

POLK COUNTY
Monday, December 6, 2010, 7:00 PM
BOARD OF COMMISSIONERS' REGULAR MEETING
R. Jay Foster Hall of Justice, Womack Building
Columbus, N.C.
MINUTES

PRESENT: Chairperson Walker, Vice-Chairperson Gasperson, Commissioner McDermott, and Commissioners elect Owens and Pack. Also in attendance were County Manager Whitson, Interim County Attorney Egan, Clerk to the Board Britton, and staff, media and citizens.

Incoming Board Swearing In Ceremony

Donald Hill, Sheriff – The oath of office was administered by Charlene Owens, Clerk of Court.

Ray Gasperson, Commissioner – The oath of office was administered by Charlene Owens, Clerk of Court.

Ted B. Owens, Commissioner – The oath of office was administered by Marche Pittman, County Magistrate. Commissioner Owens dedicated his term in office to the late Earl Foy, and a copy of his comments are on file with these minutes.

Tom E. Pack, Commissioner – The oath of office was administered by Marche Pittman, County Magistrate.

1. Call to Order – Interim County Attorney Mike Egan called the meeting to order.
2. Election of Chair – Commissioner Pack said that, in keeping with the long-standing tradition of the highest vote getter being elected as Chair, he is nominating Commissioner Owens as Chair. Commissioner Walker read a statement on new traditions, a copy of which is on file with these minutes, and nominated Commissioner Gasperson as Chair. A roll-call vote followed, and Commissioner Gasperson was elected Chair with a 3-2 vote (Owens and Pack opposed).
3. Election of Vice-Chair – Commissioner Owens nominated Commissioner Pack as Vice-Chair. Commissioner Walker nominated Commissioner McDermott as Vice-Chair. A roll-call vote followed, and Commissioner McDermott was elected Vice-Chair with a 3-2 vote (Owens and Pack opposed).
4. Welcome – Chair Gasperson expressed his personal gratitude to Commissioner Walker for serving as Chair the past two years, and for setting such a high standard for herself and the Board. It is his goal as Chair to continue the same level of excellence.

5. Institute of Government's Suggested Rules and Procedures for the Board of Commissioners by Joseph S. Ferrell – Discussion ensued regarding regular Board meeting times. Commissioner Owens made a motion to adopt the procedural book written for the Board of County Commissioners by the NC Institute of Government; to adopt the Polk County Procedures and the Citizen Comment Form; to hold the second meeting of every month at 3:00pm; and to hold one 7:00pm meeting per quarter at a location outside of Columbus, seconded by Commissioner Pack and the motion carried unanimously. Commissioner Owens also encouraged the Board to schedule Polk County employees early on the agenda.

6. Approval of Agenda – Commissioner Walker requested that agenda item #14 be moved to agenda item #6a. County Manager Whitson clarified that agenda item #18, Personnel, regards three separate matters. Commissioner Pack requested that agenda items #7, #11 and #12 be placed after the closed session. Commissioner Owens made a motion to accept the agenda as amended, seconded by Commissioner Pack. Vice-Chair McDermott asked County Manager Whitson if a request for periodic reports on County employees' comp time was one of the items to be discussed in closed session, and he said it was. Vice-Chair McDermott said she did not think this simple request was a matter for closed session. She said she would like to see the conducting of business - to the fullest extent allowed by the law - as transparent as possible. County Manager Whitson said all he was seeking is whether the Board would like a quarterly report on employee comp time, and Vice-Chair McDermott said that is something that can be agreed to by consensus. Commissioner Pack recommended the update be given monthly, and the Board agreed.

Regarding agenda item #7, Vice-Chair McDermott said it was her understanding that Commissioner Pack could ask Interim County Attorney Egan any questions he had for him in open session, if Mr. Egan was amenable. Vice-Chair McDermott also said she did not believe agenda item #11 involves any particular individual, but rather is a matter of caseload and hours, and this, too, seems to be something that could be accomplished in open session. Vice-Chair McDermott went on to say that agenda item #12 concerns a reduction in force for the Tax Assessor's office due to lack of work, not a particular individual, and that could also be dealt with in open session. Vice-Chair McDermott reiterated her desire for the Board to strive for transparency with the community and do as little as possible – only that which is actually required by law - in closed session.

