

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

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April 13, 2020

- I. ROLL CALL AND MEETING CALLED TO ORDER - 5:00 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

- II. UPDATE OF RESOLUTION FROM THE BOARD OF SUPERVISORS AND NEW ELEMENTARY SCHOOL PROJECT**

**Scott Mullins:** While we have some issues that are unresolved. I don't think that the two boards are disagreeing on those issues, I think there may be some problems in communicating. To make sure the Board of Supervisors understand what we are proposing I want to make sure we are all on the same page by briefly revisiting the proposal that was set forth by the Board of Supervisors and then how to follow up with it. The Board of Supervisors proposed a resolution that the School Board would choose the site and after we evaluate the sight we would provide them, the Board of Supervisors with information, regarding the size, the particulars of the construction. If you recall a lot of that was dictated in our contract with the Corp of Engineers so we have to build a certain size school to be in compliance with the Corp of Engineers regulations and the School must be in compliance with the Virginia Board of Education standards. The real issue came down to financial responsibilities. We have construction accounts that have approximately eight million dollars in them. We owe approximately seven million dollars. So that's one million dollars in the construction account. That one million dollars was primarily attributable to Ridgeview and the money that was appropriated from the Corps there. It can be used for the Elementary School, and what we are hoping to do is to look at that one million dollars and come back to you with the things that may be needed at Ridgeview and the monies that might be needed for the elementary school and let you make an informed decision on how it is best to allocate that one million dollars that is left over. That left us \$24,500,00.00 from the Corp of Engineers to work within building the elementary school. Basically the things that are in it for both sides are for us, it's the ability for us to move forward. Severing the case would allow us to start what needs to be done. The constant problem for us is construction inflation. We are losing \$85,00.00 a month, that is real money. We need to get beyond this litigation so we can start to do what we need to do to build this school. The settlement would give us the ability to move forward knowing that the Corp of Engineers funding is there in addition to the one million dollars that's leftover if we needed it. What this means for the Board of Supervisor is that we owe approximately seven million dollars and that is it. These facilities at Ridgeview and the new elementary school would be paid for. The Board of Supervisors would have no additional financial contribution. They could wipe that off their books.

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We could all be very thankful for the facilities we have and that we have no debt. That was sort of the proposal that was put out. We seem to have two issues. I want to emphasize that while we have disagreed with the prior Board of Supervisors I don't think that we should believe that we have a problem or disagreement with this Board of Supervisors. I think like you, they have been thrown into this. It's a mess that's been going on for ten years. I think that this has been our primary focus since the first time you came in as Board Members. I think that the Board of Supervisors unfortunately have had other things that they have juggled. They may not be as intimately aware of the problems as we are, particularly the effect of construction inflation. They may not understand our primary concern. My primary concern as an attorney which I think is a concern that the School Board should have. The biggest obstacle we have is that the contract to build the school will be with the Dickenson County School Board only. The Dickenson County School Boards' name will go on contract for somewhere between eighteen to twenty million dollars with a general contractor to build a school. The general contractor will go to a lot of work, expense, post bonds, they will mobilize equipment. They will do things that are significant to them in order to build your school. They will expect to be paid consistently to terms of the contract. When that doesn't happen they will wait around somewhere between thirty to forty-five days and they will demobilize. They will take their equipment, their materials on site that they have paid for, and their people, and they will go away. Then in due force you will be sued. That is the last thing the contractor wants to have happen, that's the last thing we want to have happen. The way we avoid that is to make sure we control our own destiny by making sure that when we sign that contract with the general contractor to build the school we have what it takes to be successful and complete that contract. Which means to have access to that money. The twenty-four million dollars that the Corp of Engineers has appropriated for us to use. That contract is with the Dickenson County School Board only also. The only entity in Dickenson County that has the risk is the Dickenson County School Board. What I want to be sure of as your attorney is that when you sign that contract that there is nothing going to come up, that is going to be any obstacles that would prevent you from paying the bills when they come due. The problem that we have now, the problem that has existed since November of 2018 is that the checkbook requires three signatures: the signature of the County Administrator, the signature of the Executive Director of the IDA, and the signature of the Division Superintendent. When we stopped agreeing on the location, the other two boards stopped signing the checks. That essentially shut down the project. Not just the elementary school project but it shut down a variety of other things we had going on such as contracting for Wetlands Mitigation. It basically brought everything to a stop. As your attorney I can not in good conscience tell you to go forward and agree under these circumstances. There is no guarantee that we won't be back in this same situation we find ourselves in right now next month, next year or two years from now. A building project like this could take two and a half years or so before we would be finished with it. We still have things at Ridgeview that

