

COLUMBUS COUNTY BOARD OF COMMISSIONERS**April 20, 2007****7:00 A.M.**

The Honorable Columbus County Commissioners met on the above stated date and at the above stated time in the Dempsey B. Herring Courthouse Annex Building, located at 112 West Smith Street, Whiteville, North Carolina, to resume the April 16, 2007 Board Meeting.

COMMISSIONERS PRESENT:

Sammie Jacobs, **Chairman**
 James E. Prevatte, **Vice Chairman**
 Amon E. McKenzie
 Bill Memory
 Lynwood Norris
 Ricky Bullard
 Ronald Gore

APPOINTEES PRESENT:

Jimmy Varner, **County Manager**
 Steven W. Fowler, **County Attorney**
 June B. Hall, **Clerk to Board**
 Leo Hunt, **Interim Finance Officer**

MEETING CALLED to ORDER:

At 7:00 A.M., Chairman Jacobs called the April 20, 2007 Board Meeting to order.

RECESS REGULAR SESSION and enter into COLUMBUS COUNTY WATER and SEWER DISTRICT V BOARD METING:

Commissioner McKenzie made a motion to recess Regular Session and enter into a Columbus County Water and Sewer District V Board Meeting, seconded by Commissioner Memory. The motion unanimously carried.

This information will be recorded in Minute Book 1 for the Columbus County Water and Sewer District V Board.

ADJOURN COLUMBUS COUNTY WATER and SEWER DISTRICT V BOARD MEETING and resume REGULAR SESSION:

At 7:13 A.M., Commissioner Memory made a motion to adjourn Columbus County Water and Sewer District V Board Meeting and resume Regular Session, seconded by Vice Chairman Prevatte. The motion unanimously carried.

APPOINTMENT - JUVENILE CRIME PREVENTION COUNCIL:

Commissioner Prevatte appointed Marie Tutwiler, 132 Cape Fear Drive, Whiteville, North Carolina 28472, to the Juvenile Crime Prevention Council, to fill the vacancy of Fran Stephens, who has resigned, with term expiring June 30, 2008.

ADJOURNMENT:

At 7:15 P.M., Commissioner Memory made a motion to adjourn, seconded by Commissioner McKenzie. The motion unanimously carried.

APPROVED:

JUNE B. HALL, Clerk to Board

SAMMIE JACOBS, Chairman

**COLUMBUS COUNTY WATER and SEWER DISTRICT V
BOARD MEETING**

Monday, April 20, 2007

7:01 A.M.

The Honorable Columbus County Commissioners met on the above stated date and at the above stated time in the Dempsey B. Herring Courthouse Annex Building located at 112 West Smith Street, Whiteville, North Carolina, to act as the Columbus County Water and Sewer District V Board.

COMMISSIONERS PRESENT:

Sammie Jacobs, **Chairman**
James Prevatte, **Vice Chairman**
Amon E. McKenzie
Bill Memory
Lynwood Norris
Ricky Bullard
Ronald Gore

APPOINTEES PRESENT:

Jimmy Varner, **County Manager**
Steven W. Fowler, **County Attorney**
June B. Hall, **Clerk to Board**
Leo Hunt, **Interim Finance Officer**

MEETING CALLED to ORDER:

At 7:01 A.M., Chairman Sammie Jacobs called the Columbus County Water and Sewer District V Meeting to order, and stated this meeting was for the purpose of receiving an update on the Performance Bond with Goodyear Construction, Incorporated.

UPDATE on GOODYEAR, INCORPORATED PERFORMANCE BOND:

Chairman Jacobs requested that Jim Varner, Columbus County Manager, and Steven W. Fowler, Columbus County Attorney, deliver an update on the Goodyear, Incorporated Performance Bond. Mr. Varner stated the following:

1. For information purposes, we have a bond for this project in the amount of \$4,564,000 and we have a grant for \$1,987,000;
2. It was requested that I discuss this matter with an attorney, and Steve and I called Ted Smyth who is an insurance attorney in Raleigh who is well known, and orally read the following memo relative to this matter:

To: Sammie Jacobs, Chairman
Columbus County Board of Commissioners

From: Jim Varner, County Manager

Re: Water District V's Release of Goodyear Construction from Contract
(Based on discussion with Insurance Attorney Ted Smyth)

Date: April 19,2007

After much investigation, the county may not have a performance bond claim. The contract may be void because Goodyear Construction, Incorporated cannot legally perform the duties they initially agreed to perform. It is my opinion, a party to a contract cannot force an illegal contractor (Goodyear has no licensed contractor) on the other party when the other party is not able to perform. North Carolina General Statutes state than an unlicensed contractor cannot perform duties to be performed by a licensed contractor. This protects the public from potentially inferior work.

Also, the county/district may not be damaged by the low-bidder's inability to perform. With the contract being void, the federal government (USDA) would pick up the difference between the low bidder (Goodyear) and the next lowest bidder (T.A. Loving). The April 19, 2007 letter from Ronnie Pope, stated that USDA is willing to pay the difference for any shortfall between the first and second bidders.

Therefore, there may not be anything in the current situation that would trigger a performance bond claim. Apparently, the only licensed contractor with Goodyear died the night/morning before the notice to proceed was issued. It may also be difficult to prove the District was damaged in the form of lost money by going to the next highest bidder with the difference being made by the USDA.

However, it would be important before proceeding too much longer to have the appropriate Goodyear representative to sign an indemnity agreement not to litigate against the district for any reason. Both parties thus agreeing that the contract cannot be performed.

Based on the April 19, 2007 letter from Ronnie Pope, USDA is looking for the district to conclude that the contract is void. This would open the door for USDA to provide the additional money for work performed by T.A. Loving.