Commissioner Pack said that if Interim County Attorney Egan wanted to be questioned in open session, that was his choice. Regarding agenda items #11 and #12, Commissioner Pack said these items are definitely about particular individuals, and the County Manager has brought him up to speed about them. Commissioner Pack said, as far as the questions he is going to ask, these items

have to be discussed in closed session. Interim County Attorney Egan agreed to answer Commissioner Pack's questions in open session.

Commissioner Owens made a motion to move agenda item #14 to #6a, and to move agenda items #11 and #12 to after the closed session, seconded by Commissioner Pack and the motion failed 2-3 (Gasperson, McDermott and Walker opposed).

Commissioner Walker made a motion to move agenda item #14 to #6a, and to change the number of personnel items for closed session to two, seconded by Vice-Chair McDermott and the motion carried 3-2 (Owens and Pack opposed).

- 6.a. Resolution of Support for the Saluda Grade Rails to Trails Project – Saluda Grade Trail Committee (SGTC) members Andy Millard, Chris Armbrust and John Vining were present to discuss the Saluda Grade Rails to Trails project. Mr. Millard said SGTC's mission is to try to convert the Norfolk and Southern 14 mile railbed from Landrum to Saluda into a public access trail for use by hikers, bikers, runners and, perhaps, equestrians. This stretch of railroad has been inactive since 2001 and the rails are cut at the Landrum end. Mr. Millard said he would like to have the signed resolution of support from the County to present to Norfolk Southern when the committee meets with them. The Town of Tryon and the Foothills Chamber of Commerce have already passed the resolution; Saluda and Landrum will each consider the resolution at their next meeting. The SGTC will build its support base and have a firm plan in place before contacting Norfolk Southern. Mr. Millard said he anticipates the project will be extremely expensive, but SGTC does not expect the County or municipalities to pay for it. Monies for the project will be obtained through grants and donations. However, Mr. Millard said SGTC may ask the County for money in the future. The Virginia Creeper Trail is a project similar to what is currently being proposed, and Chair Gasperson said John Vining would be glad to arrange a trip to Abingdon, VA, for anyone interested in seeing first-hand the positive impact the trail has had on the area. Commissioner Owens made a motion to adopt the resolution, seconded by Commissioner Walker.

Citizen Comments – Commissioner Walker read e-mails expressing support for the Rails to Trails project from Helen S. Demos of Saluda, and Polk County Travel and Tourism Director Melinda Young.

With a motion and a second on the floor, the motion carried unanimously.

7. Appointment of Polk County Attorney – Commissioner Owens made a motion to appoint Mike Egan as the interim county attorney for ninety days in order to give the Board an opportunity to explore the feasibility of creating a single County Attorney/Clerk position. He said that, from the numbers he has been looking at, the County could possibly realize a savings of over \$30,000. Commissioner Pack

seconded the motion. Vice-Chair McDermott said she had done quite a bit of research on the potential money savings with a County Attorney/Clerk position, and on the wisdom of combining the positions, and she does not think it is a feasible proposition. She said someone could be found to fill the position, especially in these hard economic times, but she is not sure that person would be the one the County would want as its representative. She said that the County spent \$49,537.80 on legal fees last year. This total includes a combination of Tom Hix and Mike Egan serving as the county attorney, as well as Mr. Egan's additional charges for non-Board meeting related issues, i.e., litigation.

