

STATE OF NORTH CAROLINA

COUNTY OF CHATHAM

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

18 CVS 809

2019 NOV -1 P 2:53

BARBARA CLARK PUGH; GENE  
TERRELL BROOKS; THOMAS HENRY  
CLEGG; THE WINNIE DAVIS CHAPTER  
259 OF THE UNITED DAUGHTERS OF  
THE CONFEDERACY,

Plaintiffs,

vs.

KAREN HOWARD; MIKE DASHER;  
DIANNA HALES; JIM CRAWFORD; and  
ANDY WILKIE, in their official capacities as  
members of the Board of County  
Commissioners of Chatham County, North  
Carolina,

Defendant.

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that Defendants Karen Howard, Mike Dasher, Dianna Hales, Jim Crawford, and Andy Wilkie, in their official capacities as members of the Board of County Commissioners of Chatham County, North Carolina ("Defendants"), by and through the undersigned counsel, will bring Defendants' Motion to Dismiss before the Superior Court Division, Chatham County, North Carolina, on Monday, November 8, 2019 at 10:00 a.m., or as soon thereafter as the matter may be heard, or as otherwise directed by the presiding judge.

This the 1<sup>st</sup> day of November, 2019.

**POYNER SPRUILL LLP**

By: 

Nicholas Ellis

N.C. State Bar No. 13484

[jnellis@poynerspruill.com](mailto:jnellis@poynerspruill.com)

Post Office Box 353

Rocky Mount, NC 27802-0353

Tel: 252.446.2341

Fax: 919.783.1075

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies, pursuant to Rule 5 of the North Carolina Rules of Civil Procedure, that on this date a copy of the foregoing was served by facsimile and e-mail addressed to the following:

James A. Davis  
301 North Main Street, Suite 2452  
Winston-Salem, NC 27101  
Fax: 336-760-3421

Cabell J. Regan  
Post Office Box 1595  
Pittsboro, NC 27312  
(No Fax)  
cabelljregan@earthlink.net  
*Attorney for Plaintiffs*

This the 1<sup>st</sup> day of November, 2019.

**POYNER SPRUILL LLP**

By:   
J. Nicholas Ellis  
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Tel: 252.446.2341  
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*Attorneys for Defendants*

STATE OF NORTH CAROLINA

CHATHAM COUNTY

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19-CVS-809

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**CALENDAR REQUEST**

( ) Case Calendared for Trial:

( X ) Case Calendared for Motion:

**November 8, 2019**  
**Chatham County Superior Court**

Statement of Nature of Action:

**Motion to Dismiss**

Estimation of Time Necessary for:

( ) Trial ( X ) Hearing on Motion

**60** minutes

Case Calendared By:



J. Nicholas Ellis, Attorney for Defendants

Date: November 1, 2019

Copy Faxed And/Or Mailed To:

James A. Davis  
Cabell J. Regan  
Jamie N. Richardson

STATE OF NORTH CAROLINA

CHATHAM COUNTY

BARBARA CLARK PUGH; GENE TERRELL  
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CHATHAM CO. N.C.

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CHATHAM COUNTY

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CHATHAM CO.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

CHATHAM CO. S.C. 19-CVS-809

**DEFENDANTS' MOTION TO DISMISS**

Defendants Karen Howard, Mike Dasher, Dianna Hales, Jim Crawford and Andy Wilkie, in their official capacities as members of the Chatham County Board of Commissioners ("Defendants"), hereby move the Court pursuant to NC Rule of Civil Procedure 12(b)(1, 6 ) to dismiss this action as the Court lacks subject matter jurisdiction and the Complaint fails to state a claim upon which relief can be granted. In support of this motion, Defendants show the Court as follows:

1. Defendants are members of the Chatham County Board of Commissioners ("Chatham County Board of Commissioners").
2. On July 8, 1907, the Chatham County Board of Commissioners issued a license to the Winnie Davis Chapter of the United Daughters of the Confederacy ("UDC") authorizing and permitting the UDC to erect on the court-house square a monument (the "Monument" which refers

to the statue and its pedestal) to Chatham County's Confederate soldiers. (Exhibit A is a copy of the "Monument License"). The Monument License further expressly stated the Monument would remain in the care and keeping of the UDC.

