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Posted By: Evelyn Baker
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**MINUTES OF A
SPECIAL MEETING
OF THE
JACKSON COUNTY
BOARD OF COMMISSIONERS
HELD ON
MAY 20, 2005**

The Jackson County Board of Commissioners met in a Special Joint Meeting with the Jackson County Board of Education on Friday, May 20, 2005, at 7:00 pm, Board of Education Building, 398 Hospital Road, Sylva, North Carolina.

Board of Commissioners:

Brian T. McMahan, Chairman
Roberta Crawford, Vice Chair
Joe Cowan, Commissioner
Eddie Madden, Commissioner
Conrad Burrell, Commissioner
Kenneth L. Westmoreland, County Manager
W. Paul Holt, Jr. County Attorney
Evelyn Baker, Clerk to Board

Board of Education:

Ken Henke, Chairman
Ali Laird-Large
Nathan Moss
Mark Brooks
Thurza McNair
Sue Nations, Superintendent
W. Paul Holt, Board Attorney
Betty Brown, Clerk to Board

John Cort, Cort Architectural
Victor Lofquist, Engineer
Chris Buchanan, Buchanan & Sons

Chairmen Henke and McMahan called the meeting to order and stated that the purpose of the special meeting was to discuss Smoky Mountain High School Site Work, Phase I.

(1) Chairman Henke stated that he was concerned after the meeting earlier this week with representatives of the utilities concerning relocating lines so that the site work could proceed on schedule. Ms. Nations read and disbursed a copy of a letter she received via fax earlier today from Bob Golding of Verizon South, Inc. The letter stated in part:

“At this time Verizon Engineering cannot submit a time frame to perform the requested cable relocation due to insufficient lead-time of notification. According to a statement in the May 19th issue of the Sylva Herald, it was printed both Verizon and Duke Power were contacted several months ago when in fact Verizon Engineer was notified and received a set of plans about this project on May 13th. The process for this large of a task will require field surveying, work order packaging, material arrangements, and billing details before the work order can be released to the Construction Department. Then there is the time allotted for the actual work to be done in the field. It will be critical in your efforts to prearrange payment for billable costs borne to the county. When the work order(s) are ready to release, a billable amount will be sent in a self-explaining letter requesting payment prior to the actual construction start date”.

(2) The problem arose when the architect, John Cort, discovered that Verizon, not Duke Power, owned the poles at Smoky Mountain High School. He stated that Mike Ray, a Duke representative, was in a meeting at the school in November and he and Mr. Ray walked the site and Mr. Ray did not inform him that Duke did not own the poles. Thus, Mr. Cort did not know that the poles carrying the power lines were not owned by Duke until April 5th. Mr. Ray called Verizon and was informed it had not been contacted, which was correct since Mr. Cort

had been going through Duke. Duke was aware of the total scope of the relocation because at a meeting on November 30th it was discussed with Duke that the entire campus was to be an underground service including Fairview School. Mr. Cort stated that the initial written notification was that Duke would not be able to do anything until it received a purchase order and he believes Duke received that on or about April 30th because when a representative called on May 5th, it had received the letter. Mr. Cort stated that he felt adequate time was given to the utility since Duke said the actual work would only take one week and eight weeks notification was sufficient. However, Mr. Golding of Verizon stated that May 13th was the first time he had seen the plans.

(3) Mr. Westmoreland stated that in his conversation with Verizon, he was advised that the engineering work had not been completed and Verizon would feel uncomfortable giving a specific date for relocation. Verizon did indicate, as a result of the conference earlier this week, there was most likely enough work outside the immediate area for the contractor to do while Verizon does its work. The fact that Duke can furnish a replacement pole may make it easier for Verizon. At present it appears that all Verizon will be needing is for the 45 ft. pole to be replaced with a 55-60 ft. pole Verizon does not keep that size pole in stock and would be relying on Duke to acquire the pole and put it up. It was obvious after the meeting with the utilities that Phase I could not be completed this summer.

(4) Commissioner Burrell asked what would occur if the contractor wanted to start in the area around the utility lines and poles and is it possible that the contractor would be delayed and unable to complete the project on time. Mr. Westmoreland responded that it is possible if the proposed contractor agreed with the architect and engineer that there were other locations on campus to work until the utility poles have actually been replaced. How that arrangement can be done from a legal standpoint would be left to the attorney to establish.

(5) Chairman Henke stated he was concerned not only about the increased cost, but if change orders are added, unforeseen costs such as the approximate \$75,000 for moving utility poles, then these different costs would have been brought to everyone's attention before this week. He stated that it appears that the actual time for moving the lines is one week, but that does not include the engineering which is more like six months. Ms. Nations stated she understood that the utilities needed six weeks, but they would do something as quickly as possible and the contractor could work around them.