Vice-Chair McDermott said Commissioner Owens expects to hire a County Attorney/Clerk for a per annum base salary between \$50,000 and \$60,000, excluding federal and state withholding taxes, FICA, medical insurance, etc. She said a County Attorney/Clerk would need a means to do legal research, and online services can cost \$9,000 per year. She went on to say that she does not believe the County can come close to getting the quality of expert legal counsel it currently receives for the amount of money; in this era of legal specialization, one-size-fits-all simply does not work anymore. Vice-Chair McDermott said the County would get into a lot of trouble by the person trying to be all things to all people - trying to overextend - and it would end up costing the County dearly in the short run and the long run. She said she appreciates Commissioner Owens coming up with what might appear to be a creative approach to saving money but, in this case, at the very best the amount of savings would be very small when all the costs are factored in, and the County would not be provided with the level of legal services that it needs and deserves.

Commissioner Owens said he did his research as well, and consulted with a local attorney who has been in practice for many years. He said the idea to create a County Attorney/Clerk position was not originally his, but has been discussed over a couple of years. He said he never could justify the position until Ms. Britton decided to retire, but then he could justify the cost. Commissioner Owens said the attorney he has been discussing this with - as well as others in the community - agrees that this is the right way to restructure Polk County Government. Regarding legal research, he said previous county attorneys called the Institute of Government when they had a question and were not charged anything except the annual membership fee. He said he thinks combining the positions is the right thing to do, and the Board owes it to the people of this County to at least study the issue for ninety days. Commissioner Owens said if the feasibility study results were not favorable, then he would concede the point and thank the Board for the opportunity of looking into it.

Commissioner Pack said he initially supported the idea of creating a County Attorney/Clerk position because it would give the County the ability to have, and the convenience of having, an attorney in the building. He said he was skeptical that the County could hire an Attorney/Clerk at an affordable salary. However, the

recent NCACC *County Lines* publication contained an advertisement listed by Caswell County seeking a county attorney in the \$55,000-\$70,000 range. Commissioner Pack said Caswell County is looking for an attorney who possesses the same experience and abilities as Polk County would require, and he wholeheartedly supports Commissioner Owens' request to spend 90 days researching the issue.

Commissioner Walker clarified that Caswell County seeks a county attorney, not a County Attorney/Clerk, and that Commissioner Owens estimates the total cost to the County for this combined position would be \$74,816 per year. Commissioner Owens reaffirmed his request that the Board take time and research the issue.

County Attorney Whitson reported that the County uses the following attorneys: Interim Michael Egan, BOC meetings and general County business; Phil Feagan, foreclosures; Kevin Kopp of Roberts & Stevens, personnel; Billy Clark, Roberts & Stevens, water related issues; Rebecca Reinhardt, Roberts & Stevens, loans; Michael Egan, planning/zoning/land use.

County Manager Whitson said the new Clerk's position would cost the County approximately \$45,000-\$50,000 per year. Commissioner McDermott said the County spent approximately \$94,000 in legal fees in 2009, and the difference between this amount and the projected \$83,000 (\$74,000 + \$9,000) of a County Attorney/Clerk represents a savings of \$11,000, not \$30,000. Commissioner McDermott said that as an attorney for over twenty-five years - five of which were spent as a county attorney - it has been her experience that trying to ask one person to do it all is asking for trouble.

With a motion and a second on the floor, the motion failed 2-3 (Gasperson, McDermott and Walker opposed).

Vice-Chair McDermott made a motion to appoint Michael Egan as the permanent County Attorney, seconded by Commissioner Walker. Commissioner Pack requested and was granted the opportunity to interview Mr. Egan. Mr. Egan began by giving a general overview of his professional background, and a copy of his resume is on file with these minutes. In response to Commissioner Pack's questions the following information was imparted.

Mr. Egan worked as a part-time staff attorney for the City of Hendersonville until 2005, and was paid \$46,000 per year for 25 hours of work per week. He did not become an attorney in order to specialize in land use, but his mentor specialized in environmental and land use law. At the time Mr. Egan joined the law firm it represented mostly developers. He has worked with a number of cities and towns in creating ordinances and land use plans, and has served as counsel to planning and zoning boards. Most of his work has been in providing counsel to local governments in land use areas.

