

August 18, 2008

The Board of Commissioners of Franklin County, North Carolina, met for its Regular Meeting at 7:00 P.M. in the Commissioner's Meeting Room located in the County Administration Building with the following Commissioners present: Chairman Robert L. Swanson, Vice-Chairman Penny McGhee-Young, Bob Winters, Sidney E. Dunston, Harry L. Foy, Jr. and Lynwood D. Buffaloe. Commissioner Donald C. Lancaster was absent.

Chairman Swanson called the meeting to order and asked the board to consider the consent agenda. Commissioner Buffaloe made the motion to approve the consent agenda, seconded by Commissioner Winters. The motion duly carried with all present voting "AYE." The items approved are as follows:

1. CONSENT AGENDA

- A. August 4, 2008 minutes
- B. School Bond project ordinance in the amount of \$53,281,930
- C. Resolution authorizing the execution of Community Development Block Grant documents and designating appointment to various regional committees
- D. Certificate of Substantial Completion – Long Mill Elementary School
- E. Releases, Adjustments, Refunds, and Tax Collection Report
- F. Criminal History Records Check Ordinance
- G. Proposed additions to the Pay Plan

Commissioner Foy arrived at 7:05pm.

2. COMMENTS FROM THE PUBLIC

This was the time set aside by the Board of Commissioners to allow individuals five minutes to address the Board on issues concerning the county.

Rosemary Champion, 1168 White Level Road, Louisburg, NC

- Mrs. Champion recently came before the board and expressed disappointment in the attendance of Comprehensive Development Plan Advisory Council (CDPAC) members. She said three of the members in attendance represented the towns. She remains disappointed in attendance as a meeting held the week prior only yielded seven out of 20 committee members. She stated eight citizens attended the meeting and suggested that action be taken to increase attendance. Mrs. Champion was informed that reminders and advertisements of the meetings had been distributed and Chairman Swanson encouraged the board to contact CDPAC members to discover if they still wish to serve.

Ron Prokopowicz, 104 Pony Express Cv, Louisburg, NC

- Mr. Prokopowicz stated he is a resident of Lake Royale and stated he attended the meeting to become more informed about activity in Franklin County. Following a recent decision by the county to reduce hours at convenience sites, he asked the board to consider a better allocation of hours allowing sites to be open seven days a week. He also asked for increased presence of Sheriff's deputies at Lake Royale, despite the fact that Lake Royale maintains its own Police Department. He said increased protection is needed. Mr. Prokopowicz said he is somewhat new to the area and owns several properties in Franklin. He commended the road system in the county as well as EMS service.

George-Anne Brown, 313 West Dyking Road, Louisburg, NC

- Mrs. Brown stated she and her husband are long-time residents of Franklin County and said recent events had raised her awareness of certain issues of importance. She spoke specifically of the Franklin County Unified Development Ordinance and the legislative role of county commissioners. Her suggestions included a change in the ordinance title; a review of criteria in Section 7 as it pertains to special use permits; a review of Section 6; a review of procedures to ensure that towns and communities are notified in timely fashion of such things as applications for special uses; and ongoing revisions of the ordinance.

3. REQUEST FOR PROPOSAL – HAULING AND DISPOSAL SERVICES FOR FRANKLIN COUNTY SOLID WASTE

John Faulkner, Solid Waste Director, asked the board to consider contract negotiation with the most responsible bidder, Waste Industries-Landfill Division-Sampson County at \$45.25 per ton.

If approved, Commissioner Winters asked Mr. Faulkner to comment on its effect on the 2008-2009 budget. Mr. Faulkner stated the current contract with Waste Management would be in effect until October 8, 2008. He said a contract with Waste Industries would offer a better fuel adjustment. Depending on fuel costs, Mr. Faulkner anticipates a savings of approximately \$130,000.

Commissioner Winters made the motion to accept the proposal and award a contract to Waste Industries-Landfill Division-Sampson County, pending negotiations. The motion was seconded by Commissioner Foy and duly carried with all present voting “AYE.”

4. FAITH MISSIONARY BAPTIST CHURCH APPEAL

The board was asked to consider the appeal of Faith Missionary Baptist Church for granting of late application for 2008 and request for refund of monies paid for 2007 taxes.

Jim Wrenn, Tax Administrator, stated after consulting with the County Attorney and the North Carolina Department of Revenue, there are two separate, but related issues for the Board to consider. The following written explanation of both issues was provided in the agenda packet.