3. The Monument License did not convey ownership of the Monument to Chatham County. This instrument merely granted a license to the UDC to erect a monument on the courthouse square.

4. Plaintiffs allege they are taxpayers and residents of Chatham County and as such, have the right to bring this action. However, Plaintiffs lack standing to bring this action. A taxpayer may have standing to sue a local government if the case involves "[A] tax levied upon him is for an unconstitutional, illegal or unauthorized purpose [;] that the carrying out of [a] challenged provision will cause him to sustain personally, a direct and irreparable injury [;] or that he is a member of the class prejudiced by the operation of [a] statute." Fuller v. Easley, 145 N.C.App. 391, 395, 553 S.E.2d 43, 46-47 (2001) *quoting* TexFi Industries v. City of Fayetteville, 44 N.C.App. 268, 270, 261 S.E.2d 21, 23 (1979) (brackets in original.) None of the above exceptions is applicable to the case at hand.

5. NC. Gen. Stat. § 153A-12 reads as follows:

Except as otherwise directed by law, each power, right, duty, function, privilege and immunity of the corporation shall be exercised by the board of commissioners. A power, right, duty, function, privilege, or immunity shall be carried into execution as provided by the laws of the State; a power, right, duty, function, privilege, or immunity that is conferred or imposed by law without direction or restriction as to how it is to be exercised or performed shall be carried into execution as provided by ordinance or resolution of the board of commissioners.

6. NC. Gen. Stat. § 153A-158 reads as follows:

A county may acquire, by gift, grant, devise, exchange, purchase, lease, or any other lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A.

7. The Chatham County Board of Commissioners has never exercised any power, right, duty, function or privilege to acquire by gift, grant, devise, exchange, purchase, lease or by any other lawful method ownership of the Monument. Nor has the Chatham County Board of Commissioners ever adopted or passed a resolution exercising any power, right, duty, function or privilege to acquire by gift, grant, devise, exchange, purchase, lease or by any other lawful method ownership of the Monument.

8. The Chatham County Board of Commissioners adopted and passed a motion on August 19, 2019 terminating the Monument License and advising the UDC that it had until October 1, 2019 to communicate to the county manager in writing its plan for the final disposition of the Monument (the "License Termination Motion"; See Exhibit B).

9. Pursuant to the License Termination Motion, if no plan was duly and timely submitted by the UDC to remove the Monument, then the Monument's continued presence on the courthouse property would be declared a public trespass and the Monument would be removed. No such plan has ever been submitted by the UDC.

10. A motion was made and passed at the October 21, 2019 meeting of the Chatham County Board of Commissioners recognizing that the License Termination Motion had been passed, that no plan for the Monument's removal had been submitted by the UDC and therefore, the Monument would be considered a public trespass and that the county manager was authorized

and ordered to safely and respectfully have the Monument removed and securely preserved and stored until such time as the UDC takes possession of it.

WHEREFORE, Defendants respectfully request that their Motion to Dismiss be granted and that Plaintiff's Complaint be dismissed with prejudice.

This the 1<sup>st</sup> day of November, 2019.

**POYNER SPRUILL LLP .**

By: 

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*Attorney for Plaintiffs*

This 1st day of November 2019.

**POYNER SPRUILL LLP**

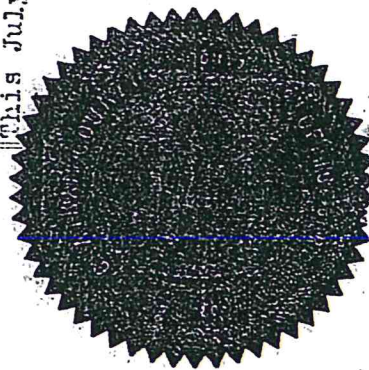
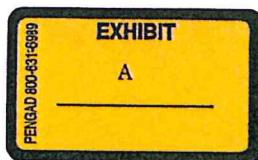
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*Attorneys for Defendants*

Office of the Board of County Commissioners of Chatham County, N. C.

