

Minutes of the Special Meeting of February 24, 2011  
at 10:00 a.m.

The Union County Board of Commissioners met in a special meeting on Thursday, February 24, 2011, at 10:00 a.m. in the Personnel Training Room, Room 131, First Floor, Union County Government Center, 500 North Main Street, Monroe, North Carolina. The purpose of the special meeting was to meet with representatives of Kaufman Hall, a firm engaged in merger and acquisition advisory services to the healthcare industry, to review strategic partnership education materials, to discuss transaction goals and objectives, to evaluate the benefits and drawbacks of the various transaction process strategies available to the County that will best achieve the goals and objectives of a strategic partnership; to discuss other general matters pertaining to the hospital; and to take such action related thereto as the Board deemed appropriate. The following were

PRESENT: Chairman Jerry Simpson, Vice Chairman Todd Johnson, Commissioner Tracy Kuehler, Commissioner Kim Rogers, and Commissioner Jonathan Thomas

ABSENT: None

ALSO PRESENT: Cynthia A. Coto, County Manager; Wes Baker, Interim Assistant Manager; Lynn G. West, Clerk to the Board; Jeff Crook, Senior Staff Attorney; David Cannon, Finance Director; H. Ligon Bundy, County Attorney; members of the press and interested citizens

At approximately 10:00 a.m., Chairman Simpson convened the special meeting and recognized Mrs. Coto to introduce representatives of KaufmanHall: Stephen Sellers and Michael Finnerty. She stated that the Board previously approved a revised scope of work with respect to KaufmanHall as it related to negotiations with the hospital. She said that today Mr. Sellers and Mr. Finnerty would be providing the Board with information as it relates to the partnership, developing goals and objectives, and some transaction strategy. Mrs. Coto stated that John Crill, Attorney at Law, who has worked on hospital issues in the past, could not attend today's meeting, but he will be joining the meeting via conference telephone.

Stephen Sellers stated that he and Mr. Finnerty had met with the Board on February 24, 2010, to discuss transaction goals and objectives. He said that presentation was heavily geared toward transaction process and transaction structure. He stated that today's discussions would be somewhat different given that the process has been determined to have exclusive negotiations with Carolinas Healthcare System (CHS) and the structure has been determined to be some form of lease mechanism. He said that today's focus

will be more acutely on transaction goals and objectives. He stated that they hoped to walk away today with a good set of parameters upon which to begin negotiations with CHS for a lease extension.

Mr. Sellers encouraged the Board to be deliberate and thoughtful in setting the transaction goals and objectives. He said that typically a hospital is a very important community asset.

He gave a broad overview of the current lease with CHS. Mr. Sellers said that one of the first things that the Board needs to consider is a term for the lease extension. He stated that typical hospital leases are long-term: 40 or 50 years are common and 99 years are not uncommon. He said that some of the non-financial reasons that hospital lease agreements are long-term include: negotiating a lease agreement is an arduous process and maintaining consistency of the hospital operations.

**Term of Lease:**

Mr. Sellers asked the Board what was its preference for a lease term. Vice Chairman Johnson responded that he would not want to have a 99-year lease term.

Commissioner Thomas said healthcare is a growing industry and Union County is a growing county. He stated there will be some unique challenges over the next few years. He said what would determine his position on the lease term is how much control the County is going to exercise.

**Financial Considerations:**

Mr. Sellers stated that the lease payments could be structured in a variety of methods to include annual payments that typically inflate or escalate over time, a one-time upfront lump sum payment, annual payments that are structured to be front, middle, or back loaded, or a combination of upfront consideration and annual payments. He said that in the County's circumstance, it makes sense to structure the payments to the greatest extent possible to match the County's needs. He asked the Board's thoughts on the best way to structure the compensation for a lease extension.

Commissioner Thomas said that he preferred to see a combination of both a portion to be prepaid upfront and annual payments.

Commissioner Kuehler said that for her she thought the answer to the question depends largely on what the goal is financially. She said that Mr. Nelson, the former Finance Director, repeatedly said that one-time revenues cannot be used for recurring expenses.

She stated that if the Board was looking for increased revenues over a period of time so that it works into the budget process, then a large payment upfront would not be desired, because the payment could not be used for anything other than for the Capital Improvement Plan (CIP) or paying off debt.

