

Camden County Board of Commissioners

Special Meeting

7:00 P.M.

October 27, 2005

Camden County Courthouse

Camden, North Carolina

MINUTES

A special meeting of the Camden County Board of Commissioners was held on Thursday, October 27, 2005 at 7:00 p.m. in the Camden County Courthouse, Camden, North Carolina. The following members were present:

Chairman Melvin J. Jeralds
Vice Chairman Clayton D. Riggs
Commissioners Jeffrey B. Jennings, Carolyn Riggs, and Mike Andrews

Also attending were County Manager Randell Woodruff, Clerk to the Board Ava Murgia and County Attorney Herbert Mullen.

Chairman Jeralds called the special meeting to order.

**North Carolina Department of Environmental and Natural Resources' (NCDENR)
Letter of Request – Black Bear Disposal LLC**

Chairman Jeralds asked County Attorney Mullen to comment on the results of a report sent to the Board from Richard Whisnant of the Institute of Government regarding Black Bear Disposal LLC.

Mr. Mullen stated he talked to Mr. Whisnant after receiving a copy of Mr. Whisnant's letter to the Board dated October 25, 2005. Mr. Whisnant stated to Mr. Mullen that the Franchise Ordinance is valid; that possibly the county may have an opportunity in the future to negotiate the host fees. Mr. Mullen stated that the various questions asked to Mr. Whisnant by the Board were basically NCDENR questions. Mr. Whisnant's letter answered all of NCDENR's questions in favor of Black Bear Disposal LLC, and, that the Franchise Ordinance was valid.

Chairman Jeralds confirmed with the Commissioners that they had the opportunity to read Mr. Whisnant's letter.

Commissioner Carolyn Riggs asked Mr. Mullen to address, for the people to understand, what the term safety, health and welfare means. Commissioner Carolyn Riggs stated that it is her understanding this applies to specific incidences that occur and not attitudes toward the landfill itself.

Attorney Mullen stated that the Board has county zoning, subdivision ordinances and county rules and regulations. The legislature has given the Board of Commissioners the prerogative to set zoning, subdivision regulations and other rules and regulations of the county to benefit the people. The public welfare, police power, is to ensure that the Board has the authority to regulate the affairs in the county in such a manner and fashion for the betterment of the people. The franchise ordinance gives the Board the opportunity to regulate and control as the contract or agreement says so that the Board can ensure the county is properly maintained and people do not take advantage of the people. Police power is an entity to control and regulate the people in the county by laws that the Commissioners pass. County ordinances are as valid as state statutes. Attorney Mullen further stated that the state gave counties the opportunity to do franchises in situations such as this.

Commissioner Carolyn Riggs stated that when she read the term health, safety and welfare, she questioned looking at the general welfare of the public as does that mean not having a landfill in the county and this was a conversation she had with Mr. Whisnant.

Commissioner Carolyn Riggs stated Mr. Whisnant told her, no, that is not what it means; it means that once a contract is in place and followed on, that if there is something the Board sees that is in the contract that the Board does not think is fulfilled properly, that the Board can address that and have it corrected regardless of what the franchise says, but, Mr. Whisnant indicated to her that it clearly did not mean the Board could stop the landfill because of the general welfare of the public.

Attorney Mullen replied that is correct. It is in the tenor of Mr. Whisnant's letter; Black Bear Disposal LLC has a contract and agreement with Camden County that was entered into, and by the reliance on that contract and agreement, Black Bear has proceeded with their project. The county can not come in now and take the project away from them because some people want to. The county has to allow Black Bear to go ahead with their project; at the same time, should Black Bear do anything that would danger or endanger anyone, then the Board of Commissioners has the opportunity to revisit those issues, because they are contrary to contract. The contract provides that everyone will be protected.

Following discussion, Chairman Jeralds called for any motions.

Commissioner Jeffrey Jennings made a motion to answer Item I of the NCDENR letter dated October 6, 2005 that the information submitted by Black Bear Disposal LLC in the March, 2005 Revised Facility Plan is consistent with the franchise issued by the county. The motion passed with Commissioners Jeffrey Jennings, Carolyn Riggs, Clayton Riggs, and Chairman Melvin Jeralds voting aye; Commissioner Mike Andrews voting no; no Commissioner absent; and no Commissioner not voting.

Commissioner Clayton Riggs read into the minutes the following except from Mr. Whisnant's letter: *"I have received copies of various letters and memos raising questions about many aspects of the procedures Camden County followed in the summer and fall of 2002 when it enacted its franchise ordinance and entered into the Franchise Agreement. The record of the Board's actions set out in the minutes is not crystal clear; it is conceivable to me that a review court would find something objectionable in those proceedings. However, I do not find anything that I believe voids the agreement."*

Commissioner Clayton Riggs stated to Mr. Mullen that the conditions were set at the time, then when the process proceeded, the condition was let go because the permits and zoning paperwork were compiled, so the Board took that in lieu of; and asked Mr. Mullen if that was a good terminology of what happen.

