

CUMBERLAND COUNTY POLICY COMMITTEE
NEW COURTHOUSE, 117 DICK STREET, 5TH FLOOR, ROOM 564
AUGUST 5, 2010 – 9:30 AM
MNUTES

MEMBERS PRESENT: Commissioner Phillip Gilfus, Chair
 Commissioner Ed Melvin
 Commissioner Kenneth Edge

OTHERS PRESENT: James Martin, County Manager
 Juanita Pilgrim, Deputy County Manager
 Amy Cannon, Assistant County Manager
 Rick Moorefield, County Attorney
 Bob Stanger, County Engineer
 Sally Shutt, Communications Manager
 Mary Smith, Payroll Supervisor
 Daryl Cobranchi, President Point East Subdivision HOA
 Dave Averette, Averette Engineering Company
 Candice White, Deputy Clerk to the Board
 Press

Commissioner Phillip Gilfus called the meeting to order.

1. APPROVAL OF MINUTES: JUNE 3, 2010 MEETING

MOTION: Commissioner Edge moved to approve as presented.
SECOND: Commissioner Melvin
VOTE: UNANIMOUS

2. CONSIDERATION OF PROPOSED AMENDMENT TO FUNERAL LEAVE
 IN PERSONNEL ORDINANCE

Commissioner Gilfus called on James Martin, County Manager, who stated several years ago a revision was made to the funeral leave section of the personnel ordinance and since that time, issues have arisen and the ordinance needs to be more restrictive in what it provides for.

Rick Moorefield, County Attorney, stated an employee committee provided input on a previous draft of the funeral leave section of the personnel ordinance but management had requested a redraft that would tighten administration of the policy and reduce the amount of leave that would be available. Mr. Moorefield explained one of the problems was language that allowed for “three (3) working days” and variances therein depending

on the number of hours in a shift. Mr. Moorefield further explained there was also no provision in the ordinance that indicated when a supervisor was to be notified and as a result notification had been handled differently from department to department. Mr. Moorefield advised substantial amendments to the ordinance include defining leave by the number of hours as opposed to the number of days and removing the provision for “persons living within the household”.

Mr. Moorefield advised some employees and a commissioner had expressed concern regarding the removal of “persons living within the household” because it did not afford employees living in an unmarried relationship with a domestic partner with the same accoutrements as those who were married and living with their spouse. Mr. Moorefield stated questions can arise in domestic partners relationships when it comes to the partner’s family members, but it is still a legitimate concern for employees with domestic partners and it was impossible to draft language that specifically covered every possible circumstance.

Mr. Moorefield further advised funeral leave is not a requirement under federal or state law but is a privilege granted by the county. Mr. Moorefield stated the proposed amendment meets management’s objective by clearly defining what is available, when it is available and to whom it is available.

In response to a question posed by Juanita Pilgrim, Deputy County Manager, Mr. Moorefield clarified funeral leave for Section 10-116. (c) (4) would be the same allowed for in Sections 10-116. (c) (1) and (2). In response to a question posed by Commissioner Edge, Mr. Moorefield further clarified that sick leave could not be used as funeral leave under the county’s personnel ordinance.

Mr. Martin explained the proposed amendment allows eight (8) to twenty-four (24) hours leave depending on the relationship of the decedent whereas the current ordinance allows for three (3) days. Mr. Martin further explained experience has demonstrated that employees will take the full three (3) days whatever the circumstances and it has been viewed as a three (3) day right as opposed to a three (3) day need.

Mr. Moorefield advised the proposed amendment would not limit employees from taking other time, such as exempt time, annual leave or compensatory time, to supplement or in place of funeral leave should they have the need and time available. Mr. Martin confirmed that employees can take sick leave to attend to an immediate family member who is ill. Mr. Moorefield advised the proposed ordinance amendment reduces the number of hours available for funeral leave dependent on the relationship of the employee to the decedent and limited to the time period actually including the date of the funeral or memorial service.

Ms. Pilgrim asked whether weekends would be included, particularly for those occurrences involving out of town travel. Mr. Moorefield stated it would be twenty-four (24) consecutive hours of scheduled work time including the day of the funeral/memorial

service with the idea that if an employee is not scheduled to work, they will not need nor be eligible for the leave time.

Commissioner Gilfus stated he could understand going from days to hours and he could understand the notice requirement, but the definitions of family are problematic for him because in the mid-twenty-first century the nuclear family is no longer the statutory definition. Commissioner Gilfus inquired whether discretion of the supervisor could be written into the policy. Mr. Moorefield responded the department head or the county manager have the right under the existing ordinance and proposed amendment to request documentation but that is the only discretion provided under the ordinance.

Mr. Moorefield stated the county pays out a substantial amount of money for funeral leave, which is an administrative issue in terms of the budget. In response to a question posed by Commissioner Edge, Mr. Moorefield stated funeral leave was not a benefit widely offered by employers but it was not uncommon and was aimed at making a very difficult time more bearable for employees. Mr. Moorefield explained under the proposed amendment, public safety and emergency services staff may be treated differently in some instances because there could be a funeral/memorial service during a time in which they were not scheduled to work for a three (3)-day period, thus they would not qualify for any funeral leave.

