

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
SEPTEMBER 10, 2007**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT:

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: County Finance Director Julie Davis, Chad Roberson, Robert Meynardie, Attorney with Nelson Mullins, and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation

DISCUSSION:

County Manager David Cotton presented the Board with a report regarding the performance of KMD Construction. Mr. Cotton shared that the timeline of the renovation of the courthouse is forty percent, with the completion of actual work being thirty percent. We now have our third project manager. Chad Roberson, PBC+L Architect shared that it has taken two months to schedule and receive a fee application for approval. The second project manager became hostile. After requesting a schedule they were very late in producing a critical path schedule. Mr. Roberson stated that two subcontractors have not been paid.

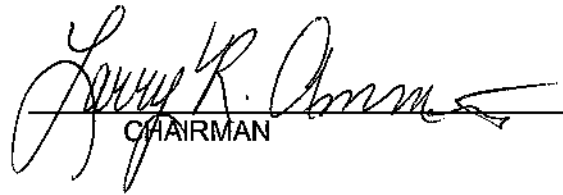
After discussion by the Board it was recommended that KMD be given thirty days to review the schedule with the new [third] project manager. Chairman Ammons inquired as to how the project manager with KMD plans to make up the time that has been lost during the construction. Mr. Roberson has been requested to write a letter for review by the Board of County Commissioners and present it to them during the October 15th meeting in closed session. Commissioner Enloe shared her dissatisfaction during her tour of the courthouse. Mr. Cotton shared that the architects are doing a tremendous job with the construction.

Mr. Roberson explained that Dr. Wenzel brought an agreement which has been signed by both Dr. Wenzel and the contractor, but not by David Cotton. Mr. Meynardie, Attorney with Nelson Mullins, advised giving thirty days to present a schedule and review it at that time. Mr. Roberson will continue to report the situation to County Attorney Killian. Chairman Ammons requested Mr. Roberson to review the change order regarding the HVAC. Mr. Roberson stated that every item inside the courthouse should be turned over to the County rather than various construction workers and recommended a memo stating this be given to the contractor.

OPEN SESSION:

Commissioner Upton moved to return to open session. Vice-Chairman Kirkpatrick seconded and the motion passed unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swartz</u>
Clerk	<u>Neil Star</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
OCTOBER 15, 2007**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Attorney Bob Meynardie, of Nelson Mullins, "Attorneys for County".

OTHERS PRESENT: Chad Roberson, PBC + L Architect

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - KMD Construction

DISCUSSION:

Mr. Bob Meynardie presented the evaluation of the project schedule for KMD Construction concerning the historic courthouse renovation. Mr. Chad Roberson and Mr. Bob Meynardie reviewed the contract terms and specifically covered the termination clause. The Board members seriously considered filing a law suit for the KMD Construction's failure to submit a contractually compliant schedule. An actual letter of termination was discussed.

OPEN SESSION:

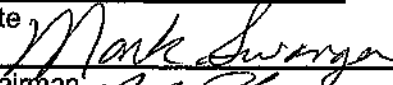
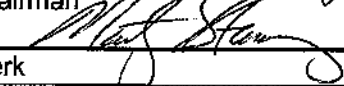
Commissioner Upton moved, seconded by Vice-Chairman Kirkpatrick to return to open session. The motion passed unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JANUARY 22, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Commissioners Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey,

OTHERS PRESENT: Attorney Bob Meynardie, Nelson Mullins "Attorneys for County", Bill Noland, PE, Noland Construction Consulting, LLC

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - KMD Construction

DISCUSSION:

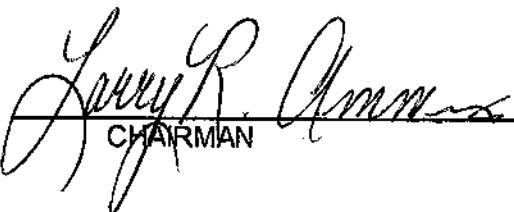
Mr. Bob Meynardie began by stating that there are concerns related to the lack of a contractually compliant schedule being delivered by KMD Construction. Mr. Noland concurred with Mr. Meynardie's statement, which was that the schedules thus far submitted by KMD Construction do not comply with the contractual requirements. Mr. Noland stated that based on his review on the meeting minutes, the pay application submitted, and the project manual, he identified two major issues which he thought KMD Construction would identify as a critical path. The first being unsuitable soil for the segmented wall construction. The second being the fourth and fifth floor structural conditions within the Historic Courthouse. Mr. Meynardie provided options to force a contractually compliant schedule to be delivered by KMD Construction. First, to hold all future pay applications or two, suspend KMD Construction from the job until such time as a contractually compliant schedule is delivered by the general contractor. Mr. Noland suggested that the county could self-perform the segmented wall construction after provide notice to KMD Construction in order to stabilize the bank.

OPEN SESSION:

Commissioner Upton moved to return to open session. Vice-Chairman Kirkpatrick seconded and the motion passed unanimously. The Board returned to opened session.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Mark Swartz

Chairman

Mark Swartz

Clerk

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JANUARY 31, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, Attorney Bob Meynardie, Nelson Mullins, "Attorneys for County".

OTHERS PRESENT: Chad Roberson, PBC + L Architect, and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - KMD Construction

DISCUSSION:

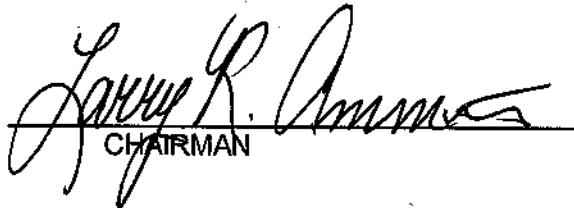
Mr. Bob Meynardie with Nelson Mullins "Attorneys for County" was present via conference call. The Board discussed KMD Construction and the request for a schedule for the renovation of the historic courthouse. A letter from Mr. Chad Roberson was sent to KMD Construction requesting the following: 1) a critical path, cost load schedule, 2) protection of work in place procedures 3) cold weather procedures for masonry and concrete placement and 4) response times for proposal requests and outstanding submittals. Chairman Ammons stated that the Board of County Commissioners feels that these four requests are normal business practice and not having them is beyond normal business practice by KMD Construction. Mr. Meynardie advised that holding KMD Construction to a contractually compliant schedule is of primary importance. Mr. Roberson advised that he plans to meet with the project manager tomorrow, February 1st to discuss the proposed schedule. The Board discussed designating County Attorney Killian as spokesperson for the Board regarding the potential litigation.

OPEN SESSION:

Commissioner Upton moved, seconded by Vice-Chairman Kirkpatrick to return to open session. The motion passed unanimously.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Swartz

Mark Swartz

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
FEBRUARY 4, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. Killian

OTHERS PRESENT: Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)


SUBJECT: Potential Litigation - KMD Construction

DISCUSSION:

Mr. Chad Roberson, PBC + L Architect was present by conference call to discuss a schedule he received from KMD Construction concerning the historic courthouse renovation. Mr. Roberson stated that he and Attorney Bob Meynardie, Nelson Mullins "Attorneys for County" reviewed the contract terms of KMD Construction. Mr. Roberson stated that he received a schedule with costs assigned to different activities from KMD Construction. He further stated that he has not had sufficient time to evaluate the schedule for contractual compliance.

OPEN SESSION:

Commissioner Upton moved, seconded by Vice-Chairman Kirkpatrick to return to open session. The motion passed unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9/19/2011</u>
Chairman	<u>Mark Swager</u>
Clerk	<u>[Signature]</u>

NOTE: Prior to release of minutes, clerk noted omission of the last name of the County Attorney, and by action of the Board of County Commissioners, the last name of the County Attorney is added to the minutes.

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
FEBRUARY 18, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. Killian

OTHERS PRESENT: Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - KMD Construction

DISCUSSION:

David Cotton, County Manager, stated that Mr. Chad Roberson, PBC + L Architect requested a cost loaded contractual schedule from KMD Construction concerning the historic courthouse renovation. Mr. Roberson reported to Mr. Cotton that progress has been made by KMD Construction.

OPEN SESSION:

Vice-Chairman Kirkpatrick moved, seconded by Commissioner Upton to return to open session. The motion passed unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	<u>9/19/2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>Mark Swanger</u>

NOTE: Prior to release of minutes, clerk noted omission of the last name of the County Attorney, and by action of the Board of County Commissioners, the last name of the County Attorney is added to the minutes.

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
APRIL 7, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: Commissioner Curtis left the meeting at 11:30 am

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: Chad Roberson, PBC + L Architect, Attorney Reed J. Hollander with Nelson Mullins Riley & Scarborough LLP and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+L Architect shared that KMD Construction continues working on the renovation of the historic courthouse, and has submitted a completion date of September 2008. PBC+L has received a schedule and all the critical path objects are stacked. A granite subcontractor has left. There is not a mock up of the panel. Since the critical path is stacked, the granite becomes a critical path issue.

PBC + L has not approved the schedule presented to them by KMD Construction. It would be invalid if the schedule were approved while KMD Construction is actually behind the submitted schedule. KMD Construction is required to update their schedule at every monthly meeting. All letters from KMD Construction are copied and sent to David Cotton, County Manager.

Chairman Ammons acknowledged that the Board has received the said letters. The letters include the criteria of KMD Construction. Chairman Ammons stated that the Board needs a schedule that is in accordance with the contract. Also, the Board needs to know the actual completion date in order to purchase items such as furniture. At this time the Board recognizes that the schedule is not in compliance. After discussion the Board stated that KMD Construction should be instructed to abide by the letters.

Mr. Roberson stated that a lien requesting another \$89,000 from KMD Construction has been submitted. This is due to failure to pay the subcontractor. Mr. Roberson has reviewed the issues and supports that lien. Hickory Sheet Metal may be afraid that KMD Constructions will walk. Vice-Chairman Kirkpatrick inquired if the County shared any liability. The County should not pay KMD Construction without knowing that the subcontractor is paid. More investigation regarding liability of the subcontractor's lien should be researched by County Attorney Killian.

Mr. Roberson explained the proposal to correct the retaining wall. The soil in the area of the wall is bad at the slope from the top of the new wall up to the walkway. The lowest wall is constructed in suitable soil.

The Board requested an update from Mr. Roberson for April 21, 2008.

OPEN SESSION:



CLERK



Vice-CHAIRMAN

RELEASED	
	<u>9-19-2011</u>
Date	<u>Mark Swartz</u>
Chairman	<u>Mark Swartz</u>
Clerk	<u>Mark Swartz</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
MAY 5, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: Vice-Chairman Kirkpatrik left the meeting at 12:15 pm

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: Chad Roberson, PBC + L Architect, Attorney Bob Meynardie with Nelson Mullins Riley & Scarborough LLP, William "Bill" Noland, with Noland Construction Consulting, LLC, David Teague, Public Information Coordinator, Captain David Mitchell, Sheriff's Office, Chuck Boyce, Deputy Sheriff, and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC + L Architect, presented a letter from PBC + L Architect, which certifies that there are legal grounds for termination of KMD Construction. This letter was sent to David Cotton, County Manager, and copies were presented to the Board. Mr. Roberson stated that KMD Construction has failed to perform.

David Cotton, County Manager presented a timeline of the historic courthouse to the Board. The timeline included the closed session minutes beginning September 2007.

County Attorney Chip Killian advised that closed session minutes must be released unless there is a reason for these records to remain closed.

Attorney Bob Meynardie, Nelson Mullins Riley & Scarborough LLP, stated that he will read the closed session minutes before advising the Board as to releasing them. Attorney Meynardie stated that the best scenario is to keep KMD Construction and expect them to perform in a manner of expertise, but they are not performing.

