MINUTES – DECEMBER 17, 2018

The Caswell County Board of Commissioners met in special session at the Caswell County Historic Courthouse in Yanceyville, North Carolina at 5:00 p.m. on Monday, December 17, 2018. Members present: Rick McVey, Chairman, Jeremiah Jefferies, Vice-Chairman, Sterling Carter, Nathaniel Hall, Steve Oestreicher and David Owen. Absent: William E. Carter. Board of Education Members present: Gladys Garland, Chair, Donna Hudson, Vice-Chair, Mel Battle, Ross Gwynn, Jr., Tracy Stanley, Vennie Beggarly and Wayne Owen. Also present: Bryan Miller, County Manager, Brian Ferrell, County Attorney, Dr. Sandra Carter, School Superintendent, Ron Bradsher, School Attorney and Luke Burris representing The Caswell Messenger. Paula P. Seamster, Clerk to the Board, recorded the minutes.

MOMENT OF SILENT PRAYER

Chairman McVey opened the meeting with a moment of Silent Prayer.

PLEDGE OF ALLEGIANCE

The Board of Commissioners and all the guests in the audience recited the Pledge of Allegiance.

CALL TO ORDER

Chairman McVey called the Board of Commissioners meeting to order.

Chair Garland called the Board of Education meeting to order.

WORK SESSION TOPICS

Chairman McVey stated “At this time I am going to turn this over to the County Manager Bryan to bring us up to date on what has gone on so far and the County Attorney.”

Mr. Miller stated “First on behalf of the Board of Commissioners I would like to welcome the Board of Education, Dr. Carter and the Staff, we have quite a few folks here tonight from both the School System and the County so welcome. You know I think we have a monumental project in front of us and probably one of the largest projects Caswell County has ever seen a $36.5 million high school. The voters voted and the referendum passed so I think Dr. Carter has a tremendous amount of work in front of her. I think I have a tremendous amount of work in front of me. Both these Boards have a lot of very important decisions that need to be made through this process. I think it is incredibly important that we work in a unified body and work in conjunction with each other moving forward and at the end of the day we will have a wonderful project. We will have a $36.5 million high school that is going to be a shining star for Caswell County so I look forward to the process. I look forward to working with Dr. Carter, the Board of Education and Board of Commissioners. So having said that understand that this is of tremendous importance and that we realize what our goal is. We do have an agenda and I think we need to start with the agenda.”

UPDATE OF PROJECT TO DATE

Bartlett Yancey Project Status

Mr. Miller stated “The first item on the agenda is the Bartlett Yancey High School project status and Dr. Carter if you or someone on your board would like to speak about that.”

Dr. Sandra Carter stated “I can begin at any time, Mr. Bradner is here so he can certainly add items to this if he would like but basically I know you all have seen the drawings of the project and the proposal that we put forth to the County but this process has been in process since early January of 2017. We have had several meetings that have involved teachers and involved administration and involved board members, myself, there has been a lot of work that has gone into this project. We have visited area high school during construction, talked to the public, Dewberry & Davis, put out the bids for the architectural engineering firm and awarded the project on that as well. We have put a lot of work into this.” Commissioner Oestreicher responded “I can’t hear you.” Dr. Carter stated “I have never been accused of talking low so this will be the first.” Commissioner Oestreicher responded “Well I’ll accuse you right now because I am having trouble hearing you.” Dr. Carter continued “But we have spent quite a bit of time getting to this point so we feel we have plans for a high school that will benefit all of our students, staff and certainly hope to serve the students here in Caswell County. I think you know the rest, it was put before the voters and of course the voters voted in favor of this and we are ready to move forward. We have been working with Dewberry & Davis and I think we are ready to move on it. That is where we are at at this point as far as the big picture.”

Mr. Miller stated “Thank you Dr. Carter.”

Construction Timeline

Mr. Miller stated “The next thing on the agenda is Construction Timeline and I think it would be helpful just from a construction standpoint Dr. Carter if you or Mr. Bradner could outline the timeline just through the construction and we will get to the USDA process a little bit later on.”

Dr. Carter stated “Right Bryan, I can certainly add to this, we were reviewing this not that long ago and if we started in January with the process involving the loan or funding piece jus the project itself we would hopefully break ground at the end of the summer, early September, somewhere in that area and that does put us off about three or four months from what we were hoping at this point in time however that being the case we are hoping to have a high school completed by early 2021 at this point and that is baring no bad weather, no issues with construction. Mr. Bradner is that pretty much right?” Mr. Bradner responded yes.

Mr. Miller stated “Thank you Dr. Carter and Mr. Bradner.”

Construction Timeline

Mr. Miller stated “The third thing on our agenda is the Bond Referendum Resolution and I would just like to inform the Board of Education if you are not already aware of that at the last meeting the Caswell County Board of Commissioners did certify and declare the bond referendum results by resolution so that has been completed as outlined in the steps that needed to be completed has been completed. There is a 30 day period where anyone that wishes to contest the results but having said that we do not perceive that as being an issue so the Board of Commissioners has taken the first step that they needed to take is the issue with the bond.”

RESPONSIBILITIES MOVING FORWARD

Ownership of Property

 Moving forward on the agenda the next item is Responsibilities Moving Forward and under that item we are going to talk a little about the responsibilities of both the Board of Education and the Board of Commissioners. So I know earlier in the process speaking with the USDA, the USDA had lead myself in two different separate phone conversations and the county attorney was involved in those as well as the bond counsel and finance officer that the county would need to have ownership of the property. We now know on a phone call with the issuance of the bond that this is not the case so the county will not need to own the physical property to move forward with the project.”

