

WAKE COUNTY FIRE COMMISSION

Thursday, September 22, 2011

Adopted Minutes

(Audio Replays of the meeting are available upon request)

A meeting of the Wake County Fire Commission was held on Thursday, September 22, 2011, 7:00 PM, in the Wake County EMS Training Facility, Cary Drive, Raleigh, North Carolina.

CALL MEETING TO ORDER

Commission Chair Lucius Jones called the meeting to order.

The following members were present: Chief Cecil Parker, Chief A.C. Rich, Chief Mark Haraway, Chief Rodney Privette, Ms. Barbara Poole, Mr. Billy Myrick, Mr. Robert Stagg, Commissioner Paul Coble, Michael Denning, and Mr. Keith Gregory.

The following County officials and staff were present: County Manager David Cooke, Vice Chairman Wake County Board of County Commissioners Phil Matthews, Deputy County Manager Joe Durham, County Internal Auditor John Stephenson, Budget and Policy Analyst Jason Horton, and Fire and Emergency Management Business Officer Demetric Potts.

Mr. Billy Myrick gave an invocation.

RESOLUTION IN HONOR OF ANN SUGGS

Fire Commission Chair Lucius Jones read a Resolution in Honor of Former Commission Member Ann Suggs.

Upon motion of Mr. Paul Coble the Fire Commission unanimously approved the Resolution in Honor of Former Commission Member Ann Suggs. Ms. Suggs family was unable to attend the meeting, so Commission Chair Lucius Jones requested that staff send the Resolution to a family member.

MINUTES

Upon motion of Mr. Paul Coble and second by Mr. Robert Stagg, the Fire Commission unanimously approved minutes of the May 5, 2011, Regular Meeting.

The agenda was approved as submitted.

REGULAR AGENDA

BAY LEAF STATION #1 RECONSTRUCTION

Mark Foresteiri, Senior Project Manager, Wake County Facilities Design and Construction gave a brief presentation of recent activities that led us to a conclusion that we believe the County could support with respect to Bay Leaf Fire Station. The full presentation is included in these minutes. Mark Foresteiri reported that we have reached the conclusion that the County could build a two-story building in exchange for the conveyance of Bay Leaf Station #3. Mr. Foresteiri stated the County Manager David Cooke would elaborate on that a little further.

Mr. Cooke reported that Mark had really done a great job, and what he was doing was look at how we could design and build a one-story building and compare that to the two-story headquarters building. To summarize what we identified is that the two-story headquarters building got us the additional bays, and essentially the training space and the area that you could assemble from the headquarters standpoint. Mr. Cooke reported that the County's position which was shared with Bay Leaf was that as long as they kept station #3 in operation they had plenty of space to do the training and the assemblage in the space that they had in Bay Leaf Station #3.

Mr. Cooke stated that what the County suggested was that if they closed and sold Bay Leaf Station #3, then they could have the money that would go to supplement money that the County would provide for a one-story fire station that would allow them to build the two-story headquarters station. In that conversation Bay Leaf said why don't we give you Bay Leaf Station #3 because the County is currently using it as an EMS station. Mr. Cooke reported that within the last year the County, because of some financial management at Six Forks Rescue Squad the County now provides the service in that area and the County now operates out of Bay Leaf Station #3 to provide EMS services. Mr. Cooke stated that was a natural issue for the County because we were going to have to have a station in that area so Bay Leaf offering that site is attractive to the County.

Mr. Cooke stated that the way that transaction would work is that the County would support building the Headquarters Station at Station #1; Bay Leaf would agree to deed Bay Leaf Station #3 to the County; the County would use money that it would have provided to buy and build an EMS station in that general area, in this case the difference between the one-story and two-story which is about \$723,000 with some other conditions. The long and short of it is that there is a proposal on the table that the County could support, it hasn't gone to the Board of Commissioners yet, it is still at a staff level. Bay Leaf gets a Headquarters station and the County gets an EMS station where it needs one.

Upon motion of Mr. Paul Coble and second by Chief Rodney Privette the Fire Commission unanimously approved the Bay Leaf Station #1 Reconstruction Project.

