

The Russell County Commission  
Meeting Minutes  
May 9, 2018  
9:30 A.M. E.D.T

An Adjourned meeting of the Russell County Commission was called to order by Chair Peggy Martin.

The invocation was given by Reverend Steve Reneau, Trinity United Methodist Church.

The Pledge of Allegiance to the U.S. flag was led by Commissioner Chance Corbett.

**Public Comments:**

Ms. Janie Potts from the Crisis Center of Russell County announced they are partnering with Children and Family Connection of Russell County, Inc. to host a Golf Tournament May 18, 2018, Check in time 11:00 A.M. All proceeds go to both the Crisis Center and Children and Family Connection.

Mik Cole announced the FOP Breakfast on June 2, 2018, 8:00 A.M.-11:00 A.M. at the Fletcher-McCollister Post 135, 511 13<sup>th</sup> Street. Sponsored by FOP Endorsed Candidates. Meet the Candidates and get the Best Pancakes.

Administrator Horne called the Commission roll. Members present were Chair Peggy Martin, Vice Chair Carl Currington, Gentry Lee, Ronnie Reed, Cattie Epps, Chance Corbett and Larry Screws. Also present was the County Attorney Kenneth Funderburk and Assistant County Administrator Vickie Perry who kept the minutes.

A quorum was established.

Commissioner Lee motioned to approve the April 11, 2018 and April 25, 2018 meeting minutes. Seconded by Commissioner Currington. Assistant County Administrator polled the Commission; the vote was unanimous.

Commissioner Corbett made a motion for the Commission to approve a Proclamation for Ricky Steward who is retiring from the Sheriff's Department at the next Commission Meeting to be held on May 23, 2018. Seconded by Commissioners Lee & Currington. Assistant County Administrator polled the Commission; the vote was unanimous.

**Proclamation and Resolutions:**

Chair Martin and Sheriff Taylor presented a Proclamation for National Peace Officers Day and Week. Chair Martin requested the deputies that could be present come and

accept the Proclamation. Commissioner Lee moved that the Commission adopt the Proclamation unanimously. Seconded by Commissioner Currington. Assistant County Administrator polled the Commission; the vote was unanimous.

### **Business Items:**

Commissioner Corbett stated he received an email from Sonny Brasfield from the ACCA asking us to appoint someone to serve on the 2018-2019 ACCA Legislative Committee. The change when into effect last year where there is one person from every County that serves on that committee. Commissioner Lee moved that the Commission allow Commissioner Corbett to continue to serve. Seconded by Commissioner Currington. Assistant County Administrator polled the Commission; the vote was unanimous.

Victor Cross, the County Economic and Tourism Director, gave the Commissioners some information and history on the ASA Archery Tournament. I request that we handle the ASA Archery Tournament through County Tourism if we can get Mr. Terrell to come back to Uchee Creek. Commissioner Lee motioned to approve the expenditure of the \$18,000 out of Tourism to try to bring this tournament back. This is one of the largest events I think that goes nation wide that ever happens in Russell County. Commissioner Reed seconded the motion. Commissioner Corbett asked County Attorney Funderburk is this a good use of the funds. County Attorney Funderburk stated it would be. Assistant County Administrator polled the Commission; the vote was unanimous.

Chair Martin presented Mr. Taylor to speak to the Commissioners about the ADECA Grant for the Hatchechubbee Fire Station. Mr. Taylor requested a letter of support to apply for a grant to rebuild a fire station on the south end of our fire district. I understand that we are going to move forward with a letter of support this morning and then proceed to the next meeting to finalize. Commissioner Screws stated there was a conflicting report, so he would like to table it. Commissioner Screws asked Mr. Taylor what would he like for the Commissioners to do? Mr. Taylor stated Russell County can do a letter of support and get ADECA engaged along with Southeastern and then we could find out from there what steps would have to be taken from the fire department the Commission. Commissioner Screws stated if that's the case we will do the letter and I move that we allow the Chair person to sign it along with the County Administrator. Commissioner Reed seconded the motion. Assistant County Administrator polled the Commission; the vote was unanimous. Commissioner Lee stated just for the record they are doing the entire match they are not asking us for any money. Chair Martin stated from what she understood the Commission is giving a letter of support. The fire department is to put in the matching funds. Chair Martin asked Mr. Taylor to call County Administrator Horne next week to get the letter started.