Mr. Martin stated under the current policy, staff were taking and were allowed to take three (3) days funeral leave in instances in which the funeral/memorial service was on a weekend. Mr. Martin further stated administration is attempting to address something that has become an issue. Mr. Moorefield described a specific issue that had arisen under the current ordinance.

Commissioner Gilfus suggested the definition of “family members” under the proposed ordinance amendment be defined as bloodline plus the immediate household.

Commissioner Edge stated he had no problem with twenty-four (24) hours and the definition of “family members” as proposed, but he was not clear regarding notification on the “end of the employee’s first scheduled work day”. Mr. Moorefield explained under the current ordinance there is no specific notification requirement and it is not unreasonable to expect an employee to contact their supervisor by the end of the first day on which they expected to request the leave to let their supervisor know why they were absent. Mr. Moorefield further stated this has not always been done under the current ordinance.

Commissioner Gilfus stated with the increasing diversity in the workplace, his thoughts were for a mix of the new and the old definitions to include any persons living within the household. Commissioner Gilfus further stated given subsections (C) (1), (2) and (3) of the proposed ordinance amendment in which different hours are given depending on the family relationship, he would make a motion as follows:

MOTION: Commissioner Gilfus moved to create a family relationship definition that would include those living within the employee's household in addition to families as defined under the current ordinance.

Mr. Martin suggested the inclusion of (C) (4) to clarify that the half, step, foster and in-law relationships apply to the relationships listed specifically in (C) (1), (2), and (3).

Commissioner Edge asked how one would know who is residing the household. Mr. Moorefield responded the issue would be the same as knowing whether an employee's reported relationship with the decedent was actually as the employee stated, in other words, how would a supervisor know an employee's grandparent. Mr. Moorefield stated there is no good basis on which to make such determinations.

Commissioner Gilfus called for a second to his motion. The motion died due to lack of a second.

Mr. Moorefield stated he views the proposed ordinance amendment as a way to address the specific concerns of management in the way the ordinance is administered. Mr. Moorefield further stated the proposal before the committee is the second version to come from the legal department; the first version contained all the considerations having been discussed. Mr. Moorefield stated the objective he was given was to tighten up the ordinance to restrict the amount of hours the county pays for funeral leave in a reasonable way. Mr. Moorefield stated the proposed ordinance amendment directly ties the leave to the funeral/memorial service.

Mary Smith, Payroll Supervisor, reported the county paid out \$9,300 for funeral leave during the last payroll period.

MOTION: Commissioner Edge moved to approve the recommendations as proposed.

SECOND: Commissioner Melvin

VOTE: PASSED by a vote of 2 in favor (Commissioners Edge and Melvin) to 1 in opposition (Commissioner Gilfus).

3. DISCUSSION OF REQUEST FROM POINT EAST SUBDIVISION PROPERTY OWNERS

Mr. Martin introduced Daryl Cobranchi, President Point East Subdivision HOA, and Dave Averette, Averette Engineering Company. Commissioner Gilfus called on Bob Stanger, County Engineer, who stated at the request of the Board of Commissioners during their June 21, 2010 meeting, the Point East Subdivision property owners' request was referred to the Policy Committee for additional consideration. Mr. Stanger further stated at that meeting Mr. Moorefield advised there was no statutory authority for the county to undertake a special assessment project to breach a dam and the property owners would need to petition the Board to repair the dam.

Mr. Stanger explained the original petition received from the property owners was for the dam to be breached. Mr. Stanger stated following his discussions with Mr. Cobranchi, another petition was received requesting that the county undertake a special assessment project to repair the dam. Mr. Stanger further stated the petition was signed by nine (9) of the fifteen (15) property owners that reside on the lake and there are seventeen (17) lots that surround the lake with about forty properties of different class distinctions being located in the entire Point East Subdivision. Mr. Stanger explained the properties adjoining the lake would be the only properties assessed should the county undertake the project.

Mr. Stanger outlined deficiencies with the dam as follows: tree growth on the dam causing stability problems; undermining of the principal spillway pipe; severe erosion of the emergency spillway; and potentially inadequate spillway capacity. Mr. Stanger stated he researched the North Carolina Administrative Code for provisions related to the construction, repair, alteration and removal of a dam regulated by the State, and the code required an application together with a preliminary and final design report and approval by the NCDENR prior to commencing any work on the dam.

Mr. Stanger explained investigations would have to be completed prior to submission of the final plans relating to the foundation and abutments of the dam, construction material proposed for the dam, survey of the downstream area to delineate the area of potential damage in case of failure, and hydrology of the watershed upstream of the dam. Mr. Stanger further explained subsurface exploration would be necessary to evaluate the condition of the existing earthen dam and a report prepared by a qualified geologist would be required for the small Class C dam in the Point East Subdivision. Mr. Stanger reviewed design requirements for the spillway system and the seepage analysis that would have to be conducted. Mr. Stanger stated an operation and maintenance plan must be developed for the dam.

