any kind where you are paid 100% upfront. There are a lot of other things I could discuss but the bottom line is the intent of the original Board was to receive payment in August. That's the spirit in which we are entering into this agreement should we decide to vote for it. And the funds will not be expended all at once when the line is built. As you know, most construction projects go on a draw system. Now, under this amendment we can't draw from the escrow. However, it is a short project. At least half of the funds will be in an escrow account secure for the County. The second half of the funds will be paid at the completion. If they aren't paid it will result in no water to White Oak and payment of interest should we request it. It is not like having all the money in the bank, but it is certainly a better position than we are in right now. I think this water line will provide a lot of other benefits for the citizens in the County and, in addition, we did this contract after a lot of negotiations - part of a larger project - and we are trying to look at the big picture. This line will provide a source of fire protection for the citizens along Sandy Plains Road. It will provide a source of water should they request it. It is an investment for the County. We will probably come out with no money out of pocket except for engineering fees. That has been the way of the whole project from the previous Board. I would like to continue this project and make Polk County a place where we can have water and fire protection, and this is part of the big picture to me.

Commissioner Gasperson – This is a benefit and will also help those from Sandy Plains crossroads to the White Oak development. I have had conversations with those who need water or having difficulty with their wells. Fire protection is so important and also this has been pointed out. White Oak will be using public water instead of wells, and we are all concerned about ground water. I think White Oak has tried to be a good citizen here in Polk County in so many ways. Let me reaffirm I am not only concerned about this contract; I am concerned about all the others out there in the Green Creek community who are concerned about water. I want to find a way to get it to others like the folks here tonight. In the end, we will have a water line that will be paid for and will give an opportunity for those along that line to pay the tap fee.

Commissioner Melton – I would like to give you some history. White Oak has been a good neighbor and has put forth the right hand to do what is right for Polk County. One of the things was on the previous Board; White Oak saw the need to transfer their raw sewage out of Polk County. They did not want to use septic systems to go into White Oak. They chose to come to the Board of Commissioners and ask for permission to speak with Rutherford County so they could pay for a wastewater line that would leave White Oak and go into Rutherford County, thereby removing the sewage that goes into the ground. I think that number was 2.5 million dollars that White Oak paid to have that work done and that line now belongs to Polk County. The fact is that White Oak has approached the previous Board and this Board on not taking water out of the ground and trying to protect the groundwater, I have always found to be the right thing to do. White Oak, in previous discussions with the Boards, has always put the right foot forward and said we want to pay our fair share, and they have come forward and they are paying their fair share. I think it is important to recognize what they have been able to do and I do strongly support the commitment White Oak has made to Polk County. They are trying to do the right thing for all the citizens in Polk County.

Commissioner McDermott – I did want to make it clear again that I am a supporter of White Oak, that I am not against having water to White Oak. I want White Oak to get water. I want to have water along Sandy Plains Road, and to the people who need it because their wells are going dry. If there was any implication earlier that that is not the truth it was incorrect. That is a fact, but my point is the other citizens of Polk County should have better security for the money the County is likely going to spend putting that line out Sandy Plains Road to be sure that they will get it back. The security that was voted on at that Nov. 3rd meeting, that's what they should have, so it is not an interest free loan that other citizens of Polk County won't be eligible for.

Citizens Comments – 1) Jerry Hardvall stated his concern over this contract without a letter of credit. That is a red flag to him. We, in the audience, don't

understand this and now they are offering half the money with no guarantee on the other half.

Attorney Hix asked to respond to Mr. Hardvall. He said a contract was signed by the County and delivered to White Oak which did not contain a controlling condition, i.e., a letter of credit which all members of the prior Board voted on unanimously as a condition precedent or part of the whole contract. But the contract was signed without that addition by an innocent and honest party on the other side, White Oak.

Vice-Chairperson Watson restated the motion: I move that we accept the amendment to the contract with White Oak for the waterline extension subject to the County Attorney's recommendations and subject to the County Manager's request to award Phase 2 with the signed contract minus the master meter.