## **County Attorney:**

County Attorney Funderburk stated he would start with the Walking Trail. He stated we worked on that with Rick Chancey the School Board Attorney, and we just found out the one thing we need to add to it. I will take care of that this afternoon and bring it back for signing next meeting May 23, 2018. The other issue is litigation. These matters may be generally covered in litigation, but what I am telling you here there is things the County needs to do in addition is also in conjunction with that litigation.

The first one I will discuss is Parkman Point. There is an argument that since it is generally involving litigation, that you might take it in Executive Session. But, these matters do involve things that involve the public. Therefore, the public needs to have some idea of the conflicts between the City and the County. I can summarize it by saying the Citizens of Russell County will benefit from the actions being taken by the County Commission. Nothing we are doing, that I can calculate would adversely affect the Citizens. Among other things it would reduce their taxes, particularly those in the Police Jurisdiction and several carriers including sales tax. The first thing that some of you are aware of, particularly those who live in Parkman Point, is what has happened there, the City Planning Commission took over Parkman Point and, of course, they enforced City rules. They had the bonds posted. Basically, the road was not completed and at some point, the City decided they did not want to have jurisdiction over that. In that process the roads were not completed, and the bonds were not made payable to the County which is a requirement in that situation. It ends up with the roads not completed and the City telling the Citizens there that was in the County and that was the Counties problem. That is not legally or any other way that right.

It's the Cities problem and the City Planning Board to have jurisdiction in the matter outside the original boundary of the City. Where you have the boundary of the City and the Police Jurisdiction, the jurisdiction beyond that you have the County that has a Planning jurisdiction. In order for the City to be superior there is a list of things they have to do. One of those is that it has to be done generally in conjunction with the County Engineer has to be involved, but primary the bonds for the completion of the job and have to be made payable to the County Commission. The City had the bonds payable to themselves which is not correct and allowed those bonds to expire without applying the money and repairing the road which is the purpose of the bonds. We have notified the City that it is their responsibility to complete the work that the City undertook to control and collected the fees involved and wrongly made the bond payable to themselves. Commissioner Corbett asked, "Was there a response on that?" County Attorney Funderburk stated "No", but I gave them 30 days then I would join them to the law suit. I have them in the law suit generally, I am just letting you know the cost of that work is \$125,000. The reason the rules have to be followed and Parkman Point is a good example. When you get outside the original City Limits the County is generally responsible for roads within the County. Now where the City takes over jurisdiction and doesn't follow the rules and the roads are not completed the people in the County want to look to the County when in fact it is a responsibility of the City. So, essentially what

we are asserting with the City in a letter is that we will tell them that the City Planning Commission no longer has authority outside of their City limits for the reasons I just stated. The County Planning Commission needs to know that and understand that they are in charge of everything outside the original City limits. It is pretty simple you can't allow the City to take charge and not do right things that are going to end up in the County's responsibility. When the City turns them on the County this is wrong. It is wrong because they did not follow the rules.

Commissioner Corbett stated this project started in 2009. The comment from one of the citizens is that the City had sent a letter to the County Commissioner in that area back when they pulled their jurisdiction from 5 to 21/2 miles. The City believed that was in District 2 because they sent the caller to Commissioner Currington. It's in District 6 which is my District. I took it upon myself to talk to previous Commissioners, both Pugh and Dudley, and both said they have never had any correspondence from the City. That was the right way to do it I just think it's proper to show here there was no correspondence even with the previous Commissioners. County Attorney Funderburk stated this is one of the things the public needs to know. There is a reason that the rules are the rules and it's because the City should not be allowed to put a responsibility on the County where the County has no say so. And where the City allows bonds to lapse that are not payable to you; you have no recourse. The recourse is the Cities responsibility. The Parkman Pointe subdivision is not a legitimate subdivision and I won't run down all that but that is just the way it is.