Design of Bartlett Yancey High School Project

Mr. Miller stated “The Design of the Bartlett Yancey High School project. Dr. Carter would you like to talk about that?”

Dr. Carter stated “Yes Bryan, like I said earlier there has been a lot work in the proposed design in front of us and we have been working to the point that our science teachers have the design that needs to meet with their curriculum as well as our CTE programs. There has been a lot of thought put into the design of the building at the opinions of the students. I feel like we are at the point now where we really need to move forward with Dewberry & Davis. Our Board of Education voted in November to move forward with that which was part of the bid proposal that was put out for bid and the board did vote to move forward with the contract with Dewberry & Davis for architectural engineering services.”

Financing

Mr. Miller stated “So the third item under Responsibilities Moving Forward is financing and I think both the Board of Commissioners and Board of Education are both aware whose responsibility it is to finance this project. I think the passing of the bond referendum authorized the County Commissioners to move forward with that process and as I indicated earlier they’ve taken the first step in doing that. Are there any questions up to this point?”

(At 5:10 p.m. Commissioner S. Carter entered the meeting.)

Dr. Carter stated “Yes I do, if I may, I do have information, we are talking about financing, I put together a summary that I included in the Board of Education’s packet which is a Summary of Funding/Expenditures. Ms. Kimrey if you will pass this out. This is an overview, I know we have talked about paying off the amount owed on our Dillard Middle School and a portion of the lottery funds to go towards the safety of our schools and after you get a copy I would like to go over this.” (The information was given to the Board of Commissioners and is included here).



Dr. Carter continued “I just wanted to share and make sure that everyone has the same information that we have in front of us.” She went through the summary as outlined above. Dr. Carter stated after reading Section D “I understand there is a payment due in February. I just wanted to share with you this financial summary and expenses.” Mr. Miller responded “The payment due in February is $234,250.”

Contracting

Mr. Miller stated “So if there are no questions at this time we will talk a little bit about contracting and who has the responsibility of the contract as far as the architecture, engineers and so on and so forth. I am going to ask the county attorney to speak about the contracting issues.”

Mr. Ferrell stated “Good evening, my name is Brian Ferrell. The contracting requirements for this project have two primary drivers, the first is the USDA Contracting Requirements and there are a number of those and the second is the traditional State Law Procurement Requirements. We had a productive telephone conference with Mr. Bradsher, the superintendent and some county representatives last Friday where we got some details from the USDA about their contracting requirements. The most fundamental piece of information from that call on contracting is the USDA requires the County to be a party and the only party in the USDA’s mind, I don’t think that is what we have in mind, requires Caswell County to be a party to the architectural services and all the construction agreements for the new high school. There are different methods in state law in school construction as we know, as the Board knows, but since we are using USDA financing that’s where we are on the contracts therefore the County has to be a contracting party and perhaps as we get into the different responsibilities the County and the Board of Education will be the contracting party for the architectural services and the construction contracts for this. Now that we have the USDA requirements we look to state law to see what that means for Caswell County in entering into architectural services agreements. The procurement for architectural services is dictated by the Mini Brooks Act and what is law in North Carolina, which requires the County to participate in a qualification based selections process for architects that it contracts with. I understand the Board of Education has done quite a bit of work on the front end with the architect already and that work will certainly be useful going forward with the RFQ process but the next set up in my mind for the architectural services piece is for the Board of Education and the County to work together on the qualification based selection to secure the final architect for the project. There are also some important decisions to be made about the delivery method for the construction contracts themselves. I think again the Board of Commissioners and Board of Education can think through the best construction delivery method for this particular project and of course the architectural selection will consist in going through the bidding process for awarding the appropriate contract. So that’s a high level view of the primary contracts that need to be met in conjunction with this project. I’m certainly happy to answer any questions and there is one more extremely important component that I didn’t mention and that is the interlocal agreement between the Board of Commissioners and the Board of Education that lays out the joint responsibilities associated with this very large project. Mr. Bradsher has agreed to take the lead in drafting in what will likely be termed a memorandum of understanding between the Board of Commissioners and the Board of Education that will set forth things like who will take the primary deed on the property or this requirement or that requirement. The USDA’s requirements are pages and pages long so there is plenty of responsibility to go around there. So that document will be extremely important to the contractual relationship of the parties and will facilitate, I think, what Bryan envisions in the outset of his remarks which is a collaborative process between both boards. Those are our three, I think, primary components of the contracting and there will be variations of that. I’m happy to answer any questions.”