Mrs. Coto added that currently the County has a 16-percent reserve requirement. She said that a stabilization account could be set up so that while the County is going through the financial difficulties, the account could be used as a draw down to fill the gap of the expenditures and revenues. For example, she said that if the County has a three to five million dollar gap per year, and it wants to continue to maintain its level of services with respect to education, and the dollars are identified within the stabilization account to draw down to cover the gap in the hopes of a period of usually five or six-years, the gap closes with increased revenues or decreased expenses. She said it is really not one-time money and the stabilization account would be a separate account that could be used with ongoing operations.

Mrs. Coto said it is probably fair to assume growth from one-half of a percent to two percent over the next five years. She stated that this could be run into a formula that would be updated on an annual basis which puts the County in more of a long-term fiscal plan as to how the County intends to address the issue.

Commissioner Kuehler asked how the stabilization account would operate in terms of incurrence of new debt. Mrs. Coto responded that if the County was looking at debt service over a 30-year period of time to build facilities, it would either have to pay cash for the capital improvements, so, therefore, it would not be a drawn down account for ongoing expenditures, or it would have to be looked at to determine if there were sufficient monies to cover the debt service costs over the period of the life of the loan. She stated that she thought it would be more difficult to do this and said that it could be done on a cash basis but doing it as a commitment on the County's debt would be difficult at best.

Commissioner Kuehler said from a budget and fiscal standpoint, the Board has not really determined which way to go. Mr. Finnerty added that KaufmanHall did not have any numbers at this time to provide to the Board.

Mrs. Coto said that if the lease compensation was structured in the manner that Commissioner Thomas had discussed, there are options as to how to use the dollars to address the organization's needs.

Commissioner Rogers stated that the revenues could not be artificially inflated. She said that is a risk associated when taking lump sum monies to fill gaps, which could in effect be viewed as artificially inflating the revenues. She stated that knowing the County's financial situation, the revenues are not increasing but the expenses are increasing. She said from what she could see, the lump sum was not going to be able to play a big part in filling the gaps.

Commissioner Thomas said that he thought the vision of the Board should be defined, and those funds should be encumbered. He stated that he did not want to see the monies used in lieu of making the hard choices and decisions. He said that the Board could work with legal to determine if the funds could be encumbered to a point to meet certain qualifications and with the direction of the Manager and the current board or future boards that would be able to free up some of those funds.

Commissioner Kuehler questioned whether those funds could be set aside and encumbered. Mrs. Coto responded that she thought that was dependent upon the majority decision of the Board. She said it is a policy decision.

Commissioner Kuehler stated that she likes the idea of revenue streams that can be counted on. She said her preference would be for the lease compensation to be long-term and level.

### **Risks and Reward of Operations:**

Mr. Sellers said in a typical long-term hospital lease, the operator or the lessee bears full operating risks and receives all operating rewards for the facility. He stated in this situation the County receives the bulk of the improvements and ownership at the expiration of the lease. He stated that the risks and rewards of operations also have value to the lessee in that it cannot consolidate the hospital into its overall system platform.

Mr. Finnerty stated that in order to receive a higher lease payment than the current financial relationship, the County would be in a situation where it is giving risks and rewards to the lessee. He said that in general, the more control the County maintains going forward, the less that can be expected in upfront consideration, the more the County would take in the shared risks.

Commissioner Thomas asked when speaking of less control, would there still be a Community Trustee Council or less control as far as expenditures that the Board of Commissioners would approve. Mr. Finnerty responded that he thought it could be all of these factors.

Commissioner Rogers stated in 2004 there was an amendment to the lease that changed the makeup of the Community Trustee Council from the County nominated and appointed members to the selection of the members chosen by CMC. She said that there is very little control currently, and from what she has heard and read, the citizens want more control.

Mr. Finnerty said that if the Board did not believe the County has control now, it will not until the end of the lease. He said he thought it would behoove the lessee to involve the community about decisions involving healthcare. He asked the Board if there were any thoughts about what level of participation in the governance the County would require.

Mr. Sellers noted that the financial consideration is very much a component of who actually holds the risk for the operation going forward.

Mr. Sellers stated that the lessee ultimately does not bear operating risks, the County does. He said that he thought their question was “Does the Board want to continue in a similar vein to that or does it want to transfer operating risks to CHS with the expectation that with the transfer of that risk, the County would get very much increased remuneration for the ownership of the asset.”

