

June 14, 2007

At the regular meeting of the Board of Supervisors of Prince Edward County, held at the Court House, thereof, on Wednesday the 14th day of June, 2007, at 9:00 a.m., there were present:

William G. Fore, Jr., Chairman

Howard F. Simpson, Vice-Chairman

Pattie Cooper-Jones

Sally W. Gilfillan

Robert M. Jones

Charles W. McKay

James C. Moore

Lacy B. Ward

Also Present: Sarah Puckett, Assistant County Administrator; James R. Ennis, County Attorney; and Sharon Carney, Director of Economic Development and Tourism.

Chairman William G. Fore, Jr., called the meeting to order.

In Re: Closed Session

Supervisor Cooper-Jones made a motion that the Board convene in Closed Session to interview a prospective candidate for employment for the position of County Administrator, as provided for in the personnel exemptions of Section 2.2-3711(A)1 of the *Code of Virginia*. The motion was seconded by Mr. Simpson and carried:

Aye:	Pattie Cooper-Jones	Nay:	None
	William G. Fore, Jr.		
	Sally W. Gilfillan		
	Robert M. Jones		
	Charles W. McKay		
	James C. Moore		
	Howard F. Simpson		
	Lacy B. Ward		

Mrs. Gilfillan left during closed session.

The Board returned to regular session by motion of Mr. Moore, seconded by Mrs. Cooper-Jones and adopted as follows:

Aye: Pattie Cooper-Jones
William G. Fore, Jr.
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Lacy B. Ward

Nay: None

Absent: Sally W. Gilfillan

On motion of Mrs. Cooper-Jones and seconded by Mr. Jones and carried by the following roll call vote:

Aye: Pattie Cooper-Jones
William G. Fore, Jr.
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Lacy B. Ward

Nay: None

Absent: Sally W. Gilfillan

the following Certification of Closed Meeting was adopted in accordance with the Virginia Freedom of Information Act:

WHEREAS, the Prince Edward County Board of Supervisors convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Board of Supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Prince Edward County Board of Supervisors hereby certifies that to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the Prince Edward County Board of Supervisors.

In Re: Sale of Property to Lowe's

Mr. James Ennis, County Attorney, said Sharon Carney, Director of Economic Development and Tourism, spoke with the Lowe's representatives to clarify their position in respect to the 1.695 acre parcel and whether or not they would agree to make an offer for the purchase of the parcel. Lowe's response was that they want to be able to restrict use of the 1.695 acre parcel.

Chairman Fore said if they do not purchase the parcel, they have no option on its use. Mr. Simpson asked for a definition of the restrictions.

Mr. Ennis said Lowe's wants several restrictions, some are absolute prohibitions, some require their consent as pertains to intended use. He said if the offer is not specific, he has to assume it would be under the original conditions. If the Board chooses to vote no, he suggested giving a counter-offer of limited use restrictions both as to the nature and duration. He added he is not sure Lowe's would continue the discussion as it now seems to be an all or nothing proposition regarding the 1.69 acre parcel, and if the Board doesn't give control of the outparcel, they may counter or walk away.

Mrs. Carney said Lowe's feels very strongly on the 1.69 acre parcel as it is in the view shed south on Route 15. She said any other business locating on that parcel would share the parking and entranceway and Lowe's would like to have some control. She said because of past experiences, they are mostly concerned with limiting the use and the height of another business on that parcel. Mrs. Carney said some uses would be moot because of the size of the parcel, and some could be negotiated and others are obnoxious uses, such as an adult entertainment facilities, landfill, auto repair, veterinarian, or crematorium.

Mr. Ennis said Lowe's also wants prior restrictions on the industrial park be waived as to the Lowe's property.

Chairman Fore said the Board should not allow Lowe's to control the rules of the entire park. He suggested making an offer stating for \$10.00, Lowe's would have the option to purchase that parcel any time in the future for the amount they paid per acre on the rest of the land that they own. He said to let that option until the Atkins property sold, at which time it could be purchased from the county. He said the 1.6 acres is an integral part of the Atkins property, and that the only thing that would lengthen or shorten the time of their control of that parcel would be the sale of the Atkins property.

Supervisor Gilfillan returned to the meeting at this time.

Chairman Fore said Lowe's wants control of everything around them, and the option to control the corner so that the land belonging to them because of the option, if someone wanted to put a business on it that suited Lowe's, then Lowe's could purchase the land for \$100,000 per acre and sell it to the prospective buyer for the current market value at that time.

Mrs. Puckett said Lowe's requested, in the purchase contract, the covenants be waived on anything they own, which is a new, separate issue.

Mr. Ennis said if that option is considered, he suggested it would be part of the consideration for the 13 acres, but not on the 1.69 acre parcel.

