

**PASQUOTANK COUNTY, NORTH CAROLINA
DECEMBER 4, 2017**

The Pasquotank County Board of Commissioners met today in a work session on Monday, December 4, 2017 in the Community Room at the WC Witherspoon Memorial Library.

MEMBERS PRESENT: Cecil Perry, Chairman
Dr. William R. Sterritt, Vice-Chairman
Jeff Dixon
Lloyd E. Griffin, III (*arrived 2:15*)
Joseph S. Winslow, Jr. (*via telephone*)
Frankie Meads

MEMBERS ABSENT: Bettie J. Parker

OTHERS PRESENT: Rodney Bunch, County Manager
R. Michael Cox, County Attorney
Sheri Small, Finance Officer
Lynn Scott, Clerk to the Board

1. DISCUSSION ON DISTRICT ATTORNEY/PUBLIC DEFENDER SPACE:

The work session was called to order at 2:00 PM by Chairman Perry who called on Judge Marion Warren, Director of the North Carolina Administrative Office of the Courts (NCAOC). Judge Warren thanked the Board for the opportunity to address them. He added that he also appreciates the time the County Manager and Chairman spent with him on a previous occasion discussing what can be done to avoid what they see as not only bad public policy, but a disservice to the citizens of Pasquotank County and to the area as a whole.

Judge Warren said he is more than happy to talk about facility fees and how fines, fees and costs are divided between municipalities, police departments, the state, and local governments. He said it is his understanding that there was a consortium or a contract prior to him becoming the director. He apologized for arriving late, because he believes there has been some board action on this issue, as well as correspondence, but as soon as he saw the proposal he felt it incumbent to come and speak to the Board. He said when he realized that we had several counties that were no longer participating in the consortium or the agreement that we had previous to the great recession, it became abundantly clear that there had to be action taken here in Pasquotank County. He said it comes down to equity. He stated that the County Manager and Chairman made an unassailable case about equity for the people here in Pasquotank and he cannot argue with the decisions being made by the Board as they relate to financial integrity and responsibility and making sure that a deal is a deal, but as he understands it there is no written memorandum, contract or agreement.

Judge Warren said in doing so, however counties relate to themselves as independent local governments, he cannot do much about that, but what he can do is explain what kind of impact it would make upon the folks here, not just in Pasquotank, but across the district if we take one part of the criminal justice system (the public defenders) out of their current location and put them in the same building as the district attorneys. He is not concerned with how the county allocates its space, but when the county considers taking the public defenders from whatever space they have and putting them in with the prosecutors that's when he becomes concerned. He added that putting the public defender in the same building where we put the primary law enforcement agent (Sheriff) for the county gives him even greater concern. He asked the Board to think about it. If an individual is charged with a crime, whether they are using a back entrance or a side entrance, more likely they will use the larger, commonest parking lot between the library and public safety building. Imagine a victim being interviewed seeing the person that they have accused coming into the very same building. He said that is bad enough, but put the shoe on the other foot. Imagine that a person accused or charged of a criminal offense having to go into the very same building of the folks that arrested them and will prosecute them.

Judge Warren stated that he understands that staff has tried to make accommodations by taking the back half of the building and making an entrance on the side street and making it self-contained, but he thinks bringing criminal defendants into the same building as the person that is going to try to secure a conviction against them and with witnesses being interviewed is a bad

idea. He said being a lawyer since 1991, he has tried, as a lawyer and as a prosecutor, tens if not hundreds of cases and what he has had in most places is difficulty keeping jurors, defendants, and prosecuting witnesses out of the same place during the trial. It is more problematic before charges have been brought or immediately after charges have been brought and the investigation is still ongoing and these three groups of people all converging in the same location.

Judge Warren said for years he has been on his county's capital projects task force, as well as planning/zoning boards, chair of the hospital authority, and chair of the board of trustees for the local hospital so he understands constraints of time, money and space. He noted that he would not have come to the Board if he did not have some suggestion to ask to resolve this problem. He feels it would be more advantageous if instead of moving law enforcement away from their primary provider of legal assistance (DA), he would suggest that Mr. Maher, the Executive Director of the Indigent Defense System (head of public defenders across the state) agree to move the public defenders off of the campus if the space in the courthouse needs to be reallocated in some other fashion. If there is space here in the county that the county has access to that we can reallocate to the public defender, he would be more than happy after having spoken with County Manager Bunch and Chairman Perry to try to assist Pasquotank County in the refurbishment or rehabilitation of the space to allow the public defender to have a law office in which they can speak to their clients and witnesses without fear of being targeted or singled out. He noted that he does not have a statutory responsibility nor does he normally have the funds to do something like this. He said he is in a position to provide some financial assistance to the county to address the equity issue that was brought to his attention by Mr. Bunch and also to facilitate a separate space that can be used by criminal defendants without harming, reducing, or decreasing the space that the prosecutor has to interact with the Sheriff. At no time would he ever wish to put the Sheriff in any position of losing any of their space as well. He added that he certainly would not wish to have to put lawyers in positions to file motions against a Sheriff about space, parking, sight and sound. He said we already deal with those with civil commitments and with juveniles in the county jail. He would not wish to invite any of those troubles by putting all three in one spot.