Commissioner Kuehler stated that she wanted Mr. Finnerty and Mr. Sellers to leave today knowing what the Board wants, but she has not heard any discussion from the Board.

Mr. Crook stated that he thought what the Board was trying to do is to quantify the control that it currently has. He said that Commissioner Rogers had mentioned that the appointments to the Community Trustee Council have changed over time, but he noted that the Council has always been an advisory board responsible for those duties delegated to it by the Board of Directors, which is not controlled by the County either. He stated that the real control, if there is real control, is the requirement that the County approve capital expenditures over \$500,000.

Commissioner Thomas questioned if the \$500,000 component would have a significant impact on the lease payments. Mr. Finnerty stated that if the lessee is going to bear risks, then it would want to be able to spend money. He said that if a lease was entered into wherein the lessee would share all of the risks and rewards, the capital that the lessee is putting in is really theirs.

Commissioner Thomas asked if the Board could lay out guidelines that the monies would be spent in the County for items that would affect healthcare owned by CMC-Union. He said that he did not want to see the County at a point where those funds are so depleted that there is no choice but to go with a capital partner at the end of the lease. He stated that this was his fear, and if this fear could be addressed, he thought it would address most of the concerns of the Board. He said that the lease would guide the operations of the hospital for many years to come.

Commissioner Rogers said the \$500,000 approval was included in the lease to ensure that the monies coming out of the operations of the hospital which would decrease the current rent payment to the County, as the lease is written, is being put into Union

County assets. She stated that if the Board is considering not including the approval, then a lease would need to be structured in a way so that the citizens retain the asset.

### **Capital Spending and Projects:**

Mr. Sellers said that typically included in a lease is some guarantee that the plant will be returned to the owner at the expiration in a competitive nature. He said that there are several ways to do this. He stated that one way is to ensure that the age of the plant, which is a financial metric to gauge how old the assets are, is returned either at the same age as it was when the lease began or that it is maintained throughout the lease at an age of plant that is competitive with not-for-profit rating agency median (for instance an A rated credit usually has a 10 or 11 year age of plant) to ensure over the course of the lease that those investments are being made and at the expiration of the lease that the hospital is new enough on the basis of its plant, property, equipment, and fixtures to be competitive in the market. Mr. Sellers stated that mechanisms would be built into any lease extension to ensure that the facility remains competitive throughout the lease and when the asset might revert to its owner.

Mr. Finnerty said if the County were to get an asset back with the average age of the plant the same as the County's, but on a dollar basis, it is twice as much, the lessee would want some mechanism in the lease to assure that it will be reimbursed for the additional investment that they have put in.

There was a brief discussion regarding the bed tower project at the hospital. Mr. Sellers asked the Board if there were any other projects the Board would like to see at the facility.

### **Clinical Services and Programs:**

Mr. Sellers stated that as the control is transferred to the operator, the owner normally wants insurance that the clinical services that were provided at the beginning of the lease will continue to be provided. He said that when considering a 40 or 50 year lease, it cannot be said that absolutely all of the services that are being provided today will be provided in 40 years. He said that it is typically a shared goal between the parties in that both parties generally want there to be robust healthcare in the community. He explained that what they often see in situations such as these, after a lease extension or other kind of transaction, is that the parties agree to jointly work on a strategic plan that would study additional services that are not currently provided. He stated that based on the area demographics, there would be a specific time and date certain where that would be studied and the groups would determine when that type of addition or program of service would be completed.

Mr. Sellers said that this area is twofold: one to determine how important it is to this group to make sure those core services are provided in the future, and, secondly, to determine the Board's initial thoughts on additional services that could be studied or provided in a lease extension.

Mr. Finnerty added that it appears that services have been expanded at the hospital. He said that it appears for the foreseeable future, the lessee would want to expand services to the extent that it can do so profitably. He said that what he thought he was hearing from the Board on this matter is that it generally agrees that it would prefer to have some guarantees as to the types of service that would be provided to be contained in the lease and that KaufmanHall can determine what can be provided in this area, and it can bring its findings to the Board at a future meeting.

Commissioner Kuehler questioned whether this was where independent care and emergency medical services would be included. Mr. Finnerty said that emergency medical services is a service that was an issue previously and he said another matter that was an issue before was the medical services provided to the prisons as well as school nurses. He stated that they would want to reach what they believe is a favorable resolution on all of these issues.

