

MINUTES OF A REGULAR SESSION OF THE COUNTY COMMISSION OF KANAWHA COUNTY, WEST VIRGINIA, HELD AT THE VOTER REGISTRATION OFFICE THEREOF ON THE 17TH DAY OF MAY 2010.

A REGULAR MEETING OF THE COUNTY COMMISSION OF KANAWHA COUNTY, WEST VIRGINIA, WAS HELD ON THE 17TH DAY OF MAY 2010 AT THE VOTER REGISTRATION OFFICE LOCATED AT 415 QUARRIER STREET, CHARLESTON, WEST VIRGINIA, BEGINNING AT 8:00 A.M. COMPLETE AUDIO IS AVAILABLE IN THE COMMISSION OFFICE OR ONLINE AT <http://live.kanawha.us>.

THE FOLLOWING MEMBERS WERE PRESENT:

**W. KENT CARPER, PRESIDENT (TELEPHONICALLY)
DAVE HARDY, COMMISSIONER
HENRY C. SHORES, COMMISSIONER**

5-17-10	2010-279	New Employee, Chelsea Hill, Commission Office, Intern, \$10.00 per hour, effective May 3, 2010
5-17-10	2010-280	Rules for the Board of Canvassers to be Observed for the May 11, 2010, Primary Election
5-17-10	2010-281	<i>New Employee</i> , Katelyn Marie Whitt, Sheriff's Department, Law Enforcement Division, Intern, temporary, part-time employment, \$10.00 per hour, effective May 17, 2010
5-17-10	2010-282	<i>New Employee</i> , Joseph Michael Sassler, Sheriff's Department, Law Enforcement Division, Intern, temporary, part-time employment, \$10.00 per hour, effective May 17, 2010
5-17-10	2010-283	<i>New Employee</i> , Nate Chapman, Intern, Prosecuting Attorney's Office, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010
5-17-10	2010-284	<i>New Employee</i> , James Bailey, Intern, Prosecuting Attorney's Office, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010
5-17-10	2010-285	<i>New Employee</i> , Kristen Pennington, Intern, Prosecuting Attorney's Office, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010
5-17-10	2010-286	Order Authorizing the Clerk of the County Commission to issue a check from General County, #001-401.00-5-67.00, in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) to the County Stabilization FUND #058
5-17-10	2010-287	Resolution – Fiscal Year 2009-2010 General Fund Budget Revision #20
5-17-10	2010-288	Declaration of Results of the Primary Election Held on May 11, 2010

New Hires/Change of Status approved/processed at 5/17/10 Commission Meeting:

New Employee, Katelyn Marie Whitt, Sheriff's Department, Law Enforcement Division, Intern, temporary, part-time employment, \$10.00 per hour, effective May 17, 2010

New Employee, Joseph Michael Sassler, Sheriff's Department, Law Enforcement Division, temporary, part-time employment, \$10.00 per hour, effective May 17, 2010

New Employee, Nate Chapman, Prosecuting Attorney's Office, Intern, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010

New Employee, James Bailey, Prosecuting Attorney's Office, Intern, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010

New Employee, Kristen Pennington, Prosecuting Attorney's Office, Intern, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010

Budget Revisions approved/processed at 5/17/10 Commission Meeting:

1. Fiscal Year 2009-2010 General Fund Budget Revision #20
2. Fiscal Year 2009-2010 General Fund Line Item Budget Revision
3. Fiscal Year 2009-2010 General Fund Line Item Budget Revision

8:00 A.M. CALL TO ORDER

NEW EMPLOYEES

Sheriff's Department – Law Enforcement Division

Katelyn Marie Whitt, Intern, temporary, part-time employment, \$10.00 per hour, effective May 17, 2010

The Honorable Michael Y. Rutherford, Sheriff

Joseph Michael Sassler, Intern, temporary, part-time employment, \$10.00 per hour, effective May 17, 2010

The Honorable Michael Y. Rutherford, Sheriff

Commissioner Hardy moved to approve the new interns for the Sheriff's Department, Katelyn Whitt and Joseph Sassler. Commissioner Shores seconded. Motion carried.