First issue:

Faith Missionary Baptist Church is requesting that the Board approve its late application for property tax exemption under GS105-282.1 for the 2008 tax year. The office of the Tax Administrator cannot grant a late application, however the Board, by statute, can. It is the recommendation of the Tax Office that the late application for 2008 be granted per the authority given the Board in GS105-282.1(a1) which states as follows; “Upon showing of good cause by the applicant for failure to make a timely application, an application for exemption filed after the close of the listing period may be approved by the Board of Equalization and Review, the Board of County Commissioners, as appropriate”.

Second issue:

Faith Missionary Baptist Church is requesting the granting of a late application for the previous calendar year of 2007 and a refund in the amount of \$3,304.80 for property taxes paid in August 2007 for the previous year’s bill. General Statute 105-282.1(a1) states as follows; “An untimely application for exemption approved under this subsection applies only to property taxes levied by the county in the calendar year in which the untimely application is filed.” Therefore since there was no application filed in 2007, as Tax Administrator, I am unable to recommend relief.

Mr. Wrenn presented background information and a summary of the request. He stated in 2003 Timberlake Grove Missionary Baptist Church purchased a parcel of land at 267 E.F. Cottrell Road. He said the church paid taxes on the vacant property in a timely manner each year. In 2006, he said a church building was constructed on the property. Once the building is constructed, by state law, Mr. Wrenn said a one-time application must be filed in order for the land and building to be tax exempt. Mr. Wrenn said the application should have been made in January 2007, but it was not. In August 2007, Mr. Wrenn stated the church paid the tax bill which was \$3,304.80. On December 17, 2007, he said the church secretary contacted a tax clerk who then mailed an application to the church which had later changed its name to Faith Missionary Baptist Church. He stated that still the application was not submitted in January 2008. In March 2008, he said the church secretary and Reverend K.G. Hall contacted him in writing and made application for both 2007 and 2008 and expressed their appeal. Mr. Wrenn said he then explained the situation and the law, and relayed that he did not have the authority to grant a late application. He explained the Board of Commissioners does have the authority to grant a late application in the calendar year in which the late application is made. Mr. Wrenn stated at that time, the Board of Equalization was scheduled to meet in April and in writing he informed the secretary and Reverend Hall that the application and the appeal could be heard at that time. He said time went by and he received no response. In July 2008, Mr. Wrenn said Reverend Hall contacted him again and resubmitted another application. By that time he said new tax bills had been created. Once again he said there are two situations to deal with including the late appeal for 2008. If the board agrees to grant a late application, the 2008 bill could be disposed. Mr. Wrenn stated his recommendation that the board (in its authority) approve the late application for 2008 to abate the current tax bill.

Commissioner Swanson then asked if there were any other churches in the county paying taxes on property or buildings. To his knowledge, Mr. Wrenn stated "no" unless the land is vacant. He said he was unaware of churches paying taxes on buildings.

Commissioner Dunston asked Reverend Hall if he applied for a building permit when the church was being built and Reverend Hall confirmed he did. He then asked if Reverend Hall was aware of the application process for tax exemption. Reverend Hall stated he was aware of tax exempt status, but stated he was not aware of the procedure to establish the status. Commissioner Dunston said it is common knowledge that churches are exempt from paying taxes, but it appears that this situation occurred due to a lack of knowledge. In the future, he said when a group applies for a permit to build a church, notification should be given at that time of the process in place. He said there are likely a number of people who have done the same thing when establishing a church and had no idea of the process. Mr. Wrenn said he didn't disagree, however he said this is the first time he's dealt with a situation like this since he's served as Tax Administrator. He stated it would be a good step on the county's part as a matter of policy. In the future, he said it would be a good idea for an appraiser to advise a church of the opportunity to become tax exempt when the appraiser goes out to work the permit. He also suggested sending out information in writing outlining the requirements of the law.

Commissioner Young then made the motion to release (delete) the 2008 bill for Faith Missionary Baptist Church. The motion was seconded by Commissioner Foy and duly carried with all present voting "AYE."

Considering that Faith Missionary Baptist Church diligently paid their taxes up until 2006 and for the year 2006 and considering the church lacked understanding of the application process, Commissioner Dunston made a motion to grant a refund of the previous year's bill. The motion was seconded by Commissioner Young.

