

**Minutes  
Catawba County Board of Commissioners  
Special Session  
Monday, June 20, 2005, 4:30 P.M.**

**City Councils**

Special Meeting with Newton, Conover and Maiden Councils

7

06/20/05

The Catawba County Board of Commissioners met in Special Session on Monday, June 20, 2005, at 4:30 p.m. in the Council Chambers of Conover City Hall, Conover, North Carolina. The purpose of the special meeting was a joint meeting with the City Councils of Newton, Conover and Maiden.

Present were Chair Katherine W. Barnes, Vice-Chairman Dan A. Hunsucker, Commissioners Lynn M. Lail, Glenn E. Barger and Barbara G. Beatty.

Absent: None

A quorum was present.

Also present were County Manager J. Thomas Lundy, Assistant County Manager Joellen J. Daley, Assistant County Manager Lee Worsley, County Attorney Robert O. Eades, Attorney Debra Bechtel and County Clerk Barbara E. Morris.

1. Chair Barnes called the special meeting to order at 4:34 p.m.

Chair Barnes stated this was a meeting of the Catawba County Board of Commissioners with Newton, Conover and Maiden Councils and said the Board was pleased to be at the meeting and especially pleased that Conover was willing to host the meeting. Chair Barnes introduced the members of the Board and the County staff present. Chair Barnes then asked the Mayor of Conover, Bruce Eckard, to make introductions. Mr. Eckard welcomed the County and the cities of Newton and Maiden. Mr. Eckard said he was pleased to host the meeting and hoped it would be productive and would keep communications going between these entities. He introduced Mayor Pro Tem Stuart Terry, Councilman Franklin Travis, Councilman Tom Moser, Councilman Phillip Hawn, Councilman Gene Hamilton, City Manager Rick Beasley, Attorney Martin Panel and Clerk Amy and Chris, IT Director.

Chair Barnes then called on Tom Rowe, Mayor Pro Tem for Newton, to make introductions. He named Councilwoman Anne Stedman, Councilman Roy Johnson, Councilman Wayne Dellinger, Councilman Tom Dixon and staff members Attorney Larry Pitts, Assistant City Manager Glenn Pattishall, City Clerk Rita Williams and City Manager Ed Burgess. Chair Barnes then asked Zane Hudson, Mayor of Maiden, for introductions. Mr. Hudson introduced Councilman Bill Brotherton and Mayor Pro Tem Kevin Spiva and Town Manager Todd Clark and apologized for the absence of the remaining council members who had previous appointments.

Chair Barnes stated there were three items on the agenda to be discussed and they were as follows:

- A. Consortium Agreement to Negotiate Cable Franchise – which was presented by Don Williams of Rice, Williams Associates and Rick Beasley, Conover City Manager. Mr. Beasley pointed out the proposed cable franchise negotiation agreement had been the product of a lot of work by the managers of the County and specifically Assistant County Manager Joellen Daley. Mr. Beasley said in 1993 the first joint cable consortium was started with the cities present and Catawba because all the franchises had come due and they had worked together to get the best franchise for the community – which at that time was Prime Cable. At that time they hired Rice, Williams to help negotiate the franchise. In March 1995, the consortium entered into a 12 year franchise that will come due in March of 2007. Prime later sold to Charter and that is the current cable company. Major improvements were achieved from those negotiations.

Mr. Beasley said that approximately a year ago, consortium members received a three year notice from Charter that it was time to begin negotiations for the franchise. The agreement at issue at this meeting is very similar to the one developed in 1993. It states the County Commissioners would be the lead agent and the consortium would pay a consultant to assist in the negotiations and basically sets out what would be negotiated. The consultant firm would complete the following tasks:

Task I - Initial Consulting

- Task II - Compliance Review
- Task III - Technical Evaluation
- Task IV - Community Needs Assessment, Customer Market Survey
- Task V - Request for Proposal (if necessary)
- Task VI - Evaluation of Renewal Proposal
- Task VII - Update Ordinance
- Task VIII - Assistance with Negotiations and Public Hearing
- Task IX - Draft Franchise Agreement