Commissioner Rogers said that she did not think the County has any business operating a hospital. She stated that she thought people are happy with the way that it is being operated now, but in regards to adding additional services, such as the bed tower, etc., as a Commissioner, it is her responsibility to ensure that those assets remain within CMC-Union and not to dictate what needs to be added. Commissioner Thomas said that the possibility of the hospital moving to a tertiary level of care has been mentioned, and anything that could be done to move closer to that would be a welcome sight.

### **Medical Staff Recruitment:**

Mr. Sellers stated that typically the more physicians in the community the better community care and the more revenues generated. He gave examples from other leases that KaufmanHall has been involved with writing that provided every third or fourth year there is a community assessment or physicians' needs analysis. He said that the analysis would determine the deficit number of physicians in the County and there is a plan to use the best efforts to recruit those physicians. He asked if it was important to the Board to build into the lease certain studies or analyses regarding recruitment of physicians to the community.

Mr. Finnerty stated that he thought this was somewhat similar to what Commissioner Rogers had said earlier, and it is fairer to have an assessment for a plan to address, but enforcing it or telling the hospital how to run it is difficult when it is actually in its best interest. He said that currently CMC pays for a portion of the operations of the physician practice that operates in Union County, but Union County does not own that enterprise. He said that he thought this would need to be addressed.

Commissioner Rogers noted that there are some issues that need to be addressed in regards to this matter in closed session.

**Employees:**

Mr. Sellers stated that hospitals are often one of the largest, if not the largest, employers in communities, and in order to protect that, the lease or other transaction documents often has built into it some protections for the current employee base. He said that another shared goal of the lessee and lessor is that the number of employees would be expanded particularly in clinical positions that would allow for a higher level of care.

He said that there is often a fear that back office or billing staff will be relocated to the corporate office. He asked if the Board wants to designate or ensure that the services that are currently being provided locally remain locally.

Commissioner Rogers said that on February 24, 2010, when the Board met with KaufmanHall representatives, this was discussed, and the Board did not want jobs to leave the County.

Mr. Finnerty said that on net he thought the employee base at the hospital has increased substantially. He stated that what he and Mr. Sellers are asking is to possibly receive assurances or at least understand what services can or would be consolidated outside Union County.

**Governance Representation:**

Mr. Sellers stated that this matter has been discussed earlier and it was mentioned that there are two seats on the current board that are appointed from the Board of Commissioners. He asked what are the Board's expectations and desires going forward concerning local governance in regards to the negotiations or lease extension.

Commissioner Rogers said that currently the Community Trustee Council is an advisory board and the County has really no control over who is appointed to it. She stated that the Community Trustee Council receives its directions from a Board of Directors, which again the County has no control over, so the \$500,000 in capital expenditures is where the County's oversight and participation occurs.



Commissioner Thomas asked if it were possible to set up the Board of Directors as an arbitration board with two from Carolinas Healthcare, two from the County, and one on which both parties agree. Mr. Finnerty said it was something that could be explored.

**Prioritization:**

Mr. Sellers asked if there were any areas that are particularly important going forward in the discussions with Carolinas Healthcare.

Vice Chairman Johnson said at the end of the lease, he thought the County needs to own the hospital, and he thought this had been made clear. He stated that he could not support anything that resembled a sale.

Mr. Crook asked Mr. Finnerty how this would work with the risks and rewards that were discussed earlier today. Mr. Finnerty said that if at the end of the lease, the lessee owns the operations, it might well be that the County receives more up front in capital or in the form of lease payments. He said that what he was hearing the Board say is that at the end of the lease, the County would receive an operating hospital. Vice Chairman Johnson stated that was his preference.

Mr. Finnerty said that the discussions would likely center around finding a structure so the lessee is incented to continue to invest in the asset. He stated that if the hospital continues to grow as it has been growing, it is going to require a lot of capital, and the County is going to receive an asset back that is larger and possibly more profitable, and they will want some kind of consideration for the fact that they put in additional capital and gave the County something with more capital than what was leased to them.

Mr. Finnerty said that it sounds as though the Board wants in some respects to have a working hospital come back to the County at the end of the lease.

Commissioner Thomas said that he would like to prevent a situation similar to what has occurred with the Waxhaw Emergency Department. He stated he thought this facility should be an asset of the hospital.