(6) Mr. Cort stated that originally he thought he was dealing with one utility – Duke Power. He stated that it is usual in utility relocations that power companies own the poles and phone companies co-locate; however, SMH has a very unusual situation. Usually the power utility takes the lead and coordinates relocations with the other utilities. Cable TV also has lines on those poles and just last night he discovered another utility was involved, BalsamWest, whose fiber optic lines serve Fairview Elementary. Thus, four utilities are involved. There is no problem with BalsamWest or Cable TV promptly moving their lines. Duke stated that once Verizon moves its poles, together they do not have a week of construction work. Verizon has stated its position in the letter and which does not include the relocation of the utility lines in back of the school.

(7) Chairman McMahan stated that no one person or group can really take the blame for the status of the project. When the road project was first planned, it was the understanding that DOT was going to do the work and some discretionary funds would be available; however, those funds are no longer available and the county had to start re-planning and let the project out for bids. Commissioner Burrell stated that DOT's commitment was the allocation of \$50,000 for the bus parking lot and build Jones Cove Road. Representative Haire, Senator Snow and Commissioner Burrell were going to ascertain if they could locate some discretionary funds. Mr. Cort stated he never had any knowledge of the amount of funds DOT may have had available and he does not recall giving numbers to the owner or anyone.

(8) Ms. Nations stated there is a concern about dumping all the dirt on the front parking lot and wanted to know if something could be done such as placing the dirt on the Jones property. The other concern is the time frame. The fact that having a long summer this year is a windfall, because the original plans called for completion of the project in 63 days. She stated that she did not fully understand the front parking lot being built up to accommodate 210-250 parking spaces.

(9) Some of the changes include stream mitigation and Jones Road right of way acquisition. Commissioner Burrell stated there is only one right of way in question.

(10) There has been some discussion concerning breaking Phase I into Parts A and B so that this summer the dirt could be moved from behind the Science Bldg. to the front and allow the utility companies to complete their plans and studies about moving the lines underground. Then next summer do the back area.

(11) Mr. Cort stated that the contractor had advised him that if he were awarded the contract, he would, at no cost, delay work along Big Orange Way and between the stadium and existing buildings in order to provide the utilities the opportunity to put the electrical service underground before he commences work in those areas. There are two utility problems: (a) Big Orange Way and (b) around the stadium.

(12) Also discussed with Duke at the November 30th meeting was the replacement of the stadium lights which would be a huge undertaking. It is less an undertaking to raise the lines along Hwy. 107. The bus and student parking lots could be moved forward in the schedule.

(13) Attorney Holt stated that the bid cannot be awarded if the scope of the contract is changed. He quoted G.S. 143-129 (b) procedure for letting of public contracts:

"In the event the lowest responsible bids are in excess of the funds available for the project or purchase, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available. . . ."

Attorney Holt stated the statute just addresses funds, not re-negotiation of the scope of the project. He stated that the fee can be renegotiated and the Commissioners only have the option of either letting the whole project as bid or re-bid it.

(14) Chris Buchanan of Buchanan & Sons stated he was willing to re-negotiate the fee. He stated he could complete Phase I before school starts.

(14) Everyone agreed that whatever projects are started, they must not interfere with the opening of school.

(15) There is concern about the costs because it has been mentioned that the over budget costs for Phase I is going to be allocated from Phase II. Mr. Cort stated there are several projects under construction, i.e., completion of the Science Bldg., replacing the gym windows, renovate the multi-purpose room, adding air conditioning, and two new classrooms that can be done this summer.

(16) Chairman McMahan stated that the Commissioners never, at any time, considered not fulfilling the entire project. He assured the school board that the Commissioners are committed to completing the projects; however, some may need to be rearranged – but will be finished.

(17) Commissioner Madden stated that it was suggested to the Commissioners this past Monday night that maybe Phase I could be broken into Plan “A” and “B”, if so, would that conflict or delay the opening of school? Based on Attorney Holt’s opinion, the project cannot now be divided without having to be re-bid. Mr. Cort stated there was insufficient time to re-bid the project this summer. Commissioner Madden stated he was not comfortable with a bid that is \$700,000 over budget; however, if the project can be “re-phased” and re-bid without the pressure of having to complete it this summer, it appears that would be more reasonable.

(18) Mr. Cort stated that the part between the stadium and existing buildings is totally dependent upon the utilities. All utilities are overhead and cross from one side of the road to the other. The utilities must complete their work 100% before the project can proceed and this cannot be done this summer before school starts. However, the utilities may be able to relocate over the summer.