Chairperson Walker - I have thought long and hard about this contract, and this is one of those times when I used to sit out in the audience and think that is a tough one. What you want to do is we are representing the people of Polk County. It doesn't matter what party we are or anyone else is. Our job is to represent Polk County, the financial interest, the environmental interest, the water and everything. I have been studying hard on this and thinking I am not happy. I am like Commissioner McDermott. I don't like the fact that we don't have what the original agreement was – a letter of credit for the full amount. We expect that in our other dealings and it was to be expected here, and we don't have it. So now we have half of it in escrow. I have a copy of the check in the account and I know it is there. But it is not what I wanted. I have to think what is the greatest good being served here. What is the least harm being done because this is one of those situations where I have to apply another measuring tool. It is too big a conundrum. Getting a line out that road that will bring water to folks and to the development to succeed and for the higher and greatest good. Let's vote.

The vote was 4-1 (McDermott opposed). I have attached the contract (amended by Attorney Hix) to the minutes.

(b.) Stimulus Package Water Line Proposals – Dave Odom, Engineer, presented possible routes that could be put into use if awarded a stimulus package based on the rules from the State as are known thus far. Mr. Odom's recommendations were to go up Highway 9 to the first stream, up Peniel Road with a 12" line to the first stream and include the Poors Ford Loop. These projects must be "shovel ready" and it is hoped the Poors Ford Loop project would be part of this package. All of these plans have been delivered to Raleigh. The cost of this stimulus package would be for a total of \$1.1 million that is a 50% grant and 50% loan (20 years at 0 interest with no closing costs. Vice-Chairperson Watson made a motion to accept the resolution to authorize Ryan Whitson, the County Manager, to

execute and file an application on behalf of Polk County, seconded by Commissioner Gasperson and the motion carried unanimously.

Citizen Comments: 1) Rob Hilton wants the County to continue working on the Poors Ford Loop. 2) Gary Curtis encouraged the County up the good work on the Poors Ford Loop.

(c.) Water Line Extension Policy - The Board still had questions and comments. The draft will be updated by Commissioner McDermott and sent back to Attorney Billy Clarke for a final draft. Vice-Chairperson Watson made a motion to make the amendments to the draft, seconded by Commissioner McDermott and the motion carried unanimously.

(d.) Draft of Interlocal Agreement for sharing water resources on the Green River with Henderson County. It was the consensus of the Board to allow the County Manager, Engineer, Attorney and Chairperson to enter into negotiations and bring these negotiations back to the Board and to the Henderson County Board. Commissioner Gasperson made a motion to approve this consensus, seconded by Commissioner Melton and the motion carried unanimously.

16. Board Vacancies (Vote): Recreation Advisory Board - 3 vacancies (Initially there were 4 vacancies, but one board member withdrew her resignation.), 4 applications, John Marino, Dee Obrien, Harry Petersen, and Ernie Smith. The Commissioners voted 5-0 to elect John Marino, Harry Petersen and Ernie Smith to those 3 vacancies.

Board of Equalization and Review Board – 5 vacancies, 6 applications, Marvin Arledge, (3-0) John Dahlgren, (5-0) Fred Earl Foster, (5-0) Frances Parker, (5-0) Matthew Pohsweg, (2-0) and Herman Walker (5-0). The Board will be Arledge, Dahlgren, Foster, Parker and Walker. Vice-Chairperson Watson made a motion to appoint Herman Walker as Chairman, seconded by Commissioner Melton and the motion carried unanimously.

Mental Health Advisory Board – 1 vacancy, 1 application, Dianne Brandstadter. Vice-Chairperson Watson made a motion to appoint Dianne Brandstadter to that vacancy, seconded by Commissioner Melton and the motion carried unanimously.

Board Vacancies (Review) Library Board – 2 vacancies, 3 applications, Janice Impey, Kenneth Yeager, Matthew Pohsweg, Jr; Recycling – 1 vacancy, 1 application, Beth Thomas; Appearance Commission – 1 vacancy, 1 application, Harry Petersen; Council on Aging – 3 vacancies, 1 application, Scott Sheffron; Juvenile Crime Prevention Commission – 6 vacancies, 1 application, Scott Sheffron.

17. Citizen Comments on Non-Agenda Items. Joyce Kimpton expressed her concern over the incorrect dispatching from the Communications Department.
18. Commissioner Comments – The Commissioners thanked everyone for coming.
19. Adjourn.

POLK COUNTY BOARD OF
COMMISSIONERS

Cindy Walker
Chairperson

ATTEST:

Anne Britton
Clerk to the Board