Prosecuting Attorney's Office

Nate Chapman, Intern, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010

**The Honorable Mark A. Plants, Prosecuting Attorney
Maryclaire Akers, Chief of Staff**

James Bailey, Intern, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010

The Honorable Mark A. Plants, Prosecuting Attorney
Maryclaire Akers, Chief of Staff

Kristen Pennington, Intern, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010

The Honorable Mark A. Plants, Prosecuting Attorney
Maryclaire Akers, Chief of Staff

Prosecuting Attorney's Office – Unpaid Positions

Andrew Shumate, Intern, unpaid, volunteer, unpaid position, fulfilling hours/credits, effective May 17, 2010

The Honorable Michael Y. Rutherford, Sheriff

Dave Shuman, Intern, unpaid, volunteer, unpaid position, fulfilling hours/credits, effective May 17, 2010

The Honorable Michael Y. Rutherford, Sheriff

Commissioner Hardy moved to approve the new interns for the Prosecuting Attorney's Office as listed on the agenda. Commissioner Shores seconded. Motion carried.

AGENDA ITEMS

- 8:00 A.M. Approval of Rules for the Board of Canvassers to be Observed for the May 11, 2010, Primary Election
Commission President Kent Carper
Commissioner Henry C. Shores
Commissioner Dave Hardy
Marc J. Slotnick, County Attorney

Commissioner Hardy moved to approved the rules for the Board of Canvassers to be observed for the May 11, 2010 Primary Election. Commissioner Shores seconded. Motion carried.

PUBLIC COMMENT

COUNTY MANAGER'S REPORT

DEPUTY COUNTY MANAGER'S REPORT

CHIEF FISCAL OFFICER'S REPORT

COUNTY ATTORNEY'S REPORT

CLERK OF THE WORKS REPORT

STAFF REPORTS

NEW BUSINESS

ORDERS

Commissioner Hardy moved to approve the orders. Commissioner Shores seconded. Motion carried.

Rules for the Board of Canvassers to be Observed for the May 11, 2010, Primary Election

**Commission President Kent Carper
Commissioner Henry C. Shores
Commissioner Dave Hardy
Marc J. Slotnick, County Attorney**

Order Authorizing the Clerk of the County Commission to issue a check from General County, #001-401.00-5-67.00, in the amount of Three Hundred Fifty Thousand Dollars (\$350,000.00) to the County Stabilization FUND #058

David Fontalbert, Chief Fiscal Officer

New Employee, Katelyn Marie Whitt, Sheriff's Department, Law Enforcement Division, Intern, temporary, part-time employment, \$10.00 per hour, effective May 17, 2010

The Honorable Michael Y. Rutherford, Sheriff

New Employee, Joseph Michael Sassler, Sheriff's Department, Law Enforcement Division, temporary, part-time employment, \$10.00 per hour, effective May 17, 2010

The Honorable Michael Y. Rutherford, Sheriff

New Employee, Nate Chapman, Prosecuting Attorney's Office, Intern, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010

**The Honorable Mark A. Plants, Prosecuting Attorney
Maryclaire Akers, Chief of Staff**

New Employee, James Bailey, Prosecuting Attorney's Office, Intern, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010

**The Honorable Mark A. Plants, Prosecuting Attorney
Maryclaire Akers, Chief of Staff**

***New Employee*, Kristen Pennington, Prosecuting Attorney's Office, Intern, temporary, part-time employment for eight weeks, \$10.00 per hour, effective May 17, 2010**

**The Honorable Mark A. Plants, Prosecuting Attorney
Maryclaire Akers, Chief of Staff**

**Resolution – Fiscal Year 2009-2010 General Fund Budget Revision #20
David Fontalbert, Chief Fiscal Officer**

1. Fiscal Year 2009-2010 General Fund Budget Revision #20

Commissioner Hardy moved to approve the General Fund Budget revision #20. Commissioner Shores seconded. Motion carried.