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we are finishing up. To hope that we would have some truce with the Board of Supervisors so that this will not happen again and to hope that it will all work out fine and we will be able to pay the bills is too much of a risk for me to advise you to take. What we have suggested to them is that we would keep you in the loop, Mr. Larry Barton will provide documents constantly, you will see everything involved in the building construction project. We will have Skanska who is a very reputable entity, they will provide documents to the Board of Supervisors and the IDA. We will give them access to everything we have, there will be no secrets. But we cannot lightly sign the contract on the hope that everything will be fine. We need them to agree to allow us to make the decisions about what we are going to build, where we are going to build, how much it's going to cost and how we are going to keep it within the budget. They should take comfort in that we are separate legal entities; we cannot bind the Board of Supervisors to any sort of monetary contributions. Only they can bind themselves to a contract, we can't. The other reason they should take comfort in this is that when we do a contract under a PPA you get a guaranteed maximum price that is established by a contractor under a document that is reviewed thoroughly by Skanska. That contractor posts a bond that they can perform that contract within that price. When we do this it is not like we are starting a process that will evolve and evolve and evolve. We are acutely aware of a limited budget. That's why whatever contract we bring to you will have a guaranteed maximum price. They will get to see that. We do not intend to overrun this budget. Skanska has a history of coming in within budget and on time. That is their mantra. That is not some loose aspirational goal. That is something that will be a contractual commitment before entering into it. I hope that the Board of Supervisors realize that they are walking away debt-free. We have no ability to obligate them to more money. We certainly have no desire to go over budget, that is the last thing we would do. We are putting safeguards in place. This is not our first experience in construction. We have Skanska, an entity that is there for us to see that happens. The contract is written in a way to where we get a guaranteed maximum price. There will be a contingency put in the contract for all the unseen things. Probably a healthy contingency. The Board of Supervisors will not have a risk in this. Only we have risks in this, as long as we understand those risks and can control the variables in this risk that's what we are here to do. We can't just hope that everything goes well and they will continue to sign the checks for the next three years. That is the biggest obstacle we have. I am hoping that we are like the proverbial two ships passing in the night. Everything is being run through attorneys. Which is the most inefficient way that we can go about this. This board on two occasions has made the motion and in open session has voted to ask the Board of Supervisors to meet with us. That is what needs to happen, you need to sit down with your counterparts, on the Board of Supervisors and get this resolved. We are wasting time, running up attorney fees and we are getting nowhere with the way we are doing it. So if there is anything that should happen it is there. If it is not going to happen, then I want you to at least know the obstacles the attorneys are wrestling with. The first one again, what we just went over, the ability to control

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your own budget so they are not signing off over the next two years on everything we have committed to do. The second issue is that the prior Board of Supervisors took six hundred thousand dollars out of our construction budget. That was to assist the private residents, the town of Haysi, and the town itself to construct the Town Hall. They did that about two and a half years ago. That reduced the elementary school budget and the Ridgeview budget, and they did that because like we had to make a 5% match from local funds in order to build Ridgeview and in order to get the elementary school money. They believed they had to make a 5% match to secure that fund. Fortunately, the law changed and so they don't have to make a 5% match for that. It is my understanding that the six hundred thousand that they took from our accounts to make that match are not needed. We have asked that funding come back. We desperately need that money in order to be successful in building the elementary school. It's a very skinny skinny deal. Those are the two things. The six hundred thousand dollars and the ability to sign our checks without requesting endorsement of the Board of Supervisors and the IDA. We are still working through those matters. They have a meeting next Tuesday and you have a meeting next Wednesday. With your permission we will again tell them that we stand ready willing and able to come to their meeting, to go in open session, or closed session particularly with the assistance of Mr. Barton. We will go over the numbers, go over the proposal. All we want to do is to sit down and talk with them and get this behind us.

- III. CLOSED SESSION, PURSUANT TO Section 2.2-3711, Paragraph A of the Code of Virginia**, there will be a closed meeting 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. Virginia Code Section 2.2-3711 (A) (7)

Following a motion by Dr. Lurton Lyall and a 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	

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Following a motion by Rick Mullins and a second by Damon Rasnick; 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 Jason Hicks; 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 Jason Hick and second by Damon Rasnick the motion for the School Board Members along with Mrs. Robinson and Mr. Barton to be able to attend the Board of Supervisors meeting in closed session to answer any questions that they have and hope to discuss and settle the litigation with our Department and the Board of Supervisors was passed.

*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	

V. **ADJOURNMENT: 6:45 p.m.**

Following a motion by Dr. Lurton Lyle and second by Jamie Hackney the meeting was adjourned. All votes aye.

Approved: May 27, 2020

*Dr. Lurton Lyle*

Dr. Lurton Lyle

*Tonya Baker, Clerk*

Tonya Baker, Clerk