Commissioner Pack asked Mr. Egan what his personal views are regarding subdivision ordinances, land use, development, the developing of land, and the growth of counties. Mr. Egan said that as the County Attorney his personal views are not material. However, he said, growth has been and is inevitable. His hope as a citizen would be that his government could find ways to manage growth that are congruent with the aspirations of the community. He is in favor of growth, but would like growth to be consonant with his community's values. Regarding private property rights versus the good of the majority, Mr. Egan said it is a balance. Property ownership is one of the foundations of our society and it is critical that the law protect those rights. It is also critical that those rights not cause a significant detriment to other properties.

Mr. Egan currently lives in Hendersonville, NC, where he has his law practice, and he stated he does not socialize with any of the Commissioners. He was hired by Jackson County in 2006 to prepare a steep slope ordinance and a subdivision ordinance, and the BOC wanted a subdivision moratorium put in place pending the enactment of these two ordinances. Subsequently, Mr. Egan created a farmland preservation ordinance, restructured the administrative procedures ordinance to make their government more efficient, and created a new corridor ordinance.

Regarding legal non-conformities, commonly called grandfathering, Mr. Egan said he personally recognizes the importance of them and feels that it is a balance. Grandfathering is a necessary and important protection because people have invested in those properties, and they could be substantially affected by new laws being put into place.

It was clarified that Mr. Egan would serve as County Attorney for a \$1,500/month retainer, which covers his attendance of BOC meetings and routine legal advice. Additional assistance to the Planning Department, as well as any litigation, will be charged at a discounted hourly rate of \$175 plus out of pocket expenses.

Commissioner Walker said she appreciated Commissioner Owens's creative thinking regarding the County Attorney/Clerk position. She said she also understands Vice-Chair McDermott's concerns regarding the efficacy of a one-size-fits-all County Attorney/Clerk.

Vice-Chair McDermott made a motion to approve Michael Egan as the regular County Attorney upon the terms outlined in his letter of November 29, 2010, to County Manager Whitson, seconded by Commissioner Walker. Commissioner Pack asked that County Manager Whitson read Mr. Egan's letter, a copy of which is on file with these minutes. With a motion and a second on the floor, the motion carried 3-2 (Owens and Pack opposed).

8. Clerk to the Board Anne Britton's Retirement – County Manager Whitson announced that Clerk to the Board Anne Britton will retire effective December 10, 2010. The regular Employee Christmas Party is scheduled for that day, and Ms. Britton will be properly fêted at that time. Commissioner Walker thanked Ms. Britton for all of her kind support and thoughtful guidance. Vice-Chair McDermott thanked Ms. Britton for all of her hard work and wise counsel. Commissioner Pack thanked Ms. Britton for her help during his previous four-year term. Commissioner Owens said Ms. Britton had set the standard as Clerk and thanked her for her outstanding service. Chair Gasperson thanked Ms. Britton for her calm, wise counsel and wished her well in her retirement.
9. Approval of 2011 Board of Commissioners' Meeting Schedule/Discussion of Possible Retreat and Date – The Commissioners discussed scheduling an all-day Board Retreat on January 24th in lieu of the regularly scheduled meeting, to begin at 9:00am in the R. Jay Foster Hall of Justice. Commissioners also discussed holding the March 7, 2011, and the June 6, 2011, meetings at locations other than Columbus. The location will be determined at the retreat. Commissioner Pack made a motion to approve the 2011 Board of Commissioners' meeting schedule as amended, seconded by Commissioner Owens and the motion carried unanimously.
10. Approval of 2011 Holiday Schedule – Commissioner Walker make a motion to approve the 2011 holiday schedule, seconded by Vice-Chair McDermott and the motion carried unanimously.
11. DSS Request – Sue Rhodes, DSS Director, requested that a part-time income maintenance case worker position be upgraded to a full-time position, and the written request is on file with these minutes. The position will cost the County approximately an additional \$7,500 per year. Commissioner Walker made a motion to approve the DSS request, seconded by Vice-Chair McDermott. Commissioner Pack asked County Manager Whitson if he had someone in mind for the position, and Mr. Whitson said he planned to move an employee from the Tax Assessor's office (agenda item #12) to DSS. Commissioner Pack requested and was granted a sidebar discussion regarding personnel with County Attorney Mike Egan, which was followed by a brief recess.

