

The Russell County Commission  
Meeting Minutes  
April 25<sup>th</sup>, 2012  
9:30 A.M. EDT

Public Comments:

Recreational Director Mike Parker announced the Multipurpose Ball Field is complete, and it was finished approximately \$3,000 under budget. The first game to be held on this field is May 1<sup>st</sup>. Mr. Parker thanked everyone for their support.

An adjourned meeting of the Russell County Commission was called to order. Members present were: Chair Peggy Martin, Vice Chair Cattie Epps, Gentry Lee, Ronnie Reed, Mervin Dudley and Larry Screws, Tillman Pugh was absent from the meeting. Also present was County Attorney Kenneth Funderburk and County Administrator LeAnn Horne, who kept the minutes.

A quorum was established.

Chair Martin added a business item to the agenda; Dr. Ahmed's road expense for new business located off Hwy 165 and requested a motioned to approve the meeting agenda with the added item. Commissioner Dudley motioned to approve the agenda and was seconded by Commissioner Reed. The vote was unanimous.

The invocation was given by Tommy Poole, Pastor of the Pine Grove Baptist Church.

The Pledge of Allegiance was led by Chair Martin. Afterward she welcomed elected officials, department heads, media and visitors.

Chair Martin requested a motion to approve the April 11, 2012 meeting minutes. Commissioner Lee motioned to approve the minutes and was seconded by Commissioner Dudley. The vote was unanimous.

Commissioner Epps introduced David Hicks from David Hick & Associates, Inc, who presented a proposal for different types of sewer systems and the requirements for each system for the Fort Mitchell Area. He stated there are grants available for sewer projects. Mr. Hicks will return in two weeks with cost for the systems.

County Engineer Larry Kite had several items to present

- Update on the Surplus Pothole Patcher. Mr. Kite contacted J M Woods Auctions, who said they could guarantee \$14,000 for the pothole patcher but found that Butler County was willing to buy the patcher for \$25,000; therefore, it will be sold to Butler.
- Resolution & letter of Intent for the Striping /Marking on Sandfort Road.

This project is part of the High Risk Rural Road Grants which was estimated to be \$133,000 with a County Match of 10%. This project must have a letter of intent and resolution now, but the match will be budgeted in the next fiscal year. Commissioner Lee motioned to approve the letters of intent and the resolutions. Seconded by Commissioner Reed. The vote was unanimous.

- Request for "\$6 Rule" on Caldwell Road. Commissioner Dudley discussed the request with Mr. Kite concerning 475 feet at the end of Cadwell Road that two citizens are willing to pay \$1,710 to have this section paved. The rule states that citizens who pay a portion of the paving, is given a high priority for the project. This does not guarantee the project will be completed within a specified time frame. Commissioner Screws motioned to approve and was seconded by Commissioner Epps. The vote was unanimous.
- Resolution to Change Classification of Designated Road. Mr. Kite wants to change the certain roads with ALADOT which he feels meets the criterion to change from local roads to major collectors of traffic. The status change will allow use of Federal Funds for maintenance. The roads listed for status change are: Owens Road, McLendon Road, Cutrate Road, Allen Road and Price Road. There is no funding available at this time, but when the time comes these roads will be in line, if approved by the Federal Hwy Administration. Commissioner Epps motioned to approve the road status change. Seconded by Commissioner Dudley. The vote was unanimous.
- Authorization to Solicit Bids for Used Water Truck. Mr. Kite would like to declare a 1970 AM General army truck as surplus, because it does not fit their needs for current operation. He would like to sale the truck by auction to the highest bidder. The sale of this truck will help purchase another used water truck that will fit their needs and will be equipped with a jetter pump for cleaning out storm drains. This truck is estimated to cost \$40,000-\$50,000. Bid Opening for the old truck is May 31 at 10:00 a.m. EST. Commissioner Screws motioned to approve the bid opening and was seconded by Commissioner Dudley. The vote was unanimous.
- Request for Approval to Designate Ellison Drive as One-Way Road. Ellison Road was listed in the dirt road paving program in this fiscal year's budget and is near ready for paving. It meets the County's Dirt Road Policy criterion that was approved by the Commission September 2011 for a limited use road which will be paved 12 feet wide. Houses on this road are close to the roadway which makes it impossible to acquire rights of way for widening. Ellison Road does connect two paved roads. Therefore, we are requesting for this to become a one-way road to allow for it to be safely paved as the 12 foot width. He also requests to post 25 MPH speed limit signs at the beginning of Ellison Road. Commissioner Screws motioned to approve Mr. Kite's recommendations and was seconded by Commissioner Dudley. The vote was unanimous.