Chairman Ammons inquired as to the granite. Mr. Roberson explained that the granite wall has been taken down and rebuilt three times. A mock up was required, but was not produced. The renovation project is approximately sixty percent complete. The contract allowed 460 days for completion. Mr. Roberson stated that the County is now 410 days into the project. The connection between the tower and the courthouse has not begun. Mr. Roberson stated that he does not feel confident the work is of the quality required by the Board.

Commissioner Curtis asked what the difficulty had been with the granite. Mr. Roberson replied that KMD Construction is using bolts and nuts to install the granite and lapping 2" x 4" lumber over it instead of using steel braces. This process is inadequate.

Mr. Roberson shared that he and Mr. Meynardie met this morning with Warren Ashe, former project manager. Mr. Ashe stated that no one on the site knows what they're doing. Mr. Roberson urged the Board members to retrieve the "as built" drawings prior to terminating KMD Construction.

Mr. Roberson introduced William "Bill" Noland, with Noland Construction Consulting, LLC. Mr. Roberson stated that Mr. Noland has a working knowledge as to the procedure of termination letter. Mr. Noland explained that once the letter of termination is sent, the bond claims diversion. The surety will contact KMD Construction and ask questions. The surety will look for a way out and ask, "Were there adequate grounds for termination?"

Once the grounds for termination have been confirmed, the surety will try to find how much this termination will cost them. They will set up a reserve and decide the contract balance amount that is owed them. Mr. Noland explained that this will be a problem because the pay applications were not set up as a cost loaded schedule. Mr. Roberson has been certifying the pay applications. The surety could claim that the project was under bid. Their consultant will try to protect the surety's interest.

Chairman Ammons inquired as to buying back the bond. Mr. Roberson stated that questions the surety may ask is, "Do you want KMD Construction to finish?" and "Do you want to buy back the bond?" Chairman Ammons inquired if the work has been substandard.

Mr. Roberson stated that the fifth floor stairwell should be poured with concrete grout, but Mr. Cotton and Mr. Roberson are of the opinion that it is hollow. This has not been confirmed. Mr. Cotton asked as to learning of deficiencies in the work after the date of termination. Mr. Noland stated that all deficiencies should be determined as soon as possible.

Chairman Ammons stressed the importance to thoroughly examine the renovation project thus far and locate everything that is wrong. Chairman Ammons stated that the County cannot continue with KMD Construction on the job site. They simply must abide by the instructions given them by the architects, but they have not. Mr. Meynardie stated that the bonding company would be responsible for everything over the bond.

Mr. Roberson and Mr. Noland stated that they have not had previous experience with this bonding company. Chairman Ammons instructed Mr. Cotton to investigate the bonding company. Commissioner Curtis stated that once the Board has terminated KMD Construction, there will be months without any renovation to the courthouse.

Mr. Noland stated that the surety will require an investigation. Mr. Noland stated that most of the subcontractors are professional workers. Mr. Noland discussed the possibility of the plumber stating that he under bid the work and therefore, is not performing. Mr. Noland recommended terminating KMD Construction. Mr. Noland speculated one question that may arise is, "Do you have a recommended contractor to finish this job?" The surety can reject bidders that were received prior to selecting KMD Construction.

Mr. Meynardie stated that the Board should expect litigation. County Attorney Leon M. "Chip" Killian stated that the County has already prepared them for this probable litigation.

Mr. Roberson confirmed that there is rebar used in place on the fifth floor stairwell, but not concrete filled blocks. In the meeting this morning, Mr. Ashe stated that he was instructed not to grout, but Bill Davis said to Mr. Ashe, "They're not smart enough to figure that out".

Mr. Cotton recommended using the expertise of Bill Noland. Mr. Roberson stated that Mr. Noland would be beneficial to the County and could review the documents and be sure the County is ready when the surety comes.

Mr. Meynardie reviewed the sequence of termination. Mr. Meynardie has prepared a letter of termination that he will e-mail to Mr. Cotton. The Board could review the letter and send it to KMD Construction and to the surety. Mr. Meynardie recommended that Mr. Cotton prepare to inventory the project and lock it down. Mr. Noland advised that after the termination letter is sent, the subcontractors will attempt to gather their tools and materials and vacate the site. The large equipment would have to remain on site. Holding the equipment is an action that could create claims. Mr. Noland suggested supervising the workers as they leave the site. Mr. Cotton stated that he will request from Sheriff Alexander, a deputy go on site with him to gather the "as built" drawings. Mr. Noland explained that the surety will likely pay the County for work because it is in their best interest.

Vice-Chairman Kirkpatrick inquired as to the lease for the tax office. Mr. Cotton stated that the lease for the tax office was extended once and he does not expect a problem with requesting another extension. Mr. Cotton assured the Board that he will update them with the progress.

Commissioner Enloe made a motion to return to open session. Vice-Chairman Kirkpatrick seconded and the motion carried unanimously.

The Board agreed to recess the closed session until 1:45 pm.

Upon returning to closed session, the Board continued discussion of potential litigation of the historic courthouse. Mr. Cotton stated that during the recess he contacted the Sheriff's office. Captain David Mitchell, Sheriff's Office, and Chuck Boyce, Deputy Sheriff, followed Mr. Cotton onto the site and joined the closed session meeting. Mr. Cotton confirmed that he retrieved the "as built" drawings.

During the recess, Mr. Meynardie e-mailed a proposed termination letter to Rebecca Morgan, Administrative Assistant, who printed the letter for review. The letter was addressed to KMD Construction. Mr. Cotton presented the letter to the Board. Mr. Meynardie advised that the letter was to be sent to KMD Construction and to Fidelity and Deposit Company of Maryland, the surety. Mr. Killian advised David Teague, Public Information Coordinator send a copy of the termination letter to the media. Also, the letter received from Mr. Roberson recommending the termination of KMD Construction should be sent to the media.

Commissioner Enloe confirmed that a bicentennial event scheduled for December 15th, 2008, was to be held at the historic courthouse, but this event could be held at another location. The Board discussed using the courthouse lawn for events. The Board agreed that the lawn is available for events.

OPEN SESSION:

Commissioner Upton made a motion to enter into open session. Commissioner Enloe seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Surjan
[Signature]

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
MAY 19, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Bill L. Upton, Charles "Skeef" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: n/a

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: Chad Roberson, PBC + L Architect, Attorney Bob Meynardie with Nelson Mullins Riley & Scarborough LLP, and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Historic Courthouse

DISCUSSION:

Attorney Bob Meynardie, Nelson Mullins Riley & Scarborough LLP, stated that a seven day notice is required prior to termination of the contract with KMD Construction. The date of termination of KMD Construction was May 12th, 2008. Attorney Meynardie stated on May 6th, 2008, it was confirmed that the fifth floor on the historic courthouse project was not grouted properly. A subsequent letter was sent to KMD Construction which included this finding.

County Attorney Chip Killian stated that he received a call from Mr. Steve Smith who appears to represent KMD Construction as their attorney, but that has not yet been confirmed.

David Cotton, County Manager, stated that he received a letter from the Surety proposing a walkthrough with KMD Construction on Thursday, May 22nd, 2008 followed by a meeting on Friday.

A fourteen page letter was received from the office of Mr. Smith to Chad Roberson, PBC + L Architect. Mr. Roberson explained that this letter included responses for each of the points of poor workmanship by KMD Construction that was cited by the County. Mr. Roberson explained that he would respond to each point. Mr. Roberson presented the letter to the Board.

Mr. Roberson stated that on May 12th, 2008, his office received a lengthy rebuttal to the termination.

Attorney Bob Meynardie, Nelson Mullins Riley & Scarborough LLP, stated that future litigation would be concerning dollars and not necessarily quality of workmanship. Eighteen different schedules were received from KMD Construction, one was handwritten. Vice-Chairman Kirkpatrick stated that the County needs to let the surety know of the poor workmanship.

Mr. Roberson has received telephone calls from numerous subcontractors who claim that they have not been paid. One subcontractor is owed \$95,000 and was advised to submit invoices to the Surety. The granite subcontractor is sending a letter stating what they were told to do by KMD Construction.

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JUNE 2, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Charles "Skeeter" Curtis, Bill L. Upton, and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, and Assistant County Manager Marty Stamey, and County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: Chad Roberson, PBC + L Architect, and Attorney Bob Meynardie with Nelson Mullins Riley & Scarborough LLP

GENERAL STATUTE: Litigation §143-318.11(a)(3)

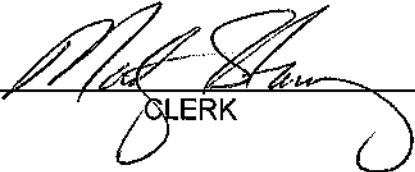
SUBJECT: Potential Litigation - Historic Courthouse


DISCUSSION:

The Board discussed that much of the Owner's willingness to allow KMD Construction to complete the project is based upon the Surety's willingness to have full-time on-site project management for the first ninety days of the re-start. The scope, follow-up, and reporting of the testing of the CMU blocks should be controlled by the County. Therefore, the County intends to engage a testing agency to perform the testing. This change would remove the testing requirement from the Agreement and replace it with the requirement that the Surety repair or correct any deficiencies found. The Board expects the Surety to accept responsibility for the cost of this testing. The Surety is to establish an acceptable end date for paragraph 7 of the Agreement, which is dependent upon at least a preliminary schedule. The County would like the schedule to include, at a minimum, the interim milestones as required by the construction contract. The County will not allow the posting of any signage by KMD Construction during completion of the project. Attorney Bob Meynardie agreed to submit the above items of concern to Donald Spratt concerning revisions to the Takeover Agreement.

OPEN SESSION:

Vice-Chairman Kirkpatrick made a motion to enter into open session. Commissioner Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JUNE 16, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Chip Killian

OTHERS PRESENT: Chad Roberson, PBC+L and Attorney Bob Meynardie

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Mr. Bob Meynardie, Attorney provided an overview of the proposed takeover agreement submitted by the Surety and characterized it as favorable to the County. Commissioner Enloe inquired as to the completion date and if the Courtroom would be available for the drama scheduled in December 2008 as part of the Bicentennial Celebration. Mr. Meynardie responded that the completion date presented by the Surety would suggest that possibility.

Vice-Chairman Kirkpatrick raised reservations about KMD Construction's ability to complete the project. Mr. Chad Roberson, Architect stated that there are three significant milestones identified in the contract. The milestones include substantial dry in, temporary power and temporary mechanical. Commissioner Upton stated that the most important quality of work issue is related to the concrete masonry unit (cmu) walls and that we need to ensure that the walls are correct.

Commissioner Curtis inquired if KMD will sue and if KMD is aware that the County may sue for additional costs incurred. Mr. Meynardie responded that they have made several assertions of delay in time and money.

Chairman Ammons asked about ensuring the quality of the granite installation. Mr. Roberson stated that the specification clearly outline the proper installation technique. Also, KMD has not installed a mock up which has been approved by PBC+L.

Commissioner Curtis stated that he has significant concerns about safety and allowing KMD back on the job. Mr. Meynardie stated that the Surety will want to use KMD as the completing contractor. He stated that if we do not agree to allow KMD to complete the project, the Surety may walk away. A final point stated by Mr. Meynardie was that the County is relying on the Surety and their engineer to complete the project. Commissioner Upton inquired as to what capacity KMD would serve if allowed to complete the project. Mr. Roberson responded that the Surety would use KMD Construction's General Contractor's License Number. He stated that KMD is not self performing substantial work but rather subcontracting.


Mr. Meynardie stated that the materials testing component of the takeover agreement is under negotiations. The Surety is proposing to only pay for the portion of the testing which reveals any

defects. Mr. David Cotton, County Manager stated that the reason we are requesting this testing is directly related to KMD Construction's performance and that the Surety should pay for all the testing. He also suggested that the County directly engage MACTEC to perform the materials testing before agreeing to the takeover agreement. Mr. Meynardie stated that he would inform the Surety of this directive.