ORDERED, That the Winnie Davis Chapter of the Daughters of the Confederacy are hereby authorized and permitted to erect on the court-house square and in front of the court-house a monument to Chatham's Confederate soldiers, and to cut down the shade tree in front of the court-house near to the place proposed for said monument; and the said monument may remain in the care and keeping of the said Daughters of the Confederacy and such person or persons as they may hereafter designate.

This July 8th. 1907.

*W. H. Harrington*  
Chairman of Board.





# Chatham County, NC

## Meeting Minutes

### Board of Commissioners

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Monday, August 19, 2019

6:00 PM

Historic Courthouse Courtroom

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#### Rollcall

**Present:** 5 - Chair Mike Dasher, Vice Chair Diana Hales, Commissioner Jim Crawford, Commissioner Karen Howard and Commissioner Andy Wilkie

#### Work Session - 3:00 PM - Historic Courthouse Courtroom

#### PUBLIC INPUT SESSION

#### BOARD PRIORITIES

19-3195

Receive request from the Chatham Arts Council for \$55,000 in funding for FY 2019-2020.

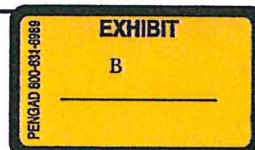
**Attachments:** [2019-0228 CAC Chatham County Grant Application FY20 Part 1 Artists-in-Schools FINAL](#)  
[2019-0228 CAC Chatham County Grant Application FY20 Part 2 Meet This Artist Go See This FINAL](#)  
[2019-0801 CAC AIS Board of Commissioners Powerpoint Presentation FINAL](#)

*Taylor Hobbs, President of Chatham Arts Council, addressed the Board. The Chatham Arts Council is requesting \$55,000 in funding for two programs. Executive Director Cheryl Chamblee gave a presentation to the Board. (Presentation attached)*

*Commissioner Wilkie asked why this request is not going to the Board of Education. Ms. Chamblee stated the Chatham Arts Council has made a commitment to finding the funding outside what the schools are already stretched to fund. When they go to other funding sources, it helps to have a strong statement from local government, especially at the state level.*

*Chair Dasher asked staff if the County is funding any other arts organizations. The County Manager stated the Chatham Arts Council is the only arts organization currently receiving funding from the County.*

**A motion was made by Commissioner Howard, seconded by Vice Chair Hales, to approve \$55,000 of funding for FY19-20 for the Chatham Arts Council. The motion carried by the following vote:**



*of slavery economics. Congressional allocation of districts counted, not just free persons, but also counted all non-free persons...slaves...as 3/5 a person. By 1860 the US slave population was 3.9 million. The Congressional discourse over expansion of slavery into new western territories raised both moral and constitutional issues leading up to the Civil War. The direct cause of the Civil War was the south firing on the federal installation at Fort Sumter, South Carolina.*

*Another story about the Confederacy is that this monument represents all those who died, so that they can be venerated and remembered. The County courthouse was the center of government, which is why it was selected by the Daughters of the Confederacy. The monument positioned the soldier facing north, toward the aggressors who destroyed the southern slave economy. We all know the horrors both north and south of this war and the still-standing record of thousands of lives lost in battles and to starvation and disease. It is worth commemorating and retelling the stories of people who died fighting for their country.*

*But, the monument speaks to more than dead soldiers. It reflects the reality of early 1900's America where millions of freed slaves were trying to sort out how and where to live and feed their families, and get an education, which had been denied to them by law. In the southern states, reaction to the loss of property and weakening of white entitlement resulted in new laws and practices of Jim Crow. The enemy was easy to identify... and could be manipulated by fear. That is what the monument represented then and now, 150 years later. It is not exclusively homage to the soldiers who died, but a constant reminder of the brutality, second-class status, and political power the white population has and can exercise over our citizen neighbors with dark skin.*

