

## Dickenson County School Board Special Called Meeting - Summary Minutes

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August 18, 2020

- I. ROLL CALL AND MEETING CALLED TO ORDER - 5:05 P.M.** The meeting was called to order by Chairman, Dr. Lurton Lyle.

**Members in Attendance:** Dr. Lurton Lyle, Chairman; Rick Mullins, Vice-Chairman; Jason Hicks; Damon Rasnick; Jamie Hackney; Tonya Baker, Clerk; Haydee Robinson, Superintendent; and Scott Mullins, Board Attorney

### Approval of Agenda

Following a motion by Damon Rasnick and second, by Jamie Hackney, the agenda was approved as presented.

#### *Vote results*

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Aye:	5	Dr. Lurton Lyle, Rick Mullins, Jason Hicks, Damon Rasnick, Jamie Hackney
No:	0	
Abstain:	0	
Not Cast:	0	

## II. DISCUSSION OF THE ELEMENTARY SCHOOL LOCATION LITIGATION:

**Scott Mullins:** I want to give you a little bit of background. The debate that has been going on between the attorneys from outside the area and working towards the language of an agreement to move forward with the construction of the school. The real issue involves interim financing and to give you a little background on the significance of the issue, we now have around \$7,705,000 in our construction accounts. Of that amount the Board of Supervisors wants \$6.9 million back to deal with QSCAB funding and that leaves around \$805,000 in our construction accounts. Unfortunately \$250,000 of that is earmarked for design work and to build the new elementary school at \$250,000 of that is earmarked for the wetlands mitigation so that leaves us around \$300,000 to go forward to build the school. As you may recall the problem that we have in a nutshell is that the contractors generally demand to be paid on a schedule and it's usually within 30 days of submitting an invoice. That's the bad news the good news is the Corps of Engineers will promptly repay us so that it's not like the interim financing is outstanding for a great period of time and just to be very clear there's no request by the school board for new money to build the elementary school. What we're looking at is basically to be sure as the school board that we can pay the bills of the contractors that are performing the work because ultimately their expectation is to be paid in a timely manner with work that they do. I think I'll start out by saying the problem is as much in the process as it is in the substantive issues of the language. The way we are doing this is that whenever there is a language issue were working through the terms of the interim financing agreement with the board a supervisor and that is what we're talking about here is the interim financing agreement with the Board

## Dickenson County School Board Special Called Meeting - Summary Minutes

---

August 18, 2020

of Supervisors. Their responsibility is to come up with the money for us to pay the contractors and then they get promptly repaid from the Corps of Engineers reimbursement. What that language looks like, and we have hit some obstacles in dealing with that. I want to talk about those tonight. I want to talk about them just so you could understand them. And then we will go back in closed session as part of our agenda and talk about how we deal with these issues moving forward with the litigation. The problems that we're talking about are not necessarily new problems; the problems with the language actually began in July when we first received a copy of the draft from the attorneys from the Board of Supervisors, and it contains language that at that time we found to be unacceptable. At the last board meeting in closed session, we bent over that language some. I have a very brief slide three slide presentation.

The first slide in front of you is in the interim agreement as proposed by the order supervisors and it talks about the following should be events of default and it says any public or private accusation by the School Board or any of its members or agents including the Superintendent and counsel to the School Board that the Board of Supervisors has failed to perform its obligations in connection with the construction of the new elementary school Then it goes on with a separate paragraph any public or private assertion by the school board or any of its members or agents including the superintendent and counsel to the board that the Board of Supervisors bears any responsibility for the location of the new elementary school or the manner, method or cost of construction and then if you turn to the next slide this is just a continuation of the acts of default. Any filing of litigation against the Board of Supervisors or the IDA or failure to dismiss prejudice the existing litigation against the Board of Supervisors or the IDA. Those are the acts of default that would create a situation where the Board of Supervisors could take action. If you could turn over to the last page about the consequences of default. In the event, the Board of Supervisors declares an event of default it may thereafter declare all funds advanced under this agreement and the credit line note due and payable refuse to advance any funds under this agreement and the credit line note, impose interest on all unpaid funds in the amount of 7% per annum from the date of the initial disbursement. I know that the COVID issue and you folks have more things going on tonight and I don't want to belabor the point here but I do want you to understand going back to the very first slide of the events of default. The thing that as your attorney I don't like about this is that it says any public or private accusation by the school board or any of you individually or the superintendent or myself that the Board of Supervisors has failed to perform its obligations. To say that you cannot have a private discussion with anyone whether it be your spouse, your neighbor, your friends. You know I've never quite frankly seen anything like this. I'm reasonably comfortable that it's not enforceable. I think that it's void against public policy. I think that you are an elected board. I think if your constituents come to you with questions that you have an obligation to answer those questions. I think for you to accept this limitation on your right of free speech is not only prohibited by law I think it would be a mistake. The same thing is true with the next paragraph any public or private assertion by the school board or any of its members were agents that the Board of Supervisors bears any responsibility for the location, manner, method, or cost of construction. Another thing that I have to tell you on both of these paragraphs that I don't particularly understand, it's very broad. If it's a public or private assertion or accusation by your agents, who are your agents? It says clearly you do not have it in your individual capacity at the