Mr. Williams of Rice, Williams then came forward and thanked the Board members, council members and staff for the invitation to speak. He pointed out that his firm only works for cities, counties and state governments and exclusively does telecommunications regulations. He said that consistently since 1981 the power of local administrations to govern telecommunications users and the rights of way have declined. He said it was quite likely that in ten years there will be less power locally to regulate telecommunications providers than now. He added that this might be one of the last opportunities for this consortium to really get a good set of regulatory documents governing the cable operator in the consortium's rights of way. He said a consortium is a great idea – it gains leverage by having multiple jurisdictions going into negotiations together but still leaves room for significant differences in the franchise agreement for each jurisdiction.

#### Cable Franchise Negotiate Agreement

The governmental entities (all of Catawba County, North Carolina) who become participants (hereinafter referred to as participants) agree as follows:

1. That each of the participants has the authority granted by North Carolina law to regulate cable television franchises within their respective jurisdictions.
2. Participants desire to form a joint venture to negotiate a comprehensive franchise agreement to include each one of their respective jurisdictions with the current franchise holder, Charter Communications, LLC (hereinafter referred to as franchise holder).
3. Catawba County will be lead agency authorized to engage in direct negotiations with franchise holder subject to the terms and conditions as described below.
4. Each of the participants agrees to the contract with Rice, Williams Associates as set out in draft dated October 2004. If there are any substantial changes to the draft each of the participants will be notified and given an opportunity to participate in any substantial changes to the draft.
5. Each of the participants will be kept apprised of the negotiation process through their designated representative.
6. Each participant agrees to pay their pro rata share of the costs set out in Attachment 1 hereto.
7. The participants through their representatives will jointly produce a proposed franchise package to include, but not limited to, specific proposals for:
  - A. User costs;
  - B. Channels to be offered to users;
  - C. Services area (which will be based on population density);
  - D. Operating system equipment;
  - E. Franchise fees;
  - F. Pole agreements for the relevant participants;
  - G. Quality standards.
8. After approval by the participants of a franchise package Catawba County will negotiate a franchise agreement. County acknowledges that the specific provisions of the franchise package have to be included in the eventual franchise except as modified by the participants, in such a vote a simple majority will control.
9. To further the process as described above, \_\_\_\_\_ the parties agree that a representative of

each participant will meet on a regular basis to review the negotiation progress with the franchise holder and to consider any counter-proposals or modifications.

10. Catawba County will be the repository for all documentation including the franchise agreement and reference materials. Each participant will be given a copy of all proposals and can obtain any available documentation upon request.
11. The parties agree that any franchise agreement approved by simple majority of the joint meeting of the representatives will be submitted to their respective governing bodies for adoption.
12. That any participant can withdraw at any time upon thirty (30) days notice and that upon such withdrawal such participant will be responsible for its share of expenses accrued up to the date of notice.
13. Participants agree this document is the entire agreement of the parties and supersedes all previous agreements concerning this subject.
14. This agreement may be executed in one or more counterparts, each of which shall constitute an original.

Entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

CATAWBA COUNTY  
BY: \_\_\_\_\_

TOWN OF CATAWBA  
BY: \_\_\_\_\_

CITY OF CONOVER  
BY: \_\_\_\_\_

TOWN OF MAIDEN  
BY: \_\_\_\_\_

CITY OF NEWTON  
BY: \_\_\_\_\_

**CABLE CONSORTIUM FEES**

Task I	Initial Consulting	1,400
Task II	Compliance Review	5,500
Task III	Technical Evaluation	1,820
Task IV	Community Needs Assessment	10,500
	Customer Market Survey	<u>11,800</u>
		22,300

Task V	Request for Proposal (may not need)	4,770
Task VI	Evaluation of Renewal Proposal	3,420
Task VII	Update Ordinance	2,500
Task VIII	Assistance with Negotiations and Public Hearing	15,000
Task IX	Drafting Franchise Agreement	<u>3,800</u>

