

PUBLIC INSPECTION STATUS

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	_____	_____	Release Authorized By:
	_____	_____	<u>Board of Commissioners</u>
	_____	_____	<u>5-0 vote</u>
	_____	_____	<u>6-5-12</u> Date

**CLOSED SESSION MINUTES
MOORE COUNTY BOARD OF COMMISSIONERS**

The Moore County Board of Commissioners met for a Closed Session in the Commissioners Conference Room of the Historic Courthouse, Courthouse Square, Carthage, N.C., on May 15, 2012 at 5:00pm. Commissioners attending the meeting were Chairman Larry Caddell, Vice Chairman Jimmy Melton, Craig Kennedy, Tim Lea, and Nick Picerno. Also attending were County Manager Cary McSwain, Assistant County Manager Ken Larking, County Attorney Misty Leland, Clerk to the Board Laura Williams, and Tax Administrator Wayne Vest.

The purpose of the meeting was to discuss matters relating to:

- N.C.G.S. 143-318.11(a) (3) Attorney-Client Privilege
- N.C.G.S. 143-318.11(a) (4) Industry/Economic Development
- N.C.G.S. 143-318.11(a) (5) Real Property Acquisition Negotiation
- N.C.G.S. 143-318.11(a) (6) Personnel

SUMMARY OF CLOSED SESSION DISCUSSION:

County Attorney Misty Leland distributed to the Board a handout she had previously provided them regarding the sale or disposition of local government property. This handout is hereby incorporated as a part of these minutes by attachment as Appendix A. Ms. Leland said there are three methods of disposition of property which could not be discussed in closed session unless the property was to be exchanged. Ms. Leland said certain aspects of acquisition could be discussed in closed session, but not site selection. Ms. Leland said that regarding the County property that Bojangles was interested in, she did not know if the Board wanted to use one of the three methods but if they did there was a process to follow. She said if the Board did want to move forward, she and County Manager Cary McSwain could discuss with them what needed to be done.

Commissioner Lea said he thought the Board agreed that the space needs allocation study needed to be finished prior to giving the sale of the property any consideration. Chairman Caddell said he thought when Commissioner Picerno had suggested \$500,000 as an acceptable offer, the Board was agreeable to that, and then the space needs allocation study discussion followed. He said the Board would be shortsighted not to look at this. Commissioner Lea said he agreed but Bojangles had been looking at property in Carthage for a long time and he did not think another few

months would hurt. He said the property belongs to the taxpayers and the Board should look at the negotiated offer and upset bid process. He said taxpayers should know that it was an open and fair process and that the Board was trying to maximize the return on the investment. Chairman Caddell said he agreed totally.

Mr. McSwain said there were only certain things the Board could discuss in closed session. He said the Board needed to discuss the procedure, their willingness to sell, and a fair price. Ms. Leland said then, to move forward, the Board would have to decide in open session that they were willing to sell the property and choose a method of sale. She said the Board could set a price they were willing to accept, or receive an offer, or solicit one. Commissioner Lea mentioned the space needs allocation study again.

Commissioner Melton said the Board needed to consider everything. He said selling it at the right price could benefit the County and make the rest of the County property more valuable. He said there is not always a good buyer. He said if the property could be used in the future it would be different, but selling it could be beneficial to the County. He stated his opinion that the Board should come up with a price that was realistic but on the high side and consider selling it and going after another tract of land with the money. He summarized by saying he saw nothing but benefit in selling it at the right price.

Commissioner Picerno said, for Commissioner Kennedy's benefit, that three years prior, the Board wanted to create a vision for the County. He said they had talked about consolidating properties, minimizing heat and air costs, etc. and then got in a war over the public safety center and really never developed their vision. He said the space needs allocation study was being done to get them back on track. He said the problem is that the Board members all have a vision, but without the facts behind it. He said, however, that there may be a buyer now that would walk away. Commissioner Picerno said somehow the Board had to get their vision. He said land with the main building complex made more sense than on the main road, but that then again, there was money invested in that commercial area.

Chairman Caddell said if they could generate enough money to buy a piece of property for a government center, if they could take that money and turn around and invest it, it would not take him five minutes to make a decision.

Commissioner Picerno asked if the Board wanted to sell the property pending the outcome of the space needs allocation study, if they could do that. Ms. Leland said they could put terms and conditions on it. Chairman Caddell mentioned that a 12 acre piece of property on Highway 15/501 had just sold for \$400,000. Ms. Leland said that the terms would be advertised as part of the deal.