## Dickenson County School Board Special Called Meeting - Summary Minutes

---

August 18, 2020

kitchen table or wherever that it's a violation but does that mean that you and your agents are the central office staff's principles how far down the line do you go to where you are potentially in default if these things happen. I think it's very broad I think that the most important thing for you to understand is that this is not hypothetical, it comes with consequences because if you are in default then if they choose to declare you in default then you're not able to pay your bills including your bills to the contractors for building the school. When that happens we're going to get sued and it's going to be only the Dickenson County School Board that gets sued because the Board of Supervisors is not on the contract. The other thing that I think is important for you to recognize is the consequences of default on the third slide that you have. It's important if you read the very first line paragraph G, in the event, the Board of Supervisors declares a default. It's not that there was in fact a default that is declared to have happened by a court or some independent entity should they in their sole discretion determined that there's an event of default then your ability to pay your bills ends. This is not something that came up as I said before it came up once they presented it over a month ago and went back and said this is not acceptable. We hoped that they would reflect upon it and this would not be something that would be an ongoing subject of debate but they came back and said that this was important to them. To be very clear what we always wanted was for the relationship with the Board of Supervisors to be much like a business type relationship. It would be at arm's length treated as such. Treat the documents that are being drafted by a very capable counsel as documents just like you would do interim financing through the bank. I don't think any of you if you are really entering into an agreement with the bank to borrow money would want to subject yourself to that type of act of default. The question is how to work through this. To get to the other side because I truly believe that the people on the Board of Supervisors are good people that want to work through this. We do not have the luxury of time to continue to knock the ball back and forth for months for people that are not from Dickenson County on either side to work through these issues. We need to work through these issues locally we need to get beyond this. This is something that I think we were just talking to each other. I think if you are sitting across the table from your counterparts on the Board of Supervisors we wouldn't be having this discussion. In closed session will talk more about the litigation and what we can do to deal with this but in a nutshell that is a summary of the problems of what we are encountering.

(slide 1)

### Paragraphs of Concern in Agreement with the Board of Supervisors

#### **1. Events of Default:** Any of the following shall constitute events of default:

- c. Any public or private accusation by the School Board (or any of its members or agents, including the Superintendent and counsel to the Board) that the Board of Supervisors has failed to perform its obligations in connection with the construction of the new elementary school;

August 18, 2020

d. Any public or private assertion by the School Board (or any of its members or agents, including the Superintendent and counsel to the Board) that the Board of Supervisors bears any responsibility for the location of the new elementary school or the manner, method, or cost of its construction;

(slide 2)

## Paragraphs of Concern in Agreement with the Board of Supervisors

**1. Events of Default:** Any of the following shall constitute events of default:

g. Any filing of litigation against the Board of Supervisors (or the Industrial Development Authority) or failure to dismiss (with prejudice) existing litigation against the Board of Supervisors (or the Industrial Development Authority).

(slide 3)

## Paragraphs of Concern in Agreement with the Board of Supervisors

**g. Consequences of Default:** In the event that the Board of Supervisors declares an event of default, it may thereafter:

- a. Declare all funds advanced under this Agreement and the Credit Line Note due and payable;
- b. Refuse to advance any funds under this Agreement and the Credit Line Note;
- c. Impose interest on all unpaid advanced funds in the amount of 7% per annum from the date of initial disbursement.

### III. VIRGINIA DEPARTMENT OF HEALTH MATRIX DATA REGARDING COVID-19 AND THE REOPENING OF SCHOOLS

#### **Presentation by Mrs. Robinson: COVID-19 Health Metrics 8/17/20**

**Mrs. Robinson:** I think that whatever is decided, At some point, I think we all have to understand that we will be going virtual as I've mentioned before here that no plan is perfect. We can minimize the risk of COVID in our schools but it will come, it has come, and we will have to address it when it does come.