OPEN SESSION:

Vice-Chairman Kirkpatrick moved, seconded by Commissioner Upton to return to open session. The motion passed unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanson</u>
Clerk	<u>Mark Swanson</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JUNE 30, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: Commissioner Bill L. Upton

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, and Assistant County Manager Marty Stamey

OTHERS PRESENT: Chad Roberson, PBC + L Architect, and Administrative Assistant Rebecca Morgan.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

County Attorney Leon M. "Chip" Killian, III, and Attorney Bob Meynardie with Nelson Mullins Riley & Scarborough LLP, were present by conference call to discuss the initial verbal report received from MACTEC concerning the historic courthouse renovation. MACTEC is a construction evaluation firm and has been on the site to assess the renovation project thus far. Attorney Meynardie stated that MACTEC tested every level of the CMU stair tower and forward elevator tower and found significant problems with the construction. However, the free standing tower was tested at elevations 0 and 1 with no notable anomalies at the testing sites. Attorney Meynardie stated that he corresponded via e-mail with the Surety on Friday, June 27th, 2008. The e-mail stated that the findings of the MACTEC inspection were worse than the County expected.

David Cotton, County Manager, stated that the Surety should be informed that the stairwell is of major concern due to the findings from MACTEC.

Chad Roberson, with PBC + L Architect, stated that no grout was found between the fourth and fifth floor levels of the stairwell. Rebar was used, but only in "hit and miss" sequence and the spacing was sporadic. A design for the remediation of the stairwell will be studied by PBC + L Architect. Mr. Roberson explained that a written report from MACTEC is expected this week. Once the report is received, Mr. Roberson confirmed that a copy will be sent to the Surety.

Commissioner Curtis inquired as to how this many deficiencies could occur and who was overseeing this project. Mr. Roberson explained that PBC + L Architect acted as quality assurance, not quality control and that they were on site once a week. Mr. Roberson stated that KMD Construction should have been contacting the building inspector regarding the grout. Vice-Chairman Kirkpatrick inquired as to when the inspections should have taken place. Mr. Roberson stated that some inspections were made, but the inspector was not contacted each time the grout was poured. Some jurisdictions require an inspector to be present during every pour. Haywood County does not have this requirement.

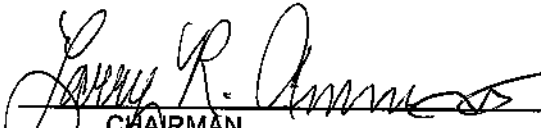
Vice-Chairman Kirkpatrick asked what arrangements could be put in place with KMD Construction and the Surety in order to protect Haywood County and make KMD Construction solely responsible. Vice-Chairman Kirkpatrick also inquired if a guarantee could be made stipulating that the County is only using KMD Construction's license within the terms of the Takeover Agreement. Attorney Meynardie stated that he was not certain that a guarantee could be reached, but that he would research this question. Vice-Chairman Kirkpatrick reiterated that the County could not give KMD Construction any authority on this project. Chairman Ammons agreed and stated that in his opinion, KMD Construction has committed fraud. Vice-Chairman Kirkpatrick and County Attorney Killian stated that fraud could be difficult to prove. However, there seems to be evidence to prove negligence.

Chairman Ammons asked if the County could be refunded for the fees incurred because of the inefficiencies of KMD Construction. Mr. Roberson stated that there is a contractual guarantee for quality.

OPEN SESSION:

Commissioner Enloe made a motion to enter into open session. Vice-Chairman Kirkpatrick seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	Mark Swanger
Clerk	Mark Swanger

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JULY 7, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman J.W. "Kirk" Kirkpatrick, III, Charles "Skeeter" Curtis, Bill L. Upton, and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, and Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Bruce Crawford, Chief Building Codes Inspector

OTHERS PRESENT: Chad Roberson, PBC + L Architect, and Administrative Assistant Rebecca Morgan.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Attorney Bob Meynardie with Nelson Mullins Riley & Scarborough LLP, was present by conference call to discuss the report received from MACTEC concerning the historic courthouse renovation. Chad Roberson, PBC + L Architect stated that David Cotton, County Manager, received a draft report from MACTEC on Thursday, July 3rd, 2008. The report indicated that the rear stairwell and the elevator shaft are poorly constructed. Mr. Roberson stated that the next step for PBC + L Architect is to design a remediation for the deficiencies that were found by MACTEC. Chairman Ammons confirmed that the draft report should be shared with the Surety. Mr. Roberson suggested including photographs with the final report.

David Cotton, County Manager, introduced Bruce Crawford, Haywood County's Chief Building Inspector. Mr. Cotton stated that questions regarding inspections could be answered by Mr. Crawford. Mr. Crawford explained that KMD Construction was responsible for contacting the inspection's office. When KMD Construction contacted the inspection's office, inspections were performed, but only on areas designated for inspections by KMD Construction. Various inspections were performed approximately thirty times on the historic courthouse renovation.

Commissioner Curtis left the meeting at 11:58 am.


Commissioner Enloe stated her opposition to allowing KMD Construction on the site of the historic courthouse property. Commissioner Upton also expressed concern regarding KMD Construction being on site. Mr. Cotton stated that the final report from MACTEC will be presented to the Surety.

Attorney Meynardie stated that he was inclined to call KMD Construction's legal representative and ask how much of this work was to be self performed in order to allow them an opportunity to explain the failures of KMD Construction. Chairman Ammons instructed Mr. Cotton to send the report from MACTEC to the Surety.

OPEN SESSION:

Vice-Chairman Kirkpatrick made a motion to enter into open session. Commissioner Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	Mark Swanson
Clerk	Mark Swanson

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JULY 21, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: Vice-Chairman Kirkpatrick

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: Chad Roberson, PBC + L Architect, Attorney Bob Meynardie with Nelson Mullins Riley & Scarborough LLP, William "Bill" Noland, with Noland Construction Consulting, LLC, Bernie Friesmuth and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Attorney Bob Meynardie, Nelson Mullins Riley and Scarborough, stated that Bernie Friesmuth, with Nicholson Consulting, P.C., was waiting outside the meeting room. Mr. Friesmuth may be called upon to join the closed session meeting in order to answer questions. Attorney Meynardie explained that presently his office is negotiating with the Surety. MACTEC has issued a report regarding construction issues. Attorney Meynardie presented a memorandum to the Board of County Commissioners, which summarized his interviews with representatives for KMD Construction and his recommendation for agreeing to allow KMD Construction as the completing contractor per the Surety's request.

Attorney Meynardie stated that there is no evidence that KMD Construction performed in a manner to intentionally harm the County. The conclusion is that the quality problems are due because KMD Construction provided poor oversight and management, but their failures were not due to misconduct.

Chad Roberson, PBC + L Architect, stated that the MACTEC report is an independent assessment of the CMU walls per the scope of the contract. The report notes that the quality of grout and placement of rebar was very sporadic. This report has been shared with the Surety. Mr. Roberson confirmed he has received no response from the Surety regarding the report.

Attorney Meynardie stated that legally the County has terminated KMD Construction and has no obligation to hire them. Attorney Meynardie reviewed the process in the event that the County authorizes the Takeover Agreement with the Surety. William "Bill" Noland, with Noland Construction Consulting, LLC, explained that if KMD Construction does not finish the renovation of the historic courthouse, the Surety would be required to engage another contractor to finish the project. This is an expensive proposition requiring a new bidding package. County Attorney Chip Killian explained that once the Surety signs, they would be responsible for completion of the project.

Commissioner Curtis inquired as to the inspection of the work. Mr. Roberson stated that inspection of the work is a stipulation which he highly recommends.

Commissioner Curtis asked if the Surety would pay for hiring MACTEC. Attorney Meynardie stated that payment of MACTEC is a stipulation that could be added to the agreement.

Mr. Noland explained that the MACTEC inspection techniques would require finishing work which should be paid for by the Surety. Mr. Roberson agreed that there should be in the agreement a stipulation to include repair work related to the areas inspected by MACTEC.

Chairman Ammons inquired if there was a list of subcontractors who have not been paid. Mr. Roberson replied that the Surety has, with the exception of two, come to an agreement with the subcontractors relative to outstanding payments.

Mr. Noland stated that the Surety's representative will call the subcontractors. Mr. Friesmuth will review any debt owed to the subcontracts and make recommendations for payment. This comes with a lien waiver so the Surety will know how much it will cost to finish the job.

Bernie Friesmuth entered the meeting room. Attorney Meynardie inquired as to Mr. Friesmuth's work experience. Mr. Friesmuth answered that he has thirty plus years of experience and has worked with numerous Sureties.

Attorney Meynardie inquired as to Mr. Friesmuth's role in the event the Surety continued with KMD Construction and the role of KMD Construction completing the project. Mr. Friesmuth replied that he would have the ultimate say as to what KMD Construction's role would be in order to complete the renovation project. KMD Construction and the subcontractors would be working directly under him.

Attorney Meynardie stated that KMD Construction was terminated for many reasons, one being a failure to supply a schedule. Mr. Meynardie asked Mr. Friesmuth if he would provide a schedule. Mr. Friesmuth replied that he has a cost loaded schedule and estimates that the renovation project would be completed in approximately six months.

Attorney Meynardie inquired as to how long before the project could begin. Mr. Friesmuth answered that the work could begin within one week of a Takeover Agreement being executed.

Attorney Meynardie inquired about the role of Mr. Hardy on the project. Mr. Friesmuth answered that the Surety would engage Mr. Hardy as the project superintendent. He stated further that the superintendent as well as the subcontractors must meet his expectations to be on the project.

Mr. Noland asked who assembles the pay application. Mr. Friesmuth answered that the Surety is in the process of ratifying the subcontractors' agreements. Mr. Noland asked at what point Mr. Friesmuth would pay KMD Construction and who is responsible for that payment. Mr. Friesmuth answered that after a monthly draw against the contract to pay for the work performed by the subcontractors, KMD Construction would be paid last.

County Attorney Killian explained to Mr. Friesmuth the moral responsibility the Board has to the citizens of Haywood County and that presently, there is a reluctance to have KMD Construction on the job site. Mr. Friesmuth responded that there are two roles of KMD Construction. The first is the contractor's license and insurance. The second role is the need for a superintendent.

Attorney Meynardie stated that since the time of termination of KMD Construction, several subcontractors reported that they were not getting paid. Attorney Meynardie asked Mr. Friesmuth if he knew how many subcontractors were not paid to date. Mr. Friesmuth replied that he believes all the subcontractors, except one, were paid up to March 2008, which includes the last pay application

before termination. There are some subcontractors who worked during April 2008, who have not been paid. Mr. Noland stated that the subcontractors would be paid through Mr. Friesmuth.

Attorney Meynardie explained that the most economical option is to turn the project over to the Surety and provide an agreement with stipulations as to the role of KMD Construction, since the County's relationship is now with the Surety.

The Board agreed that a news release would be prepared for and presented to the media. The Board discussed the extra cost the County has incurred, attorney fees, consulting fees and the delay for completion of the renovation. Attorney Meynardie will prepare a draft agreement by Wednesday, July 23rd, 2008. David Cotton, County Manager, stated that he would brief the Board members on the evening of July 24th, 2008.

Mr. Friesmuth left the meeting room at 8:40 pm.

OPEN SESSION:

Chairman Ammons made a motion to enter into open session. Commissioner Upton seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swinger</u>
Clerk	<u>Mark Swinger</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
AUGUST 4, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: Chad Roberson, PBC + L Architect, Attorney Bob Meynardie with Nelson Mullins Riley & Scarborough LLP, and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Attorney Bob Meynardie, Nelson Mullins Riley and Scarborough, presented a draft Takeover Agreement between the County and Fidelity and Deposit Company of Maryland, the Surety, in order to complete the renovation project on the historic courthouse. The Board discussed revisions to the proposed Takeover Agreement.