EASTERN WAKE FIRE DEPARTMENT

Demetric Potts stated that he wanted to update the Fire Commission on events that have been occurring with Eastern Wake Fire Department. Demetric stated that Ray Echevarria, Fire and Emergency Management Director reminded the Fire Commission that in FY 2010 the County

implemented a new Fire Protection Agreement which included a paragraph that allowed staff to visit the contracting departments to perform compliance reviews to make sure that things are being done in accordance with the contract. At that time we had completed three site reviews, Eastern Wake, Garner, and Swift Creek. Staff found no compliance issues at Garner and Swift Creek. With Eastern Wake we found issues with compliance with the Compensation Guidelines.

The following is a detailed account regarding the Eastern Wake Fire Department compliance Review:

Specifics on the Eastern Wake Compliance Review/Issues:

Eastern Wake Fire Department was sent notice of the Fire Protection Compliance Review on October 22, 2010. The authority given for the review was Section 10 of the Fire Protection Agreement. The specific compliance issues that were under review were:

- Eastern Wake Fire Department employees may not have adequate certifications;
- Eastern Wake Fire Department employees may be operating fire apparatus without valid driver's licenses;
- Eastern Wake Fire Department employees may be accruing leave inconsistent with direction given by the Eastern Wake Fire Department Board of Directors;
- Eastern Wake Fire Department employee salary adjustments may be inconsistent with the Wake County Fire Service Compensation Guidelines.

On November 15, 2010 County staff which consisted of Fire and Emergency Management staff, Finance and Budget Office staff (Jason Horton, Budget Analyst, John Stephenson, Internal Auditor, performed that the compliance review. At the conclusion of the review staff requested that EWFD provide Training and Certification Documentation for the following:

Albert Best

- Documentation of completion of Medical First Responder – Defibrillation (Wake County Medical Director's curriculum);
- Has completed Hazardous Materials Operations Course delivered by Wake County Local Emergency Planning Committee. Employee did not have North Carolina Hazardous Materials Responder Operations Plus Level certification.

Michael Dennis

- Documentation of completion of 16 hour Instructional Techniques for Company Officers course.

Anthony Lyons

- Documentation of completion of Wake County "Essentials of Firefighting" Course.

On February 16, 2011 Eastern Wake Fire Department was sent notice of staff findings from compliance review. The most significant compliance issues were:

- Two EWFD employees did not have the certifications required for the positions for which they held as outlined in the Wake County Fire Compensation Administrative Guidelines;
- Eastern Wake employees appeared to be accruing leave inconsistent with the direction given by the Eastern Wake Fire Department Board of Directors and the Compliance Review Team noted the following:
 - There was no record of the Eastern Wake Board of Directors formally adopting the 2002 amendment addressing leave accrual in the New Employee Handbook.
 - The 2002 amendment extends leave benefits to incumbent employees prior to 2002 which are inconsistent with Wake County's leave benefits.
- To address these compliance issues Eastern Wake Fire Department was told that the following improvements were needed for compliance:
 - Eastern Wake shall either provide documentation of certification compliance or reduce the two incumbent salaries back to June 30, 2003 rate.
 - Eastern Wake shall establish an internal practice of checking all employee certifications annually with reference to all certifications required for each position classification employed by the Department.
 - Eastern Wake shall present Wake County with a plan for repayment of funds received in excess of salary guidelines from June 30, 2006 through the date of compliance. The amount of repayment shall be equal to (the gross salary amount paid by the Department to the two incumbent employees between June 30, 2006 and the date of compliance minus the gross salary amount that would have been paid to the two incumbent employees for the same time period at their respective salaries as of June 30, 2003).
 - Eastern Wake shall effect a properly approved Board of Directors' resolution which ratifies adoption of the 2002 amendment addressing leave accrual in the New Employee handbook and 2) specifies that to the extent that the amendment extends leave benefits to incumbent employees prior to 2002 which are inconsistent with Wake County's leave benefits, Eastern Wake shall not use Wake County Fire Tax Revenues to pay such expenses, and such expenses shall not be part of the Department's annual budget submission to Wake County.

