

FINANCE COMMITTEE CLOSED MINUTES

Purpose: Discussion of Purchase/Swap of real property for the use of the public body

Pursuant to: State Statute Section 2 (c) (5) of the Open Meetings Act

(Opened at 5/11/17 closed minute review)

March 2, 2015

MEMBERS PRESENT

Jay Dunn, Chair
Keith Ashby
Kevin Greenfield
Linda Little
Tim Dudley
Patty Cox
Greg Mattingley

COUNTY PERSONNEL PRESENT

Mike Baggett, State's Attorney's Office
Carol Reed, Auditor
Bruce Bird, County Highway Engineer

Jeannie Durham, County Board Office

MEMBERS ABSENT

Mike Baggett explained that the County built a bridge off of CH38 that gave access to some property. We are required by law to do that when we have property adjoining a county highway and there is a ditch or culvert as a result of the creation of the county highway. That was built sometime back. The bridge is now in a state of disrepair and needs to be either rebuilt from the ground up or we need to find an alternative. One alternative that was initiated back in 2011 was that a contract was entered into between the Highway Department and the Rannenbarger Trust which owns the property in question. This contract purported required a couple of things: 1st, that the County provide an alternate means of access to the property and the County has done that. It built a road that bypassed the bridge. It is a good, solid quality road. In addition, the contract purported to require that the County develop an engineered solution to the bridge. Basically, maintain the bridge or rebuild the bridge, but that was the gist of it. Bruce estimates that the cost of repairing the bridge up to spec would be about $\frac{3}{4}$ million dollars. Alternative to repairing the bridge, there has been a proposed agreement between the Trust, the Macon County Conservation District, & the County wherein the County & the Conservation District would exchange some land. The property in question that is currently connected to this bridge would be sold for anywhere between \$250,000 and \$500,000 depending on what the sale costs would be. That would be a cost mostly borne by the County. The Trust would obtain acreage that would be more farmable, better land than they currently own.

The question was whether it was in the best interest of the County to A) spend $\frac{3}{4}$ million dollars rebuilding the bridge, B) engage in this land swap which would cost anywhere between $\frac{1}{4}$ million dollars and $\frac{1}{2}$ million dollars or C) find a way to walk away from the deal. Mike said he believes we have a way to walk away from the deal. The contract that was entered into in 2011 was drafted by Randy Waks when he was here. But it is Mike's opinion that the contract, because it was not preceded by a County Board Resolution authorizing its execution and was executed by the County

Engineer is not an enforceable contract against the County. Mike said he had some case law on that and thought that Bruce signed the contract, probably on advice of Counsel, but in Mike's legal opinion, the contract is unenforceable and if we were sued, we would have a valid defense to the enforceability of the contract which says that we have to have an engineered solution. Even if the contract is enforceable, the engineered solution could be legitimately argued to be this other road that was built a number of years ago. One way or another, we have the ability to simply disregard this contract.

With respect to our Statutory obligations, we had an obligation to build access, of some kind, to this property as a result of building the county highway. We did that initially with the bridge, now we've done away with the bridge, but come in and built this road which also allows access. Mike said he thinks we have met our Statutory obligation to the landowner.

Mike said he believes that the Trust is not as interested in having access to this property as they are with forcing us to manage a deal where they are going to get better land that they can farm for a better profit. While he doesn't blame them for that, he does not believe they should be allowed to do that. Mike said his opinion is that the County has the ability to walk away from this; to disclaim this contract which was entered into in 2011 and the extension that was entered into last year. Mike said he has had opportunity to brief the Transportation Committee and now the Finance Committee and would like the opportunity to speak with the full County Board next week in closed session. If the consensus of the County Board is that we do what I am advising, I would contact the Trust and advise them what the County's position is and let them decide what the next step is going to be.

Keith Ashby asked what the cost of the legal argument would be if they decided to sue the County? Mike said it's hard to say. If outside counsel was obtained, that may be an insurable claim based on the fact that the County would be on the hook, but without speaking with Travelers first, he could not say whether Travelers would pick up the tab for outside counsel. Otherwise, it would have to come out of the contractual line in the judgment fund and he said he had no way of guessing how much it would cost. Keith asked how long a lawsuit would take. Mike said it could take years and he has no way of estimating. It would depend on how strongly the Trust feels its case is good and how far they want to pursue it.

Linda asked if there was any possibility that Bruce could be sued. Mike said no, but went on to clarify, saying that he could absolutely be sued, but that suit would not be a winnable suit.

Bruce added that the Conservation District identified some grant monies that would pay for 60% of the cost of the purchase of the ground. Initially, they were looking at providing the 60% grant money & we would have to provide the 40% match. The ground was appraised and it came in at \$125,000. The Trust started at \$800,000, so there is a big difference in the appraised value there. If you were able to tell the Conservation District that they needed to throw in some local dollars, at the worst case scenario, the two of you are splitting \$320,000. As far as a comparison of what our costs would be versus that, the Conservation District, at least as far as the 60% grant dollars, they are very

confident that if they applied for it, they would get it.

Bruce said that when he first spoke with Randy about the phrase “engineered solution”, he said it was left intentionally vague in case we wanted to say the road is fine, we’re out of here. The road was constructed while the bridge was still open, but the bridge was weight limited and they could not get farm trucks in and out, so the road was built as an alternate to the bridge. The bridge has since been closed. It has been closed for about a year and a half now. Linda asked where the bridge was. Bruce explained that it is on CH38 north of Argenta & east of CH25. It crosses Friend’s Creek right when it first comes into the County.

Motion to go back to open session made by Tim Dudley, seconded by Keith Ashby and motion carried 7-0.

Closed minutes submitted by Jeannie Durham
Macon County Board Office