Chairman Caddell asked when the study would be complete and Mr. McSwain said three months. Commissioner Picerno inquired about a deadline for calling bonds as possibly mentioned by Davenport and Company in a prior meeting and Mr. McSwain said that deadline was June 1, 2013. Chairman Caddell said Mr. McSwain had asked the space needs consultant to complete the courts portion first and he asked if Mr. McSwain could ask them to look at the subject property secondly. Mr. McSwain said yes and he said the contract said that they would look at all the facilities up front. Commissioner Picerno asked if the Board could even feasibly sell the property

within ninety days and Ms. Leland reviewed the process. Commissioner Picerno said it seemed like the Board could accommodate what everyone wanted. Mr. McSwain said he did not know how binding the offer would be and Ms. Leland said the Board had the discretion to reject all the bids.

Commissioner Melton said he did not think the Board needed to get tied down to the offer made as they could probably get a better offer. He said he preferred not to put figures on the table, but would be willing to negotiate after a certain date. He said they did not need to string the interested party along, but if the study showed it was in the County's best interest to sell the property, Bojangles could wait.

Chairman Caddell asked if the Board could send Commissioner Melton to negotiate rather than doing it out front. Ms. Leland referenced UNC School of Government attorney David Lawrence's Local Government Property Transactions in North Carolina, 2nd Edition, 2000 which said government officials can negotiate, but they cannot do so in closed session. Chairman Caddell asked again if Commissioner Melton, then, could negotiate the offer, as the Board had asked Commissioner Lea to do before regarding the ERP software. Commissioner Lea clarified that the software recommendation came from a committee, not him alone. Commissioner Melton said to let Bojangles know the County had a study underway and if it came back positive, they would be willing to negotiate. Chairman Caddell asked Mr. McSwain if he could tell the people doing the study to prioritize that piece.

Commissioner Lea said there was no hurry as Bojangles had been looking since before Chairman Caddell had ever taken office. He said they were not going to disappear. He said the Board did not need to get on the fast track like they did with the Grimm property. He said they would have known there were six acres of wetlands on the property if they had done their due diligence. Chairman Caddell said Commissioner Lea's statements regarding the Grimm property were untrue. Commissioner Melton suggested the Board move on. He said to let Bojangles know the County was interested in an offer and they could wait for ninety days if they were interested in making one. Ms. Leland reviewed the offer and negotiation process. Commissioner Picerno stated that the offer that had been received from Bojangles was really an unsolicited offer. He commented that everyone had their own sense of urgency and everyone could get what they wanted. Commissioner Melton said Bojangles had been looking for a long time and would not walk away in thirty to ninety days if the property were such a prime piece.

Commissioner Lea said that if the study showed the County should sell the property, there was no one commissioner that should do that alone. He said there should be two commissioners if it were going to be negotiated that way. He said also the Board needed to come up with the number they wanted and go through the process. He said whoever negotiated the deal would just deliver information to the Board and act as a messenger in the process. Commissioner Lea commented that Commissioner Melton had told him before that he had taken partners with him to negotiate. Commissioner Melton said before he would agree to negotiate an offer he would determine a partner. Commissioner Lea said the Board would determine his partner. Chairman Caddell said the Board could tell the partners the number they were willing to accept. Ms. Leland said that would all have to be done in open session.

Chairman Caddell said this was a chance to do what was in the long term best interest of

the County. Commissioner Lea said Chairman Caddell knew what he wanted and knew how the Board got to this position. He said Chairman Caddell had told him when coming on Board that he wanted to sell that piece of property. Chairman Caddell refuted this. Commissioner Melton asked members to calm down. Commissioner Melton said if it was ok to have Ms. Leland and Mr. McSwain to put some language together and whatever they needed from the study they would put on the floor. Commissioner Kennedy asked if it had to be taken out in open session. Commissioner Lea said enough had been done in closed session. Commissioner Kennedy suggested saying the County was potentially interested in selling depending on the outcome of the study. Chairman Caddell said it should be done out in open session, and the discussion concluded.