On April 28, 2011 Eastern Wake Fire Department was sent notice requesting that they present a plan for repayment of funds received in excess of salary guidelines from June 30, 2006 through the date of compliance.

- The amount of repayment shall be equal to (the gross salary amount paid by the Department to the two incumbent employees between June 30, 2006 and the date of compliance minus the gross salary amount that would have been paid to the two incumbent employees for the same time period at their respective salaries as of June 30, 2003).
- Eastern Wake was informed that they could not use Wake County Fire Tax Revenues to pay such expenses, and such expenses shall not be part of the Department's annual budget submission to Wake County.
- Eastern Wake Fire Department reported back to the Fire and Emergency Management Director that if they could not use Fire tax Revenues to repay the funds received in excess of the salary guidelines they had no other means to repay the County.

On June 23, 2011 the County's response to Eastern Wake was that their FY 2010 audit showed that they didn't have sufficient fund balance to assist in repaying the funds owed to the County so the County offered Eastern Wake the option of paying back the funds over a 4 year period. To do this Eastern Wake Fire Department would forfeit their FY 2012 employee merit allocation and their annual appropriation would be reduced.

- The repayment plan would remain in place from FY 2012 through FY 2016.
- Eastern Wake Fire Department could make adjustments/reductions to its operating budget based on the reduced appropriation, but they could not make reductions that would negatively impact fire protection service delivery.
- Eastern Wake was also informed that since their current fund balance was below the minimum as required by Section 20.H of the Fire Protection Agreement they could not take any action that would further reduce the department's fund balance.

On June 27, 2011 Eastern Wake Fire Department offered an alternative repayment that would reduce the department's annual appropriation the amount of \$22,640.75 over a 4 year period to repay the funds owed to the County.

- The County accepted Eastern Wake's alternative plan with the stipulation that the department could make appropriate adjustments/reductions to its operating budget based on the reduced appropriation. However, Eastern Wake could not make adjustments/reductions that would negatively impact fire protection service delivery by the department, and the department could not take any action that would further reduce the department's fund balance.

Eastern Wake Performance Audit:

- After the County accepted Eastern Wake's alternative repayment plan the County Manager's office requested that the County Auditor perform a performance audit on Eastern Wake to ensure that the department had the ability repay the monies owed without having a negative impact on fire protection service delivery.
- Eastern Wake was sent notice on July 11, 2011 informing the department that John Stephenson, County Auditor and I would be performing the audit on July 18, 2011.
- To facilitate the performance audit the County Auditor requested that Eastern Wake provide bank statements for July 2010 through June 2011, ESC Employer's Quarterly Tax & Wage Report for July 2010 through June 2011, Federal IRS Form 941 for July 2010 through June 2011, as well as payroll reports for May 2011 through July 2011.
- Prior to arriving at Eastern Wake on July 18, 2011 County staff had been informed that Eastern Wake had allegedly paid several employees for accrued vacation leave. During the review of the department's bank statements it was verified that they had paid accrued vacation leave to 4 Eastern Wake employees. The County Auditor informed the County Manager's Office that he had documentation that Eastern Wake had made these payments.

Additional Compliance Issues:

