YADKIN COUNTY BOARD OF COMMISSIONERS
EMERGENCY SESSION MINUTES
Tuesday, May 26, 2015

The Board of Commissioners of the County of Yadkin, State of North Carolina, met for an Emergency Session in the Commissioners' Meeting Room of the Yadkin County Human Services Building located at 217 East Willow Street, Yadkinville, NC on Tuesday, May 26, 2015 at 2:00pm.

Present were:
Chairman Kevin Austin
Vice Chairman David Moxley
Commissioner Gilbert Hemric
Commissioner Marion Welborn
Commissioner Frank Zachary

Staff present: County Attorney, Ed Powell; County Manager/Finance Officer, Lisa Hughes; and Clerk to the Board, Tanya Gentry.

Chairman Austin called the meeting to order at 2:00pm.

The Board discussed the following:

Yadkin Valley Community Hospital Update

Chairman Austin told those present that the Board would be going into Closed Session a little later in the meeting. The audience will be able to remain in the Commissioners Room because the Commissioners' will be going into a smaller conference room for Closed Session today. There may be comments made after Closed Session. It has been a particularly trying last few days for everyone in the County. Chairman Austin gave a special thank you to County Attorney Powell and County Manager Hughes for their hard work since this issue broke. They have done a fantastic job of trying to protect the best interests of the citizens in regards to what has happened with Yadkin Valley Community Hospital. HMC/CAH has fatally ended the negotiations with the County and closed the Hospital. County Manager Hughes went over some background information on what has occurred with HMC/CAH. Please see Appendix A for further background information. When negotiations with HMC/CAH failed, County Manager Hughes reached out to all three of the bidders who responded to the RFP process. Wake Forest Baptist Medical Center and Hugh Chatham had withdrawn their proposals. Both of them were asked to consider rescinding their withdrawals and to continue to negotiate with the County. Wake Forest Baptist Medical Center did ask some questions but they did not rescind their withdrawal. Hugh Chatham asked to meet with County representatives to discuss the matter. After they spoke with the County, they did ask to rescind their withdrawal. Negotiations have since resumed with Hugh Chatham. County Manager Hughes turned the meeting back over to Chairman Austin. Chairman Austin spoke about the Medicaid provider number that is assigned by CMS. The County does not want HMC/CAH's provider number to be transferred to the County because that would mean accepting unknown liabilities that HMC/CAH has accrued while operating the Hospital. Those unknown liabilities could be crippling to the entire County. County Attorney Powell went over the events that occurred on Friday, May 22, 2015. The NCDHHS contacted the County on Friday afternoon. They said they had been notified by HMC/CAH that they were going to close the Hospital at 7:00am on Saturday, May 23, 2015 and deliver pink slips to their employees. This was the first the County had heard anything about the Hospital closing on May 23rd. Fortunately the County had already entered into an agreement with Smith Moore Leatherwood, a firm that has attorneys who specialize in healthcare matters. The County asked them to file a lawsuit to get a temporary restraining order from the Court to prevent HMC/CAH from closing the Hospital. The temporary restraining order (TRO) was granted. The TRO ordered HMC/CAH to keep the Hospital open. The lease amendment they signed and agreed to requires them, by law, to operate the Hospital through the end of the day on July 31, 2015. The TRO was served at 5:59pm on May 22, 2015. County Attorney Powell read a letter that Yadkin Valley Community Hospital emailed to the NCDHHS at 6:03pm on May 22, 2015. The letter, signed by Shawn Bright, was dated May 22, 2015 and it stated that the Hospital would be closing immediately. County Attorney Powell read a letter written by Bob Wilson, of Smith

Moore Leatherwood, to Dennis Davis. Dennis Davis is the Chief Legal Officer of the corporation that operates Yadkin Valley Community Hospital. The letter spoke about how HMC/CAH was violating a court order and harming the citizens of Yadkin County by keeping the Hospital closed. It asked that they reopen the Hospital immediately and honor the lease agreement they had signed or risk substantial legal liabilities for their conduct. The only response the County received as a result of the letter was a notification to contact Alex Barrett, their attorney in North Carolina. An HMC/CAH representative told the Winston-Salem Journal that the County evicted them and they had to close the Hospital. That is not true; no eviction proceedings took place. The TRO the County filed and was granted ordered the Hospital to remain open. Chairman Austin spoke about the Board deciding that the best thing for the citizens of Yadkin County was to open up a negotiation with any parties who are interested in operating the Hospital. He also spoke about the negotiations with HMC/CAH. HMC/CAH has said that the County won't negotiate reasonable terms. That is not true. The County would gladly negotiate reasonable terms but HMC/CAH did not present reasonable terms for consideration. The Board answered a few questions from the citizens.