REVENUE:

001-324-0-00.00	Other Grants	\$30,000.00
001-382-0-00.00	Refunds/Reimbursements	\$3,739.00
001-322-0-25.00	Federal Grants - HIDTA	\$17,020.00
001-366-0-01.00	Misc. Revenue Insurance Claims	\$700.00
001-398-0-00.00	Transfers from Stabilization	\$1,350,000.00

EXPENDITURES:

001-401.00-5-67.00	Transfers to Other Funds	\$350,000
001-430.00-5-68.35	Comm Dev Countywide Cleanups	\$17,000
001-700.00-1-08.01	Sheriff's LED Overtime	\$21,459
001-700.00-3-41.05	Sheriff's LED Operating Grant Ver.	\$30,000
001-916.00-5-68.00	Libraries	(\$17,000.00)
001-704.00-2-30.00	Regional Jail	\$1,000,000.00

2. Fiscal Year 2009-2010 General Fund Line Item Budget Revision

Commissioner Hardy moved to approve the general Fund Line Item Budget Revision. Commissioner Shores seconded. Motion carried.

EXPENDITURES:

001-401.00-3-41.00	County Commission Supplies	\$2,500.00
001-401.00-3-41.01	County Commission Equipment Non-Depr	(\$2,500.00)
001-439.00-2-14.00	Planning Commission Travel	(\$400.00)
001-439.00-2-20.00	Planning Commission Legal Publications	\$400.00
001-716.00-2-13.00	Humane Utilities	(\$2,180.00)
001-716.00-3-44.00	Humane Supplies F&D	\$2,180.00

3. Fiscal Year 2009-2010 General Fund Line Item Budget Revision

Commissioner Hardy moved to approve the General Fund Line Item Budget Revision. Commissioner Shores seconded. Motion carried.

EXPENDITURES:

001-442-33-2-14.00	Federal Grant – Drug Court Travel	\$12,000.00
001-442-33-2-30.00	Federal Grant – Drug Court Contracted Services	(\$12,000.00)

Commissioner Hardy moved to recess until 8:30 a.m. for the Public Hearing regarding Greenbrooke Associates, LLC, and the Greenbrooke Building Property. Commissioner Shores seconded. Motion carried.

8:30 A.M. Discussion regarding Application for Relief from Erroneous Assessment relating to Greenbrooke Associates, LLC, and the Greenbrooke Building Property

**Commission President Kent Carper
Commissioner Henry C. Shores
Commissioner Dave Hardy
The Honorable Phyllis Gatson, Assessor
Marc J. Slotnick, County Attorney
Rob Schulenberg, Assistant Prosecuting Attorney
Mike Chaney, Esquire, Counsel for Greenbrooke Associates, LLC**

The matter relating to the Greenbrooke Associates, LLC., Application for Relief from Erroneous Assessment was heard before the Kanawha County Commission at the Special Meeting on Monday, May 17, 2010, at 8:30 a.m. President Carper presided over the discussion via telephone, Commissioner Shores and Commissioner Hardy were present; also present were: Marc J. Slotnick, County Attorney, Attorneys Ned Rose and Steve Broadwater for the Assessor's Office, Rob Schulenberg on behalf of the Prosecuting Attorney's Office, and Michael Chaney and Lucille Wellborn on behalf of Greenbrooke Associates, LLC.

President Carper opened the discussion stating the Final Order has been held pending Mediation, but stated the parties mutually agreed previously that no further evidence would be admitted into the Record.

Marc Slotnick stated Counsel for Greenbrooke has asserted they were not aware of the terms of the original sale prior to March 3, 2010.

President Carper confirmed the Commission has thoroughly reviewed all pleadings as have counsel for the Assessor, the Prosecuting Attorney's Office, and the County Attorney. President Carper inquired of the County Attorney as to forcing the State to become a party to the action, as requested by Greenbrooke Associates. Mr. Slotnick stated the Commission did not have the power or authority to force the State's participation at mediation. President Carper stated it was as though Greenbrooke wanted a "do over" prior to filing the Final Order.

Mr. Chaney, Counsel for Greenbrooke Associates, stated this has put a burden upon Mr. Summers' widow.

Mr. Schulenberg stated he opposed to the inclusion of the Lease into the record as it was clearly stated previously no additional evidence would be admitted. Commissioner Hardy inquired of Mr. Chaney why the Lease being admitted into the record was needed and why they should consider this inclusion. Mr. Chaney stated the State would be responsible for 70% of the back taxes should the Commission rule in favor of the Assessor in this matter.