Mr. Ron Bradsher stated “Brian I think we got a vast difference in terms of understanding with the USDA, I asked specifically the question to the USDA what that partnership meant, there is no definition. Apparently this isn’t a typical situation with the USDA. If you go to the website and go to CFR and look it’s not a lot different than going to a bank and borrowing the money. They’ve got a list of things they have to have, this is a bit different, this is the Board of Education building a school that the County is going to finance. There is no definition of a partnership; there is no requirement from what they said on the telephone conference that the county takes the lead in the contract.” Mr. Ferrell responded “It was as clear as a bell. I looked…what I take it as is the role will be defined in that memorandum of understanding…” Mr. Bradsher continued “It is. That’s exactly right.” Mr. Ferrell responded “There is no doubt about that. So I did not mean to imply that the County needs to be in the lead. What I think I said is that the County must be a party, it could be the only party…” Ms. Tracy Stanley stated “You said they need to be in the lead.” Mr. Ferrell responded “Well if I did I misspoke on that, what I meant to say was the County must be a party, it can be the only party but I don’t think it will be in this case because of the nature of the property.” Mr. Bradsher stated “But the extent of the partnership is there is not a definition.” Mr. Ferrell responded “That will be part of the memorandum of understanding so if I misspoke on that I did not mean to imply…” Mr. Bradsher stated “You were very clear.” Mr. Ferrell continued “In fact I think the bulk of the work falls on the Board of Education because the Board of Education designs the school on what its vision is.” Mr. Bradsher asked “Can you go back to that, the Brooks Act and everything else, why would the county be subject to that if the Board of Education takes the lead in everything, if the board actual pursuant to statutory authority?” Mr. Ferrell responded “That’s a great question and it’s because in the relevant statute it says any local government that contracts or designs services must follow this process.” Mr. Bradsher continued “But the School Board has.” Mr. Ferrell responded “But the County has to be the contracting party.” Mr. Bradsher stated “Now that goes back to what I said, that is not what the USDA said. They said they wanted basically everybody to get along.” Mr. Ferrell responded “They do…” Mr. Bradsher continued “I think the problem that we have basically is everything that has been said is based on a telephone conversation and I think ultimately you’re probably going to have to get something in writing from the USDA to resolve it.” Mr. Ferrell responded “We sent you a legal opinion from the USDA about contracting responsibilities to answer that question through, I think, there regional office and their lawyer and we wanted to be absolutely clear on that and what we found out is we clarified that the School Board doesn’t have to convey title to the property but that the County has to be the contracting party on the construction documents including the architectural services and I am certain that is what they said.” Mr. Bradsher stated “I have not seen those emails. I have only gotten emails from Paul Jacobson but I have not seen anything from the USDA. They said party and I think that is where these two boards are going to have a problem because that extent on who has responsibility for what moving forward, you know, I had indicated earlier this board has gone through building an awful lot of projects and never before has it run into any situation where it had to enter into any sort of agreement basically giving up statutory power or anything.” Mr. Ferrell responded “And I don’t know that that is the case here. The good news is I think that the two boards can come to an understanding about who is going to do what and the Board of Education will do what it wants but I heard clearly and I don’t think it is negotiable that the USDA’s requirement is that the County enters into the contract. You did not hear that differently did you?” Mr. Bradsher stated “Well the only thing I heard was that the County and the board had to have some sort of an agreement whereby the County was a partner to some extent.” Mr. Ferrell responded “Let me be clear about this, you did not hear on that call that the County must be a party to the architectural services?” Mr. Bradsher stated “No, I didn’t, I didn’t.” Mr. Ferrell responded “That was worded pretty clear. That was what they said and we an appeal that to whoever that needs to go but I am not making up the requirements so perhaps we need some clarification on that but I think the components on the contracting are as you stated. You got to start with an architectural services agreement. You move to approve the architect through the bidding process and before that it sounds like I think it is probably a good idea we have to have this memorandum of understanding between the two boards.”

Commissioner Hall asked “Fellow School Board is that a deal breaker for you?” Dr. Carter responded “You know I think the main thing is you know the contracts. We have already hired an architect with Dewberry and Davis and we want to continue with the contracts because that is our expertise.” Commissioner Hall continued “From what I am understanding our general counsel to say is that he recognizes that you all have done a lot of work and from my understanding he is saying we need to be a party to that contract and so my question is you do it however you deem appropriate, the Board being a party to that contract is that a deal breaker?” Dr. Carter responded “I think if it is in the memorandum of understanding you could allow us to oversee the contracts I think that would be fine because that is my understanding too that that could be a part of that memorandum of understanding.”

Mr. Ferrell stated “That is exactly right.” Dr. Carter responded “That is exactly what Mr. Bradsher and I have been talking about. Unless the Commissioners want to oversee the contracts which I don’t think you have done that in the past then that memorandum of understanding would allow us to continue and we could move forward. Again we just want to be able to do what legislation will allow us to do and can continue with.”

Mr. Bradsher stated “Commissioner Hall and Mr. Ferrell it is not a matter of…the Board of Education, I think, from all of my discussions with the board it understands that it has to assist you all with complying with USDA requirements but the board, I have not, it’s not my opinion from everything I have heard that what the USDA is requiring is a partnership other than a communicative partnership. It is not a requirement that the Board of Commissioners conducts itself as if it is the contracting party. The Board of Education would be the contracting party pursuant to some agreement. If the County would be a partner to some extent, an undefined extent according to the USDA, they don’t have a definition of partnership. I don’t think, like I said I don’t think this is a typical situation for them. I am not so sure that they are not answering the standard way but I am not certain it’s with a full understanding of the circumstances if that makes sense. I don’t know any other way to say that. Bottom line like I said it’s up to the School Board to construct the facilities. It’s up to the County to finance so yawl’s responsibility right now is with USDA and everything that I understand or that I have been told is the USDA is not trying to change that. They are not trying to change the fact that the County has to finance it and the School System has to construct it. So when you start talking about what we can put in a memorandum or an agreement it is really going to depend on is what exactly the USDA is going to require of the County in order to go forward with financing, it is a bond issuance, a USDA purchase bonds. The way I understand bonds and I am not a bond attorney but a bond is basically is a pledge, it’s debt but it’s a pledge of the County’s ability to tax. It’s a relatively secure issue. I don’t think Caswell is going to go bankrupt anytime soon.”