County Administrator LeAnn Horne stated the Commission had approved a commercial project at the corner of Hwy 165 and Owens Road up to \$60,000 for an access lane. Dr. Ahmed has submitted invoices to obtain the approved

amount; however, those invoices exceed the \$60,000 and total \$62,429.50 due to required changes. This is not a budgeted item and a request for a budget amendment will be required if approved by the Commission and if Mr. Kite approves the completed project. Commissioner Epps motioned to table this item until Mr. Kite can inspect the project and return with a report for the Commission. Seconded by Commissioner Screws. The vote was unanimous.

County Attorney Kenneth Funderburk stated that a letter was received from The City of Phenix City in response to the County letter concerning sewerage. If the Commission goes forward with the City on the sewerage project; they will require the County to have additional engineering at the pumping station. The City also states they will not reduce the \$5,000 tap fee.

County Attorney Kenneth Funderburk gave a time-line and a memorandum to the County Commission relative to Garbage Services to explain issues that have not been resolved. He requested these items be a part of the permanent minutes. **\*\*time-line and memorandum will be inserted at the end\*\*** The Commission may be personally liable if you don't cover your legal responsibility of oversight which in this case has not been happening. The last four years we have tried to work these issues out, since the Water Board is the one who came to the Commission with a lot of complaints. There have been a lot of meetings with no progress. In fact what has happened has been to the contrary. It is obvious the Water Board has no intentions of following the resolution that this Commission has passed.

The Water Board had a meeting on January 18<sup>th</sup>, 2012 and at that time the Water Board raised the amount of money that they were pulling out of the garbage reserves which are County Commission funds. The amount went from \$7,000 to \$18,600 a month which is totally unjustified to date. There are other charges in there I feel are not justified and if they are wrong in that it will be the Commission's personal responsibility because we have had a Resolution since 1973 which has not been enforced.

Now there is a situation where the Water Board has raised the fee without telling the Commission and they did not have the authority to do so. Not only have they moved Mr. Dabbs from the Water Board and have hired someone else to run the Water Board; they are moving the Garbage Department over to the Sewer Authority, which they do not have the authority to do without the Utility Board approval. The basic problem is the County is responsible for money that is collected for garbage fees and the way it is spent.

At this point you can take this information and go forward or just keep doing what you are doing which is not a viable solution. Also you are doing it at your own personal risk. There are many viable options, but one option you don't have is to continue to do what you have been doing. You have to fulfill your legal responsibility.

My recommendations are as follows:

- The Commission immediately takes the Solid Waste Department from the Water and Sewer Authority.
- Take all funds and accounts that are related to the Solid Waste Department
- Place this function under the Utility Board which will be operated under the Administrative side of this County Commission
- Temporarily for 30 days until the Utility Board has a chance to come back with a more permanent solution.
- Hire Kevin Dabbs at his present salary for 30-45 days
- Kevin Dabbs may hire 2 girls whose salaries are not to exceed \$20,000 annually.
- The Utility Board is to come back with a permanent recommendation of who will fill the position and at what salary and a budget

Essentially if the Commission approves my recommendations Kevin Dabbs will take the business over immediately. The old utilities building, which belongs to the Commission, is in good shape but will take a week or two to be ready for occupation or the Garbage can operate out of the courthouse until the building is ready.

Commissioner Reed motioned to accept the County Attorney's recommendation stated above. Seconded by Commissioner Epps.