## Dickenson County School Board Special Called Meeting - Summary Minutes

---

August 18, 2020

. One of the things we may have to do when it does come is that either one school or all schools or several schools are virtual. When we talk about virtual I do want to certainly share this. I think some of us, some of our community members think of when we went virtual in March that we remain closed. When we talk about going virtual we're talking about going virtual for a short period of time assessing and at the end of that time where we are and then quickly going back to a hybrid as possible. School divisions around us have done that and that would certainly be a consideration for the board but again just to allay parents and community members' feelings, I know that this is on the minds of many of our parents but just to let them know we could go virtual at any time. Please be prepared for that and we're trying to get prepared for that. We honor their commitment to that as we look at the total number of students that have chosen remote. We have 41% of our students that chose all remote. We know the parents are concerned. We know that parents and guardians caregivers are very concerned about their children and their families and they have to make tough decisions. We understand that working parents have tough decisions. We are glad you were able to offer that option to our parents. We hope that if we get the start hybrid that some of our parents perhaps that will alleviate some of their concerns. It may not because the next time something were to happen and we have a COVID case in our schools immediately parents want to say I don't want my child return and so on that way. We said this before this is uncharted unprecedented territory. We know that the best thing for our children is to be back in school but we also have to look at the health, their health, and the health of our staff.

### III. CLOSED SESSION, PURSUANT TO Section 2.2-3711, Paragraph A of the Code of Virginia, there will be a closed meeting for the purpose of :

1. Discussion and to consider and act upon a proposed interim agreement relating to design work associated with the new elementary school pursuant to a PPEA procurement with the Quesenberry/OWPR/Lane Group for the construction of new elementary school involving the investment of public funds pursuant to a PPEA procurement where competition and bargaining are involved, where the financial interest of the school system would be adversely affected if these discussions were made public initially pursuant to 2.2-3711 (A) (6) of the Code of Virginia; and
2. To consult with legal counsel and receive briefings by staff members pertaining to actual litigation with the Board of Supervisors and IDA regarding the location of the proposed new elementary school pursuant to section 2.2-3711 (A) (7) of the Code of Virginia.

Following a motion by Rick Mullins and second by Damon Rasnick, the Board convened in closed session.

#### *Vote results*

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Aye:	5	Dr. Lurton Lyle, Rick Mullins, Jason Hicks, Damon Rasnick, Jamie Hackney
No:	0	
Abstain:	0	
Not Cast:	0	

## Dickenson County School Board Special Called Meeting - Summary Minutes

---

August 18, 2020

Following a motion by Dr. Lurton Lyall and a second by Jamie Hackney; the board returned to open session.

*Vote results*

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Aye:	5	Dr. Lurton Lyle, Rick Mullins, Jason Hicks, Damon Rasnick, Jamie Hackney
No:	0	
Abstain:	0	
Not Cast	0	

Pursuant to Section 2.2-3712(a) of the Code of Virginia, I move to certify and second by Rick Mullins; that during the closed meeting just concluded the Dickenson County School Board discussed only matters lawfully exempt from the open meeting requirements under Section 2.2-3711 of the Code and identified in the motion convening the closed meeting.

*Certification of Closed Session*

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Aye:	5	Dr. Lurton Lyle, Rick Mullins, Jason Hicks, Damon Rasnick, Jamie Hackney
No:	0	
Abstain:	0	
Not Cast	0	

#### IV. BOARD ACTION

Following a motion by Rick Mullins and second, by Damon Rasnick; the motion to authorize the Division Superintendent and School Board Attorney to meet with the County Administrator and County Attorney in an effort to reach an agreement to resolve the issues between the boards and in the event they decline to meet or those discussions fail to produce an agreement in principle regarding outstanding issues then the School Board's Attorneys are authorized to proceed with the litigation to resolve the issues, including the ownership and control of the funds in the three construction accounts passed with a 4-1 vote.

*Vote results*

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Aye:	4	Dr. Lurton Lyle, Rick Mullins, Jason Hicks, Damon Rasnick
No:	1	Jamie Hackney
Abstain:	0	
Not Cast	0	

**Dickenson County School Board Special Called Meeting - Summary Minutes**

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**August 18, 2020**

**IV. ADJOURNMENT: 8:00**

Following a motion by Jamie Hackney and second, by Damon Rasnick, the meeting was adjourned. All votes aye.

Approved: September 23, 2020

*Dr. Lurton Lyle, Chairman*

Dr. Lurton Lyle, Chairman

*Tonya Baker, Clerk*

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Tonya Baker, Clerk