Commissioner Epps stated at the last meeting she asked the question did a letter from the City come to the Administrators Office to the Commissioners. I thought I asked would they do some research on that. I don't know if Mrs. Perry has any information whether the office did any research on that to make sure we are in compliance with this letter that was supposed to have been set. County Attorney Funderburk stated they checked and they have not found one. The letter doesn't solve the problem. That doesn't eliminate the legal liability that they had to make the bonds payable to the County to cover exactly this. You can't assume jurisdiction and decide when you don't like it you are going to just unassume jurisdiction. Commissioner Epps stated the bonds expired. Is this what I am hearing? The bond was payable to the City and not the County and the City allowed the bonds to expire. Commissioner Corbett stated that from one of the citizens that the City Leadership that the County failed to take over the bonds. The County couldn't take over the bonds if they wanted to. County Attorney Funderburk stated that is correct. It is not the County's bond.

County Attorney Funderburk stated next essentially the sales tax in I will deal with it just in the Police Jurisdiction. The law in 2016 changed it was effective May 20, 2016 where you have lassoed communities which when you look at the map and the City has even admitted that most of these areas are outside of their original City Limits are lassoed areas. If you look at the map it is obvious they are. Whether they are annexed areas the new law says that the City cannot take with them the Police Jurisdiction. Either existing at that time or in the future. It affects existing it is retroactive.

The law being the law the police jurisdictions which the City is exercising control over under that law they cannot do it. As part of that there are two or three things we need to do. We have started one of them. First, the sales tax, essentially the County has 3 percent sales tax which the County cannot collect in the City. When there is an annexation the County gets no tax. In the police jurisdiction the County collects 1 ½ percent. In other words, we lose half of the County sales tax. We have sent to RDS a list of merchants who are affected and told them the money collected on sales tax should be forwarded to the County. We also must send a letter to the merchants and tell the same and what the tax is. That is just what we have to do to exercise our power. If we sit around and not do it, a judge or the public will say why didn't you do it sooner or tell me sooner. That is about a year and a half. I have heard the statute mentioned for two years. That does not apply in this case, in fact no statute really applies in the other case which I will argue in court. There is a two-year statute which only applies to tax payers and of course we are not a tax payer and while the tax payer's may have a right or cause against the City, eventually it does not have anything to do with the County which is not a taxpayer. We are arguing over the tax that we are due for the police jurisdiction at this stage. We will do the same on the annexed cities. So, you know we need to send the letter and exercise our control.

The two other parts to that may be more, but some of those things we don't have control over. The other is the building permits. We know because they moved the line in Ladonia where this has actually happened where we have insisted on that area out there they have to buy the building permits from the County. This letter will notify the County Building Inspection Office that anybody who builds in the police jurisdiction has to buy the building permit from the County and pass the County inspection regardless of what the City Inspectors Office does. Of course, they were going to file a declaratory judgement on that. We are already challenging that. This action needs to be taken now. The County Building Department needs to make them buy a permit and take action if they don't. Those are the main items in police jurisdiction is building permits and sales tax. Those are the actions we are taking now independent of the litigation since there are actions under the law that we should take. That covers all I can actually cover now, and we need to make sure everyone is on board since we have started with the litigation.

Commissioner Corbett stated the question about the law in 2016 for the police jurisdiction and the lassoing and the annexations were pretty clear. Even when I read it in 2016. Has the City commented or made any action toward changing that? County Attorney Funderburk stated the statute of limitations which anybody can subtract 2016 from the present date in two years, in other words the tax is continuing. There is no statute that applies to that and that is a state-wide problem. As usual, Russell County is ahead when the law changes. The law states the City's Planning Commission is superior to the County's, providing they do the certain things. They have not done them. We are under a duty that we are exercising the power of the law, and when you read that statute it is a little hard to read any other way. Of course, a judge can read it anyway he see's fit. The state has been trying to put some controls on the expansion of

