

PASQUOTANK COUNTY, NORTH CAROLINA

APRIL 15, 2016

The Pasquotank County Board of Commissioners met today in an emergency meeting on Friday, April 15, 2016 in the Hugh Cale Commissioners Board Room in the Pasquotank County Courthouse.

MEMBERS PRESENT: Joseph S. Winslow, Jr., Chairman
Cecil Perry, Vice-Chairman
Jeff Dixon
Frankie Meads
Bettie Parker
Lloyd E. Griffin, III (Via Conference Call)

MEMBERS ABSENT: Dr. William Sterritt

OTHERS PRESENT: Rodney Bunch, County Manager
R. Michael Cox, County Attorney
Sheri Small, Finance Officer
David Smithson, Water Superintendent
Lynn Scott, Clerk to the Board
John Morrison, Twiford Law Firm
Lauren Arizaga-Womble, Twiford Law Firm

The meeting was called to order at 2:00 PM by Chairman Joseph Winslow.

Attorney John Morrison said he thought we had a resolution to the water dispute between the County and City yesterday afternoon, but he learned around noon today that the efforts had not been successful. He stated that the proposal made to the City which required amongst other things a term of five years and they would pay \$71,000 for two 10" taps and one 8" tap was rejected by Mr. Olson. He noted the tap fee is in accord with the County's tap fee schedule.

Mr. Olson sent a letter to County Manger Bunch this morning in response to the County's offer. The letter requested the City be granted at least 30 days to consider the proposal for commercial water services. Mr. Olson said his initial review of the document leads him to conclude that the amount the County is proposing for tap fees should not apply pursuant to the Halstead Boulevard Area Extension Agreement. Mr. Olson also has concerns with the term of the agreement. The letter went on to say that under the Halstead Agreement the County owns the main line and the City owns all valves and the County cannot touch the shutoff valves. He said he has been advised that Elizabeth City Police officers are sitting at the valves currently. The City asked that all impact fees be waived since the City is paying for part of the Halstead Boulevard line and the 24" finished water line from the plant. The letter stated it is the City's position that they have an ownership interest in those lines.

Attorney Morrison said the letter went on to say that Attorney Morrison stated on several occasions during his arguments if Judge Sumner voided the water purchase contract the County will be required to terminate the service. It said Attorney Morrison was probably not aware of the agreement dated August 6, 1980, which was executed by the County and City and is still in effect. He noted Mr. Olson is correct, he has never heard of a 1980 agreement. He asked if we already had an agreement on the sale of water why we went through everything we did from 2006 to 2010 to prepare a new agreement. The City sent a copy of the agreement to us today. Ironically, the agreement was signed by the Mayor and Chairman, as well as the City and County Clerks, but there is no pre-audit stamp attached to it and it says the County agrees to make available to the City up to a maximum of 500,000 gallons per day of water treated for drinking purposes and being of drinking quality at connections with the County system at locations shown in Exhibit A and designated as the County's supply point. Unfortunately, he added it does not have an Exhibit A. Mr. Bunch inquired with Mr. Olson and he does not have Exhibit A either, but he is looking for it and is trying to determine if there was a pre-audit certification. He stated it appears to him the language stating "at connections with the County system" is not applicable because there were no connections at Halstead Boulevard. The contract however does lay out a formula, which is on production and not capacity, which is what the County has been contending all along.

Mr. Morrison stated that a letter was hand delivered to Mr. Olson shortly before the meeting asking what the City's position would be if the Pasquotank County Board of Commissioners omitted the term obligation, as well as the tap fees from the Interlocal Agreement for Commercial Water Service. Mr. Morrison advised the Board to waive the term limit, as other commercial customers are not required to do so. He assured the Board that they are not bound to the letter, but he wanted to see what the City's response would be. City Attorney Bill Morgan and Manager Olson returned a call to Mr. Morrison informing him there was nothing in the letter that seemed to cause them problems.

Mr. Morrison reiterated he has not told them that the county should amend the policy, only that he would lay it out before the Board as an option. Mr. Bunch explained that the existing infrastructure is in place, which makes this factor unique to this case. Attorney Morrison advised releasing the tap fees is better than further litigation and exposing the community to water cutoff. Mr. Morrison said another option is to cut the water off. He stated that it is his understanding the City believes all five valves belong to them.