Attorney Mullen stated it is conceivable but as a Board of Commissioners, whatever you do today, you can undo tomorrow, so long as it does not void a contract. The Board could have said that they want a, b, c and d before we take action and then for reasons unknown to him, the Board at the next meeting could say forget a, b, c and d. It is a prerogative of the Board of Commissioners. It allows for the Board to make a decision today and change the decision as the Board feels need be. On reliance on the contract and agreement, Black Bear Disposal LLC has gone out and made effort. Mr. Mullen stated it would be an entirely different situation if Black Bear Disposal LLC never spent anything and done anything from the time of the franchise to this date, but as they have, they have vested rights.

Commissioner Clayton Riggs stated that his answer followed what he had summarized from Mr. Mullen's letter to Commissioner Carolyn Riggs, that the Board did not follow that particular condition but they took another procedure and that the Board did not break the law.

Attorney Mullen stated that is correct.

Commissioner Clayton Riggs stated he wanted to make sure it was clear and on the record that the reason why they were going to do this.

Commissioner Jeffrey Jennings made a motion to answer Item II of the NCDENR letter dated October 6, 2005 that the condition in the 2002 Board of Commissioners minutes

was met by Black Bear Disposal LLC. The motion passed with Commissioners Jeffrey Jennings, Carolyn Riggs, Clayton Riggs, and Chairman Melvin Jeralds voting aye; Commissioner Mike Andrews voting no; no Commissioner absent; and no Commissioner not voting.

Chairman Jeralds stated due to the motion made at the October 17, 2005 Commissioners meeting, the answer to Item III of the NCDENR letter dated October 6, 2005 is yes, and the three (3) items to report to NCDENR have been confirmed yes.

Commissioner Carolyn Riggs made the following statements: *"I realize that there are some who are going to be very upset by the votes and how they came out. One of the things that has been presented to me throughout this whole process was that keeping the public uninformed, secrecies, and not following the law was one of the most important things bothering the people were most upset about."* Commissioner Carolyn Riggs further stated, *"Speaking for myself alone, had I voted against the law, I would have been doing the same thing that previous Boards did. Now, I know, I am not asking for your approval on that, I am just simply stating where I am coming from."*

Hearing no further comments from the Board, Chairman Jeralds proceeded with the meeting.

Closed Session – Pursuant to G.S. 143-318.11(a)(3) – Consultation with Attorney regarding litigation brought by the City of Chesapeake, The Lewis Family Ltd. Partnership, Camden County Action League, William Bland and wife Tracy Bland, Mike Elliot and wife Mary Lu Elliot, Lokie Flythe Jr. and wife Dawn Flythe, Marvin Myers, Robert E. Nobles, David Kravhak, and Richard Light Jr. against Camden County, the Camden County Board of Commissioners individually, and the County Manager.

Commissioner Clayton Riggs made a motion to go into closed session pursuant to G.S. 143-318.11(a)(3) – Consultation with Attorney regarding litigation brought by the City of Chesapeake, The Lewis Family Ltd. Partnership, Camden County Action League, William Bland and wife Tracy Bland, Mike Elliot and wife Mary Lu Elliot, Lokie Flythe Jr. and wife Dawn Flythe, Marvin Myers, Robert E. Nobles, David Kravhak, and Richard Light Jr. against Camden County, the Camden County Board of Commissioners individually, and the County Manager. The motion passed with Commissioners Jennings, Carolyn Riggs, Clayton Riggs, Andrews and Chairman Jeralds voting aye; no Commissioner voting no; no Commissioner absent; and no Commissioner not voting.

The Commissioners entered closed session at 7:38 p.m.

Commissioner Jennings made a motion to come out of closed session at 8:58 p.m. The motion passed with Commissioners Jennings, Carolyn Riggs, Clayton Riggs, Andrews and Chairman Jeralds voting aye; no Commissioner voting no; no Commissioner absent; and no Commissioner not voting.

Chairman Jeralds called for any motions.

Hearing no motions, Chairman Jearlds proceeded with the meeting.

Adjournment

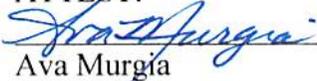
There being no further business to come before the Board at this time, Commissioner Carolyn Riggs made a motion to adjourn the meeting. The motion passed with Commissioners Jennings, Carolyn Riggs, Clayton Riggs, Andrews and Chairman Jeralds voting aye; no Commissioner voting no; no Commissioner absent; and no Commissioner not voting.

The meeting adjourned at 8:59 p.m.



Melvin J. Jeralds, Chairman
Camden County Board of Commissioners

ATTEST:



Ava Murgia
Clerk to the Board