Commissioner Hall asked “Just a follow up here, so for general counsel, our general counsel, are we in fact talking about a bond issue at this point or are we talking about a loan?” Mr. Ferrell responded “It is a pledge of a full faith credit of taxing power this money that we are borrowing so yes it is a bond issuance yes.” Commissioner Hall continued “Okay.” Mr. Ferrell responded “And so the way it works well I can give you reasons on how the financing is going to work but it is a bond financing, it is, yes and the reason why, if you will recall, we chose the USDA rather than going to the market with a bond issuance, right, is because the Local Government Commission does not allow a typical bond issuance to stretch out 30 years. So the repayment term on a conventional, if you will, market financing would have been within the 20 year range that would impact the potential tax impact to the County was that this was not favorable in this case and so that’s why we are using the USDA mechanism. Were we not using the USDA which has the requirement of County contracting party this financing may well have been more like the last financing that you used to build the other schools. Again the contracting requirement in this case the County must be a party of the contract through the USDA.”

Mr. Bradsher stated “The USDA, the bond buy back and payout will be extended to the life of the project so we have a term of a few years versus 20 or 30.” Mr. Ferrell responded “Right and the County made the decision on a 30 year term or even with the USDA they offer a longer pay period but I think this Board made the decision was to not stretch it out further than 30 years. That is the procedure for an LGC approval so just to be clear there’s multiple step financing so what is going to happen is there is going to be an interim financing. So the first financing is going to be a market based, short term, financing because the USDA doesn’t come in with its money until the project is completely, okay, so we are going to have to go to the market to borrow the money for construction through a LGC approved process on a short term loan so there are going to be two closings potentially in this deal. We are going to close and interim financing for the construction costs upfront, you know, early in the project and then we are going to come back for the USDA financing second. That is the way it works.”

Mr. Bradsher asked “Brian have y’all looked at the match part of the grant monies? It was my understanding that it may not, the bond situation may resolve it, it was a straight out loan from the USDA but there was a question as to whether or not the $5 million would be built into that. Do you know whether it is a different situation with the bond; is that going to be a problem?” Mr. Ferrell responded “You know I am not going to say it is going to be a problem but I don’t know exactly how that piece fits in...” Mr. Bradsher continued “I don’t either. It was mentioned to me, I’ve got no clue. I hope that the fact that there is going to be a bond issue rather than a direct loan through the USDA it is not going to be a problem.” Mr. Ferrell responded “I don’t know, how financing occurs as opposed to how much is financed but we will be working together to look into that. I don’t know who your vendor is on that but we can work together on that.”

Mr. Miller asked “So any more questions on this point?”

Chair Garland stated “If I may, Mr. Ferrell you said something about, help me out, something about securing a contractor and something about the something else delivery and method?” Mr. Ferrell responded “Yes.” Chair Garland continued “And local agreements and all of that. My concern is what is the what ifs, you know, what will happen to all the time, the energy and the effort that we have put forth getting the plans together with Dewberry and Davis, the what ifs, I think can we go further with Dewberry and Davis or what if?” Mr. Ferrell responded “Sure. Sure and what I will say about that is all of that information, the planning, goodwill, preliminary design work, all of that will be transferred to the benefit of the project. In my mind there is no loss here. If I go down just a little bit more there are three components, three application components for the USDA application. One of them is a preliminary design requirement. They want to know substantially what the project is going to look like, what it is going to include and there is a pretty strenuous requirement of pre-design work submittal. The good news is because of the advance work that the School Board has done with Dewberry and Davis, what we talked about in the call last week is that significant pre-application piece is I believe the superintendent said about 90% done so that piece will be to the benefit of the project. I think all of your efforts were great.”

Dr. Carter stated “But I understand that the MOU, in order for us to continue to hear and what I hear is the board has taken care of all of that and they will put the ownership of the project back to the Board of Education and we want the MOU to say that.” Mr. Ferrell responded “Well the County is not going to be able to delegate responsibilities under the contracts. The USDA is looking to the County to satisfy all the requirements of the USDA. It understands that a school is being built but the partner that the USDA is going to be looking to for compliance is the County. We can certainly through this MOU process, it will rely on the Board of Education in a lot of areas to make sure that that compliance takes place. That is the part that we are going to have to figure out in the MOU but it’s clear the USDA is looking to the County to fulfill those responsibilities. I think the County can certainly rely on the Board of Education to do a number of things in this process but I don’t want this board to be under any intentions about the fact that it is the Board of Commissioners that will have to approve the contracts and that the County is going to be the accountable party if something goes wrong.” Dr. Carter stated “That is definitely not what we understood from the conversation with the USDA.”