The County Administrator reviewed steps that were stated. We are now establishing a department under the County Commission; Mr. Dabbs will be reporting to the Commission and the Utility Board; the garbage (utilities) employees will now become County Commission employees. Is this correct?

Mr. Funderburk stated: That is correct.

Chair Martin asked how the billing would be done.

Mr. Funderburk said: It would be done by the Solid Waste Office by their personnel.

Commissioner Screws asked since there will be a 30 -60 day trial will those employees be in only that length of time or would they become permanent.

Mr. Funderburk stated: The temporary part was making sure they are housed and determine if it is two or three employees. This is just a starting point.

Administrator Horne stated she would need authorization to work with Mr. Dabbs to transfer and set up utility bank accounts under the Commission so these employees can be paid until we can transfer them to the County Commission.

Mr. Funderburk stated: This recommendation would empower that. They will have to operate through this wing of the Administration which is you.

Chair Martin asked the Administrator to poll the Commission: District 1 (Lee) voted, no; District 2 (Pugh) was absent; District 3 (Martin) voted, yes; District 4 (Reed) voted, yes; District 5 (Epps) voted, yes; District 6 (Dudley) voted, no; District 7 (Screws) voted, yes. 4 yes votes and 2 no votes the motion was passed.

### **Timeline**

- *1973 Resolution adopted by Commission who contracted by resolution with Russell County Utilities to manage garbage services for the County*
- *January 18, 2012—Water Authority amends Utility (Garbage) annual budget increasing transfer from \$7,417.50 to \$18,600.00 monthly for a total of \$223, 200 per year*
- *January 25, 2012—Commission approval to expand Utilities Board with 2 new members and amendment to resolution approved in 1979*
- *January 27, 2012—Utility Board Meeting with new members and overview of 1979 Resolution, Board duties and responsibilities*
  - Note: Department transfer reported in Utility Board Minutes (1-27-2012) was reported at \$11,000 and that office workers are not paid by garage revenue.*
- *February 17, 2012— Utility Board Meeting*
  - *Board agrees Utility Board sets(garbage services) budget*
  - *Excess funds to be provided to County Commission*
  - *A monthly financial accounting sent to Commission*
  - Note: No mention of the transfer of \$18,600 increasing to Water Authority or that contract discussions were being held considering hiring Clear Water Solutions to manage Utilities (water and sewer) or hiring additional manager.*

### **Memorandum to County Commission Relative to Garbage Service**

#### **A. History:**

*Enclosed with this memorandum is the updated information giving the full history which establishes the Water Authority operation directives relative to garbage service in Russell County. We should note that in January 2012, the Water Authority increased the amount they were charging the garbage funds to operate the garbage business from \$7,417.50 a month to \$18,600.00 monthly. This information was not provided to the County or the Utility Board, and was only discovered in April of this year. This increase was an arbitrary increase and is not supported or justified in any way. We recommend that you read through the documents which have been provided in the package so that you may be up to date on what has been authorized and what has not been authorized. The Commissioners have personal knowledge that at no time in the past few years*

*has the Russell County Commission required any accounting or approved wages or done anything else in furtherance of its resolutions.*

*i. Based on complaints from the water system over the past several years, regarding their dissatisfaction with the garbage service, there have been ongoing discussions of their complaints resulting in no progress.*

*ii. The County has failed to enforce its existing resolutions dealing with garbage and has exercised no control over County funds derived from garbage fees which are presently in the absolute control of the Water Authority.*

*iii. The Water Authority has failed to follow resolutions of the County and has overtly avoided the County's authorizing resolutions. At the present time, the Water Board has essentially abandoned its agreement with the County as evidenced by the information provided in the supporting package.*

*B. Issue: The issue is the County's legal responsibility for garbage service and their legal duty to control charges and expenditures.*

*C. Problem:*

*i. The basic problem is that the County is responsible for money which is collected for garbage fees and the way it is spent.*