3. Mrs. Joy H. Goodyear, Goodyear Construction, Incorporated, faxed me the letter for the Release from Contract with her signature, around 4:00 P.M., yesterday;
4. I have received the following letter from James R. Pope, Area Specialist, USDA Rural Development, which I will read the first two (2) paragraphs:

April 20, 2007

Mr. Jim Varner
Columbus County Administrator
111 Washington Street
Whiteville, NC 28472

Re: Water District V - Contract 1

Dear Mr. Varner:

Rural Development's concurrence to award the contract to Goodyear Construction was based

on the attorney's legal determination and recommendation relative to the validity of the Goodyear contract.

However, the District is apparently proceeding at this point to communicate with the bonding company about possible payments from them based on the Goodyear contract. We question whether the bonding company has any obligations for a contract that has been voided. We believe the only way that District V can recover from the performance bond is under a condition of default by the contractor and not in a case where the contract has simply been nullified. Therefore we are now somewhat confused as to the District's determination of the status of the Goodyear contract.

5. The head man at USDA and the Local Government Commission got involved in this situation yesterday.

Vice Chairman Prevatte asked the following three (3) questions:

1. Did we legally void the contract when the letter was sent to Joy Goodyear requesting her to sign a hold harmless statement?;
2. Were we trying to force Gtoodyear to do the work?; **and**
3. Is the \$160,000 (-/+) a loan or a grant?

Mr. Varner replied stating the \$160,000 (-/+) would be a loan from USDA.

Commissioner Bullard asked why the letter for the Release from Contract was sent to Mrs. Goodyear, and why were the County Commissioners polled on April 05, 2007. Mr. Varner replied stating that Ronnie Pope had suggested sending the letter. Chairman Jacobs stated he wanted to find out the feelings of the Board members on this matter.

Commissioner Gore asked what did the Local Government Commission have to say about this situation. Adam Kiker, engineer with Hobbs Upchurch, replied stating that he did not talk to the Local Government Commission, he called the North Carolina Institute of Government. Mr. Varner replied stating the Local Government Commission was concerned about the bonds that were to sell on April 26, 2007.

Commissioner Memory made a motion to accept Joy H. Goodyear's request for the contract to be null and void and award the bid to T.A. Loving for the sum of \$2,875,890, who is the next lowest bidder, seconded by Commissioner Norris.

A roll-call vote was taken with the following results:

AYES: Chairman Jacobs, Vice Chairman Prevatte, Commissioners McKenzie, Memory, Norris and Bullard
NAYS: Commissioner Gore.

The motion passed on a six (6) to one (1) vote.

ADJOURNMENT:

At 7:13 A.M., Commissioner Memory made a motion to adjourn, seconded by Vice Chairman Prevatte. The motion unanimously carried.

APPROVED:

JUNE B. HALL, Clerk to Board

SAMMIE JACOBS, Chairman

COLUMBUS COUNTY WATER and SEWER DISTRICTS I, II, III, IV and V

COMBINATION BOARD MEETING

Monday, April 16, 2007

7:13 P.M.

The Honorable Columbus County Commissioners met on the above stated date and at the above stated time in the Dempsey B. Herring Courthouse Annex Building, located at 112 West Smith Street, Whiteville, North Carolina, to act as the Columbus County Water and Sewer Districts I, II, III, IV and V Board.

COMMISSIONERS PRESENT:

Sammie Jacobs, **Chairman**
James Prevatte, **Vice Chairman**
Amon E. McKenzie
Bill Memory
Lynwood Norris
Ricky Bullard
Ronald Gore

APPOINTEES PRESENT:

Jimmy Varner, **County Manager**
Steven W. Fowler, **County Attorney**
June B. Hall, **Clerk to Board**
Leo Hunt, **Interim Finance Officer**

MEETING CALLED TO ORDER:

At 7:13 P.M., Chairman Jacobs called the Columbus County Water and Sewer Districts I, II, III, IV and V **Combination** Board Meeting to order.

Agenda Item #15: PUBLIC UTILITIES - RECOMMENDED CHANGES to the UNIFORM RULES for all WATER DISTRICTS and RETAIL WATER FACILITIES:

Leroy Sellers, Public Utilities Director, requested Board approval and adoption of the recommended changes to the Uniform Rules for all Water Districts and Retail Water Facilities Operated by the Columbus County Public Utilities Department. This will be the **second reading**.

Reference may be made to the April 02, 2007 Minutes for a full listing of the Uniform Rules for all Water Districts and Retail Water Facilities Operated by the Columbus County Public Utilities Department.

Vice Chairman Prevatte asked for a full explanation fo the late fee that will be charged. Leo Hunt, Columbus County Interim Finance Officer, stated the following:

1. The customer will have fifteen (15) days to pay after being billed;
2. If the bill is not paid by the due date, there will be a late fee charged;
3. Five (5) days after the due date, if the bill has not been paid, the water will be turned off, and the customer will have to pay a re-connect fee for reinstatement of the water; **and**
4. That is a total of twenty (20) days for the customer to pay after being billed.

Commissioner Memory made a motion to approve and adopt the recommended changes to

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the Uniform Rules for all Water Districts and Retail Water Facilities Operated by the Columbus County Public Utilities Department, seconded by Commissioner Bullard. The motion unanimously carried.

ADJOURNMENT:

At 7:14 P.M., Commissioner Memory made a motion to adjourn, seconded by Commissioner Bullard. The motion unanimously carried.

APPROVED:

JUNE B. HALL, Clerk to Board

SAMMIE JACOBS, Chairman