

**SCOTT COUNTY SCHOOL BOARD
MINUTES OF SPECIAL MEETING
TUESDAY, APRIL 16, 2013**

The Scott County School Board met in a special meeting for the purpose of discussion and/or approval of the Memo of Understanding for the Performance Contract for Scott County Public Schools and discussion/possible action in consideration of the Duffield Recreation Facility Property on Tuesday, April 16, 2013, in the School Board Office Conference Room in Gate City, Virginia, with the following members present:

James Kay Jessee Chairman
William "Bill" R. Quillen, Jr. Vice-Chairman
Jeffrey A. Kegley
Gail L. McConnell
L. Stephen "Steve" Sallee, Jr.
H. Kelly Spivey, Jr.

ABSENT: None

OTHERS PRESENT: John I. Ferguson, Superintendent; Will Sturgill, School Board Attorney; Loretta Q. Page, Clerk Of The Board/Budget Specialist/Head Start Payroll & Invoice Clerk; K.C. Linkous, Deputy Clerk of the Board/Human Resource Manager; Robert Sallee, Supervisor of Building Services; Dennis McFarlane, Account Executive for Comfort Systems USA; Suzanne Goins, Virginia Professional Educators; Sally Kegley, Attorney for County of Scott; John Hamilton, citizen; Justin Forrester, Scott County Education Association President; James "Skip" Sheets, Director of Parks & Recreation; Ramona Russell, Duffield Primary School Teaching Assistant; and Wes Bunch, Kingsport Times News Reporter.

CALL TO ORDER/MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE: Chairman Jessee called the meeting to order at 6:30 p.m. He welcomed everyone to the meeting and asked the audience to observe a moment of silence followed by a citing of the Pledge of Allegiance.

APPROVAL OF AGENDA: On a motion by Mr. Kegley, seconded by Mr. Spivey, all members voting aye, the Board approved the agenda as submitted.

CLOSED MEETING: Mr. Sallee made a motion to enter into a closed meeting at 6:32 p.m. to discuss possible acquisition and/or disposition of real estate, as provided in Section 2.2-3711A (3) of the Code of Virginia as amended, motion was seconded by Mr. Quillen, all members voting aye.

RETURN FROM CLOSED MEETING: All members returned from closed meeting at 6:57 p.m. and on a motion by Mr. Sallee, seconded by Mr. Quillen, all members voting aye, the Board returned to regular session and Mr. Sallee cited the following certification of the closed meeting:

CERTIFICATION OF CLOSED MEETING

WHEREAS, the Scott County School Board has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Freedom of Information Act; and

WHEREAS, Section 2.2-3711 of the Code of Virginia requires certification by this Scott County School Board that such meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Scott County School Board hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies and (ii) only such public matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Scott County School board in the closed meeting.

ROLL CALL VOTE

Ayes: James K. Jessee, Jeff Kegley, Gail McConnell, Bill Quillen, Steve Sallee, Kelly Spivey

Nays: None

ABSENT DURING VOTE: None

ABSENT DURING MEETING: None

APPROVAL TO DEED DUFFIELD PROPERTY TO THE SCOTT COUNTY BOARD OF SUPERVISORS FOR DUFFIELD COMMUNITY PARK WITH THE REVERSION CLAUSE THAT IF THE PROPERTY CEASES TO BE USED AS A COMMUNITY PARK THE PROPERTY WOULD REVERT BACK TO THE SCOTT COUNTY SCHOOL BOARD:

Mr. Kegley made a motion that the school board grant the recreation department's request for the property at Duffield so that they can receive a grant and proceed with upgrades, motion was seconded by Mr. Spivey. Chairman Jessee asked if there was any discussion. Mr. Will Sturgill, school board attorney, asked would the Board want to include a reversion clause that if property ceases to be used as a community park the property would revert back to the school board. Board members were in agreement to add the reversion clause. Mr. Kegley amended his motion to include the reversion clause that if the property ceases to be used as a community park the property would revert back to the Scott County School Board; Mr. Spivey seconded the amended motion, all members voting aye.