*ii. It is the responsibility of the County Attorney, as well as the Administrator, to advise the Commissioners of any problem that may involve the potential personal liability of the Commissioners.*

*iii. Once we have informed you of the problems, it is then your responsibility to address the problem, or ignore it at your risk.*

*D. The financial risk to the Commissioners is specific:*

*i. The County is responsible for all expenditures of County funds.*

*ii. Garbage is a County mandated function.*

*iii. Under the existing system, all money in the garbage account maintained by the Water Board belongs to the County.*

*iv. The County has approved no budgets for garbage collection which is operated by the Water Authority.*

*v. The Water Board has more than doubled the fees being charged against the garbage funds without permission of the County Commission.*

*vi. The audit of the Water Board and Utility Board for 2011 provides no justification for an increase in charges for garbage business. The increase from \$ 7,417.50 to \$18,600.00 is arbitrary and unjustified.*

vii. *All public funds in the garbage accounts belong to the County and are being used without permission and without your oversight.*

viii. *Changing the Federal ID number, which it appears the Water Authority is going to do, will not relieve you of your responsibility for the expenditures of funds derived from garbage collection.*

E. *It is my legal opinion based on the law and the facts, that you have available to you the following options:*

i. *If you do nothing but leave matters as they presently exist, you do so at your own personal risk. Essentially, all expenditures made by the Water Authority are in contravention of existing County Resolutions and are therefore questionable, even if justifiable. You can not escape the Commission's responsibility for properly managing public funds.*

ii. *You can (and should) demand that all funds that are held in the garbage account be immediately turned over to the County, along with all funds being collected for garbage service in the future. The Water Authority can then bill the County monthly by invoice which the County will pay all or part thereof based on a detailed examination of the invoice.*

iii. *The County may follow "ii" on a temporary basis while a longer term solution is developed.*

iv. *Follow "ii" and then contract out the service based on competitive bids.*

- a. *Sell the equipment; or*
- b. *Lease the equipment;*
- c. *Lease the shop.*

v. *Take over the garbage service and collection.*

- a. *Hire Kevin or a manager.*
- b. *Move office to Courthouse.*
- c. *Need possibly three (3) ladies in the office.*
- d. *Based on our research, this method would be substantially cheaper than what the Water Authority is presently charging the County, without its approval, for operating the garbage service*
- e. *Replace all Water Board members on the Utility Board with new appointees.*
- f. *Utility Board to be in charge of garbage.*

vi. *The County may also consider taking over the service and eventually adding the yearly garbage bill to the land owners to their ad valorem*

*tax bill. This would be similar to what Lee County does, without changing the present method of collection which is a pick up service.*

*vii. Provide the same type of garbage collection service as provided by Lee County which also collects the yearly bill through the tax office.*

*In conclusion, the County has several viable solutions for handling its mandated obligation to collect the county garbage. The present system is not a viable solution. The County ignores its own resolutions and exercises no control over the public money in the garbage account. The water system also refuses to follow the County resolutions and is charging the public funds excessive fees. The water system refuses to present the garbage budget to the County and has resisted efforts to get a proper accounting on the actual costs of rendering the garbage service to the County by attempting to turn the garbage over to the Sewage Authority which has no agreement with the County. Finally, the Water Authority has abandoned its agreement with the County. Continuing the present system, therefore, presents to Commissioners the risk of personal liability. Adopting one of the workable and viable solutions is highly recommended.*

*Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2012.*

*FUNDERBURK & LANE*

*Kenneth L. Funderburk, Attorney for  
Russell County*

Sheriff Taylor stated Reverend Mac Ballard has invited the Commission to attend the ribbon cutting for the new church at 89 Sweet Water Branch Road on May 6<sup>th</sup>, 2012 at 4:00 p.m.

Commissioner Dudley announced the Dollar General in Crawford has recently opened for business.

Chair Martin announced the Commission has been invited to attend the annual Legislative Days Meeting in Montgomery May 2<sup>nd</sup> & May 3<sup>rd</sup>.

Meeting adjourned.