- On July 29, 2011, the County Manager sent notice to Ray Broadwell, President EWFD Board of Directors that the County aware that compensation payments were made to four Eastern Wake Fire Department employees for excess vacation leave totaling \$86,959.
- In a letter dated September 24, 2010 the County Manager had advised the Eastern Wake Fire Department Board that fire tax dollars could not be used to pay out accumulated vacation leave in excess of payments made to a County employee.
- The County Manager also appeared before the Eastern Wake Fire Board on May 27, 2010 and communicated the same information.
- The County Manager communicated to the Eastern Wake Board that the County and fire tax compensation guidelines do not provide leave payouts except at termination and the amount of leave paid cannot exceed 240 hours.
- Eastern Wake Fire Department had additional notice that they could not use fire tax funds to pay leave benefits inconsistent with the County's policy in the County's last request for corrective action dated February 16, 2011.
- The Eastern Wake Board was informed that these payments appear to violate these guidelines if paid with fire tax dollars. In his letter the Manger stated that the County needed to verify that the \$86,959 spent by Eastern Wake Fire Department for excess leave was not paid out of fire tax funds.
- Eastern Wake Fire Department was given until August 12, 2011 to :
 - Provide an accounting of the source of funds used for the \$86,959 in compensation payments.
 - Produce employment agreements or other documentation from June 2002 or earlier that indicates employees are entitled to unlimited accumulation of vacation leave.
- On August 9, 2011 the County Manager sent notice to Ray Broadwell, President EWFD Board of Directors that the County was continuing to review the payments to four employees for excess vacation leave paid out in June 2011. The department was informed that the County would extend the deadline until August 19, 2011 for the department to provide the documents requested in the July 29, 2011 letter.
- On August 26, 2011 the County Manager sent notice to Ray Broadwell, President EWFD Board of Directors informing Eastern Wake Fire Department the payouts to the four Department employees were made in violation of the County and Fire Tax District Compensation Guidelines which made the department non-compliant with the Fire Protection Agreement.
- Pursuant to Section 10 of the Fire Protection Agreement Eastern Wake Fire Department was notified that fire tax funds provided to the department would be suspended 90 days from the date of the August 26, 2011 letter. The department could avoid suspension by taking the following actions:
 - The County and the Department would utilize the services of a trustee who will oversee the financial operations of the department pursuant to our contract. The trustee should be selected from Wake County financial management services so as to not incur further unnecessary expense of fire tax dollars.
 - The Department, through its current Board of Directors, will take action to grant the Board of Commissioners authority to appoint a majority of a newly reconstituted Board of Directors.

- The County and the Department will agree for a length of time for the two actions above to remain in effect until performance standards are met or exceeded, as decided by the County.
- The Department will immediately assist that County in making claim on any applicable insurance coverage's to obtain reimbursement for the unauthorized expenditures of the Department, including error and omission coverage and umbrella coverage.
- Eastern Wake Fire Department was given until September 6th to respond.

David Cooke responded to the question from the Fire Commission in reference to the response received from Eastern Wake Fire Department. Mr. Cooke stated that he would paraphrase the response, noting that some of the Eastern Wake Fire Department representatives were in attendance. He reported that the quick answer was that essentially we've done nothing wrong, we have to make those payouts, and the only source of money that we had to do it from was the fire tax money. Mr. Cooke stated that part of our challenge and one of the things that we've looked into the issue was the original overpayment to the employees worth \$96,000 roughly, is predicated on that getting paid back to the County. If you look at where the source of that money has got to come from, they have to get it from savings or fund balance. When we looked at their fund balance we think that the first action put them in jeopardy of the fund balance issue and put on top of that the \$86,000 spent to pay for the accrued vacation, so it's a series of things that led to that at the end of the day if their fund balance is deficient they still have a contractual issue with the County. Then if the only ways you can fix that fund balance issue is with an infusion of money. Where do you think that money is going to come from? So it's all tax dollars at the end of the day. That was part of the discussion along the way. Mr. Cooke stated that it was still a discussion in progress we want it resolved and I am sure they want it resolved, our primary focus is to make sure fire protection still occurs in that area of the County, so we are simply raising the question on financial accountability because at the end of the day it still comes back with the County of how do you fix this and it's tax dollars that's always the solution. One of the reasons that Ray Echevarria wanted to do the compliance audits through the County was to make sure that each and every case and each and every incidence across the County in all the fire departments in the services that they provide that we are being accountable with the tax payers' dollars. The best way to spend that money is to provide great fire protection, and we have set guidance on some things that we think are important for financial accountability, and we are going to follow up from a County standpoint to make sure we hit those in all cases. We owe it to the taxpayers to do it.