SCHOOL BOARD MEMBER QUESTIONS FOR CLARIFICATION OF ITEMS INCLUDED IN THE MEMORANDUM OF UNDERSTANDING (MOU) FOR THE PERFORMANCE CONTRACT: Chairman Jessee stated that the board has a couple of questions concerning the MOU for the Performance Contract. He asked the definition of the word "commissioning" that is included in the Cost Category (Commissioning – Cost plus overhead and profit – Page 4 - ESCO Technical Energy and Water Savings Audit Conditions).

Mr. Dennis McFarlane, Account Executive for Comfort Systems USA, stated that "commissioning" refers to a sequence of operations that is designed for a piece of equipment. He provided a detailed explanation that this would include the drawings, operating design, equipment installation and checks of the functionality to make sure it is meeting the designed specifications and functioning as the sequence of operations was laid out for making sure that you are getting what was designed. He stated that it is more of a functionality testing system. He also explained that commissioning can be used in a lot of different ways depending on what needs are being talked about. In answer to Mr. Kegley's, board member, question concerning an example, Mr. McFarlane cited the replacement of Rye Cove's multi-zone unit as an example and provided details. He also cited an example of "commissioning" of lighting being a count of lights, number to install, making sure it is done correctly; and, if sensors were to be installed, making sure they have been properly set up and adjusted. He also stated that the ECM (Energy Cost Measurement) predicts costs and savings and a verification is done to make sure what was predicted and guaranteed is met.

Mr. Kegley pointed out that the Commissioning Cost Category is broad and questioned if the cost of commissioning is covered in the cost savings or if it is above and beyond the cost savings. Mr. McFarlane verified that the commissioning is included in the cost savings. Mr. McFarlane pointed out that included in the BOE is cost and savings and that cost includes the commissioning. Mr. Kegley asked if the board approves the MOU and their company does one school or, whatever, the cost of commissioning is covered in the final contract. Mr. McFarlane verified that is correct and stated that once their company does the final audit and designs a performance contract that all have agreed upon, all the costs are included.

Mr. Kegley also asked if the whole cost category listed on the MOU is figured into the contract; and if the only thing that the board would incur and have to use any items out of the Cost Category for the Project Services would be cost plus items that went above and beyond what was in the company's contract or scope of work. Mr. McFarlane indicated yes and explained that the item in the MOU is presented that way because they (the state) are looking for a basis of how the company is doing the project. He also explained that there is another section that calls out additional work that Mr. Barksdale pointed out at the last meeting (April 10, 2013 Special Joint Meeting of the School Board and Board of Supervisors).

Mr. Kegley asked if this is just to set a base line and Mr. McFarlane indicated it was and that these are the percentages used when figuring a job. Mr. Kegley pointed out that the items he asked about just were not spelled out. Mr. McFarlane pointed out that the MOU is a state contract and they

(the state) are trying to design a price structure to hold a company accountable. He also pointed out that they need to make sure of the guaranteed savings so they won't have to write the school board a check.

Mr. Kegley asked Mr. McFarlane if you come back and do your commissioning we don't have to write you another check, to which Mr. McFarlane indicated yes and stated there are no change orders. Mr. Kegley asked about the cost category of Monitoring and Verification and whether it is included in the contract or if it is above and beyond the contract. Mr. McFarlane stated that the Measurement and Verification is shown separately just as it was in the BOE and explained that it is included in the cost structure and the state MOU makes them show it separate. Mr. McFarlane pointed out that it is renewable annually and explained that there are two things that are annual renewable and one is if you have a maintenance agreement that's tied to this contract and the second one is also the Measurement and Verification.

Mr. Kegley stated that two things that were confusing were Commissioning and Monitoring and Verification where it states Cost Plus Overhead and Profit. He requested verification that once the company does the measurements the company can then put a price on Commissioning and then be able to put a price on the Monitoring and Verification because the company will know time and materials involved with doing each of those. Mr. McFarlane indicated that is correct and explained that it is just a way of breaking it out and pointed out that it is all included just as it was in the BOE proposal.