Attorney Meynardie and Chad Roberson, PBC + L Architect, expressed their approval of Bernie Friesmuth, with Nicholson Consulting, P.C. If the Takeover Agreement is approved, Mr. Friesmuth would be on the job site everyday for the first ninety days, after the execution of the agreement. After sixty days, the Surety could request that Mr. Friesmuth's oversight be reduced to two days per week.

Commissioner Enloe stated that the Surety is insisting on using the contractor that the County fired, and therefore, she will vote against the motion as a matter of principle. Vice-Chairman Kirkpatrick inquired as to the alternatives in the event that the Board did not sign the Takeover Agreement. Attorney Meynardie explained that without the Takeover Agreement, the Surety would either walk away from the project or hire a contractor. Vice-Chairman Kirkpatrick inquired as to the time line for completing the project in the event that the Board did not approve the Takeover Agreement. Attorney Meynardie stated that a new bid package would be necessary. This would be a very time consuming step. Vice-Chairman Kirkpatrick inquired if Mr. Friesmuth would present regular reports on the project. Attorney Meynardie confirmed that Mr. Friesmuth would report regularly. Mr. Meynardie stated that Mr. Friesmuth is ready to begin working on the project.

David Cotton, County Manager, stated that if the Board approves the Takeover Agreement, a press release would be prepared for the media.

OPEN SESSION:

Vice-Chairman Kirkpatrick made a motion to enter into open session. Commissioner Curtis seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>Not Sten</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
AUGUST 18, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: Chad Roberson, PBC + L Architect & Bill Noland, Noland Construction Consulting, LLC

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

County Manager David Cotton provided an overview and characterization of the progress thus far since the execution of the Takeover Agreement. He stated that meetings with Mr. Bernie Friesmuth, Surety's representative and Chad Roberson, Architect with PBC+L have been progressing and will continue through the course of the project. In addition, Mr. Bill Noland, Noland Construction Consulting, LLC will be attending these meetings on behalf of the County.

Mr. Noland stated that the meetings have been productive with detailed packages prepared and submitted by Mr. Friesmuth. Lastly, he stated that Mr. Friesmuth has ratified all of the subcontractors' agreements with the exception of two.

Mr. Roberson stated that the meetings are as expected and that his firm is responding to requests for information. Chairman Ammons inquired about changing the inspection dates to be unannounced and would such action be more effective. Mr. Roberson responded that the set inspection dates are designed to provide both parties with a clear understanding of the items to be inspected each week. He added that this will not preclude him from making unannounced inspections.

OPEN SESSION:

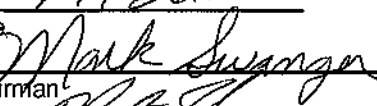
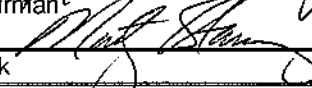
Vice-Chairman Kirkpatrick made a motion to enter into open session. Commissioner Curtis seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
SEPTEMBER 8, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Bill L. Upton, and Mary Ann Enloe present.

MEMBERS ABSENT: Commissioner Charles "Skeeter" Curtis

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, County Attorney Leon M. "Chip" Killian, III

OTHERS PRESENT: Chad Roberson, PBC + L Architect, Bill Noland, Noland Construction Consulting, LLC

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Mr. Chad Roberson, PBC+L Architect provided an update concerning the progress of the project. He stated that the slope, floors, connector and other outstanding issues requiring his input and feedback have been answered and that the Surety is in the process of moving forward. Mr. Roberson stated that the footings and sewer tie in have been completed by the Surety.

Chairman Ammons inquired as to the status of the written reports from the engineer. Mr. Roberson responded that the reports have been generated and delivered to the Surety. Chairman Ammons stated that Mr. Bernie Friesmuth needs to continue to oversee the project. Mr. Bill Noland, Noland Construction Consulting, LLC stated that Mr. Friesmuth involvement is more critical now than down the road due to the need to address all of the outstanding issues left by KMD and providing for a clear plan through the completion of the project. Mr. Noland stated that the project needs Mr. Friesmuth's detail oriented, pragmatic approach.

Chairman Ammons inquired about the status of the schedule. Mr. Noland responded that a cost loaded schedule per the contract has been delivered by the Surety. Mr. Roberson stated that the Surety is making progress. Chairman Ammons asked about the completion date. Mr. Noland stated that the completion date has moved due to the remediation of Stair Tower B and the Elevator Tower to the first of March 2009.

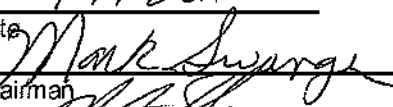

Mr. Roberson stated that the retaining wall and slope have been reviewed and direction has been given to the Surety for completing this part of the project. Chairman Ammons inquired about the single retaining wall being sufficient since the original scope called for three walls. Mr. Roberson explained the final design and stated that the engineers have agreed that the single wall as designed will carry the load.

OPEN SESSION:

Commissioner Upton made a motion to enter into open session. Commissioner Enloe seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
SEPTEMBER 22, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Bill L. Upton, and Mary Ann Enloe present.

MEMBERS ABSENT: Commissioner Charles "Skeeter" Curtis

STAFF PRESENT: County Manager/Clerk to the Board David B. Cotton, County Attorney Leon M. "Chip" Killian, III, Assistant County Manager Marty Stamey, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, PBC + L Architect, Bill Noland, Noland Construction Consulting, LLC

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+L Architect, provided an update concerning the progress of the historic courthouse. A mock up of the granite has been received and adjustments have been made to the construction plans. Proposal requests have been received and tomorrow, September 23rd, 2008, those proposal requests will be reviewed.

Bill Noland, Noland Construction Consulting, LLC, explained that the repairs to the stairwell and elevator shaft must meet constructability and liability cost. Mr. Noland encouraged allowing the Surety an opportunity to design a method for repair which must meet the North Carolina design codes and must be well engineered based upon our design criteria. The Surety will engineer, price and implement the repairs using sheet rock that will be a better finish than originally designed.

County Attorney Killian urged that the Surety be allowed to make this proposal for repair.


Mr. Cotton stated that a change to the takeover agreement would need to be decided during open session. Mr. Cotton said that this decision strengthens the point in the future for the County.

Mr. Roberson stated that the schedule is now cost loaded. Bernie Friesmuth, represents the Surety. Mr. Friesmuth has a good understanding of what the County stockpiled and stored. Chairman Ammons instructed Mr. Roberson to notify Mr. Friesmuth that the Board members inquired as to the materials that have been stockpiled and the use of these.

OPEN SESSION:

Commissioner Upton made a motion to return to open session. Vice-Chairman Kirkpatrick seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swartz</u>
Clerk	<u>Matt Swan</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
OCTOBER 7, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Bill L. Upton, and Mary Ann Enloe present.

MEMBERS ABSENT: Commissioner Charles "Skeeter" Curtis

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton and Assistant County Manager Marty Stamey

OTHERS PRESENT: Chad Roberson, Architect PBC + L, Bob Meynardie, Attorney (via phone conference) and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

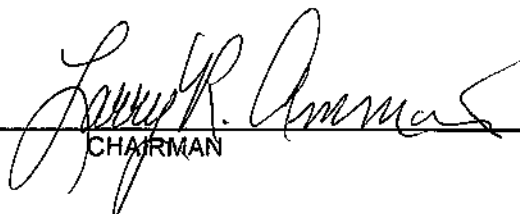
Attorney Bob Meynardie with Nelson Mullins Riley & Scarborough LLP, was present by conference call to discuss proposal requests presented by Chad Roberson, Architect with PBC + L. Mr. Roberson presented pricing that was negotiated for proposal requests 13 (slope), 14 (floor levels), 15 (4th and 5th floor windows), 16 (audio and visual work - courtroom), 17 (courtroom plaster work), and SK27. Mr. Cotton explained that the proposals are to repair some unforeseen conditions of the historic courthouse. Attorney Meynardie explained that the owner is responsible for costs that arise due to unforeseen conditions during renovation of the historic courthouse since these were not discovered until after the time of the contract. Mr. Roberson stated that William "Bill" Noland, with Noland Construction Consulting, LLC, asked Bernie Friesmuth if he expected that there would be any time or general condition claims. Mr. Friesmuth advised that there were none. Mr. Roberson confirmed that these proposal requests could not have been discovered until after the renovation began.

OPEN SESSION:

Commissioner Upton made a motion to return to open session. Commissioner Enloe seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Swartz

Mark Swartz

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
OCTOBER 20, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Commissioners Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton

OTHERS PRESENT: County Attorney Leon M. "Chip" Killian, III, Architect PBC + L, Chad Roberson, Attorney Bob Meynardie, Bill Noland, Noland Construction Consulting, LLC, and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:


The Takeover Agreement stated that Bernie Friesmuth, with Nicholson Consulting, P.C., would be on the job site everyday for the first ninety days. Chad Roberson, PBC + L Architect, explained that after the initial ninety days the renovation project on the historic courthouse is not on schedule. The Surety claims delays have resulted because the change orders approved by the County included language that they did not approve. Mr. Roberson explained that Attorney Bob Meynardie, Nelson Mullins Riley and Scarborough, reviewed the change orders and agreed to change the language per the request of the Surety. At this time the Surety claims there will be no additional requests for change orders. There have been two catch basins found in the historic courthouse. Bill Noland, Noland Construction Consulting, LLC, stated that he asked Mr. Friesmuth to explain the reason for the delay. Attorney Bob Meynardie wrote a letter asking the Surety to define the reason(s) for delay.

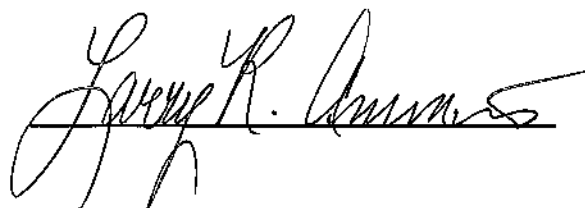
Mr. Noland stated that Mr. Friesmuth stated that he is waiting on the change order before committing to a completion date. Mr. Noland instructed Mr. Friesmuth to put up a delay claim if he has one. Mr. Roberson explained that the granite installers have changed. A weekly meeting will be held tomorrow. David Cotton, County Manager, will write a summary of that meeting and place a copy of the summary in the mail boxes of each Commissioner.

Commissioner Curtis inquired as to the percentage of work on the renovation project is completed. Mr. Roberson stated that approximately fifty percent of the work is completed.

OPEN SESSION:

Commissioner Upton made a motion to return to open session. Commissioner Enloe seconded and the motion carried unanimously.





CLERK

CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	Mark Swartz
Clerk	Pat Swan

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
NOVEMBER 3, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Commissioners Bill L. Upton, Charles "Skeeter" Curtis and Mary Ann Enloe present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey

OTHERS PRESENT: County Attorney Leon M. "Chip" Killian, III, Architect PBC + L, Chad Roberson and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

David Cotton, County Manager, advised that during a recent meeting with Bernie Friesmuth, Nicholson Consulting, P.C., and others involved in the renovation project, an engineer hired by the surety provided a building code evaluation relative to the CMU walls. Chad Roberson, PBC + L Architect, presented an update on the renovation of the courthouse. Mr. Roberson explained that the first level of the slope, and new construction of the granite appear to be excellent. Mr. Roberson stated that tomorrow the issue regarding the mock up is expected to be resolved. The tower and the courthouse are connected. Mr. Roberson stated that a letter was received from an engineer from Greensboro regarding the building code. Mr. Roberson reiterated that the plans must match the drawings. At this time Mr. Roberson has not seen anything formally as it relates to the schedule, which is expected with the pay application. The Takeover Agreement stated that Mr. Friesmuth would be on the job site everyday for the first ninety days. The ninety days end on November 4th, 2008.