At this time, Chairman Simpson stated that he thought it was a good time to take a short recess and recognized Mrs. Coto to advise what would be the next steps in today's meeting. Mrs. Coto said that she was going to talk with Mr. Crook to see if they could reach John Crill by telephone to talk about other issues where staff has been unable to answer the Board's questions.

Following brief discussion regarding the Waxhaw Emergency Department, at approximately 11:30 a.m., the Chairman called for a brief recess in the special meeting.

At approximately 12:00 o'clock noon, the Chairman reconvened the special meeting. He stated that staff was having some difficulty in reaching John Crill by telephone.

Chairman Simpson stated that the Board appreciated the information provided by KaufmanHall today and asked what other information Mr. Sellers and Mr. Finnerty planned to share with the Board following lunch.

Mr. Finnerty responded that they did not have further information to share with the Board. Commissioner Rogers said that Mr. Finnerty and Mr. Sellers had asked a lot of questions today but had not received many answers. Chairman Simpson asked if the Board had further questions for KaufmanHall or comments regarding their presentation.

Commissioner Thomas asked Mr. Finnerty and Mr. Sellers if there were areas that they needed further elaboration. Mr. Finnerty said it is an intricate process and in some ways it is unfair to ask the Board to comment on something that it has not seen. He stated that they are negotiating so it is not known at this time what is achievable. He said that he thought they had received a general idea on some of the items and on some of the items, it appears there is not real consensus. He stated that those issues would need to be addressed as they arise or as the terms are presented.

John Crill joined the meeting via conference call at approximately 12:03 p.m.

Mr. Finnerty continued with his comments stating that on some of the items where there is somewhat open-ended direction, they do not know what they will be bringing back to the Board. He asked if the Board wanted to review what they had heard today or if it preferred to wait until they could come back with information.

Chairman Simpson said that he thought it would be much easier for the Board to get its arms around something specific. He stated that for him, the priorities are preservation and appreciation of the hospital assets. He said next would be the quality of care and then finally would be the financial arrangement. He stressed that it would need to be financially equitable for the citizens of the County.

Commissioner Rogers said there were a number of questions asked where there were no answers. She stated that she wanted to make sure that they had the tools needed based on what they learned from the Board's discussions a year ago. She said that the sale is now off the table and it is totally a lease.

Mr. Finnerty again offered to review the information that they received today. He said that they had received general feelings on each of the topics, and it is a matter of what the other party is willing to do.

Commissioner Thomas said that his biggest concern is what happens at the end of the lease. He asked if it would be indicative of the current operations lease. He stated that he thought the citizens are comfortable with the current lease. He said that he understood that the County is in a very unique situation where there has been a good provider who has taken good care of the hospital and provided good care to the community. He stated that he thought where the real details need to be put are at the end of the current lease, because the citizens realize that the hospital is not a distressed asset and not one that is upside down. He said there is a dollar value on the continuity of care. Commissioner Thomas stated that he thought both parties deserve an opportunity to be heard.

Commissioner Thomas stated that a number of the points covered today are give and take points. He said that it is hard for the Board to give absolutes when it is really not sure what is on the table.

Mrs. Coto stated that if it is the Board's pleasure, it might want to ask Mr. Finnerty and Mr. Sellers to remain outside the room in the event questions arise while the Board is in closed session.

Commissioner Thomas asked about a timeframe in this matter. Mr. Finnerty responded it is their intentions to have preliminary discussions with Carolinas Healthcare this week.

Mr. Finnerty stated that he would look to Mr. Crook to let them know of any regulatory reviews. He estimated that within three to four months, it should be known whether or not there will be a transaction.

With there being no further comments or discussion, at approximately 12:10 p.m., in open session, Chairman Simpson moved that the Board go into closed session to consult with an attorney in order to preserve the attorney-client privilege in accordance with G.S. 143-318.11(a)(3). The motion passed unanimously.

The Board remained in the Personnel Training Room for the closed session discussion.

At the conclusion of the closed session, at approximately 12:45 p.m., in open session Chairman Simpson moved that the Board go out of closed session and reconvene the open session. The motion passed unanimously.

The Board remained in the Personnel Training Room. Chairman Simpson reconvened the open session.

With there being no further discussion or comments, at approximately 12:46 p.m., Chairman Simpson moved to adjourn the special meeting. The motion passed unanimously.