Judge Warren said if the county can find space he would like to rehabilitate the space and make it suitable for a legal style defense office. He stated that he had the opportunity to see space at the Edgewood Center and found it to be a pretty awesome office space when compared to some spaces. He noted that it is a little further from the courthouse, but it has parking. He would not dare try to select a site, he is just here trying to render assistance and prevent any future problems.

Chairman Perry said the Board's concern is being compensated for lost revenue due to some counties no longer contributing to Pasquotank County. Judge Warren said he is incredibly sympathetic. He would defer to our County Attorney, but he knows of no way to enforce an informal agreement that was done a decade or so ago on a handshake, a trust, and a smile and was not reduced to writing nor does he have any statutory or inherent authority to redirect the facility fees from other counties to Pasquotank in any way.

Commissioner Dixon said this has been going on for thirty or forty years. During the recession, Chowan was the first county that up and said they were no longer paying. The County Manager at that time made it known and all the other counties followed suit. He noted that Perquimans and Camden Counties are the only counties still contributing. When he was chairman he went to Representative Steinburg because he feels the only way something is going to be done is by special statute. He believes there is a statute on the books that made counties in District II pay their share. He knows it is political. He stated that the district attorneys have made it clear that they want to stay together. He said taxpayers are asking why we are housing Currituck's public defenders.

Judge Warren said whatever the Board wishes to do to address the thoughts of legislation, he understands. He asked that the Board have their attorney and manager look at the national conversation on fines, fees, and costs and also what people are looking at with facility fees. He said it is not that the County is being forced in the Second District, what it did was reassign the facility fees. If that is what this Board wishes to pursue, he has no difficulty with it because it is the prerogative of the Board. He said he does not have the ability to redirect the funds, because they are set by statute. As far as enforcing the agreement, he does not believe that it is forty years old. He noted that the current judicial branch is less than fifty years old. The Court of

Appeals and the District Court was formed in 1967. The AOC was formed in 1966 to support it. It went through in a constitutional amendment in 1968. It was all implemented by 1972.

Judge Warren said his request is a good government request. He understands that after it is all said and done, Pasquotank County will be housing Chowan, Perquimans, Currituck, Gates, and Camden. He said County Manager Bunch made it abundantly clear that the people in Pasquotank County believed that they were doing a very good turn and now because of the short sidedness of other local governments some in the community may feel they are being taken advantage of. He said that is why he came here asking that the Board use space that is already existing, in a building that we already own, that the lights are already on and has a common HVAC system that he will do what he has under his resources and authority to pay for refurbishment and up fit to make it a suitable office for the people that serve the criminally charged in this county. He noted that he is not using the money of Chowan, Perquimans, Gates, Currituck, Camden, or Pasquotank, but is using money from the people that call North Carolina home, all ten million of them. He asked is it right because of three counties that have given us a difficult time. He answered no, but it is the right thing to do. He is willing to spend ten million folks money to help the people here in Pasquotank County and he would really appreciate the Board considering this as a solution to an otherwise difficult problem. He asked that we consider this as a solution so that we do not have to put our other servants at a state level in the uncomfortable and/or uneasy position in these most tumultuous of times to advocate for something that may not be in everyone's best interest in this district. He is trying to give the Board the opportunity to solve something and best serve the people, not only of this county, but our tri-county consortium.

Judge Warren stated that he is bringing nothing more than our good graces and his offer to pay some money to make it work. He noted that it will not be recurring dollars. He said if the county decides to reassign the money once he signs it over to the county, as long as it will stand the scrutiny of state auditor, he has no difficulty with it. He noted that an offer such as this cannot be found anywhere else in the state and it is for this situation, because after speaking with Mr. Bunch on the phone and learning of the equity of the situation, he has tried to carve this out and craft this as a solution. He said original, unfunded mandate states that in order to be a county, you must have a court and provide space for the states employees.

Commissioner Meads asked Judge Warren if he would send a letter to the counties that no longer participate financially asking them to reconsider. He said he has no difficulty doing that, in fact he said he would do better than that. He said if the Board will seriously consider his offer, he will get in a car and go to the three counties.

Judge Warren said the closest thing to this is the 30th district. They actually memorialized their agreement. The statutory exception is a redirection of the facility fees and he would repurpose money and bring it to the general assembly's attention that we would be repurposing nonrecurring funds to assist in this particular problem. He thinks it is unique and it is a problem. He said he had the opportunity to read our budget as released by our administrators. He noted that \$41,000 of Pasquotank's budget is real money. He knows what he is asking, but this is the best way he knows of without harming anyone to bring a solution to this problem. He noted that he does not have a Plan B. He said it is not that he has not tried to think of a Plan B, but he will be glad to write letters and have the county manager and attorney review it. He will first discuss it with his chief justice. If he finds it suitable, he will be more than happy to mail it or get in the car and go talk to folks.