the City and that particular statute was a refinement for those laws we are discussing. Commissioner Lee made a comment that if RDS happens to send the contested sales tax to the County until this matter is settled this money be held in an escrow account. County Attorney Funderburk stated he suggested that. He has spoken to RDS and they know this is a problem. The County just happens to be the first ones to essentially call it into play. We suggested to RDS that they pay it into escrow which would be better because they are in a position to do that with the court. Commissioner Reed asked how much money do we think they owe us? County Attorney Funderburk stated several million. If you don't take action based on your position on the law, the courts are not going to help much. These are matters and the responsibility you have to make sure we are abiding by the law and where there is an issue we will serve the law which is in our favor. Fortunately, the citizens of Russell County will not be hurt. It may cost the City money because the City may have asserted itself where they should not have. I have not, by any means, covered all the affects of all the taxes that have to do with police jurisdiction like the property tax and other matters that are not our issue, which are issues. The public may have a claim separate from us. I want to make sure the County Commission knows what is going on before I proceed.

Commissioner Epps wanted to remind the citizens and the Commission with the growth in Fort Mitchell and people from all over are living there now. I have received several calls about the noise and we have no control over it. They have really commended the Sheriff's Department for coming out to try and help them with some of the noise in the neighborhood. I think as Commissioners we need to look into and get a law for the noise. I realize we do live in the County, but we should also be able to live in our homes in a quiet environment. The other thing that I have received several calls on is industry wanting to come to Fort Mitchell and the zoning. If they come will they have the privilege of not having a pig pen or cow pasture in the area their business is in. I know the County can vote on what they call spot zoning, we talked about it at an ACCA a few years back. We have ignored that. I think it is time now for the Commissioners to look at this law and take a stand if we do want industry in Fort Mitchell. The way it is set up now, you can bring your business there but next to your business you can put anything next to it. If we are going to get industry in Fort Mitchell or any other area in Russell County we need to let people know they are safe and there will not be anything next to their business that will adversely affect it.

County Attorney Funderburk stated he thinks there need to be a vote on authorizing himself and the Administrator to do the list of things the Commission needs to do. I need to add an item. There is an issue the City has a list of things they will not do in police jurisdiction. One of those things they will not do is handle nuisances. Most of the nuisances over the years have been in police jurisdiction not within the City. That has been held back because that technically is not our jurisdiction. Now the County is declaring taking over police jurisdiction along with the sources of income. We may as well clarify we are going to start handling the nuisances. We need to make it known that is part of taking over police jurisdiction and we do handle the nuisances. There are many things the City won't do that we are having to do anyway and that will be one of

them. That is part of the list the Commissioners are voting so it is clear with the building inspector that when we have those complaints we will handle them.

Commissioner Currington made a motion to support what County Attorney Funderburk is working on and what he has added. Chair Martin asked County Attorney Funderburk to restate what he is working on. County Attorney Funderburk stated he is going to send a letter and do the necessary notifications on the sales tax. We will notify the City in their planning board that based on the law that they have not fulfilled those things which gives them superiority. Therefore, our planning board is going to take over the function of exercising their authority in what was the police jurisdiction. The other is we are exercising what the law says that they do not have a police jurisdiction in Ladonia and going south since all those communities are in fact lasso communities. Therefore, there is no police jurisdiction. Chair Martin seconded the motion. Mr. Friend with the Russell County Enforcement Department asked if the Commission wanted the Russell County Enforcement to handle the nuisance complaints in police jurisdiction effective today? County Attorney Funderburk stated yes, also anyone building will have to get a permit from the Russell County Building Inspection Department. Mr. Friend asked is this all the way from the city limits out or past the 1.5 mile. County Attorney Funderburk stated past the 1.5 mile. Assistant County Administrator polled the Commission; the vote was unanimous.

Commissioner Epps asked does this mean the enforcement office is going to take care of all the noise that is in the subdivisions? Mr. Friend stated "No", noise is not in there. Noise is part of something they tried to get passed before, it has to be legislated. County Attorney Funderburk stated nuisance can be anything but it has to be real serious to qualify in the noise area. The general laws the County does not get involved in unless it gets real specific. It would be highly unusual to be able to make a case out of it.

Announcements were made.

Commissioner Epps asked to put Zoning on the next Commission Meeting.

Commissioner Lee motioned to adjourn. Seconded by Commissioner Reed.