**60,510**

	Cable Subscribers	% Customers	Amount
Catawba County	16,665	78.64	\$47,585.06
Catawba	119	.56	338.86
Conover	1,624	7.7	\$ 4,659.27
Maiden	580	2.7	\$ 1,633.77
Newton	<u>2,199</u>	<u>10.4</u>	<u>\$ 6,293.04</u>
	21,187	100%	<u>\$60,510.00</u>

Mr. Williams said one of the questions he always gets is whether the consortium can regulate rates and he said yes to this question. The basic cable rate can be regulated and the cost of equipment – i.e. modems, converters, etc. – and these can only be regulated if the market has not been declared competitive. Rates cannot be lowered in negotiations. The second question is generally about competition. He said it would be great to have a second cable operator and that would provide competition. The current franchise agreement allows anybody to come in and demonstrate that they have the financial, technical and character qualifications to grant the franchise use of public space. He said historically it is very hard for a second operator to come in and make money. Commissioner Barger asked more about this and Mr. Williams said that the competitor coming in would have to have large resources to be able to come in and compete against the existing cable company with its lines and infrastructure already in place.

Mr. Williams was asked about bundling and the appearance to consumers that the prices are being raised and the choices are being reduced. Mr. Williams said the theory of bundling is that you are suppose to wind up paying less than you would if you had purchased everything individually. He said sometimes it is hard for the consumer to keep track of what they would have been paying if they did purchase the services individually.

The call center issue was also raised regarding the routing and the busy signals and no call backs.

He was also asked about the lack of willingness to expand service to various areas. Mr. Williams said this could be due to the density requirement and where they start counting the mileage from. He said during negotiations they would need to get specific information on those citizens who are not getting the service they desire and investigate the requirements by the cable company.

Chair Barnes asked Mr. Williams to review what can be regulated - Mr. Williams said this was the basic fee and the equipment and labor rates which are based on regional data.

Chair Barnes asked about the small satellite dishes impacting the cable companies. Mr. Williams said they do impact the cable companies but the cable companies stress that they contribute to the communities and that they pay a 5% franchise fee and point out their competitors, satellite companies, do not do this.

Chair Barnes asked if there should be concern in the franchise agreement regarding voice-over internet protocol. Mr. Williams said this is not a concern with the cable franchise in particular but that issue may need to be addressed in the ordinance to expand it to be more of a telecommunications ordinance.

Chair Barnes then asked for any further questions and there being none, she said she believed the County was ready to adopt the Cable Franchise Negotiation Agreement and Commissioner Barger made a motion to adopt the agreement and to directed the staff to work with Williams, Rice Associates through the process. The motion carried unanimously. Conover also voted on the agreement and their motion to adopt the agreement carried with no opposition. Newton wanted to take more time to review the document prior to voting on its adoption and Maiden did not have a quorum present for a vote.

- B. The next presentation was a report on Hwy 16 and it was noted that Judge Collier was unable to attend but John Tippet from the Western Piedmont Council of Governments was to make the presentation. He said he wished he could give the participants good news. He distributed the draft State TIP. He said the lower portion of NC16 up to Tower Road would be ready for paving by 2008. The portion of NC16 from Tower Road to Claremont Road (the missing link) has been a priority since the 1980's. This is not included on the State TIP. There is a one mile section under construction from Dale Earnhardt Chevrolet to roughly Claremont Road and this is because this is a transition zone for the Newton/Conover Bypass that is under construction now. Mr. Tippet said the final State TIP should be adopted the first week of July and he does not expect any changes from the draft. He did encourage Board members to continue pushing for the funding for this NC16 project in hopes it would make it on the TIP update due in 2007. Mr. Tippet said there were several reasons for delays of projects all across North Carolina which includes the cost of steel, concrete and petroleum increasing 20% to 50%, so the money is not going as far. The DOT had an audit a few years ago and they were carrying a balance of over \$100 million and it was recommended they draw that down so they have been very ambitious with spending money over the past two to three years and now the balance is now down to their minimum fund balance should be so they are trying to not over program. Chair Barnes asked if they should start lobbying immediately and Mr. Tippet said to wait until the final TIP came out but as soon as that was out, start pushing because another TIP will be out in a year. Commissioner Beatty commented that it certainly was not lack of effort of the people involved in transportation in the area that NC16 was not on the list and noted how hard everyone was working to get this project completed. Mr. Tippet was asked about the repaving of I-40 and he responded that I-40 needed to be resurfaced from Burke to Iredell. He had been told by DOT that they did not have enough money to take it all the way to Iredell but they would go from Burke County to the new interchange at NC16. Then it was said that it would only be patching this year – which Mr. Tippet said was true – but the resurfacing will occur next year.