Commissioner Hardy stated it was like getting two bites of the apple. Mr. Chaney stated it is not an additional bite, but new information that is pertinent and reiterated that his law firm was not involved the original sale. Commissioner Hardy noted that it would appear the Lease would have been a part of the preparation. Mr. Chaney stated while there had been some discussion of the Lease, Mr. Summers was in failing health, Mr. Summers passed away in January and facts are facts and they proceeded without the information.

Commissioner Hardy inquired how relevant it would be to mediate this matter with the new evidence and requiring the State's participation.

Mr. Chaney stated that since the State would owe 70% of the additional taxes and the State should be required to participate in mediation, noting the burden should not fall completely on the widow.

Commissioner Hardy stated he was unaware of the State's position in this matter. Mr. Chaney stated the state would be liable for the ad valorem property up to the closing date.

President Carper inquired why this question was not raised prior to the sale, stating that money was put into escrow pending the closing. Mr. Chaney stated the Lease was executed on June 15, 2009.

President Carper inquired of the Prosecuting Attorney's Office as to their position. Mr. Schulenberg stated in his opinion there was no provision to supplant the Lease into the record. President Carper asked Mr. Schulenberg if the Prosecuting Attorney's Office objected. Mr. Schulenberg stated his opinion is the record is closed.

President Carper moved to allow the Lease into the record because it is truth and factual information; Commissioner Hardy seconded the motion for discussion purposes.

Commissioner Hardy stated the State should be notified of the upcoming mediation. Mr. Chaney stated the State had been noticed of the discussions and the mediation and the State was not inclined to participate voluntarily. Mr. Chaney corrected the record in that it is not a Lease but is a Real Property Purchase Agreement.

President Carper amended his Motion to allow the Real Property Purchase Agreement into the record; seconded by Commissioner Hardy; motion carried and unanimously approved.

Commissioner Hardy stated he felt that having the State as an additional party would financially assist this matter at mediation.

There was further discussion between all parties as to those who should be contacted, namely: General Counsel for the Department of Administration, Secretary Ferguson's attorney, and Jonathan Deem, Governor Manchin's attorney. Mr. Rose and the Prosecuting Attorney stated they were not privy to correspondence between Mr. Chaney and the State. Mr. Chaney stated both were copied on March 9, 2010, correspondence.

President Carper stated the Commission had no authority to require the State's participation, there is no precedent to require the State to participate, and the Commission has no power and/or control over the State to require their participation. Mr. Slotnick concurred with this statement.

President Carper made the motion that (1) the State be deemed an indispensable party; (2) the State be required to participate in mediation; and (3) if the State failed to participate at mediation, they would do so at their own peril; Commissioner Hardy seconded the motion adding there would be more success for a full mediation with all parties participating; motion carried, with unanimous approval. President Carper asked Mr. Chaney to prepare the necessary Order reflecting the Commission's motions and forward to all counsel for their input and approval.

President Carper noted the mediation is set for Thursday, May 27, 2010.

President Carper made the motion that he be allowed to sign the Order upon the approval by both Commissioners and approval of Marc Slotnick; seconded by Commissioner Shores; motion carried and unanimously approved.

President Carper stated he would be contacting Secretary Ferguson to encourage the State to participate in the mediation in this matter.

President Carper wanted the record to reflect the Messrs. Rose and Schulenberg's objections to the actions of the Commission.

Commissioner Shores moved to hold the Final Order in this matter until the conclusion of the medication; seconded by President Carper; motion carried and unanimously approved.

President Carper stated the record would reflect that no additional evidence would be accepted in this matter. The next action by this Commission would be entry of the Final Order.

President Carper moved to adjourn this discussion at 9:00 a.m.; seconded by Commissioner Shores; motion carried with unanimous approval.

- ❖ **AND BOLD DENOTES CHANGE TO THE AGENDA (Example, typographical error, addition, change and/or omission from first version of Agenda)**
- ◆ **AND BOLD PRINT DENOTES EMERGENCY ITEM**

THE KANAWHA COUNTY COMMISSION MEETING OF MAY 17, 2010, RECESSED AT 9:00 A.M., UNTIL THE 20TH DAY OF MAY, 2010, AT 5:00 P.M.

THE FOREGOING MINUTES ARE APPROVED THIS 15TH DAY OF JUNE, 2010.

PRESIDENT

COMMISSIONER

COMMISSIONER

COUNTY ATTORNEY