Mrs. Carney said the Park covenants are hard to fit to commercial industries as they were written for an industrial park, not a business park. She said the 7,000 feet restriction is what probably has them concerned.

Mr. Ennis said Lowe's doesn't seem to agree with the first refusal option. He said Lowe's is used to private developers on large tracts of land to negotiate guarantees and write agreements to give all control to Lowe's.

Mrs. Carney said the covenants may need to be looked at, regardless of this transaction, as some may be outdated and because the market climate has changed since their inception.

Chairman Fore asked if Lowe's has mentioned any other parcels, or just the 1.69 acre parcel, and if it is a "done deal." Mrs. Carney said because of the impact from parking and the driveway, it's only been just the 1.69 acre parcel. Mr. Ennis added it would accommodate an option of right of purchase, and the condition could be inserted to warranty the county would not do anything with the property in the interim inconsistent with Lowe's use of that property.

Chairman Fore said if Lowe's owns and maintains it through option for 15 years, and then something occurs on Atkins' property which wouldn't bother anything, then Lowe's could come to the County and say Atkins wants to buy this piece of property, Lowe's would give \$100,000 per acre to sell to Atkins at whatever price Lowe's wishes, and asked if that would change anything. Mr. Ennis said nothing would change providing the County re-writes the covenants, because it's subject to a first refusal that anything that they buy, if they cease business or want to sell it to anyone, they have to offer it back to the County at the appraised value. Several other options were discussed.

Mrs. Carney said the timeline has the optimum date for closing on Friday, June 15, 2007. She said if that wasn't possible, if the closing date would be by Friday, June 22, the crews would be sent to begin work. If closing does not occur by that date, the project would go into their next building year's schedule

and the option remains on the property until September 14, 2007. She said if the deal can be completed by Friday, June 22, the building would be done and Lowe's would be operational by January 2008.

Mr. Ennis said Lowe's presents a new demand each day, and the contract should have contained all agreements.

Mrs. Carney said she doesn't feel that Lowe's is trying to back out of the deal, and they haven't spoken with anyone else. She said the site locator worked on this site for over a year. Mrs. Puckett added this is the third time they've looked at the parcel in six years.

Mrs. Puckett asked if Lowe's is going to expect the covenants to be changed prior to the closing because the covenants record with the property in their current form. Mr. McKay said the covenants couldn't be changed by the next working day, or even the following week. Mr. Ennis said if the County waits, and Lowe's enters into them after the fact as a declarant on the covenants with the County as respects that property only, there would be a whole new set of negotiations with them if they are made a party. He added the Board of Supervisors can modify, amend and waive any covenant at any time, in regard to outdoor storage, building height, grass cutting, approval of architectural design, first right of refusal, construction schedule. Mr. Ennis said the Board can remove the covenants entirely, make new ones for every property except Lowe's, and put specific restrictions that run with the land in the deed to Lowe's that apply only to them on the 13 acre property. Mrs. Carney said the contracts were received two weeks prior to the settlement date, but the attachments arrived a week later. She added that to change the covenants for each parcel, each property owner in the park would have to sign off on them, but that the covenants could be made specific to each property which would be beneficial.

Further discussion of changes to the restrictions, covenants and options followed.

A motion was made by Mr. Simpson and seconded by Mr. Moore to present a counter offer to Lowe's and approve a contract between the Industrial Development Authority and Lowe's, which stipulates the following conditions:

- For \$10.00, Lowe's can execute an option to purchase the 1.69 acre parcel for \$100,000 per acre up until the Atkins property is sold, free of the park covenants;
- Waive the park covenants on the 13 acre parcel, as long as Lowe's owns the 13 acre parcel

The motion carried:

Aye: Pattie Cooper-Jones
William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Lacy B. Ward

Nay: None

In Re: Sandy River Reservoir Report

Chairman Fore said he received a letter from Mr. Gerald Spates, Farmville Town Manager, stating the County has been “dragging its feet” in working on the reservoir with the Town. Mr. Fore said the Board of Supervisors has been called “the bad guys” as expressed by the Town, who states the County is not doing enough.

Chairman Fore said a letter was sent in reply to Mr. Spates on June 12, 2007, to set up a luncheon meeting to be held June 26, 2007, with the Town Council to discuss the reservoir situation. He said there was nothing else on the agenda other than the reservoir.

Chairman Fore said he would like to go over the options from the two sub-committees, and as two governmental bodies, would like focus on one or two of the options. He would also like to come up with a timeline so all parties involved know what is going on in order to further this project. Chairman Fore said the Town has never presented their choice of action, where the Board of Supervisors has stated its choice would be to build the intake. He said the citizens must approve it because the intake is a \$5 million project. The Board has also discussed running a pipeline to the Town limits at the cost of approximately \$9 million, but it would also have to be approved by the citizens, so nothing has yet been done.