County Attorney Killian recommended that even though Attorney Bob Meynardie, is no longer with Nelson, Mullins Riley and Scarborough, he should remain involved with the renovation project.

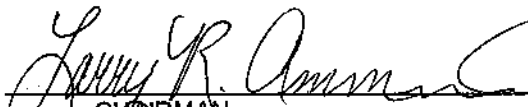
Commissioner Enloe stated that a gentleman contacted her with a concern. Apparently he was a subcontractor who has not been paid completely for his work. Vice-Chairman Kirkpatrick advised the gentleman to hire an attorney.

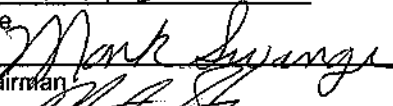
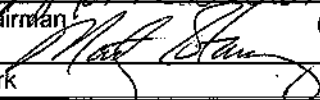
Commissioner Upton inquired as to the percentage of work on the renovation project that is completed. Mr. Roberson stated that approximately sixty percent of the work is completed.

OPEN SESSION:

Commissioner Enloe made a motion to return to open session. Commissioner Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
NOVEMBER 17, 2008**

MEMBERS PRESENT: Chairman Larry Ammons, Vice-Chairman Kirkpatrick, Commissioners Charles "Skeeter" Curtis and Mary Ann Enloe

MEMBERS ABSENT: Commissioner Bill L. Upton

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey

OTHERS PRESENT: County Attorney Leon M. "Chip" Killian, III, Architect PBC + L, Chad Roberson, Attorney Bob Meynardie, Noland Construction Consulting, LLC, Bill Noland, Facilities Maintenance Director Dale Burris, and Administrative Assistant Rebecca Morgan

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC + L Architect, explained that his office had received a delay claim from the Surety for a total of forty-seven calendar days. The total cost associated with this delay claim is \$172,088.50. Mr. Roberson stated that a time impact analysis from the Surety indicated the reason for the delay was because of change order no. 9. Attorney Bob Meynardie explained that within ten days the architect must respond to the delay claim. Mr. Meynardie and Mr. Roberson expressed that it appears the Surety has overstated the quantity of days for their delay claim. Mr. Roberson suggested requesting an updated schedule from the Surety.

David Cotton, County Manager, stated that issues with the stairwell and elevator remediation must be resolved and are not included in this delay claim. Mr. Roberson stated that he has spoken to Bernie Friesmuth, with Nicholson Consulting, P.C., regarding the repairs to the stairwell. The Board of County Commissioners agreed with Mr. Roberson's recommendation that the architect request additional information regarding the delay claim.

Mr. Roberson expressed the importance of obtaining an updated schedule from the Surety. Vice-Chairman Kirkpatrick inquired if documentation was being maintained and Mr. Roberson confirmed that the project was being documented appropriately. Mr. Meynardie reiterated the need to respond to the delay claim.

OPEN SESSION:

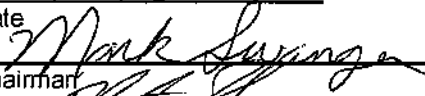
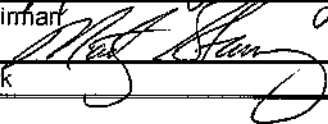
Commissioner Enloe made a motion to return to open session. Vice-Chairman Kirkpatrick seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
DECEMBER 15, 2008**

MEMBERS PRESENT: Chairman Kirkpatrick, Vice-Chairman Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, & County Attorney Leon M. "Chip" Killian, III, Dale Burris, Facilities & Maintenance Director and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, Architect PBC + L, Attorney Bob Meynardie, Bill Noland, Noland Construction Consulting, LLC

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Bill Noland, Noland Construction Consulting, LLC, Attorney Bob Meynardie, Chad Roberson, Architect PBC + L, and Dale Burris, Facilities & Maintenance Director introduced themselves to the Board. Mr. Roberson provided an update of the historic courthouse renovation project. A letter denying the delay claim was sent to the Surety by Mr. Roberson, Architect PBC+ L, as the County's representative.

Mr. Meynardie explained that the Takeover Agreement states that the Surety will pay for all third party inspections related the CMU wall remediation. The Surety now states that the County should pay for the inspection. David Cotton, County Manager, stated that presently the County is tracking the additional costs being incurred by the County. Commissioner Ensley inquired as to the frequency that Mr. Noland reviews the work and is on site. Mr. Noland replied that since September 2008, he has reviewed the work once a month. Mr. Burris explained that he has been inspecting the work on the historic courthouse daily. Mr. Burris documents the work with supplemental photographs. The Board discussed scheduling a walkthrough of the courthouse with Mr. Burris.

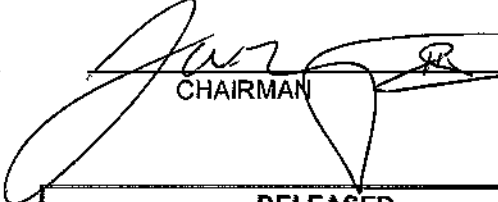
Mr. Meynardie advised that KMD Construction provides the license for the work. Bernie Friesmuth, Nicholson Consulting, P.C., was to be onsite everyday for the first ninety days. Mr. Roberson stated that the renovation work under the direction of the Surety is satisfactory to date. Mr. Meynardie stated that he will request the Surety to provide an estimate of the completion date for the historic courthouse.

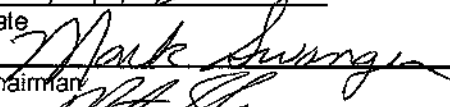
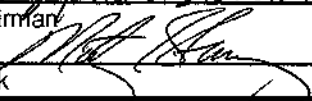
The Board agreed that the local media should be given a tour of the historic courthouse. Mr. Cotton confirmed that he would prepare a public statement concerning the status of the project.

OPEN SESSION:

Vice-Chairman Upton made a motion to return to open session. Commissioner Swanger seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JANUARY 5, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Dale Burris, Facilities and Maintenance Director, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, Architect PBC + L, Attorney Bob Meynardie (via phone conference)

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Mr. Roberson, Architect PBC+ L, summarized the actions regarding the delay claims. On December 31st, 2008, a letter was sent to the Surety summarizing all previous correspondence related to the delay claim. In previous letters sent to the Surety, additional information was requested so that the County could better analyze the delay claim. The Surety initially refused to provide the additional information as requested by the County. Subsequent to their refusal, they reconsidered and provided the additional information. The additional information provided following their reconsideration, partially addressed the CMU remediation but did not reflect actual activities existing on the fourth floor. Following the analysis of the information provided by the Surety, a second letter was sent to the Surety on December 31st, 2008 denying the claim. Within the same letter, additional information was requested regarding the second delay claim.


Chairman Kirkpatrick stated that the delay claims have been analyzed by Mr. Roberson and Attorney Bob Meynardie. The Surety may request mediation no later than thirty days after being notified of the denial by the County. Attorney Meynardie stated that he will report back to the Board as to how the County finds a mediator. Mr. Meynardie stated that the two mediations can be combined so that two separate mediations will not be necessary.

OPEN SESSION:

Vice-Chairman Upton made a motion to return to open session. Commissioner Ensley seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Swanson
Mark Swanson

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JANUARY 20, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Dale Burris, Facilities and Maintenance Director, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, Architect PBC + L

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+ L Architect, presented a status report of the renovation project on the historic courthouse. The plaster work in the courtroom area is approximately 95% completed. A paint mock up has been completed. On December 31st, 2008, a letter was sent to the Surety summarizing all previous correspondence related to the delay claim. The Surety may request mediation no later than thirty days after being notified of the denial by the County. However, no response from the Surety has been received at this time.

David Cotton, County Manager, stated that Bernie Friesmuth, with Nicholson Consulting, P.C., has requested a meeting, but a letter of request has not been received. The County requested a recovery schedule, which would be a true timeline for completion of the work. The County has not received a pay application for December. The Surety has five days until the January pay application will be due.

Mr. Roberson stated that progress on the renovation is being made and the goal to finish the courtroom with delivery of the benches is February 16th, 2009. The Surety agrees with that date.

Mr. Cotton stated that there was some water damage to the wainscoting that was stored by the County. Dale Burris, Facilities and Maintenance Director, explained that the contractor is now storing the wainscoting in a warehouse. Mr. Burris explained that since he began working for the County, there are more crews on site at the historic courthouse and the site has been kept clean.

Mr. Roberson and Mr. Burris left the meeting.

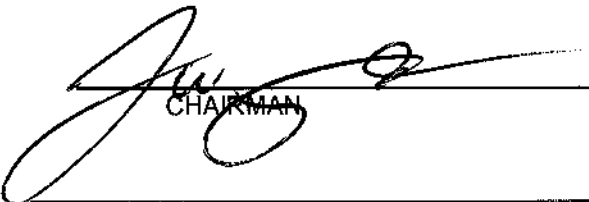
Mr. Cotton explained that a letter requesting additional fees has been received from PBC+L. The request includes compensation for additional work by Chad Roberson, PBC + L Architect and consulting engineers hired directly by the Architect. County Attorney Killian explained that the amount requested is \$101,028 in additional compensation. Mr. Killian stated that he discussed this request with Attorney Bob Meynardie. Mr. Killian stated that Mr. Meynardie recommended that the County not withhold payment, but ask how the amount was determined, and pay with a reservation on the question of entitlement for additional contract administration.

Mr. Cotton is working with Bill Noland, Noland Consulting, to evaluate the details of the request. Once these details have been collected, Mr. Cotton will present them at the Board's next closed session meeting. There was a general discussion about the merits of the PBC+L request for additional fees.

OPEN SESSION:

Vice-Chairman Upton made a motion to return to open session. Commissioner Swanger seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>[Signature]</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
FEBRUARY 2, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Facilities and Maintenance Director Dale Burris, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, Architect PBC + L

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+ L Architect, stated that a letter was sent to the Surety which included five main areas.

- 1) We should receive a certified copy of the pay application for December 2008 from the Surety.
- 2) Relating to the delay claim, we have received a letter. We have not completed our review.
- 3) We have not been formally informed that the Surety would reduce their presence on site.
- 4) There was a demand from the Surety that we change our regular meeting date from Tuesday to Thursday.
- 5) Chad has spoken to Attorney Bob Meynardie on how to access liquidated damages. Attorney Meynardie is researching this issue.

Another area to be reviewed is the demand for a letter regarding arbitration received from the Surety.

Mr. Roberson reported that work completed on the courtroom looks great and we have been given a completion date. We have asked for a recovery schedule.

David Cotton, County Manager, stated that Attorney Meynardie said the first half is mediation then arbitration. Attorney Meynardie has corresponded with the Surety's attorney and explained that we are requesting a conference regarding the supervision on the renovation site.

Mr. Cotton stated that recently tile and grout were layed in very low temperatures. Chairman Kirkpatrick urged that the Surety be notified of this problem. Mr. Roberson confirmed that this issue has been documented. Mr. Cotton explained that the latest letter to the Surety written from Attorney Meynardie stated that they are on notice that the additional costs are coming out of the bottom line.

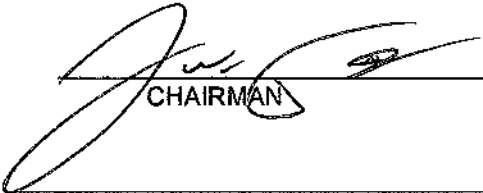
Commissioner Curtis inquired if there were enough employees on site to do the work. Mr. Burris stated that they seem to have plenty of workers on site recently, especially in the courtroom.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Commissioner Curtis seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>[Signature]</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
FEBRUARY 16, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Facilities and Maintenance Director Dale Burris, Finance Director Julie Davis, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, Architect PBC + L

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+ L Architect, presented a report on the Historic Courthouse. Mr. Roberson stated that a meeting is scheduled March 3rd, 2009 with a representative from the Surety, Bill Noland, Noland Construction Consulting, LLC and Mr. Roberson. The pay application for January has been received and is being reviewed by the Architect. The Surety has added inaccurate details to the County's change order #9. Mr. Roberson stated that the Surety had a timeframe of ten days which has elapsed. There has been no reference to a delay claim.