Chairman Austin made a motion to go into Closed Session pursuant to NCGS 143-318.11(a)(1)(3)(4)(5)(6) to discuss Personnel Matters and to Protect Personnel Information that is Confidential under NCGS 153A-98, and to discuss the potential Location or Expansion of Industries or other Businesses in the County, to Establish the County's Negotiating Position for Acquiring Real Property and to Instruct the County Staff on that Position, and to have a Privileged Consultation with our County Attorney. Vice Chairman Moxley second.
Vote: 5/0.

After a motion to come out of Closed Session was made and the Board was in **Open Session**, the discussion of the Hospital continued. Chairman Austin informed those present that the County has a meeting set up on Thursday with the State and a lot of the interested parties who are involved, including the Attorney General's Office, to discuss the County retaining the license for the Hospital. So far all the signs are very positive on that. If the State is able to transfer the license, Yadkin County will not have to go through the Certification of Need (CON) process. Chairman Austin asked Allyson Labban, of Smith Moore Leatherwood to speak about the Hearing on Monday. They will be going to Court in Wake County on Monday to request that the temporary restraining order obtained on Friday be made a permanent restraining order. The Judge is going to be very interested in what has occurred. He will need to try and figure out how the County has been harmed and what the damages are. It is hard to put a dollar figure on damages in situations like this so the Judge will want to know how this has impacted people. If there are any patients or employees of the Hospital who are willing to tell their story about how the early closure of the Hospital has harmed them please speak with Allyson Labban. She will be available after this meeting for those who would like to speak with her today. Anyone who is interested in speaking with her after today can contact the County Manager's Office.

Chairman Austin thanked everyone for being here today. After the meeting adjourns, the Commissioners will be available to answer questions on a one-on-one basis.

Commissioner Zachary made a motion to adjourn. Commissioner Welborn second.
Vote: 5/0.

Tanya Gentry
Prepared by Tanya Gentry
Deputy Clerk to the Board

Kevin Austin, Chairman
Yadkin County Board of
Commissioners

6/15/2015
Date approved by the Yadkin County Board of Commissioners

HMC/CAH History

- April 2010, after executing a Request for Proposals (RFP) process as required by NCGS 131E-13, Yadkin County sold Hoots Memorial Hospital assets and operations to HMC for a cash payment of $1.6 million.

- Of the purchase price, $805,181.00 was owed to Diamond Healthcare for behavioral health services rendered that had not been paid during the year prior when HMC was managing the hospital.

- On March 29, 2010, Hoots Memorial Hospital's CEO requested a short-term loan of $400,000.00 from the County to cover payroll taxes that were due for 6 pay periods that had not been paid.

- The payments on this loan were $51,416.47 per month, plus penalties and interest if the payment was late. HMC made one partial payment on the note in the amount of $37,279.03.

- HMC/CAH 10's lease agreement was a 4-year term with a monthly rent amount of $4,896.42. HMC/CAH 10 made 3 payments on the lease; in June 2010, July 2010 and November 2010.

- During the term of the lease, CAH 10 was to purchase land within 2 years and build a new facility within the 4 years of the lease.

- In October 2011, HMC/CAH Consolidated filed for Chapter 11 Bankruptcy in the Western District of Missouri.

- The Bankruptcy Court allowed the Promissory Note to be included in the bankruptcy and the amount owed, including penalties and interest was $387,230.30.

- The Court also allowed two payments for attorney fees and audit fees that were part of the official closing of the sale to be included in the bankruptcy for an additional $64,266.02.

- HMC/CAH 10 was not utilizing all of the space in the Hospital building, so the County inquired in 2011 about locating Emergency Medical Services in the building.

- This generated the First Amendment to the Hospital Lease, effective January 1, 2012.

- This Lease Amendment reduced the monthly rent amount to $2,500 and at that time, CAH 10 had accrued $75,000.00 in unpaid rent, interest, and penalties.