Mr. Bradsher stated “That is what I was just asking Mr. Bradner about, Ron Bradner is here from Dewberry and Davis and he’s had talks with people. We are fortunate enough that the County, Board of Commissioners and the Board of Education, we have a local person who has actually worked with the USDA and that’s not what we have heard. The only thing we have heard is bottom line you are responsible for meeting their obligations in terms of financing but meeting their obligations in terms of financing does not necessarily at least to me it doesn’t place you all in a position of having to be ones who are doing it. You are responsible for the debt but what you are pledging is your full faith and credit. You are pledging your ability to basically tax the residents but there’s not anything about being responsible for financing that puts you all in the position of having to do or having to conduct yourselves as if you are the party that is doing the work and I don’t understand the USDA’s requirements as being that you all have to be contractually be placed there.”

Mr. Miller stated “Board of Commissioners that is exactly what I heard on the telephone call, the County had to be the contractual party. I think we even discussed that the fact that the USDA required the County to be a party but the Board of Education was not a requirement but the County could include them on it. It was a requirement that the County be a party.”

Commissioner Owen asked “It appears to me that we are going back and forth on this issue, can we get the USDA to send us in writing what is required by them for the County and be done with this issue/” Mr. Ferrell responded “I have.” Commissioner Owen continued “You have that in writing?”

Ms. Stanley asked “Did you send that to everybody, your Commissioners?” Mr. Ferrell responded “I am happy to send everybody what we received.”

Mr. Bradsher asked “Was that based on the early conversations with them?” Mr. Miller responded “No the email occurred after Dewberry and Davis spoke to the USDA on behalf of the Board of Education to clarify the terms of financing.”

Mr. Ferrell asked “It seems to me that the only wrinkle in this is the requirement to do the RFQ, is that the larger issue?” Mr. Bradsher responded “No.” Mr. Ferrell continued “Everything else we can delegate in the agreement on who is responsible for what.” Mr. Bradsher responded “I am not so…you will have to ask the board members; I think it’s more the Board of Education is saying that it intends to do what it is obligated to do. We’re not, this board is not going to say we’re going to delegate that ability or that duty to the Board of Commissioners simply because financing may require it but I haven’t heard that from the USDA and that is what I just asked Mr. Bradner, does that make any sense based on your conversation with the same people and I wonder how it was placed to them. Like I said the USDA until you make that application and you set out the circumstances they will give you a general opinion just like any other lender, they are not going to give us a closing package, they are not going to give you a closing package with instructions or anything else until they’ve decided what they are actually going to require. There is not anything in the CFR, there is nothing in their policies, there’s not anything anywhere other than in a straightforward scenario that indicates that the borrower has to be the one that has the ability to do all of this. This is not that scenario that they indicated, they work within state law and bottom line state law says that the Board of Education is responsible. That’s where the, I think where the problem is, just like I said I don’t want to speak for this board. I just know generally from what they have said in talking to me…” Mr. Ferrell responded “We can go on and on about this but I think what makes some sense because there is some confusion still apparently on this issue is if Mr. Bradsher calls the USDA folks and puts the question to them in his own words ‘does the County have to be the contracting party in all service agreements and the construction contracts’ or however he would like to do that. I am satisfied with what they have told us so far about what the requirements are but I understand the Board of Education isn’t…” Mr. Bradsher stated “Well it just doesn’t make any sense particularly with a bond issue. If you are pledging full faith and credit of the County it doesn’t make a lot of sense for the lender to be too worried about what happens. They are going to buy the bonds and the bonds are secured by the full faith and credit of Caswell County.” Mr. Ferrell responded “If you can convince them of a different position I don’t know that is a huge deal with the Commissioners but I am just going by what the lender said. I still believe the contract requirements will be more or less the same regardless.” Mr. Bradsher continued “Well I think the supervision of the project is going to be, when it comes down to it that is going to be the issue who has the authority.” Mr. Miller responded “I think that can be delegated in the MOU to the Board of Education.” Mr. Bradsher stated “No it is the Board of Education’s responsibility. The MOU would be delegating it to the Commissioners, it’s just the opposite.”

Ms. Stanley asked “Can I ask something, were y’all here when Dillard, was Dillard this difficult? Do any of y’all remember Dillard?” Commissioner S. Carter responded “It didn’t involve a USDA loan.” Mr. Ferrell responded “If it was a non-USDA financing then I think the structure it’s talking about where the county basically writes the checks and the Board of Education contracts everything is an option. The USDA is saying that’s not the way we do it.”

Mr. Miller stated “There is legislation is state statute that allows that very thing. That is what I heard the USDA to say that this is our requirement. If you want our funding this is what you have to do. I, me and Dr. Carter were a partied to this, we explored through the LGC and addition ways to fund the project without having to go through the USDA to try to get rid of that requirement so we tried to do that but then the LGC no we are not really interested in doing that, it looks like the USDA is your best option. So we explored those options to try to circumvent that but it just doesn’t seem to work but what I have heard every time I have talked to the USDA but it does seem like a lot of things change from conversation to conversation but what I have seemed to hear nearly every time is the County has to be a party of this construction.”

Mr. Oestreicher stated “The County is not, I am speaking from myself, real happy with just saying yeah we are going to pay anything with the full force of the County and the goodwill and the full faith and whatever, we have a fiduciary responsibility to the County but I don’t see how we can delegate that part and I think that is exactly the point that you should be making or are making about, we are not just going to give that up, we can’t give it up.”