Commissioner Swanger inquired if the walkway was part of the base contract. Mr. Roberson confirmed that it was part of the base contract.

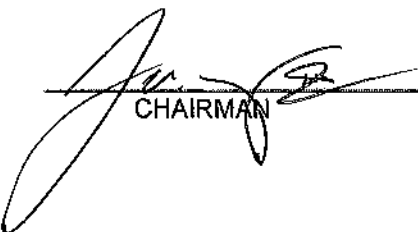
Dale Burris, Facilities and Maintenance Director stated that the benches for the courtroom will arrive soon. Most of the finishes are complete and the carpet is in place.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Swanger

[Signature]

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
MARCH 2, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, County Attorney Leon M. "Chip" Killian, III, Facilities and Maintenance Director Dale Burris, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, Architect PBC + L, Bill Noland, Noland Construction Consulting, LLC

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+ L Architect, presented a report on the Historic Courthouse. A punch list for the historic courtroom was made and other areas of the Historic Courthouse should be punched out for review. Furniture has begun to arrive.

David Cotton, County Manager, stated that the regular meeting regarding the renovation project is scheduled for March 3rd, 2009 with Bill Noland, Noland Construction Consulting, LLC, Mr. Roberson, Dale Burris, Facilities and Maintenance Director, Mr. Cotton and a representative from the Surety. Mr. Cotton will take notes during that meeting.

Bill Noland, Noland Construction Consulting, LLC, explained that the delay claim from August is allegedly a result of the County's change orders. The base line schedule was changed. The Surety is asking for \$3,500 per day for their time delay. The delay damages claim is for approximately \$105,000. The denial was made by the county in December 2008 and the deadline for filing for arbitration was thirty days.

Mr. Roberson stated that the Surety has been working on the front part of the Historic Courthouse and preparing for a punch list. KMD Construction had a pay schedule and these schedules were never tied together.

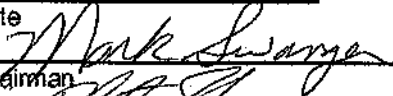

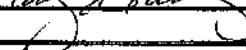
Dale Burris, Facilities and Maintenance Director, stated that Wednesday, February 25th, the benches for the historic courtroom arrived. Most of the lights are left on at the courthouse for security reasons.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Commissioner Curtis seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
9-19-2011	
Date	
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
MARCH 16, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Facilities and Maintenance Director Dale Burris, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, Architect PBC

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+ L Architect, presented a report on the Historic Courthouse. The granite work is approximately 99% completed. Mr. Roberson stated that the renovation is expected to be completed by May 2009.

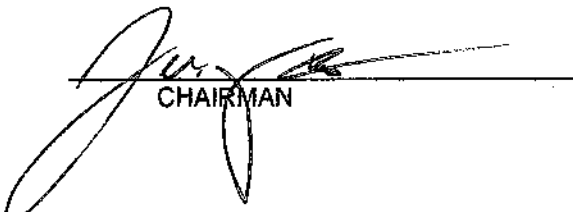
David Cotton, County Manager, stated that an informal meeting was held March 3rd, 2009 with Bill Noland, Noland Construction Consulting, LLC, Dale Burris, Facilities and Maintenance Director, and a representative from the Surety, during which time the Surety explained their reasons the delay claim should be overturned. Mr. Cotton responded in a letter which he sent to Bernie Friesmuth, Nicholson Professional Consulting, Inc. Copies of the letter were sent to Assistant County Manager Marty Stamey, Finance Director Julie Davis, Noland Construction Consultant Bill Noland, Chad Roberson, and Claims Counsel, Donald Spratt.

After discussion the Board scheduled a tour of the historic courthouse on April 6th, after the regularly scheduled Board meeting.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Commissioner Ensley seconded and the motion carried unanimously.


CLERK


CHAIRMAN

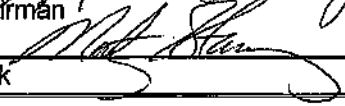
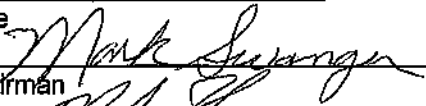
RELEASED

9-19-2011

Date

Chairman

Clerk



**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
APRIL 6, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Facilities and Maintenance Director Dale Burris, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, Architect PBC

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+ L Architect, stated that April 17th, 2009 is the scheduled completion date given by the Surety, but Mr. Roberson does not expect completion on that date. No punch lists have been completed at this time.

Dale Burris, Facilities and Maintenance Director, reported that April 2nd, at 9:15 pm he received a phone call reporting heavy smoke was coming from the courthouse. Waynesville Fire Department responded to the scene. Three space heaters were left operating inside the historic courthouse. Don Hardy, Project Superintendent, arrived on site at approximately 9:45 pm and stayed until approximately 11:30 pm. Bernie Friesmuth, Nicholson Professional Consulting, Inc., arrived at approximately 10:00 pm. There is an oily, white petroleum residue on the walls and general areas from the smoke damage sustained from one heater. Smoke traveled up the stair tower. The heaviest smoke damage was sustained on the third, fourth and fifth floors of the historic courthouse. The contractor will be required to provide the necessary cleanup. David Cotton, County Manager, stated that the walls were swabbed by Service Master. Mr. Roberson stated that Service Master wiped down some of the walls with a chemical sponge. Commissioner Curtis inquired who was actually cleaning the historic courthouse and recommended professional crews to clean the smoked areas. Mr. Roberson stated that at this time, exactly who will be performing the cleaning has not been determined. Chairman Kirkpatrick stated that the County must have the cleanup done professionally as to avoid potential problems in the future in regards to smoke damages as a result of negligence of the construction workers. Mr. Cotton stated that a conference telephone call is scheduled with Attorney Bob Meynardie regarding the incident with the smoke and the Surety's response with the informal meeting held March 3rd, 2009, with Bill Noland, Noland Construction Consulting, LLC, and a representative from the Surety, during which time the Surety explained their reasons the delay claim should be overturned. Commissioner Swanger stated that smoke interacts with humidity. Chairman Kirkpatrick stated that the County needs a quick response regarding the smoke incident or the County will need to litigate as soon as possible. Mr. Cotton stated that he will discuss this issue with Attorney Meynardie and deduct the cost from the contract price.

OPEN SESSION:

Vice-Chairman Upton made a motion to return to open session. Commissioner Ensley seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>Matt Swan</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
APRIL 20, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, Facilities Maintenance Director Dale Burris and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, PBC + L Architect was present via conference call.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+ L Architect, reported that the fire sprinklers and smoke alarms at the Historic Courthouse failed inspection. Mr. Roberson advised the Surety that they must provide the County with a list of everything that is complete and incomplete on the Historic Courthouse project.

Dale Burris, Facilities and Maintenance Director, stated that on April 9th, Neo Corporation arrived at the Historic Courthouse with RC Woodcock, a third party testing agent. Mr. Woodcock removed samples from levels one, three, four and five. Samples were sent to the testing laboratory. Mr. Woodcock advised that the areas of acoustical porous tile should be replaced because they cannot be cleaned thoroughly. The estimated cost for removing and replacing the tile is \$10,000 to \$12,000. Mr. Roberson confirmed the estimates. Mr. Woodcock stated that some areas could be cleaned and repainted to encapsulate soot particles. All walls need to be cleaned. After discussion the Board requested that Mr. Woodcock provide a follow up letter of recommendations per his findings and results of the testing.

David Cotton, County Manager, stated that a letter has been sent to the Surety indicating that they are on notice and that the Surety is expected to address all concerns regarding the Historic Courthouse immediately. Commissioner Curtis inquired if the Surety's insurance carrier had been notified of the smoke damage. Chairman Kirkpatrick instructed Mr. Cotton to demand from the Surety, the name of their insurance carrier. Mr. Cotton stated that a follow up letter would be sent to the insurance carrier of the Surety.

Chairman Kirkpatrick received a call from former Sheriff Alexander inquiring as to the landscaping of the Historic Courthouse. Mr. Burris stated that the landscaping was subcontracted by Ingle and Sons through Hickory Construction. Commissioner Swanger asked if a decision had been made regarding the trees on the courthouse lawn. Mr. Cotton stated that the Board has made no decision.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>[Signature]</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
MAY 4, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, Facilities Maintenance Director Dale Burris and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: Chad Roberson, PBC + L Architect

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+ L Architect, reported that Bernie Friesmuth, representing the Surety, has indicated that the renovation on the Historic Courthouse is complete. Mr. Roberson informed him that the project is incomplete. Cleaning is required due to smoke damage. Last week the terrazzo was being ground and installation of some hand rails between level zero and level one were not installed. Mr. Roberson stated that he sent a letter to the Surety, but has not received a reply. Mr. Roberson stated in the letter we were taking a stance that the project is not finished. We are not doing a punch list of substantial completion until all items are completed. There are some things that are life safety issues left incomplete. The warranty period begins at the time of sub-contractor completion. Mr. Roberson reported that the approved amount for March 6th, 2009 pay application are zero. Six items remain outstanding; the transfer switch reimbursement, Mactec invoices reimbursement, liquidated damages from June 16th, 2008 through May 8th 2009 (assumed date of substantial completion), utilities beyond the contractual completion date in accordance with Addendum #2 (does not include April or May invoices), additional design fees and consulting fees. June 16th, 2008 through May 8th, 2009 are the dates of liquidated damages and these continue to accumulate. The contract allows that we can hold funds plus five percent. We take the original sum of contract and we deduct actual and liquidated damages. The liquidated damages total, through May 8th, 2009, \$97,800. Liquidated damages are \$300 per day for every day until substantial completion is approved.

Dale Burris, Facilities and Maintenance Director, stated that on May 25th, the furniture will arrive at the Historic Courthouse. Installation will take ten to fourteen days.

Commissioner Curtis inquired as to the smoke damage at the Historic Courthouse. Mr. Roberson stated that the nothing has been done regarding the smoke damage. The Surety has not responded to Mr. Roberson's initial letter regarding the smoke damage. Mr. Roberson confirmed that the notification has been made to the Surety's builders risk insurance.

Mr. Burris stated that the temporary construction filters have been removed. Mr. Roberson reiterated that before the project is completed, the Surety must complete the owner's punch list. Mr. Burris walked through the Historic Courthouse this morning and most of the incomplete items that were


noted on April 28th, remain incomplete. Mr. Burris reported that Mr. Friesmuth stated everything is complete on the project. Vice-Chairman Upton inquired as to the grass coming through the mulch. Mr. Burris replied that a weed mat under the mulch did not prevent the grass from growing, but the area would be sprayed to prevent weed penetration.