Commission Member Judge Denning asked if Eastern Wake Fire Department was obligated to make those payments because of some employment agreements they entered into in 2002. Mr. Cooke stated that it was his understanding that there is some employment law that if you have made an obligation an employee under a set of certain circumstances that there is some requirement that you have to follow through with that. Every volunteer fire department got a letter from the County last September as this issue was raised and we said that you can't use fire tax dollars to make accrued vacation payouts for payouts that are in excess of what we would normally do for a County employee because we can't have fire departments out there providing unlimited obligations on behalf of the taxpayer.

Mr. Cooke concluded by stating that when these things start you hear all kinds of rumors so one of the reasons we've come to give you the facts and answer questions is so we could be really clear about where we are, where it's going as much as we can guess that, but also to be clear on our expectations, it gives us another opportunity to be clear on our expectations on the use of fire tax dollars.

Mr. Cooke stated that when we were dealing with the issue of overpayment to employees the contract that all the fire departments have requires that the county provides notice; it is a ninety day notice and within that ninety day notice the department is given an opportunity to fix the violation. The County worked our way through the issue of the overpayment. So we have in place a payment plan and supposedly over the next four (4) years the County will be reimbursed that money. So that issue is taken off the table, and so we come to the other issue which is the payment using fire tax money for accrued vacation. The letter that I sent in August is that ninety day period in which we said we have an issue and we think you are in violation of the contract and here are the things we think we need to do to resolve it and it starts that ninety day period.

The question was asked what happens in ninety days if we have no resolution. Mr. Cooke stated that's gets us to the point when the County can then start withholding money, the County has no authority to withhold money within that timeframe according to the contract. So at the end of the ninety day period we are at the point where we decide what we are going to do. We will have to start going through a checklist. Do we start withholding money? What will that do to fire protection service in that area? Do we have another alternative for providing fire service in that area? Mr. Cooke stated that it is not our goal to get to the ninety day period. Our goal is to figure out a way to resolve this situation, continue to provide fire service in that area, but to ensure that there is financial accountability from that point forward that we all will feel good about.

INFORMATION AGENDA

APPARATUS COMMITTEE REPORT

Chief Woods stated that he had two items. One is a request from Morrisville Fire Department to move up the replacement of their rescue truck to 2013. It was originally scheduled for 2012 and we moved it out to 2015 and they have requested that we move it to 2013 because they have the funding through the municipality to move it back to 2013. Chief Woods stated that he had talked with the committee and the Budget Office and he was told that the budget could sustain our cost share portion of the purchase which would be \$76,000. Chief Woods stated the second item is basically the same thing with the exception that Apex Fire Department is going to replace two vehicles with one. Their rescue truck was due in 2012 and it is now totally out of service and wouldn't pass the DOT inspection. They are going to take an engine and the rescue and replace them with one vehicle. Chief Woods stated that the committee supported both request and Jason Horton stated that the budget would support the purchases.

Upon motion of Mr. Paul Coble and second by Chief Rodney Privette, the Fire Commission unanimously approved the purchase of a rescue truck for Morrisville Fire Department and one vehicle for Apex Fire Department.

FIRE TAX FINANCIAL REPORT

Mr. Jason Horton advised the Fire Commission that there were copies of the financial reports in the meeting materials. Mr. Horton reported that this is the first Fire Commission meeting since the close of the FY 2011 fiscal year he was excited to report where the fire tax district stands at the conclusion of FY11. Jason reported that we had spent 98.4% of the budget. The unspent 1.6% was anticipated and it will be a part of the contribution to the fund balance. There were some small additional savings where the fire tax district approved some expansion positions and delays in hiring those positions and those savings stayed in the fire tax district and will be an addition to the contribution to fund balance. On the revenue side we exceed the tax revenue projections in the budgeted amount for FY11 by less than ½ % of 1% or approximately \$99,000. Jason stated with that amount and some small interest earnings the fire tax district will contribute about \$473,000 to fund balance. Jason stated for FY12 it is still early in the year and at this time he doesn't see anything abnormal so far.

CHAIR REPORT

No report.