*The soldiers should be remembered and their stories recounted, but the monument should be relocated to an appropriate commemorative site. This historic Chatham Courthouse is our front doorstep and everyone deserves respect.*

*Commissioner Crawford made a motion to approve to terminate the 1907 order granting the Winnie Davis chapter of the United Daughters of the Confederacy the right to maintain and keep their monument within the courthouse circle. By October 1, 2019 the United Daughters of the Confederacy, Winnie Davis chapter, shall communicate in writing to the county manager their plan for the final disposition of the monument (the statue and its pedestal). The county manager shall make a good faith effort to assist in the implementation of the local UDC's plan, according the monument and its custodians their due respect. If no plan for the disposition of the monument is received by the manager's office by October 1st, 2019, then the statue and its pedestal shall be declared a public trespass on November, 1st, 2019. The monument represents government speech that at one time was consistent with the ruling values of the county, but now its message is inconsistent with the ruling values of the county.*

*Commissioner Howard seconded the motion. She stated the members of the Board have never advocated for destroying the statue. They have advocated to have the statue moved to a more appropriate location. She proposed that the community look into having some sort of reconciliation panel so people can walk through these difficult issues.*

**A motion was made by Commissioner Crawford, seconded by Commissioner Howard, A motion to approve to terminate the 1907 order granting the Winnie Davis chapter of the United Daughters of the Confederacy the right to maintain and keep their monument within the courthouse circle. By October 1, 2019 the United Daughters of the Confederacy, Winnie Davis chapter, shall communicate in writing to the county manager their plan for the final**

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**Aye:** 4 - Chair Dasher, Vice Chair Hales, Commissioner Crawford and Commissioner Howard

**No:** 1 - Commissioner Wilkie

### **MANAGER' S REPORTS**

*Mr. LaMontagne distributed documents with the nominations for EDC Board seats on behalf of the EDC Director Alyssa Byrd, who was unable to attend the meeting. They have adjusted the terms of the Board and Taylor Hobbs is up for reappointment by the Board of Commissioners by October 31. He would like to be reappointed. If the BOC would like him to continue to serve, they can reappoint him. If not, the position can be advertised. Vice Chair Hales recommended that the EDC Board take another look at the new terms. She would like it to be made clearer when the appointments would occur. She requested the item be revisited in September. Mr. LaMontagne said this would not be a problem. Chair Dasher said that Mr. Hobbs still has the support of the BOC, even if the reappointment is not formalized yet.*

*Ms. Lindsay Ray, the Clerk to the Board of Commissioners, took a moment to wish Commissioner Howard an early happy birthday.*

### **COMMISSIONERS' REPORTS**

*Commissioner Howard had one update from the DCHC MPO. They are looking at having more meetings with other regional groups while considering transportation options. Work on the traffic circle on Mt. Carmel Road has generated a lot of talk in the Northeastern part of the county; it's taking a lot time. It will not be done until spring of next year so the disruption will continue through the winter. Upon completion, these improvements will help to alleviate the traffic that backs up onto 15-501. She has her last executive District Director meeting this upcoming Wednesday and will not be here for the Leadership Academy graduation. She will be attending the annual commissioners' conference with Commissioner Crawford, Vice Chair Hales, the Clerk to the Board and the County Manager as well.*

*Vice Chair Hales asked who would be attending the Leadership Graduation at 2:30 on Thursday. She said it is a very special event because it honors staff leadership training.*

*Commissioner Wilkie was pleased to tell the Board that the Town of Pittsboro gave tax credits to 48 units for affordable housing. Vice Chair Hales asked where the units were and, after some discussion, the commissioners determined they are behind the post office.*

*Vice Chair Hales is glad that everyone will be at Leadership. She asked if anyone else would be attending the Chatham Development Briefing hosted by the Chamber of*