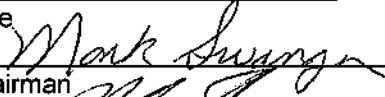
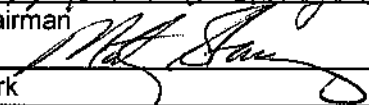
David Cotton, County Manager, stated that a follow up letter will be sent to the Surety regarding the smoke damage.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Commissioner Ensley seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u></u>
Clerk	<u></u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
MAY 18, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, and Dale Burris, Facilities and Maintenance Director

OTHERS PRESENT: Chad Roberson, Architect PBC + L

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Historic Courthouse

DISCUSSION:

Chad Roberson, Architect PBC+ L, summarized and provided an overview of the progress of work since the last briefing. Dale Burris, Facilities and Maintenance Director, explained and summarized the action taken by the County to address the smoke damage that resulted from a heating unit malfunction, which occurred on April 2nd, 2009. Mr. Roberson stated that the Insurance Company notified PBC+L that a Claims Adjuster had been assigned and will be in contact to inspect the damage. David Cotton, County Manager, stated that as instructed, proper notice was provided to the Insurance Company concerning the Smoke Damage Claim and the County's expectations for remediation. Commissioner Curtis inquired as to the status of the punch list. Mr. Roberson responded that it would take two full weeks assuming a full staff was provided by the Surety. Mr. Roberson concluded by providing an update for the elevator inspections with an estimated inspection date of May 19th, 2009.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Swartz

Mark Swartz

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JUNE 1, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, Facilities & Maintenance Director Dale Burris, Susan Layton, Human Resources Director and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Chad Roberson, PBC + L Architect.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Historic Courthouse

DISCUSSION:

Chad Roberson, PBC+ L Architect, reported that he inspected the Historic Courthouse with the punch list. The inspection for the elevator is scheduled to be completed this afternoon. Mr. Roberson stated that we deducted the outstanding design fees and liquid damages from the March pay application. The April pay application was received one month late. Mr. Roberson advised there will be smoke and soot remediation.

Dale Burris, Facilities and Maintenance Director, stated that NEO Corporation inspected the Historic Courthouse and advised that the areas of ceiling tile should be replaced because they cannot be cleaned thoroughly. The quote provided by B. Allen Construction was higher than NEO Corporation's estimate. The walls must be cleaned and refinished. The cost for cleaning and painting is \$10,500. The cleaning is scheduled to begin June 3rd. Furniture is scheduled to begin arriving June 4th. Mr. Burris stated that the elevators are not freight elevators as defined by the North Carolina Department of Labor (NCDOL).

David Cotton, County Manager, stated that the Surety's insurance carrier agreed with most of the claims for the smoke damage, but differs on the cost of the ceiling tile remediation. The insurance carrier submitted a claim, which is \$15,000 less than the estimates submitted by the contractors. Mr. Cotton stated that the County will add that amount to the damages owed by the Surety.


Mr. Burris stated that he is meeting with Blue Ridge Glass to discuss replacing windows. The seal cracked on approximately 20 windows causing condensation to collect between the panes of windows.

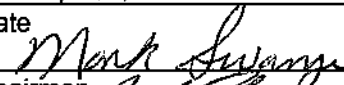
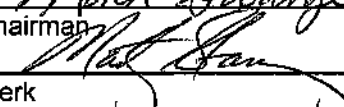
Mr. Roberson explained that certification of substantial completion is expected by the end of the week. Mr. Cotton stated that the move-in date is June 27th assuming that the certificate of occupancy is issued by the appropriate authorities.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u></u>
Clerk	<u></u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JUNE 15, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, County Attorney Leon M. "Chip" Killian, III, Assistant County Manager Marty Stamey, Finance Director Julie Davis, Facilities & Maintenance Director Dale Burris, Erosion Control Director Marc Pruet and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT:

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Historic Courthouse

DISCUSSION:

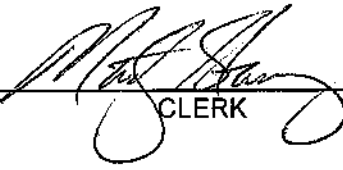
David Cotton, County Manager, stated that Bernie Friesmuth, with Nicholson Consulting, P.C., cleaned out his desk and left the renovation site. Mr. Cotton received a letter from Mr. Friesmuth explaining that the work is completed. Mr. Cotton stated that because the Fire Marshal was not available that day, it was impossible to complete a final check off of the Historic Courthouse. At this time there are no life safety issues. The evacuation plans for the Historic Courthouse were completed by Dale Burris, Facilities and Maintenance Director, saving the County a great deal of money. The total cost of the renovation project is \$7.2 million. Moving dates are June 27th and 28th. Mr. Cotton stated that the County will add the amount to the damages owed by the Surety.

Mr. Burris stated that NEO Corporation inspected the Historic Courthouse Mr. Cotton stated that the move-in dates are June 27th and 28th. Mr. Burris confirmed that smoke remediation inspection was completed on June 8th. Mr. Burris stated that the Town of Waynesville has issued a certificate of occupancy for Haywood County if the County agrees to do the work (fire caulking, smoke / damp proofing, and sealing around several wall penetrations). The offices at the Waynesville Plaza have been rented to the dental clinic, per Mr. Burris' telephone conversation with Ms. Clayton, owner of the building. Mr. Burris will schedule a meeting with Ms. Clayton after the building is vacated regarding removing the walls which are now being used for offices in the Tax Administration Department.

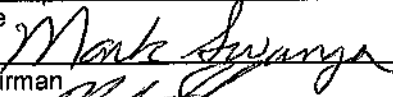
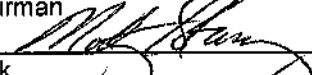

Mr. Cotton stated that he is satisfied with Neo Corporation. Mr. Cotton stated that the furniture for the Historic Courthouse looks beautiful. A ribbon cutting ceremony is being considered for the Historic Courthouse. Volunteers with Haywood Community Connections will be on site at the Historic Courthouse to welcome visitors and direct them to various offices. David Teague, Public Information Officer suggested to Mr. Cotton that tours of the courthouse be scheduled.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
	<i>9-19-2011</i>
Date	
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JULY 13, 2009**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley present.

MEMBERS ABSENT: none.

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, and Finance Director Julie Davis.

OTHERS PRESENT: None.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Historic Courthouse

DISCUSSION:


David Cotton, County Manager, presented an update on the renovation of the Historic Courthouse. The punch list includes the following: plaster repair in the courtroom, replacement of panels in the elevators, & other items.

OPEN SESSION:

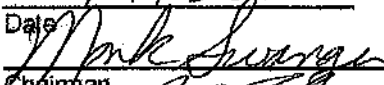
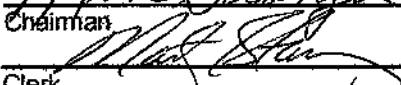
Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
AUGUST 3, 2009**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, and Mark S. Swanger present.

MEMBERS ABSENT: L. Kevin Ensley

STAFF PRESENT: Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, Facilities Maintenance Director Dale Burris and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Meynardie Law Firm LLP Attorney Bob Meynardie was available via telephone.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

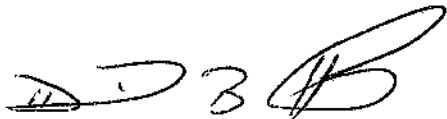
SUBJECT: Litigation - Historic Courthouse

DISCUSSION:

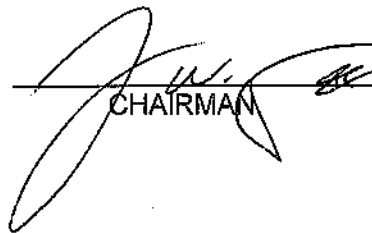
Attorney Bob Meynardie explained that a lawsuit was filed against Haywood County by KMD Construction for \$2 million. David Cotton, County Manager, and the County were served in June, 2009. The County moved for a thirty day extension of time. An Appeal arbitration is a single hearing. As part of the contract, they can force the County into arbitration. The complaint concludes problems with design, and not knowing that the jail on the fourth floor was part of the structural support for the fifth floor. Attorney Meynardie stated that he is working a strategy for all four parties to go to arbitration, but it doesn't look promising. Attorney Meynardie stated that he feels very confident about the County's position.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Swartz
Mark Swartz

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
AUGUST 15, 2011**

MEMBERS PRESENT: Chairman Mark S. Swanger, Vice-Chairman J.W. "Kirk" Kirkpatrick, Commissioners Bill L. Upton, L. Kevin Ensley and Michael T. Sorrells.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board Marty Stamey, County Attorney Chip Killian, Finance Director Julie Davis, and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Bob Meynardie, of Meynardie and Nanney Law was present via telephone

GENERAL STATUTE: Litigation §143-318.11(a)(3)


SUBJECT: Historic Courthouse


DISCUSSION:

Bob Meynardie, Attorney, reviewed a memo sent to Marty Stamey, County Manager, on August 12, 2011. The memo summarized the decision made by the Arbitration panel regarding the final award in the case with KMD Construction. County Attorney Killian requested that the closed session minutes regarding the Historic Courthouse and KMD Construction be sent to him for review. The Board discussed potential legal action against the architect. Attorney Meynardie inquired as to making a statement to the Smoky Mountain News and media regarding the outcome of the case. Vice-Chairman Kirkpatrick advised that they had already made a statement to the Smoky Mountain News. The Board agreed that if the media contacted Attorney Meynardie he could make a statement regarding the case.

OPEN SESSION:

Vice-Chairman Kirkpatrick made a motion to return to open session. Commissioner Upton seconded and the motion passed unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>Mark Swanger</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
AUGUST 27, 2009**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager David Cotton, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Meynardie Law Firm LLP Attorney Bob Meynardie was available via telephone.

GENERAL STATUTE: Litigation §143-318.11(a)(3)

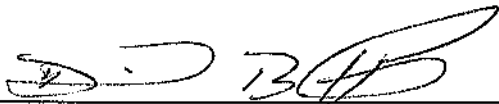
SUBJECT: Litigation - Historic Courthouse

DISCUSSION:

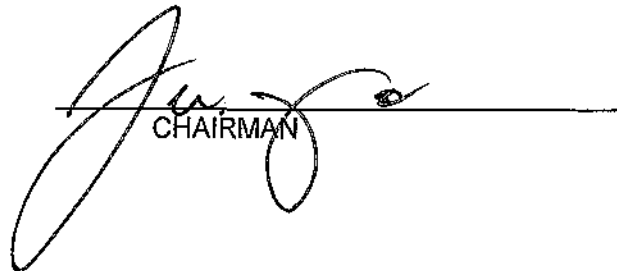
Attorney Bob Meynardie reviewed a memo given to the Board reviewing the main concerns for the County. There is some negligence on the part of KMD Construction. Attorney Meynardie explained that KMD Construction can compel the County into arbitration. The person who has the arbitration could save their right. Attorney Meynardie spoke to Attorney Steve Smith, representing KMD Construction, who was surprised that we did not want to go into arbitration. Attorney Meynardie emphasized that KMD Construction was behind schedule on the renovation project of the Historic Courthouse, they did not produce a schedule that was compatible with the contract and there was defective construction of the tower. Attorney Meynardie spoke to a subcontractor who stated their contract was with the Surety, not KMD Construction. County Attorney Chip Killian asked, "What happens to the contracts the Surety has entered into with subcontractors where the Surety is not a party to the lawsuit?" Attorney Meynardie replied that assuming they contracted with the Surety, they have rights against the Surety for the payment bond. The Surety is obligated to pay the subcontractors. At this time, Attorney Meynardie stated that there are at least two subcontractors that have not been fully paid. These subcontractors stated that they were told they would get paid when the Surety gets their final payment.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Commissioner Curtis seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Swanger

Mark Swanger

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
SEPTEMBER 8, 2009**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: none

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Historic Courthouse

DISCUSSION:


David Cotton, County Manager and County Attorney Killian presented a brief update on the status of the Historic Courthouse. Commissioner Swanger inquired if during the renovation of the Historic Courthouse, KMD Construction were responsible for signage. David Cotton, County Manager, replied that KMD Construction were responsible only for signs regarding safety issues. Other signage was not part of the contract.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Commissioner Ensley seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	Mark Swanger
Clerk	David Cotton

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
OCTOBER 5, 2009**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: none

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Historic Courthouse

DISCUSSION:

David Cotton, County Manager, stated that there was a hearing with Judge Winner. Chairman Kirkpatrick explained that the attorney representing KMD Construction requested the arbitration be ordered by the Court. However, Bob Meynardie, who is representing the County, argued that because KMD has not satisfied all the terms of the contract leading up to the arbitration that such an order would be premature. Initially, the judge stated he would not decide anything at all regarding the County and KMD Construction. If the County enters into arbitration, he would not stop the case with Kloesel Engineering or with PBC+L. Attorney Meynardie stated that details and backup information is needed in order to evaluate the claim submitted by KMD Construction before the County enters into arbitration.