Commissioner Parker said she does not think the Board should let \$71,000 stand between the health, safety and welfare of our citizens. She asked where the agreement from 1980 comes into play. Mr. Morrison said he does not think the Board should take the agreement into consideration when considering the new contract, because it is his opinion that the document is not pre-audited and does not have the attached exhibits, and therefore it should be treated as nonbinding and void. He said it is the identical situation we just spent the last two days in court arguing.

Commissioner Perry feels the County did not create this problem, it is the City. He said the City had choices and elected to take this road. Chairman Winslow said plain and simple the City did not pay their water bills. He said this has been a nightmare for the people that have been involved in this dispute.

Attorney Morrison stated that he cannot help but reflect upon the irony that the reason we are all here is because the City said we did not have a contract from the beginning. He explained there were two issues in the summary judgement motion. The judge did not say we could not prevail or lost our case; he simply said there was an issue of fact that the jury would have to decide. He said it was the City's argument that there was never a contract and if there was never a contract there is nothing to be ambiguous about and it is over. Because the City asked the judge to determine there was no contract, we cannot make a gift of the water. Staff conferred with the Division of Water Quality and asked for instruction regarding the situation. DWQ asked the County to wait 48 hours to see if they could find any exceptions and they could not. As we speak, Pasquotank County is giving water away for free to the City of Elizabeth City.

Attorney Morrison stated that Mr. Olson has not told him that the City would take this deal and it is not clear to him what authority Mr. Olson has to get the agreement pre-audited. He said it is clear to him that City Council will not meet before 5 PM to debate the tap issue.

Mr. Bunch reported that he just spoke with the City Manager and the City's Attorney. He was informed that the City has written a letter in reply to what was presented. Mr. Olson informed him that he does have the authority to sign the application. The City's Finance Officer has already left for the day and he is trying to get in touch with her so that it can be pre-audited this afternoon. Mr. Olson will be delivering the application momentarily. He noted that it is not pre-audited yet. The Board agreed that there was no reason to bring over an application that has not been pre-audited. Attorney Womble suggested the Pasquotank County Commercial Rate Fee Schedule be attached to the application and pre-audited as well.

Mr. Smithson informed the Board that as of 5:00 PM today the City will no longer receive water from the Weeksville Plant. He said he needs to know what the policy is for future taps in the Halstead Corridor. Chairman Winslow said we also need to know who owns the valves in the corridor.

Motion was made by Frankie Meads to enter into a commercial contract with the City of Elizabeth City for water services, with the City paying \$71,000 for tap

fees in equal payments over a 12 month period. The motion failed for lack of a second.

After some discussion;

Motion was made by Jeff Dixon, seconded by Bettie Parker to enter into a normal commercial contract with the City of Elizabeth City for the service of water and waive the \$71,000 in tap fees, due of this being a unique case.

After some discussion;

The motion failed 3 to 2, with Commissioners Meads, Perry, and Winslow voting against the motion.

Attorney Morrison said the only approved instructions the Board has given staff at this time is to turn the water off at 5:00 PM. No guidance has been given regarding the contract. The Board discussed extending the cutoff date and time.

Motion was made by Jeff Dixon, seconded by Cecil Perry to extend the cutoff time to Wednesday, April 20, 2016 at 5:00 PM in order to give staff additional time to negotiate the contract. The motion carried unanimously.

After additional discussion;

Motion was made by Frankie Meads, seconded by Jeff Dixon to enter into a commercial contract with the City of Elizabeth City for water services, with the City paying \$71,000 in tap fees in equal payments over a 16 month period. The motion carried unanimously.

Mr. Smithson was instructed to turn off the conventional water coming from the Weeksville Plant today at 5:00 PM.

Chairman Winslow asked if there was any further business to come before the Board. There being no further business, he asked for a motion to adjourn the meeting.

Motion was made by Jeff Dixon, seconded by Bettie Parker to adjourn the meeting. The motion carried and the meeting was adjourned at 11:00 AM.

CHAIRMAN

CLERK