Mr. Jones said the topic of creating a Water Authority had also been discussed.

Chairman Fore stated the Board and the Town need to come to some accord and be focused and have taskings from the meeting in order to know what to expect of each other.

Mrs. Gilfillan asked for a copy of the options available, and asked what the Town wants. She added the Town must communicate with the County. Discussion followed regarding the various options.

Mrs. Puckett said the Town has been unwilling to share their engineering document with our engineers and the Board, and for the last six months, the County has not had access. She added she learned of a Town Water Committee meeting the previous day with their engineer and that document was discussed in an open meeting, and its contents would be reported on in the FARMVILLE HERALD. She said another important fact is that it was reported and discussed that the Town does not intend to use the reservoir on a daily basis, just as a reserve source.

Mr. Ennis said he had been in Mrs. Puckett's office when the June 26th meeting was set, and then after setting a meeting for the express purpose of scheduling a meeting to discuss in detail the aspects of the Sandy River Reservoir project and who would be responsible for what portion on what timeline, and what steps have been taken in preparation, Mr. Spates sent this letter stating the County has not done anything. He added many easements would be necessary if the Boards opt to construct a pipeline, and asked if any easements have been negotiated.

Mrs. Puckett added that the letter to the Town of Farmville regarding the meeting was hand-delivered.

Mrs. Gilfillan said she felt it was unacceptable to get information from THE FARMVILLE HERALD, and said this should be brought up at the meeting on the 26th.

Mrs. Puckett said a general obligation bond referendum would be necessary for the County to finance any of the water infrastructure and raise tax rates to pay off the debt.

Mr. McKay said the voters must pass the referendum, and if they don't, the Board can not do anything about it. He said at that point, the Town could put the intake in, put the pumping station in, and get the water.

Mr. Ennis said that until the Town's revenue is assured of being available to spend what is estimated to be \$10 - \$12 million to put in the pipeline, there is no sense of the County incurring the expense of a bond referendum.

Mr. Ward asked if the pumping station is put in, is it anticipated the supply of raw water to be distributed to other jurisdictions. Mr. Jones said that the County would want to build the intake in order for the Town to get their three million gallons of water, and if something comes up,

someone else could put a line in. Mr. Ward said both sides are obligated to listen to each other and work toward an agreement.

Chairman Fore said a resolution is a Public Works Authority that would take charge of the water system, sewage system and the County landfill, and run it as a County service. He said the Authority could buy, sell, and borrow, and would to keep all these things running without taxing the citizens. Both the Board of Supervisors and the Town Council would be in a position to appropriate annual funds to keep things moving, and it would also be a revenue stream. He added at this time, the Town of Farmville is against an authority being created. The Town could lease their water plant and sewer treatment plant to the Authority.

Mr. Ennis said the Town would have to share their revenue stream from the water and sewer operations. Mrs. Puckett said that with the Authority, the County would put its landfill and reservoir “on the table,” and those are not unreasonably large assets to offer.

Mr. Fore said he wanted the Board to be aware of all of these issues prior to the meeting on the 26th, as the County has been blamed for “dragging its feet.” He said the timeline was in the Board pack from the June 2007 meeting, and there have been quite a few meetings.

In Re: Closed Session

Supervisor Cooper-Jones made a motion that the Board convene in Closed Session to interview a prospective candidate for employment for the position of County Administrator, as provided for in the personnel exemptions of Section 2.2-3711(A)1 of the *Code of Virginia*. The motion was seconded by Mr. Moore and carried:

Aye:	Pattie Cooper-Jones	Nay:	None
	William G. Fore, Jr.		
	Sally W. Gilfillan		
	Robert M. Jones		
	Charles W. McKay		
	James C. Moore		
	Howard F. Simpson		
	Lacy B. Ward		

The Board returned to regular session by motion of Mrs. Cooper-Jones, seconded by Mr. McKay and adopted as follows:

Aye: Pattie Cooper-Jones
William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Lacy B. Ward

Nay: None

On motion of Mr. Jones and seconded by Mr. Moore and carried by the following roll call vote:

Aye: Pattie Cooper-Jones
William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Lacy B. Ward

Nay: None

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A motion was made by Mr. Moore to hire Mr. Wade Bartlett as the Prince Edward County Administrator once the contract has been signed making it official. The motion carried:

Aye: Pattie Cooper-Jones
William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Lacy B. Ward

Nay: None

On motion of Mrs. Gilfillan and adopted by the following vote:

Aye: Pattie Cooper-Jones
William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Lacy B. Ward

Nay: None

the meeting was recessed at 5:55 p.m., and will reconvene at 7:00 p.m., June 25, 2007.