C. Scott Millar, President of the Economic Development Corporation, presented the concept of multi-jurisdictional or business park opportunities. He said for quite some time there had been an effort to explore opportunities to develop product and to get companies into the county, not to compete with what the county already has, but to provide opportunities for things not already here. The goal is to make investments for companies easier – there is a need to assess what is needed to be competitive and to make sure it will work for the next project out there. He said it was important when thinking about small area plans that there are opportunities for industry. He said it was extremely important to plan for the growth that will come and how the county wants that growth to proceed – and if it has the best potential for the county.

Mr. Millar pointed out the business park in Lincoln County on HWY 321 as an example of this concept. He gave the example of a park in Davidson/Huntersville/Cornelius which is multi-jurisdictional with the return from the park based on the investment each jurisdiction put into the park.

Mr. Millar explained that there are several things to answer before undertaking this type of park – it should not compete with business already in the county; there isn't the opportunity for a mega site; how do you get employees there; it needs to be opened up to any local government to buy in if they are interested and also answer the question whether the private section will have the opportunity to buy in.

Future Forward, Duke Power, Electricities, CBDG programs, Amendment One and The Golden Leaf all have some sort of funding that may be able to be tacked into for the development of a park. Mr. Millar said all the costs of development for the park needs to be determined – acquisition of the land, water and sewer and other infrastructure, clearing and grading – and all these need to be looked at when thinking of developing a park.

Mr. Millar said the next step are to be decided by the Boards – how to proceed, if they proceed and if it is decided to proceed, how to best go about it. He said there are a lot of questions to be answered and all he was doing was planting a seed regarding this type of project.

Chair Barnes asked why there wasn't an opportunity for a mega site and Mr. Millar responded as the County is currently situated, there is no place for a mega-site with the existing zoning and existing utilities. Chair Barnes asked how large a site could be supported and Mr. Millar said he hesitated to say how large at this point in the process. Commissioner Lail asked if legislation was required to go forward with this type of project and Mr. Millar said he believed the legislation put in place last year is sufficient for any grouping of any jurisdictions to partner together for 40 years.

Mr. Millar was asked where the dollars were coming from for the existing multi-jurisdictional parks and he replied the local governments are providing a lot of the funding and they would get the percentage return based on their investment.

Chair Barnes said she thought it would be wise to put together a task force to begin a study on the concept and see what the different governing structures are, what is available physically and what the possibilities really are. Mr. Millar acknowledged there were numerous questions yet to be answered and whether it should come to reality but he said he believed it would be prudent to investigate the options. Chair Barnes asked County Manager Lundy to work with Mr. Millar to flesh out what kind of personnel would be needed – possibly some staff, some elected officials – on a task force. County Manager Lundy suggested it be on the agenda at the next managers' meeting and it was agreed by the participants to do so.

Vice-Chair Hunsucker made a motion to adjourn the meeting. The motion carried unanimously. Dinner was served following the meeting.

The meeting adjourned at 5:58 p.m.

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Katherine W. Barnes, Chair  
Board of Commissioners

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Barbara E. Morris, County Clerk