Mr. Mel Battle stated “What I keep hearing is a difference of opinion. You had the telephone conversation people hear what they want to hear and interpret things in a different way so unless I see it in writing I would probably have a different opinion too. The simple fact is that put it on the other shoe, do you want to build the school and finance the school? All the work that has been done up until this point just start all over again. Does that make sense? That’s what I am saying. At this point right now we are just going back and forth about what my opinion is and what your opinion is I think we need…I would like to have a live person from the USDA to say this is what it is, this is what you can do, this is what you cannot do but I remember the different between the USDA and I think it was with the jail, I think you had a site construction guy at that time and it was money well spent but it went over, you spent more money than you thought you were going to spend but when we built North and South it was a totally different scenario but I tell you at this point here I would recommend another meeting with the USDA, a live individual, not a telephone call, needs to take place. Out attorney heard one thing and your attorney heard something else and I think they can come together if this is done.” Mr. Bradsher responded “And I think Mr. Battle they have said they would make themselves available for just that.”

Commissioner S. Carter stated “Mr. Chairman I concur with the comment Mr. Owen made and the sentiment Mr. Battle just made whether it being in writing or a live person whichever is more feasible, I am not satisfied with he said, she said or what phone call or whatever not only for our information or opinions but for the people to understand what’s going on. This is going to be a very confusing meeting to them when they read about this because of that misunderstanding. I have heard the county manager mention state statutes a little bit ago and I was wondering what you were referring to on that.” Mr. Miller responded “State statute 153A-164 Joint Buildings is one of the state statutes that allow us to go through this process as a County, that was sent out by our bond counsel today. State statute 153A-158.1 Acquisitions and Improvements to School Property is another state statute that allows us to do exactly what the USDA requires from us and that one was sent out 3 or 4 weeks ago by our bond counsel, Paul Jacobson. I shared that legal opinion with Dr. Carter and the rest of the Board of Commissioners at that time.”

Mr. Bradsher stated “Bryan what his opinion was…that was early on, that was based on a conversation that y’all had with USDA.” Mr. Miller responded “Well that is true…” Mr. Bradsher continued “The statutes simply say that the school system can contract to the County.” Mr. Miller responded “But what this statute says to me is that we do have the ability to do what the USDA, what I am hearing the USDA is requiring…” Mr. Bradsher responded “Exactly right, if the USDA does require it, that’s exactly right.”

Mr. Ferrell stated “We are not the first county to do this, we are not pushing you around here, it may feel like it and I apologize for any confusion that I have created. This structure with the USDA and the cooperation with the Board of Education and the County have been used in other counties across the state in successful projects. We talked during our call last Friday about Montgomery County while looking at different variation because the community college was involved in that transaction as well the USDA agreements were very similar in what we are talking about here. Mr. Bradsher has the MOU documents from that transaction and I look forward to seeing the first draft…” Mr. Bradsher responded “But Brian the difference in that was the Board of Education in Montgomery County the commissioners began the process early on and the commissioners purchased the property, it was a big difference in that.” Mr. Ferrell continued “There was some financing with the collaboration of the board of education and the county and under the contracts with state law there is a path is what I am saying.” Mr. Bradsher responded “You are right, absolutely.”

Ms. Donna Hudson stated “Brian has used the term party to the contract several times and I think we have to define what a party to the contract is and you know how much input that means and what a partied to the contract means. We don’t want what Mr. Oestreicher was talking about we all know you all are responsible but we can’t meet like this every week you know once we move forward. We want to keep you informed. We want you to know what is going on but what is a party to the contract, that needs to be defined.” Mr. Ferrell responded “That is a great question and Mr. Bradsher asked that very question on the USDA call and let me tell you my perspective on it. A party is a signatory to the agreement that is charged with the responsibilities and burdens of entering into that agreement. That’s in my view what a party is and that is what I believe what the USDA is requiring of the County to be a party. The USDA says a sole party but what it seems to me is not just having the County and having the Board of Education to enter as parties as a joint obligation but that is what a party means to me.”

Mr. Wayne Owen stated “It is not clear on what role the Board of County Commissioners want to play in this and that seems to me what we need to be talking about. If there’s a certain role that the Board of Commissioners want to play in this then we need to know what it is and work with that because even in a what is it a memorandum of understanding if these are just minor things that the Commissioners want that can be worded in that right.” Mr. Ferrell responded “Certainly.” Mr. Owen continued “So that’s my question is I don’t know what the role is the Board of Commissioners want.”

Commissioner Owen stated “Mr. Chairman, and I will just speak for me, I am not speaking for the Board, as a County Commissioner I feel a grave responsibility to dish out even $5 million to pay a bill. I think there has to be some type of responsibility this Board takes in from the time this money is borrowed to when that project is completed because they are not going to come to you if something goes wrong, they are going to come to us because the County voted, the citizens voted for the County to borrow this money, not for the School System to borrow it, for the County to borrow it and that’s my feeling this great financial responsibility that I have for every taxpayer in this County and so for my just to hand the money over, I am not willing to vote for that in any way. Now the Board may vote that way and that is fine if the Board does it, I am good with that but that is my concern. I have a great financial responsibility to every citizen in this county, taxpayer, I am one of them and you are one of them to make sure that money goes exactly as stated and so that’s my only thing. I just want to make sure there’s some way that we have some and not control because I think this MOU is where we work it out what it is exactly.” Mr. Battle responded “I understand that and I think everybody did but you didn’t answer the question. What is the role that you think the County Commissioners want in this?” Commissioner Owen stated “Well I think we have to be a party to the contract.” Mr. Battle responded “But what does that mean though, that’s what I am saying?” Commissioner Owen continued “That means that we just don’t let you handle everything and I can’t tell you specifically, I can’t tell you specifically what that will look like. I think that’s what we have to hash out in an MOU or whatever.”