Judge Warren stated that Mr. Bunch has been very kind and generous with the time that he has given him.

Vice-Chairman Sterritt asked if there is space available at Edgewood Shopping Center. County Manager Bunch noted that there is a vacant space between the Board of Elections and the hallway that goes to the Red Cross.

County Manager Bunch stated that Judge Warren has offered a good way to use space that the County already has, but we will not receive rent payment. Judge Warren noted that the current public defender space has a vault. He said the highest, best use of a vault is to put sensitive records in it such as special proceedings. Chairman Perry said he thinks the idea is great, but the County will be in the same situation it is in currently.

Commissioner Griffin read Section 7A of the statute. He said according to him, it states that each county is to provide a facility for district attorney and public defenders. Based on the law there are some exceptions, such as Alamance County. However, we are not receiving court facility fees from any of these counties. He explained that Perquimans, Camden and Pasquotank Counties are using general budgeted line items to support this. Finance Officer Small stated that we are using facility fees, but noted that we do not get enough facility fees to cover all the cost. Commissioner Griffin said at the time the county manager made this decision, Chowan County was having some economic hardships because of budgetary issues. He said the district attorney feels that Pasquotank County is a regional facility for all of his attorneys however when Dare County built their new facility they provided space for the DA and PD office. He believes there was a letter written a few years back about bringing other public defenders to Pasquotank County and a letter was submitted back under protest to the public defender at that time. He said his opinion is, if each county is supposed to provide this service and each public defender is supposed to have their own space, the three counties not paying their share should be asked to be removed from our facilities. He said we are partnered with two other counties that are paying their share. The other three counties should provide space for their people and records. They receive facility fees to support this. He said he is concerned about public safety if the public defender's office is moved to the Edgewood facility. He thanked Judge Warren for his offer to help rehabilitate Edgewood Center, but he feels if the number of people were less, we would not need quite as much space for them.

Commissioner Dixon said he has been told by members of the Chowan County Board of Commissioners that they have space in their courthouse to accommodate their people and Currituck County does as well, but the system wants them to all stay together. Judge Warren stated that Pasquotank County has superior facilities. He asked the Board to take a look at caseload and where most of the prosecutors and public defenders spend most of their time. He said the Board's point is well taken and he will be more than happy to address a letter or speak to them in person. He said he cannot help what happened six years ago but he will help in any small way that he can for us to make a good public policy decision.

Judge Warren explained that our facility fees are based upon the number of cases that are brought here in Pasquotank County that are processed and completed through resolution of guilty pleas and in a number of places dismissals, but generally guilty pleas. Facility fees are a formula that is based upon the payment of fines, fees, and cost in the courthouse. He said the County will be able to redirect and use the \$41,491 that we received last year as long as it is allocated for judicial branch support.

Vice-Chairman Sterritt said we need to look at what is best for the citizens of this rural area.

Commissioner Griffin said the administrative law clearly states that each county is supposed to provide facilities for their staff. Judge Warren asked what would you do if the space is a mold infested 6 x 4 office. He said to him mold remediation requires new construction. Commissioner Griffin said that is exactly what we did when we built the new public safety building. He said it was all good until six years ago. He said he feels Judge Warren's offer is a Plan B more than a Plan A. He said Plan A should be what is written in law.

Attorney Cox asked if there are other statutes dealing with this. Judge Warren noted that there are four or five and he would be glad to send him a memorandum with the information, as well as the scholarly work based on Alamance County to better help him inform the Board.

Commissioner Griffin thanked Judge Warren for his gift, but the other three counties need to participate on an annual basis.

Vice-Chairman Sterritt asked if the Board should leave it the way it is. Judge Warren said no, he believes that we may have space allocation issues. He said he is not presuming to tell the Board what to do, he is bringing an offer. As far as the risk part, he said that is the county's attorney, manager, finance officer and clerk's discussion. He asked the Board to do the right thing when nobody else is.

The Board thanked Judge Warren for his time and information. Chairman Perry noted that it is still unclear to him why the other counties feel they should not contribute.

2. COUNTY MANAGER SEARCH:

County Manager Bunch provided potential interview questions for perspective county managers and asked the Board to review them and select five or six questions from the list or to come up with additional question prior to our next work session on January 8th. He suggested having staff review the questions as well because they know what this person does on a day to day basis and may offer additional questions. He noted that seven applications have been received to date. He welcomed the Board to come in at any time to review the applications.

The work session was adjourned at 3:20 PM.

CHAIRMAN

CLERK TO THE BOARD