- Due to the bankruptcy, the Amendment also gave HMC a reprieve on earning interest and penalties on the $75,000.00 and a repayment plan was setup for them to pay this accrued rent.

- In February 2013, the County inquired about moving its Health Department to the hospital facility.

- This generated the Second Amendment to the Hospital Lease.

- The Second Amendment reduced the monthly rent amount to $0 and extended the lease for another 12 months, extending it through April 30, 2015.

- At the time of the execution of the 2nd lease amendment, HMC/CAH 10 had accrued a total of $88,388.00 in unpaid rent.

HMC/CAH History

- HMC/CAH 10 had to perform certain building improvements for fire suppression purposes and to accommodate the Health Department's move.

- To ease the financial burden on HMC/CAH 10, the County agreed to match $1.00 for every $1.00 that HMC/CAH 10 spent on the needed improvements. All they had to do was provide a copy of the purchase orders/invoices and the cancelled checks. HMC/CAH 10 made needed improvements to the building and a credit of $48,342.46 was given to HMC/CAH 10 on September 12, 2014. The credit was applied towards the rent they owed the County.

- By October 15, 2014, HMC/CAH 10 had fully paid the remaining accrued unpaid rent.

- In July 2014, the County was aware of the lease expiration in April 2015 and wanted to consider all available options.

- In October 2014, the County expressed its desire to have a new operator and encouraged HMC/CAH 10 to negotiate with any and all interested parties to ensure that they receive a fair and reasonable offer for their operations.

- HMC/CAH 10 offered to sell the operations to the County for $3 million, but it was not, and is not, the County's desire to operate a hospital.

- The County requested a new lease document from HMC/CAH 10 and received one that was full of blanks and had no terms.

- In February 2015, when it was appropriate, the County began the RFP process to lease the hospital facility.

- The County received three responses to the request for proposals. They were from Wake Forest Baptist Medical Center, Hugh Chatham Memorial Hospital, and Community Hospitals Corporation of Plano, Texas.

- The three agencies who responded stated they needed additional time to conduct due diligence so the County entered into a Third Amendment to the Lease with HMC/CAH 10.

- The Third Amendment extended the Lease through July 31, 2015 and HMC/CAH 10 agreed to operate the hospital for the extended period.

- On May 4, 2015, based upon a request from Dennis Davis, attorney for HMC/CAH 10, the Board of Commissioners approved a Fourth Amendment to the Lease that included HMC/CAH 10 paying rent.

- Mr. Davis had requested a Lease with terms similar to what the County had offered to Hugh Chatham. The Board of Commissioners had never entered into any agreement with Hugh Chatham. So, the County used what Hugh Chatham had included in their response to the RFP for the lease terms, with one exception.

- On May 8, 2015, Mr. Davis presented the County with a counter offer. The counter offer included $0 rent; $1 million to be paid upon signing of the Amendment; $300,000.00 per year for indigent care; and $1.00 for every $2.00 HMC/CAH 10 spent for capital improvements to the facility, without any cap.

- In other words, they wanted a local government (the County) to pay them, a for-profit corporation, more than $2.5 million over a 5-year lease term while they remained in the building rent free. The County could not do that with taxpayer dollars.

- On May 13, 2015, at the request of HMC/CAH 10, the County Manager had an appointment scheduled with Paul Nusbaum, President of Rural Community Hospitals, to discuss HMC/CAH 10. At 11:30am that day, the County Manager received an email from Shawn Bright stating that Mr. Nusbaum cancelled the meeting. No reason for cancellation was provided, nor was an offer to reschedule it made.

- However, their attorney, Dennis Davis left the County Manager 2 phone messages that day. The County Manager returned his call at 4:00pm.

- They discussed the Amendment the County had sent HMC/CAH 10 and how the County could not consider the Counteroffer. Dennis Davis questioned the amount of rent included in the Amendment and the County Manager told him that was negotiable and they could offer an amount they considered to be fair. That the bottom line was that the County wanted them to pay rent. Mr. Davis responded by saying they could not pay any rent and that anything less than the Counteroffer they submitted on May 8th could not be considered. Then he proceeded to say that in accordance with the Third Amendment he had begun preparing the 855 to transfer everything to the County. Once their part of the 855 was completed, he was asked to email it to the County Manager.

- Later that evening, the County Manager received an email that was different from the phone call where he stated he didn't know where to go based upon the phone call.