Sandra M. Wilkins
Clerk to the Board



Boyd Caddell
Chairman

Appendix A
5-15-2012

Sale or disposition of Local Government Property

- NC Constitution = unconstitutional for a local government to dispose of property for less than its fair market value (otherwise its an *exclusive privilege or emolument* = prohibited by Article 1, Section 32)
- Most procedures that by which a local government can sale or otherwise dispose of property are competitive (NC Supreme Court has indicated that the price resulting from an open and competitive procedure will be accepted as the market price)
- If a sale is privately negotiated, the price will normally be considered appropriate unless strong evidence indicates that it is so significantly below market value as to show an abuse of discretion.
- Monetary consideration is not always necessary as long as the receiver uses it for a public purpose (that promise constitutes sufficient consideration for the conveyance)
 - The receiver is usually another local government, but not always:
 - To governments (G.S. 160A-274)
 - To fire departments and rescue squads (G.S. 160A-277)
 - To nonprofit preservation or conservation organizations (G.S. 160A-266(b))
 - To nonprofit agencies to which the county or city is authorized to appropriate money (G.S. 160A-279)
- 3 main competitive methods of sale (appropriate in any circumstance):
 1. **Sealed bids:**
 - ❖ May sell any real and personal property by this method
 - ❖ Procedure set forth in **G.S. 143-129** (purchasing property) and also includes – An advertisement for sealed bids must be published in a newspaper that has general circulation in the county (for a county government).
 - ❖ Publication must occur 30 days before the bid is opened if real property is being sold (7 for personal property)
 - ❖ Ad must generally describe the property
 - ❖ Ad must tell where it can be examined and when and where the bids will be opened
 - ❖ Ad must state whether a bid deposit is required, how much it is and the circumstances under which it will be retained
 - ❖ Ad must reserve the governing board's right to reject any and all bids.
 - ❖ Bid must be opened in public and the award is made to the highest bidder.
 - ❖ Procedure designed to obtain wide competition by providing public notice and good opportunity for bidders to examine the property.
 - ❖ Invitations to bid may be mailed to prospective buyers, just as they are typically sent to prospective sellers in the formal purchasing procedures for personal property.

- ❖ This procedure is used by the Division of Purchase and Contract in disposing of almost all surplus *personal* property owned by the State.

2. **Negotiated Offer and Upset Bid (G.S. 160A-269):**

- ❖ May sell any real and personal property by this method
- ❖ The procedure begins when the local government receives and proposes to accept an offer to purchase specified government property.
- ❖ The offer may be either solicited from the offeror or made directly by it on its own initiative.
- ❖ The governing board then requires the offeror to deposit a 5 percent bid deposit with its clerk and cause a notice of the offer to be published.
- ❖ The notice must: describe the property, specify the amount and the terms of the offer, give notice that the bid may be raised by not less than 10 percent of the first \$1000 originally bid, plus 5 percent of any amount above \$1000 of the original bid.
- ❖ Upset bids must also be accompanied by a 5 percent bid deposit.
- ❖ Prospective bidders have 10 days from the date on which the notice is published to offer an upset bid.
- ❖ This procedure is repeated until 10 days have elapsed without the local government receiving an upset bid. After that time the board may sell the property to the final offeror.
- ❖ At any time in the process, it may reject any and all offers and decide not to sell the property.

3. **Public Action (G.S. 160A-270):**

- ❖ May sell any real and personal property by this method
- ❖ The statute sets out different procedures for real and personal property sold at public auction
- ❖ For real property, the governing board must adopt a resolution that authorizes the sale, describes the property, specifies the date, the time, the place, and the terms of the sale and states that the board must accept and confirm the successful bid.
- ❖ The board may require a bid deposit.
- ❖ A notice containing the information set out in the resolution must be published at least once and not less than 30 days before the auction.
- ❖ The highest bid is reported to the governing board, which then has 30 days in which to accept or reject it.
- ❖ For personal property the same procedure is followed except that the board may in the resolution authorized an appropriate official to complete the sale at the auction and the notice must be published not less than 10 days before the auction.
- ❖ Electronic sale is permitted

- ✚ Certain procedures must be followed
 - ✚ Must specify electronic address where information regarding the property to be sold can be found
 - ✚ Electronic address at which bids may be posted
 - ❖ Public action is a traditional method of selling both real and personal property.
 - ❖ Open competitive bidding may under some circumstances encourage the offering of higher prices.
 - ❖ The possibility of immediately acquiring possession of personal property makes this approach attractive to many buyers.
- **Exchange of Property:**
 - A local government may exchange any real or personal property for other real or personal property if it receives full and fair consideration for the property (G.S. 160A-271)
 - Procedure: After the terms of the exchange agreement are developed by private negotiations, the governing board authorizes the exchange at a regular meeting. A notice of intent to make the exchange must be published at least ten days before it occurs. The notice must describe the properties involved, give the value of each as well as the value of other consideration changing hands, and cite the date of the regular meeting at which the board proposed to confirm the exchange.