Ms. Stanley asked “Mr. Owen when you said the County came to y’all and voted for y’all to borrow the money well y’all had to, we had no other way right because they couldn’t have voted for the school board to go and get the money right?” Commissioner Owen responded “Exactly…” Ms. Stanley continued “Like I said, I didn’t want to put it out there in the paper and anything that there was other ways, y’all are the one we had to go to.” Commissioner Owen responded “Exactly and I want to say this to the board and this is David Owen only, I don’t know how anybody feels about it but I think a lot of our issues that we have right now would have been solved if this board would have come to us before you ever did the first plans or hired anybody if we’d sit down and worked together. It would have saved you from the $42.6 million purchase price because we would have told you there was no way the County could have done that but I think that has created a lot of this issue going forward just to be honest because I mean we are the financial backers in this situation.” Ms. Stanley stated “I remember Mr. Owen a meeting with everybody and you did not attend and we put…that was the first time that we put it out there.” Commissioner Owen responded “The first time that I saw it, the first time you put it out was in a packet showing the $42.6 million project, already drawings, already everything.” Ms. Stanley stated “Everyone attended the meeting except you.” Commissioner Owen responded “All of those drawings right there already done but you know I just think, I think it started out not on the best of terms that is my personal opinion.”

Ms. Hudson stated “Mr. Owen I would like to say, if we had just come to you guys and said we want a new high school you know we had to bring you something, we had to bring you numbers, we had to bring you figure, we can’t just come and say we want a new high school, you would have wanted details and we come prepared. That is why we gave you what we gave you. We wanted to be able to show you something and that is why we came prepared.” Commissioner Owen responded “And I am saying you showed up with a $42.6 million project, that is what we saw first.” Ms. Hudson continued “And when I did my Santa Claus list I did a wish list.” Commissioner Owen responded “I am just saying what we saw.”

Ms. Stanley stated “I want my child to have a $50 million high school.”

Chair Garland stated “Mr. Commissioner it seems we are at an impasse now we need some information about definitions, the language about what is going on and we need to get our legal team to get the information, something in writing, something that we can you know put out teeth into.”

Chairman McVey stated “I would like to get a USDA representative here as Mr. Battle said live; I think that is a route for us to take.”

Chair Garland stated “For me it is going to be hard for me to look at the rest of the agenda if we are still here at this point going back and forth.” Ms. Stanley responded “No, no, no, no we need to talk about safety. My child needs to be safe at school.” Chair Garland continued “Yes I know but we seem to can’t move beyond working on the language and who is responsible and all of that so we need some clarity on that.”

Commissioner Oestreicher stated “I would just like to give a few thoughts, my thoughts, and I have heard these discussed but not by a majority and I am not representing the Board during but some of the items that I know some of the Commissioners are concerned with as with any major project and we would as Board of Commissioners want to be responsible for or concerned with. The citizens voted for the $36.5 million but the specific items that you asked for that I have heard discussed are what about contingencies, how are those spent. What about overruns beyond the contingencies. What about the scope, those typically with contracts that I have been involved with in the private sector have always been the issues where you need some financial overview and control and I think and like I said I am not speaking for the Board here but you asked for some specific and those are some of the specifics that I would be concerned about and that’s not an exhausted list, I may add some to it later.”

Mr. Ross Gwynn stated “There are several reasons why this will not work. As the county attorney and basically your experience in these tell us why it will work.” Mr. Ferrell responded “It’s going to work.” Mr. Gwynn continued “Explain to me how it is going to work. What’s your idea of a partner?” Mr. Ferrell responded “I think that there is plenty of room in the USDA and statutory structure to develop a shared group of responsibilities that will result in the construction of the new high school that meets the School Board’s vision for whatever that is. I have no doubt.” Mr. Gwynn stated “Based on your experience and ours the sharing piece is not going to be the same, one side is going to have to be a little bit higher than the other because we know what we are doing, we know what we want and you guys are basing your own figures on what you got from Montgomery County or somewhere else, now what is your experience on this thing?” Mr. Ferrell responded “That was just a template to document that, that is just a template and Montgomery is just an example of how this will work in a North Carolina form but it’s not going to fit Caswell County perfectly, it’s certainly not. I think…you asked me about the 50/50 I guess that is what you are getting at right?” Mr. Gwynn stated “That is right, that’s right.” Mr. Ferrell responded “And so there’s got to be a decision maker at the table that can override that…” Mr. Gwynn continued “And who is that going to be?” Mr. Ferrell responded “Well I think for certain aspects it likely to be the Board of Education. For instance when it comes to what your science labs look like, I don’t think the Commissioners I going to get into that. I have heard one person say and it was a direct question, what are we talking about here, what’s the specifics that the Commissioners need to be assure that they have to have to feel comfortable in this and I think it was a good question. I didn’t hear one person say here this is what I want the designs of the lobby to look like or we want to tell you what you need in the lab or how big the classrooms need to be. I did not hear any of that on the design side but I’m envisioning is the Board of Education has that maybe almost to the exclusion right of input…” Mr. Gwynn stated “I have not heard them say anything they wanted, all I have heard is what they didn’t want.” Mr. Ferrell responded “Well let me tell you what and I don’t know if this is what they want but it is what the law requires which is the Commissioners be a contracting party to the architectural services, the USDA loan and the construction contracts and fulfill the obligations of those contracts.”