Commissioner Winters then asked for the advice of the County Attorney. Mr. Batton responded by saying that under the current interpretations of the law, he could not see the legal basis for refunding the monies. He stated there is case law that addresses clerical error. He said staff has already attempted to evaluate whether clerical error was committed by the county in that the tax clerk may not have explained the need to apply immediately, but rather sent an application without full explanation. Mr. Batton stated if

the church had submitted the application received in November in the same calendar year, the board would have had the legal authority to refund the money. However, because the application was not made in the same calendar year, the basis under the law that allows the board to refund the money does not exist. He said case law mentioned earlier, focused on documents, instruments and writings that include a clerical error. He said it's a "stretch," but the only basis for refunding the money would be based on the clerk failing to tell the applicant that if the application was not turned in before December 31, the right for refund would be lost. He said current case law does not address mistakes of the clerk. He reminded the board that if it refunds the monies of taxpayers illegally, the board is personally liable for the decisions it makes. If the county is sued, he said he would do everything he could to defend, but again stated he has found no legal basis for this refund. Mr. Wrenn stated he did not disagree with Mr. Batton's statements.

Commissioner Swanson then stated even though the board stands to be sued, it is not right for the church to pay the money because it was entitled to be exempt. He said someone simply made a mistake.

Commissioner Dunston said it is obvious to him that Faith Baptist acted out of a lack of knowledge. He said if the county is going to hold them to that, it is the board's responsibility to make sure that they are aware of the procedures. He said the church acted in good faith and are now trying to correct its mistakes. He said the board has the authority to allow them to do that.

Commissioner Buffaloe asked Mr. Wrenn to confirm the amount of the refund. Mr. Wrenn stated \$3,304.80. Commissioner Buffaloe then asked what would happen if there was a judgment against the commission for unlawfully paying the refund. Mr. Batton stated each commissioner would be libel personally. He said whether or not they would be entitled to attorney fees would be a separate issue.

Commissioner Young asked Reverend Hall once again if he was made aware of the application deadline when he contacted the tax office. He stated "no" and commented that is the premise for the appeal. Mr. Wrenn then stated he spoke with the tax clerk who said she could not recall if information about the deadline had been given.

Commissioner Buffaloe then asked if the deadline was located on the application in fine print. Mr. Wrenn stated it did not.

The Chairman then asked the board to consider the motion on the floor made earlier by Commissioner Dunston and seconded by Commissioner Young to refund 2007 taxes paid to the county by Faith Missionary Baptist Church. The motion duly carried with all present voting "AYE."

5. APPOINTMENTS

A. Juvenile Crime Prevention Council

The board was asked to consider the appointment of LaDonna Clark (Substance Abuse Professional); Kristin Peebles (Assistant District Attorney); and Oliver Green (Parks and Recreation Representative) to the Juvenile Crime Prevention Council. Each term would expire in two years.

Commissioner Dunston made the motion to appoint Ms. Clark, Ms. Peebles and Mr. Green to the Juvenile Crime Prevention Council. The motion was seconded by Commissioner Young and duly carried with all present voting "AYE."

B. Economic Development Commission

Commissioner Foy was asked to consider an appointment to the Economic Development Commission. Commissioner Foy stated he will continue to seek representation and the position will remain vacant.

6. BOARD, MANAGER AND CLERK'S COMMENTS

This was the time set aside for the Board of County Commissioners, the County Manager, and the Clerk to the Board to report on various activities. The Board may also discuss other items of interest.

County Clerk Kristen King: Mrs. King reminded the board of its next meeting scheduled for Tuesday, September 2, 2008 following the Labor Day Holiday.

Commissioner Winters: Commissioner Winters stated he attended the grand opening of the Franklin County Animal Shelter. He said the project is an accomplishment the county can be proud of.

Commissioner Young: Commissioner Young commented on issues in reference to the Department of Transportation (DOT) and three projects the board had asked for updates on at a recent board meeting in which DOT representatives were present. The projects include the bridge on Sim's Bridge Road along with requests for traffic lights at the intersection of Highway 96 and Long Mill Road; and Bert Winston and US Highway #1. She stated a response had recently been received, but said none of the responses were positive. She expressed her frustration with DOT and said it seems the board's suggestions are never considered prior to DOT's decisions. Once DOT has made their decision, she said it seems the county is stuck with it. She said she is extremely disappointed that DOT doesn't consider anything the board or the county has to offer them.