Superintendent Ferguson asked in regard to the Monitoring and Verification, which is year by year, if everything is meeting or exceeding expectations what is usually a rule of thumb timeframe that some school systems may decide not to monitor that or do away with it after a period of time. Mr. McFarlane suggested Superintendent Ferguson should ask that question to Mr. Barksdale. Mr. McFarlane pointed out that the board is following a state process but is not a state agency and is a public body. He reported that at one time the public bodies were doing it (Measurement and Verification) for a couple of years and, depending on the project—all being somewhat different—would decide that after making the savings for couple of years and feeling adequate monitoring was in place to ensure that they would continue to gain the savings they would try to reduce that cost by cancelling it. Mr. McFarlane pointed out that if you cancel that you lose your guarantee. He also reported that some state agencies were not allowing them to cancel and were making them continue and their approach to that was it is good information and you should continue to do it. He informed the board that a lot of public bodies have not. He stated that with a lot of them if you made it the first year, the second year, the third year, then you are at a deciding point that you've probably got a system in place, you've got the right measures in place to make sure that you continue to do it at that time. He pointed out that a lot of what those are is the education of your staff to ensure savings as we go along and the comfort level has probably improved while doing that. He stated that one thing that Measurement and Verification does is that it holds everyone accountable and it also keeps the focus on. He stated the school system could see how it goes down the road but he thought as a public body you probably could but could probably ask Will (school board attorney) about that.

Mr. Kegley pointed out that there will be individual proposals with a number included annually for use in basing a decision. Mr. McFarlane stated that is correct and reported that a lot of other public bodies have taken that money and reallocated it. Also, he reported that they might have made changes in the program. He explained that maybe they had a less costly program but they were still monitoring what they needed to monitor but instead of producing a document they were producing—more verification that went along to ensure they have the savings.

Mr. Spivey, board member, asked if the monitoring is done monthly. Mr. McFarlane stated what is called for in the contract is an annual renewal. He stated that, as was said in their presentation, they are going to have an ongoing process and not going to wait until the end of year and say "what's your best estimate." He explained that part of what their company is going to do will be an ongoing program but also explained that they can design a project to include some platforms that will help get a better idea of how that's going.

Mr. Will Sturgill, school board attorney, asked Mr. McFarlane what exactly is being referred to with “cost.” Mr. McFarlane explained that the cost includes all the labor, materials and “whatever it takes to make that happen.” Mr. Sturgill further questioned if the “cost” includes “overhead.” Mr. McFarlane indicated that it is a part of “what it takes.” Mr. Sturgill asked if there is any idea of how much overhead would be included in “Cost Plus Overhead and Profit.” He questioned how, specifically, the pricing works for the project and how the figures would be appropriated.

Mr. Kegley pointed out that what Mr. Sturgill is saying is that, for instance if this contract is for \$1,000 then overhead would turn it into \$1,200 and then you would basically take that \$1,200 and multiply it by 15% to come up with the profit; and, then, if you’ve got any design—and you always have construction and management—but, like you said it is all included. The only reason we need to worry about the line items is for any work that is done above and beyond the contract.

Mr. McFarlane pointed out that the pricing structure in the MOU was what was used to price the BOE and that their company was not changing anything. He also pointed out that, actually, this document, if you read it, says that we have to follow those pricing guidelines that we set forth and did in the BOE. He explained that the board’s level of holding the company accountable somewhat is looking at the way the BOE was priced and here’s what they’re pricing it now (MOU)—does it look the same. He stated that it is a “check and balance” that’s built into the MOU and the price structure is the same as that used to price the BOE. He further stated that the state broke it out into their pricing terms (MOU).

There being no more discussion, Chairman Jessee stated that the floor is open for a motion.

APPROVAL OF THE “MEMORANDUM OF UNDERSTANDING” (MOU) FOR THE PERFORMANCE CONTRACT: Mr. Kegley made a motion that the Board accept the “Memorandum of Understanding” for the Technical Energy and Water Savings Audit as written, motion was seconded by Mr. Spivey, all members voting aye.

ADJOURNMENT: There being no further business to address, Mr. Kegley made a motion to adjourn, seconded by Mr. Quillen, all members voting aye, the Board adjourned at 7:18 p.m.

James Kay Jessee, Chairman

Loretta Q. Page, Clerk