FIRE AND EMERGENCY MANAGEMENT DIRECTOR REPORT

Demetric Potts reported that it was the recommendation of the Budget Committee that we review and update the Long Range Business Plan. Staff wanted to get direction from the Commission on how you wanted to proceed with that project. The Fire Commission by consensus requested that staff follow the same process as was done before.

Demetric reminded the Fire Commission that there was funding in the capital plan for the replacement of Alpha Numeric and Tone & Voice Pager for the Fire Service. The Alpha Numeric Pagers were deployed to the departments in August and it is expected that the Tone & Voice Pagers will be deployed to the departments in mid-October.

Demetric informed the Fire Commission that the department has not been able to schedule the training for Post Incident reviews. Staff was in discussion with the North Carolina Forestry Service to deliver the training to but they were unable to schedule the training due to their response to the many wild fires that have occurred over the past year. Ricky Dorsey, Fire and Emergency Management Training Director has recently contacted the Forestry Service and they are scheduled to meet in early October in an effort to plan the training for the departments. We hope to have training scheduled by January of 2012 or sooner.

Demetric reported that the County Attorney advised that he had not completed his review and interpretation of the Wake County Fire Commission Rules of Procedure as was requested at the last Fire Commission meeting. Demetric Potts informed the Fire Commission that the County Attorney informed him that he would have an interpretation prepared for the November Fire Commission meeting.

OTHER BUSINESS

Chief Cecil Parker requested that the Fire Commission be given a list of committee members as part of the information that will be submitted with the interpretation of the Wake County Fire Commission Rules of Procedures.

Chief Mark Haraway requested that staff send out a notice to the Fire Chief's letting them know that they could start making their small capital request.

Chief A.C Rich requested that staff have the Fire Commission web site updated.

PUBLIC COMMENTS

Slade Rand, Lawyer for Eastern Wake Fire Department stated that he came before them tonight to report that what the County Manager tells you in regards to the County and the fire department negotiations are true, but they disagree with some of the facts that have been cited. He stated that the main reason that he was up here is to dispell some of the public rumors and things that have been reported in the newspaper and to answer some questions that you might have. Mr. Rand stated that one of the things that they were wrestling with was this compensation issue and vacation pay. He stated that several of the members of this board were part of the board at Eastern Wake at the time the vacation accrual policies were implemented, and to my knowledge at that time there were no Wake County policies that prohibited that practice and I don't think there is one right now. Mr. Rand stated that he had a copy of his clients Wake County Fire Compensation Administrative Guidelines updated in 2006 here with him. He stated that if he saw in the guidelines that his clients couldn't pay out vacation leave past 240 hours a year he would tell his folks back there that you made a mistake and you shouldn't have done it. That is his practice and that's what these guys would do, but what has happened and what you see in the paper and on WRAL is that these folks have misappropriated County tax money and we disagree with that, we don't see anything in the Wake County Fire Compensation Administrative Guidelines that prohibits that practice. Mr. Rand stated that under Chapter 95 if you have accrued vacation you have got to pay it, typically you pay it when an employee retires, resigns, or is terminated. Now one of the problems with accrued vacation is when you pay it you have to pay it at the then current rate of pay. Mr. Rand stated that legally speaking and I think the County would agree with this, the department was obligated to pay these payments sometime in the future or now. It's cheaper to pay it now and its several reasons for that. One is you don't pay this future cost, you get it out of the way plus, and this is important the department had the money to do it. All that money was paid in June of this year. Now according to my clients agreement with the County my folks have got to have 5% reserve fund balance at the end of the fiscal year, the 5% is the 5% of the allotted money received from the County, well that sum was about \$78,000. At July 1st of this year they had about \$127,000 in the reserve account, I have got the bank statements back here to prove it. There may be some reason that the County believes that we were less than 5% but we disagree with it and we would like to talk with them about it in the future. My purpose here is not to carry a fight with the County in public it is just to let you know that we disagree with what Mr. Cooke has presented here tonight and if he had not been here tonight I would not have been here.

ADJOURNMENT

Being no further business, the meeting was adjourned