In reference to Sim's Bridge, Commissioner Young stated the project would cut off a large community of people for a considerable amount of time (minimum of 18 months). She said the average cut off is 14 miles out of the way or 10-17 miles depending on where you live. She stated DOT is aware this will increase out-of-pocket expenses for everyone who lives in that community due to the cost of fuel. She said DOT has also taken into account the route is much longer than any other average route to drive around a problem. She said they've also considered that to carry out a different type of bridge repair (ex: a temporary bridge) would cost \$1 million. She was informed the bridge is structurally deficient in every way and stated it ranks high on the list of North Carolina bridges that are in dire need of repair. She said supports had been replaced in the last 30 years, but the bridge remains deficient. She said weight postings had been lowered for some time and will continue to decrease. She said DOT's plan is to get rid of any weight posting on all bridges so that any vehicle of any size and any weight can travel on it. Commissioner Young said based on these considerations sent to the local DOT office from Planning and Engineering out of Raleigh, she stated the local group did agree to the off-site detour even though there are many issues/concerns that go along with the project based on cost. Commissioner Young said she brought up the fact that the community affected is lower on the income scale than the rest of the county. She said that information was also taken into account and didn't make a difference. She then asked why DOT didn't approach the community and hold a public hearing prior to making a decision. She was told that based on the number of people affected, DOT didn't feel it was reasonable. She commented that citizens have not been allowed the opportunity to share their concerns with anyone unless they've called DOT and were able to locate someone that explain this particular project. Commissioner Young stated many citizens had called her with concerns.

Commissioner Young suggested the board send a letter to Tracy Walter who is the Project Planning Engineer at DOT who made the decision not to have a public hearing and ask for reconsideration. She said citizens should have the right to tell DOT how this project will affect them. She then stated that over a 24-month period, citizens themselves would spend well over \$1 million because of the change in travel pattern, nearly the same amount DOT said it couldn't afford to spend on a temporary bridge.

Commissioner Young then made her request in the form of a motion asking the board to send a letter to Tracy Walter asking for a public hearing in this matter. The motion was seconded by Commissioner Swanson. The board directed that copies of the letter also

be sent to DOT representatives Wally Bowman, Stephen Winstead, Kim Spaulding and Nina Schlossberg as well as Franklin County's state representatives.

Commissioner Young added that DOT is aware this community would be cut off from their fire department by 14 miles. She said according to fire officials, that additional travel time could mean the difference in saving a home and saving the life of someone in a home that is on fire or filled with smoke. She stated EMS would be re-routed from Louisburg during the time of the project.

Commissioner Young's motion duly carried with all present voting "AYE."

Commissioner Young then spoke about the board's request for a traffic light at the intersections of Highway 96 and Long Mill Road; and the intersection of Bert Winston and US Highway #1 because of traffic from the new school. She said the board was previously informed that DOT would reevaluate the request. She has since been informed DOT will only reevaluate if the board submits another letter six months after the school has opened and traffic around that location has regulated.

Commissioner Buffaloe then made the motion to send another letter to DOT in reference to the board's request six months after the day the school has opened. The motion was seconded by Commissioner Dunston and duly carried with all present voting "AYE."

Commissioner Swanson: Commissioner Swanson attended the grand opening of the Animal Shelter. He said it was a great event for the county. He commented positively on the turnout, event speakers and the facility itself. Commissioner Swanson commented that Congressman Bob Etheridge said the facility is a model for the entire state.

Commissioner Dunston: Commissioner Dunston attended the recent grand opening of Franklin Medical Services in Franklinton and encouraged all commissioners to visit the new facility. He said the clinic is looking for new clients and operating with adequate and qualified staff. He asked the board to inform citizens about the facility. Commissioner Dunston also attended the animal shelter grand opening. He commended Mr. Graham Stallings (Animal Control Director) and stated the animals will be well served.

Commissioner Buffaloe: Commissioner Buffaloe attended a business after hours function at Franklin Regional Medical Center recently and complimented the Chamber on the organization of the event. While there, he said a \$20,000 donation was made to Franklin County Volunteers in Medicine on behalf of the hospital. Commissioner Buffaloe also commented on interviews for Airport Manager. He said 35 applications had been received and six were chosen for interviews. He said a follow-up meeting is planned for tomorrow (Tuesday) at 10:00 A.M. with the Airport Commission. Commissioner Buffaloe also attended the grand opening of the animal shelter. He said the animal shelter is a great facility and stated the project was the result of a lot of hard work by staff as well as the current and previous board of commissioners.

County Manager Angela L. Harris: Mrs. Harris stated the Franklin County Board of Elections met last week and is pursuing an application to the state to add an early voting site in Franklinton at the library. Clearance must now be received by the Department of Justice. She also mentioned a series of local events attended by Congressman Bob Etheridge.

Commissioner Dunston made the motion to adjourn, seconded by Commissioner Buffaloe. The motion duly carried with all present voting "AYE."

Robert L. Swanson, Chairman

Kristen G. King, Clerk to the Board