Commissioner Pack said his vote on agenda item #11 would be contingent upon going into closed session to discuss a personnel issue related to agenda items #11 and #12. Mr. Egan said that if the Commissioners were going to talk about the qualifications of an employee then the discussion needed to occur in closed session. Commissioner Walker said agenda item #11 was about the position, not about the person filling the position, and it was her understanding that you could only go into closed session to talk about a person. Vice-Chair McDermott said the DSS Board voted unanimously to increase this position to full-time.

Commissioner Walker emphasized that the Board ought only to go into closed session for very specific reasons as defined by the Open Meetings Law. Following discussion, Commissioner Walker made a motion to go into closed session for the purpose of NCGS 138-143.11(6) Personnel, seconded by Commissioner Owens and the motion carried unanimously.

Upon returning to open session Commissioner Walker mad a motion to upgrade a part-time DSS income maintenance case worker position to a full-time position, seconded by Vice-Chair McDermott and the motion carried 4-1 (Pack opposed).

12. Budget Amendment BA #4 Tax Assessor/Contingency – To reduce Tax Assessor (property appraiser) salary and benefits for a reduction in workforce as of 1/3/11 and increase contingency. Commissioner Pack made a motion to table this agenda item until the January 10, 2011, meeting, seconded by Commissioner Owens and the motion carried unanimously.
13. Board Vacancies for Commissioners – Commissioners were appointed to each Board with vacancies, and a list of those appointments is on file in the County Manager's office. Commissioner Pack made a motion to approve the appointments, seconded by Commissioner Owens and the motion carried unanimously. Vice-Chair McDermott made a motion to appoint Commissioner Owens the voting delegate for the Legislative Goals NCACC Conference for 2011, seconded by Commissioner Walker and the motion carried unanimously.
14. Citizen Comments on Non-Agenda Items – Ricky McFalls urged the Commissioners to put aside their partisan differences and work together for the good of Polk County.
15. Commissioner Comments –Vice-Chair McDermott said it was a good meeting and a good start for the new Board. Commissioners Pack and Walker thanked everyone for coming out. Commissioner Owens said it was good to be back after a two year hiatus and he looks forward to serving the people of Polk County. Chair Gasperson thanked the Board for a very good first meeting, and said he is optimistic that this Board of seasoned Commissioners will be able to accomplish a great deal for the County.
16. Reminders – Chair Gasperson announced that the Employee Christmas Party will be held on December 10, 2010, at 12:00pm at Tryon Estates. He also announced that a joint meeting with Polk County and the municipalities is scheduled for January 11, 2011, at 7:00pm at Columbus Town Hall.
17. Closed Session – Vice-Chair McDermott made a motion to go into Closed Session for the purpose of NCGS 138-143.11(6) Personnel, seconded by Commissioner Walker and the motion carried unanimously.

18. Return to Open Session – Commissioner Walker made a motion to return to open session, seconded by Commissioner Owens and the motion carried unanimously.
19. Appointment of the Clerk to the Board – Vice-Chair McDermott made a motion to appoint Beth Fehrmann as Clerk to the Board of Commissioners effective December 13, 2010, seconded by Commissioner Walker and the motion carried unanimously.
20. Adjourn – Commissioner Walker made a motion to adjourn the meeting, seconded by Vice-Chair McDermott and the motion carried unanimously.

ATTEST:

POLK COUNTY BOARD
OF COMMISSIONERS

Beth Fehrmann
Clerk to the Board

Ray Gasperson
Chair