Ms. Hudson stated “Now tell me specifically what that means.” Mr. Ferrell responded “Maybe I am talking in circles, I will just stop, I was trying to do my best to answer your questions.” Mr. Gwynn stated “Thank you sir, thank you.”

Chair Garland stated “So Commissioners I think we need to talk about another meeting where we can have the USDA and other parties here who can bring some clarity so we can move forward because I can’t see us moving forward until we can determine who is going to be supervising the project.” Chairman McVey responded “Yes ma’am, I agree. I guess we need to get the County Manager to set up or find a date the USDA people can be here and let us know so we can all get back together at that point.”

Mr. Ferrell stated “Just for clarity, it is not in my mind who is going to supervise the project; it is who has to sign to enter into the contracts. I think the supervision of the discreet work is something the MOU determines. The question that seems to not be clear based on what we have heard to today at least to some of us is does the County have to be the contracting party, I think that’s the, if there’s a disagreement that’s what it is. Was that not accurate?” Chair Garland responded “That the language we need to hear to be clear on.” Mr. Ferrell continued “Good so it’s not supervision, it’s a contracting requirement.”

Mr. Miller stated “I am happy to find a date that the USDA can be here and speak to the Board and the Board of Education and I will share maybe a couple of dates to see which dates will work for the two boards. What I need in the meantime, I think having our legal counsel and the Board of Education’s legal counsel work together on this MOU because I think it would save time and move on with this.” Mr. Bradsher responded “I don’t disagree and I agree with Brian, he is absolutely right, the supervision is not the issue, it is just signing off on the contracts then it won’t be a problem, if the Board of Education supervises it won’t be a problem.”

Mr. Ferrell stated “That is what I was saying, I don’t think that you’ve got a big disagreement as it comes but of course there is a level of obligation that we have to figure out and I think that this MOU can do and we need to handle these issues.”

Ms. Hudson stated “From what we have been told, you and Dr. Carter are meeting weekly.” Mr. Miller responded “We have met fairly a lot.” Ms. Hudson continued “We were told y’all were going to meet weekly.” Mr. Miller responded “That was our conversation but the snow prevented some of that.” Ms. Hudson stated “Can’t help snow, so that’s a connection right there and you can share you know all the information and bring it back to your Board.”

Chairman McVey asked “Any more questions? I think we’ve, I’m sorry.”

Chair Garland stated “Before we leave I would like to recognize that we have two new board members and so all this and the language would certainly help them with that too.” Chairman McVey stated “Thank you.”

Commissioner S. Carter asked “Sorry, did we discuss Section D. of Item 3 at all as far as any bits of information? We don’t have to talk about what we just finished with anymore since we are depending on the USDA representative at this point. Were there any pieces of information on those two items there in Section D. that we should discuss for the sake of the public understanding that information?” Chair Garland responded “I think we would just wait on that.”

Ms. Stanley stated “The school safety, we’ve got to do something with our schools. We have got to get safe. We’ve got to put this in there.”

Dr. Carter stated “We shared with you in the summary in using the lottery funds and I think the question is what are we going to do with the commitment we have with the funding source. Are we going to put out of that or are we going to use the lottery? Those are the questions we have. We can’t upgrade school safety until we know we are moving forward.”

Chairman McVey stated “Mr. County Manager, I think you and I had a discussion about that the best that I can remember, there’s been a lot of discussions that I have been in. Wasn’t we talking at one point the USDA telling them, the School Board, to go ahead and take their money?” Mr. Miller responded “Yes that was correct, the recommendation from the USDA was for the Board of Education to move forward with the school safety upgrades at the other schools. However, I think Dr. Carter’s point is they are uncomfortable doing that because there are safety concerns at Bartlett Yancey as well and they are uncomfortable unless they have a commitment from the County Commissioners that you are going to move forward with the USDA financing.” Chairman McVey continued “Well I think that comes back to the point of we need to talk to the USDA people to get this other stuff ironed out and then we can say move forward. Agree?”

Commissioner S. Carter asked “Is there any question that we are going through the USDA to finance or not at this point, is that the question?” Chairman McVey responded “I thought we had as a Board all agreed and voted to go with the USDA.” Commissioner S. Carter continued “That’s right, so why can’t we proceed?” Chairman McVey responded “Because I want the USDA man here live to go over all of this stuff to make sure that we are correct and at that point we are, smooth sailing.”

Chairman McVey asked “Any more question on anything?”

Chair Garland asked “You will get back with us as far as a date and a time when the USDA can meet with us?” Chairman McVey responded “Yes ma’am, our county manager will be glad to set this up and get back with y’all and we will try to get it set up as soon as possible.” Chair Garland continued “As soon as possible because we don’t want to lose this money.” Chairman McVey responded “I know, I know, I understand completely. As soon as Mr. Miller can get this thing set up we will get on it.”

Chair Garland asked “Are there any other issues we need to take care of?”

ADJOURNMENT

At 6:13 p.m. Commissioner Oestreicher moved, seconded by Commissioner Jefferies to adjourn. The motion carried unanimously.

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Paula P. Seamster Rick McVey

Clerk to the Board Chairman

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