Mr. Stanger advised the homeowners association contracted with Averette Engineering Company to conduct a preliminary feasibility study of the dam. Mr. Stanger stated he asked Mr. Cobranchi to invite Mr. Averette to attend the meeting so he could give the committee information on the level of engineering work he had accomplished to date. Mr. Stanger further stated he did not include a recommendation to the committee because in his opinion until the final reports are prepared, the investigative work is completed and a repair plan is completed by Dam Safety, it is difficult to access what the repairs and cost will be. Mr. Stanger explained he did not want to present to the Board of Commissioners a cost that could change like what happened in the Lake Upchurch project.

Mr. Cobranchi explained the HOA had been in contact with Dam Safety and had a list of the deficiencies and what needed to be done to meet current code. Mr. Cobranchi further explained Mr. Averette sent his plans to the state and received a response that if the work was completed according to the plans, the dam would meet code. Mr. Stanger stated he had subsequent discussions with Steve McElroy, Dam Safety Engineer, and Mr. McElroy had asked what geo-technical evaluation was going to be done on the dam and was it

included in the scope of work. Mr. Stanger further stated the indication he got from Mr. McElroy was that there were some concerns regarding the stability of the dam and Dam Safety wanted a geo-technical evaluation to determine that it is stable. Mr. Cobranchi stated this was the first he had heard about the need for a geo-technical evaluation. Mr. Averette stated there had been nothing included about the stability of the dam itself.

Mr. Averette explained that he had developed the preliminary plans in an effort to address the concerns that had been expressed to him by Dam Safety. Mr. Averette stated he had investigated the possibility of getting the dam re-classified where it was not a high-hazard dam and a non-regulated dam in order to get the dam in a repair situation. Mr. Averette stated the NCDENR regulations for repair of the dam are very costly and when considering the small size of the HOA, it is not practical to repair or breach the dam. Mr. Averette further stated efforts continue to get the dam non-regulated. Mr. Averette concurred that efforts probably need to be made to get information on the engineering data, but at present he would likely say it is high-hazard or right on the brink of being so.

Mr. Cobranchi stated the HOA has been told by the NCDENR that they have to either breach or repair the dam. Mr. Cobranchi further stated the HOA can not borrow the money commercially, can not force property owners who are directly affected to pay the special assessment and the lien for the special assessment would only be paid when the property owners sell their homes. Mr. Cobranchi further stated the only option available was to approach the County Commissioners and request a special assessment for repair and should they not be willing to do that, then the HOA is stuck in terms of dealing with the NCDENR. Mr. Cobranchi reviewed efforts that had been made to donate the land. Mr. Cobranchi spoke to the decrease in property values for lots surrounding the lake and stated if the dam is repaired, values will increase about \$25,000 per lot.

Mr. Martin briefly described the former Lake Upchurch project which had been funded through a county assessment which was much greater than the initial estimate and stated in order for the county and the subdivision property owners to avoid that same situation, staff feels they need realistic cost estimates for everything that has to be accomplished. Mr. Stanger concurred and stated particularly on a project this small with a limited base (17 properties) paying the assessment. Mr. Stanger mentioned that the Lake Upchurch project included more than 100 parcels. Commissioner Melvin concurred.

Mr. Cobranchi inquired regarding the information the county would need. Mr. Stanger stated the county needed an approved repair plan signed off by the NCDENR, which would provide a good basis for determining the cost and offer some assurance. Mr. Stanger suggested the next step might be for Mr. Averette and he to meet with Mr. McElroy of the NCDENR to make sure all understand exactly what analysis the state is going to require. Mr. Averette stated things would have to go further in order for a detailed plan to be developed and agreed that a plan and contract should be secured before the county gets involved. Mr. Averette stated the problem is the HOA can not pay for it.

Mr. Moorefield inquired regarding the cost for the planning process. Mr. Averette responded an additional \$7,500 to the \$2,500 already paid to him, which may not include subsurface investigations and other things the NCDENR may require.

Mr. Martin stated the reason the county has not elected to take on the project is the issue of not knowing what Dam Safety will require which will ultimately determine the cost of the project.

Mr. Cobranchi inquired whether the Board of Commissioners could levy a special assessment for the project in phases because he did not know how the property owners could come up with \$10,000. Mr. Moorefield explained that was not legally permissible because the project might not proceed past the initial design phase. Mr. Martin inquired whether the HOA had the authority to assess its property owners. Mr. Cobranchi stated the bylaws provide for special assessments but the problem is there is no enforcement mechanism. Mr. Moorefield advised the HOA had the right to foreclose on assessments levied against the properties. Mr. Moorefield expressed concern that should the HOA not be willing to come up with \$10,000, then why would the county assess and levy properties for a much larger amount. Mr. Cobranchi stated he was not aware the HOA could force property owners to pay through foreclosure. Mr. Moorefield advised an HOA lien would be of the same nature as a county assessment lien and would by statute be positioned ahead of a mortgage.

Commissioner Gilfus stated Mr. Stanger and Mr. Averette need to meet with the NCDENR together to determine what needs to be done and hopefully come back next month with some county/NCDENR plans.

4. OTHER MATTERS OF BUSINESS

There were no other matters of business.

MEETING ADJOURNED: 11:00 AM