County Attorney Killian stated that a letter was sent to Steve Smith, Attorney for KMD Construction asking for the information relative to the claim submitted by KMD Construction.

OPEN SESSION:

Vice-Chairman Upton made a motion to return to open session. Commissioner Swanger seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Swartz
Mark Swartz

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
NOVEMBER 2, 2009**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, Facilities Maintenance Director Dale Burris and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Steve Martin

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Historic Courthouse

DISCUSSION:

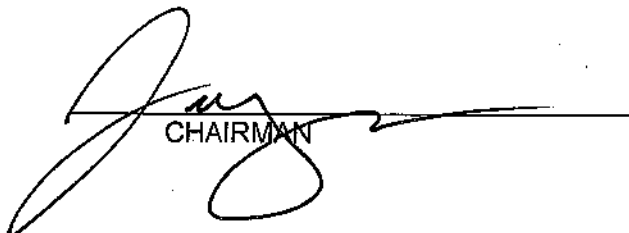
County Attorney Killian stated that KMD Construction is joining the arbitration, but has not complied with the terms of arbitration. There is an issue regarding the subcontractor claims. Marty Stamey, Assistant County Manager, stated that several subcontractors have called and are being referred to Attorney Bob Meynardie, with the Meynardie Law Firm, PLLC.

OPEN SESSION:

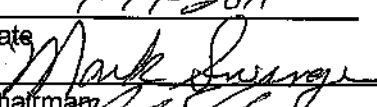
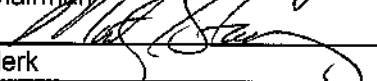
Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.



CLERK



CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
DECEMBER 7, 2009**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: Charles "Skeeter" Curtis

STAFF PRESENT: County Manager David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Facilities Maintenance Director Dale Burris, Finance Director Julie Davis, Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Attorney Bob Meynardie with Meynardie Law Firm, PLLC, was present via telephone

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation

DISCUSSION:

Leon M. "Chip" Killian, III, County Attorney, stated that KMD Construction has not provided supporting documentation for the \$2 million lawsuit filed against the County. Mr. Meynardie stated that Judge Winner instructed KMD Construction to comply with the arbitration terms of the construction contract. He further stated that until all terms are met, Judge Winner will not make a determination relative to ordering arbitration. Attorney Meynardie stated that there is a complete list of subcontractors, which are owed final payment. We are in the process of finalizing the language for the lien releases, which will need to be signed by the appropriate subcontractors as a term of condition to receive their final payment. Once the subcontractors are paid, the value of the claim will be reduced significantly as KMD Construction self-performed very little of the work. The surety owes the subcontractors approximately \$325,000, which the County has agreed to pay directly to the subcontractors. After those payments and deductions for damages incurred by the County, the contract balance is expected to be approximately \$24,000 to 25,000. Attorney Meynardie explained that the subcontractors will be paid the undisputed amount that is agreed upon by the Surety and subcontractors after all parties have executed the proper lien release. Attorney Meynardie stated that KMD Construction needs to provide the supporting documentation associated with the claim prior to mediation. One of the County's contentions is that KMD Construction is trying to reach arbitration without providing the County with the requisite information as to their claims and the rationale used to arrive at the \$2 million figure.

After discussion the Board agreed to arbitration if KMKD Construction supplies their claim(s) information. Attorney Meynardie stated that he has sent a letter and allowed the lawyers for KMD Construction time to reply in order to have the parties agree and get the mediation postponed.

OPEN SESSION:

Commissioner Swanger made a motion to return to open session. Vice-Chairman Upton seconded and the motion carried unanimously.

DBB

CLERK

James B.

CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JUNE 7, 2010**

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: Assistant County Manager / Clerk to the Board Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis, and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: none

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: KMD Construction

DISCUSSION:

Marty Stamey, Assistant County Manager, stated that three boxes were shipped to Attorney Bob Meynardie. County Attorney Chip Killian stated that there is a three-person panel. Chairman Kirkpatrick stated that the decision of the panel is final.

OPEN SESSION:

Commissioner Swanger made a motion to enter into open session. Vice-Chairman Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>Marty Stamey</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
FEBRUARY 21, 2011**

MEMBERS PRESENT: Chairman Mark S. Swanger, Commissioners Bill L. Upton, L. Kevin Ensley and Michael T. Sorrells.

MEMBERS ABSENT: Vice-Chairman Kirkpatrik

STAFF PRESENT: County Manager Marty Stamey, County Attorney Leon "Chip" Killian, III, Finance Director Julie Davis, Facilities and Maintenance Director Dale Burris and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Bob Meynardie, Meynardie Law Firm

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Historic Courthouse

DISCUSSION:

Attorney Bob Meynardie explained that there would be mediation on Friday, March 4th. Attorney Meynardie shared that on May 3rd, a binding arbitration would be held and therefore, the case would not go to court. Attorney Meynardie asked the Board as to the degree of authorization he would be allowed during the mediation. The County must clarify what it would contribute to a settlement. Attorney Meynardie advised the Board that after careful review, his findings are that the County had just cause to terminate. Marty Stamey, County Manager, confirmed that he and Vice-Chairman Kirkpatrick would attend the mediation.

Attorney Meynardie presented the Board with a handout indicating the damages claim of \$2.8 million by KMD Construction and damages claimed by the County. The Board discussed the information and the wrongful termination claim. Attorney Meynardie explained the basis for the settlement. KMD Construction will present why they are entitled to \$2.8 million. PBC & L would not want to risk future employment with the County. All cost was paid in change orders, but the time delays have not been paid by the County. Attorney Meynardie stated that the County could be out as little as \$110,000.

David Hamilton is the mediator. Attorney Meynardie asked the Board to tell Mr. Stamey how much it is willing to spend. PBC&L may be owed by the County \$109 and KMD Construction may be owed \$120,000. Julie Davis, Finance Director, stated that the County has \$179,000 remaining in the budget for the project.

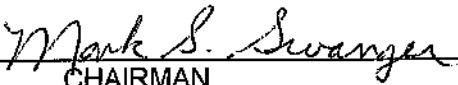
Ms. Davis confirmed that Bill Noland has been paid in full. Vice-Chairman Kirkpatrick stated that had PBC&L done their job the County would not have needed to hire Mr. Noland. Settlement authority of \$179,000 was approved by the Board.

Dale Burris, Facilities and Maintenance Director, stated that he kept a log of the hours he worked with Mr. Noland on this project and inquired if the Board was willing to compensate him.

OPEN SESSION:

Commissioner Upton made a motion to return to open session. Commissioner Sorrells seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>Mark Swanger</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
MARCH 7, 2011**

MEMBERS PRESENT: Chairman Mark S. Swanger, Vice-Chairman Kirkpatarick, Commissioners Bill L. Upton, L. Kevin Ensley and Michael T. Sorrells.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager Marty Stamey, Finance Director Julie Davis, Facilities and Maintenance Director Dale Burris and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: none

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Historic Courthouse

DISCUSSION:

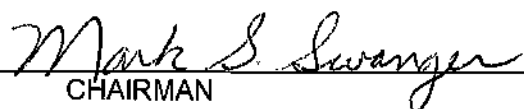
On Friday, March 4th, Vice-Chairman Kirkpatrick and Marty Stamey, County Manager, attended the mediation regarding KMD Construction and damages claimed by the County. Vice-Chairman Kirkpatrick presented an overview of the mediation. The mediation was unsuccessful with KMD leaving early during the process Friday afternoon.

Vice-Chairman Kirkpatrpick advised that the arbitration panel are three professional construction attorneys. Arbitration is scheduled to begin May 23rd, 2011. Marty Stamey, County Manager, stated that the County has \$179,000 remaining in the budget for this project. Julie Davis, Finance Director, confirmed that she would review the builder's risk insurance and report back to the Board regarding possible insurance claim.

OPEN SESSION:

Commissioner Sorrells made a motion to return to open session. Commissioner Upton seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED

9-19-2011

Date

Chairman

Clerk

Mark Swartz

W. J. [unclear]

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JUNE 6, 2011**

MEMBERS PRESENT: Chairman Mark S. Swanger, Vice-Chairman J.W. "Kirk" Kirkpatrick, Commissioners Bill L. Upton, L. Kevin Ensley and Michael T. Sorrells.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager Marty Stamey, County Attorney Leon "Chip" Killian, III, Finance Director Julie Davis, Facilities and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Bob Meynardie, Meynardie and Nanney Law was present via telephone

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: KMD Construction and Historic Courthouse

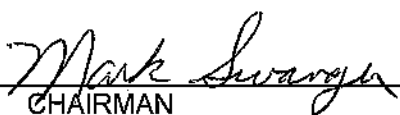
DISCUSSION:

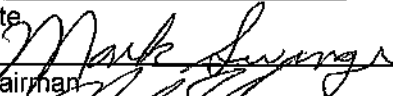
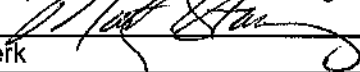
Marty Stamey, County Manager, presented a letter from Attorney Bob Meynardie, Meynardie and Nanney Law, regarding the ongoing arbitration. Attorney Meynardie called in and addressed the Board of the status of the arbitration. Attorney Meynardie expressed an opinion that the case against KMD Construction is strong and that KMD Construction was not delayed by the identified unforeseen conditions. The arbitration panel will resume proceedings June 30.

OPEN SESSION:

Commissioner Upton made a motion to return to open session. Commissioner Ensley seconded and the motion carried unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	9-19-2011
Chairman	
Clerk	

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
JULY 18, 2011**

MEMBERS PRESENT: Chairman Mark S. Swanger, Vice-Chairman J.W. "Kirk" Kirkpatrick, Commissioners Bill L. Upton, L. Kevin Ensley and Michael T. Sorrells.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board Marty Stamey, County Attorney Chip Killian, Finance Director Julie Davis, Facilities and Maintenance Director Dale Burris and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: Bob Meynardie, Meynardie and Nanney Law was present via telephone

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Historic Courthouse

DISCUSSION:

Bob Meynardie, Attorney, shared that no decision has been made since the arbitration held with KMD Construction. Mr. Meynardie reviewed the potential outcome of the arbitration.

OPEN SESSION:

Commissioner Sorrells made a motion to return to open session. Commissioner Upton seconded and the motion passed unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>Marty Stamey</u>

**HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES
SEPTEMBER 6, 2011**

MEMBERS PRESENT: Chairman Mark S. Swanger, Vice-Chairman J.W. "Kirk" Kirkpatrick, Commissioners Bill L. Upton, L. Kevin Ensley and Michael T. Sorrells.

MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board Marty Stamey, County Attorney Chip Killian, and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: none

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Historic Courthouse


DISCUSSION:

Chip Killian, County Attorney, presented a letter that Bob Meynardie, Attorney, received from Russell Killen, Attorney with Parker Poe, regarding the Historic Courthouse. The letter, dated September 1, 2011, reviewed a potential indemnity claim against PBC + L.

OPEN SESSION:

Commissioner Upton made a motion to return to open session. Commissioner Ensley seconded and the motion passed unanimously.


CLERK


CHAIRMAN

RELEASED	
Date	<u>9-19-2011</u>
Chairman	<u>Mark Swanger</u>
Clerk	<u>[Signature]</u>