(19) Mr. Cort stated that he does not have a permit for putting dirt on another site and would need to go through another permitting process. Mr. Lofquist concurred and stated this would take a 90 day minimum planning period. The only option this summer, knowing the utilities cannot immediately relocate the lines along Big Orange Way, is to move the dirt from the hill on the Massie property to the front, if Duke and Verizon can relocate their lines within the next six weeks. Moving the dirt is about a 12-week project.

(20) Why was the utility situation not taken care of before the bids were advertised? Mr. Cort stated that it was his experience the utility company does not respond until a contractor is on site. Ordinarily the power company owns the poles and in this circumstance it appears that this was different situation and Verizon is actually the owner of the poles. Mr. Cort stated he walked the site with a Duke representative and the first he heard about Verizon owning the poles was in April of this year. Mr. Cort said utility relocation is normally done in conjunction with the contractor, although it could employ its own contractor. Mr. Westmoreland did send a letter to the utility company. The architect does not do the engineering for utility relocation.

(21) Mr. Lofquist stated that the Army Corps of Engineers requires a permit if more than 300 linear feet of stream is involved. He stated he was in contact with the Corps and DEHNR and it is a very time consuming process and those agencies will not permit piping a stream unless the owner has looked at all options to avoid doing so. It is not a sure thing that they will allow the stream to be piped. Ms. Nations asked what would change if the stream cannot be piped since it is located in the middle of the ball fields. Mr. Lofquist stated that a worst case scenario is that one of the ball fields would be lost (most likely the baseball field). Stream mitigation is part of building a perimeter road. Mr. Lofquist stated there are two issues: first, permission is needed to impact that length of stream, and if it is allowed, then it would have to be mitigated at an off-site location. Before they will decide if the county can impact that amount, the county must go through an alternative analysis and show that it has looked at all other options including offsite ball fields and busing to those ball fields. Nothing is in writing as of today. Ms. Nations stated that perhaps what should be focused on this summer is the stream mitigation which would give some direction as to what can be done with the project. If the stream is not mitigated, can the perimeter road be built? Mr. Cort said yes, it would only affect the ball fields. We wanted the perimeter road to relieve the traffic congestion. Phase II must definitely be done and get the ball fields along with it.

(22) Mr. Cort was asked if the contract was awarded as is, knowing all that is now known, if Phase I could be completed in 85 days. He responded “no, if the contract is let, only approximately 75% could be completed this summer”. Ms. Nations stated that the utilities also must know exactly where to relocate the lines so they won’t have to be moved again.

(23) Mr. Westmoreland stated that he would advise the utilities that the Boards are re-defining the project and what they are requesting in the initial step is utility line relocation to allow moving forward with construction next summer. He stated he assumed if the county commits to the relocation costs that is all the utilities are interested in terms of starting their engineering.

(24) Ms. Nations said Verizon has quoted a price of \$75,000 - \$100,000. Duke has not quoted a price. Mr. Cort stated the power companies usually require the property owner to do the trenching for relocation of the lines.

(25) Chairman McMahan stated that the project was originally designed to be completed in 63 days. Mr. Cort stated that doing Phase I as now defined could probably be completed in 63 days if utilities are not a factor.

(26) Ms. Large stated that it is apparent that we need to re-plan these projects.

(27) Chairman McMahan stated that it may be necessary to let a separate contract for trenching this summer, relocate utility lines, obtain a permit for stream mitigation so that next summer a new scope of work will be presented that can be done in 66 days. Commissioner Madden suggested that the experts, Mr. Westmoreland and Ms. Nations meet and design a new plan for approval.

(28) Phase I and Phase II are critical to the overall plans for the campus. It was the general consensus that plans for this summer should be: (a) move utilities, (b) do some of the minor projects and (c) stream mitigation.

(29) Mr. Lofquist stated that the biggest impact on Phase I would be along Big Orange Way and the new parking lot between the stadium and building. The bulk of the work is if the power lines are raised within six weeks, the bulk of work can take place this summer by moving the dirt from behind the school to the front parking lot. The earth work, retaining walls, and paving work is the majority of Phase I. Mr. Westmoreland stated that Attorney Holt would need to advise the Board of the legality of altering the “scope of work contract”.

(30) A final determination of this matter cannot be made until after the Board of Commissioners makes a decision on May 23, 2005, 4:00 p.m., i.e. accepting or rejecting the bid.

There being no further business, Commissioner Crawford moved that the meeting be adjourned. Commissioner Madden seconded the Motion. Motion carried by unanimous vote and the meeting adjourned at 9:10 p.m.

Evelyn B. Baker, Clerk

Brian Thomas McMahan, Chairman