

TOWN OF BURNSVILLE  
Special Meeting  
September 14, 2011

On September 14, 2011, the Town Council, with members Mayor Danny McIntosh, Ruth Banks, Judy Buchanan, Doyce McClure, and Ron Powell present, held a special meeting in the Town Hall. Also in attendance were staff members Jeanne Martin and George Nero; town attorney Todd Bailey, and visitors Lucy Doll, Jody Higgins, Armin Wessel, and Bill Wheeler. The Mayor called the meeting to order, stating that the purpose of the meeting was for:

1. Discussion with town attorney regarding agreement with Yancey County and the East Yancey Water and Sewer District; and
2. Discussion concerning High Unit Cost Grant from NC Department of Environment and Natural Resources – Division of Water Quality (NC DENR-DWQ).

Ron Powell made a motion to amend the agenda posted in the meeting notice to include discussion of any and all issues that may be deemed appropriate by Council. Ruth Banks seconded the motion. Voting results were as follows:

<u>Ayes</u>	<u>Noes</u>
Ruth Banks	Danny McIntosh
Judy Buchanan	
Doyce McClure	
Ron Powell	

Attorney Todd Bailey asked Council to consider entering closed session pursuant to N.C.G.S. 143-318.11(a)(3). Judy Buchanan made a motion to enter closed session as suggested by Mr. Bailey. Doyce McClure seconded the motion. Voting results were as follows:

<u>Ayes</u>	<u>Noes</u>
Ruth Banks	Ron Powell
Judy Buchanan	
Doyce McClure	
Danny McIntosh	

Ron Powell made a motion to permit George Nero to attend the closed session. Ruth Banks seconded the motion, which was unanimously approved.

Council reconvened in open session. George Nero gave an update on negotiations concerning the East Yancey sewer project. He said he and Public Works Director Anthony Hensley had been working on a "working agreement" to provide services for the county to operate the sewer plant they will construct. He reported that there had been an initial meeting with Harry Buckner and Randy Hintz (McGill Associates), Nathan Bennett, and Attorney Billy Clarke. Harry Buckner made it clear at that meeting that the town was to own and operate the sewer plant. This was confirmed later by Jamie McMahan in a later meeting when he said the county was giving the town \$6 million in assets and he couldn't understand what the \$170,000 issue was about. Harry Buckner and Billy Clarke each said they represented the county at that meeting. At that point Mr. Nero was exploring the possibility of the

town being relieved of the \$170,000 commitment, since it would be town taxpayer money and town residents are already paying as county residents, which would result in every town taxpayer paying \$100 for a project that would not be of any benefit to town residents.

Mr. Nero said that at that time he did not know that the town owned the \$3.1 million grant. The 1995 agreement said it was the intent for the town to own and operate the operation. Up until this year, Harry Buckner and Jamie McMahan agreed that was the intent, and that constituted the gentlemen's agreement. However, the county said the agreement could not be acted upon until after the warranty period, after which time the operation would be turned over to the town.

Mr. Nero and Anthony Hensley then pursued a "working agreement" or "operations agreement" with the help of town attorney Todd Bailey. The county countered with a new agreement they had drawn up. Mr. Bailey edited their new version, but missed a key paragraph that referred to the agreement superseding all other agreements. Their agreement included the town contributing \$170,000 and the town running the operation; however, there was no provision for retained earnings, just reimbursement for the town's actual costs. The town would take on the liability and have no way to absorb it. Since there were serious differences in the agreement, Mr. Nero and Mr. Hensley returned to the original operations agreement, to which Mr. Bailey was opposed.

In the past week Mr. Nero learned of the town's grant through Harry Buckner. This revelation changed things because the county needs the grant to honor conditional contracts. All along, Mr. Nero and Mr. Hensley had been under the impression that the town would own and operate the system, and were trying to negotiate out of the \$170,000 match and solidify the gentlemen's agreement.

Mr. Nero said Council needs to decide (1) if the town wants to withdraw from the deal and if not, (2) how it wants to handle the \$170,000 match. Once the \$3.1 million grant became evident, Mr. Nero thought it could be used as leverage to enforce the gentlemen's agreement. He pointed out that the town will be losing \$90,000 every year in revenues from existing customers that will be absorbed by the Sewer District. Mr. Nero said he is a skilled and experienced negotiator with pure intentions, looking out for the best interest of the town residents and taxpayers.

Mr. Nero said that if the \$3 million dollar grant is reallocated, it gives the district ownership of the infrastructure and the plant – all assets. There would be no reason then for the District to deal with the town in any way, as the town would have signed away its rights.

Judy Buchanan said she wanted a copy of the grant and the grant application, and wanted copies to all council members. She also said she wanted an opinion from the High Country Council of Governments.

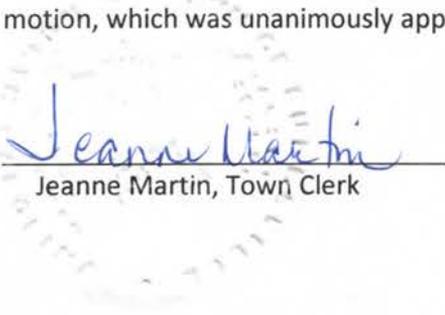
Ron Powell made the following motion to:

- 1) Request the grant and application, and provide council with copies;
- 2) Request input in writing from High Country Council, who wrote the original grant, for knowledge and information;
- 3) Pursue completion of the operations agreement with the East Yancey Sewer District;
- 4) Direct George Nero and Anthony Hensley to continue to meet with Nathan Bennett and Jamie McMahan. Once an agreement is arrived at, a copy of the agreement is to be delivered to council and forwarded to Todd Bailey for his legal opinion;
- 5) Direct staff to determine issues of administering the grant and give pros and cons in writing, and deliver to council;

- 6) Direct staff to create a future options agreement for such contingencies as water, and consider such things as who would own the asset if the town made application for funding – and what we will look like in the future;
- 7) Determine the county's intentions in the operation of their own water system;
- 8) Direct George Nero to work with Wanda Proffitt on plans for an East Yancey water line, and grants to fund it.

Judy Buchanan seconded the motion, which was unanimously approved.

There being no further business, Doyce McClure made a motion to adjourn. Ron Powell seconded the motion, which was unanimously approved.



  
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Jeanne Martin, Town Clerk

  
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Danny McIntosh, Mayor