

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
June 22, 2009 – REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Monday, June 22, 2009 at 7:00 p.m. in the large courtroom of the Transylvania County Courthouse.

Commissioners present were Lynn Bullock Chairman Jason Chappell, Mike Hawkins, Daryle Hogsed, and Vice-Chairman Kelvin Phillips. Also present were County Manager Artie Wilson, County Attorney Curtis Potter, and Clerk to the Board Trisha McLeod.

Media: *Transylvania Times*: Mark Todd

There were approximately 25 people in the audience.

CALL TO ORDER

Chairman Jason Chappell presiding called the meeting to order at 7:03 p.m.

WELCOME

Chairman Chappell welcomed everyone to the meeting and thanked the members of the audience for participating in their County government.

PUBLIC HEARING

SOLID WASTE PLAN

North Carolina General Statutes 130A-309.09A (b) requires counties to update their Solid Waste Plan every three years and for each entity of local government to develop its plan with public participation, including one advertised public hearing.

Chairman Chappell declared the Public Hearing open at 7:04 p.m.

Solid Waste Director Jeff Brookshire reviewed the updates to the Plan and some of the events that have occurred over the last three years which include the following:

- Construction and completion of Cell 5
- Construction and completion of a white goods pad
- New cell tower and access road
- The creation of the Community Appearance Advisory Committee has addressed issues regarding the clean up of some properties and dealing with abandoned mobile homes
- Rate increase in 2008 of \$3 per ton (\$2 to NC and \$1 to Transylvania County)
- Decrease of MSW and the trend continues in 2009; this increases the life of the landfill
- The State has imposed some bans on certain materials in the landfill: used motor oil filters, plastic bottles, wooden pallets, used oyster shells
- Recycling electronics
- Decrease in metals possibly because citizens are taking them to scrap dealers themselves
- Included in the Plan is the history and 10 year projections; projections are to decrease the disposal rate by 10% by encouraging people to recycle

There were no comments from the public. **Chairman Chappell declared the Public Hearing closed at 7:15 p.m.**

PUBLIC COMMENT

There were no comments from the public.

AGENDA MODIFICATIONS

There were no Agenda modifications.

Commissioner Bullock moved to approve the Agenda as submitted, seconded by Commissioner Hawkins and unanimously approved.

CONSENT AGENDA

Commissioner Phillips moved to approve the Consent Agenda, seconded by Commissioner Bullock and unanimously approved.

The following items were approved:

MINUTES

The Minutes of the May 26, 2009 Regular Meeting and sealed Closed Session, June 8, 2009 Regular Meeting and June 15, 2009 Public Hearing were approved.

DISCOVERY & RELEASE REPORT

The Discovery and Release Reports for May and June 2009 were approved.

APPOINTMENTS

DANGEROUS DOG REVIEW BOARD

Commissioner Hawkins moved to appoint Dr. Christine Weaver as Chair, seconded by Commissioner Phillips and unanimously approved.

JUVENILE CRIME PREVENTION COUNCIL

Commissioner Hawkins moved to reappoint Bruce Blackwell, Rose Stouder, Carson Griffin, David Mahoney, Marilyn Borom, Lynn Bullock, Steve Pulliam, Brad Renegar, Lynne Warner and Gay Poor and to appoint Jeff McDaris to replace Sonna Lyda. The motion was seconded by Commissioner Hogsed and unanimously approved.

JURY COMMISSION

Commissioner Bullock moved to reappoint Gay Phillips, seconded by Commissioner Hogsed and unanimously approved.

BLUE RIDGE COMMUNITY COLLEGE BOARD OF TRUSTEES

Commissioner Phillips moved to reappoint Teresa McCall, seconded by Commissioner Bullock and unanimously approved.

AREA COUNCIL ON AGING

Commissioner Bullock moved to reappoint Delores Stroup to serve as the Senior Tarheel Delegate, seconded by Commissioner Hawkins and unanimously approved.

TAX ASSESSOR/TAX COLLECTOR

Commissioner Hogsed moved to reappoint David Reid as Tax Assessor and Tax Collector for Transylvania County to a four year term. The motion was seconded by Commissioner Hawkins and unanimously approved.

OLD BUSINESS

ANIMAL SHELTER

At the request of Commissioner Bullock, Bob McKelvey, a representative from Morton Buildings, Inc., a design and build company, gave a presentation on the design of animal shelters, providing some options for the Board as they move forward with the construction of a new animal shelter for Transylvania County.

Mr. McKelvey said Morton Buildings can build an animal shelter for considerably less than the estimates given by the architect. He presented a brochure highlighting the type of projects Morton Buildings has completed in the past.

The Manager offered some background on the project and stated that a group of individuals met over a period of time and determined the needs for a new animal shelter. The Board of Commissioners then hired an architect to design the facility. The Manager pointed out that the estimates provided by Mr. McKelvey do not include the costs for grading, site preparation, etc. Mr. McKelvey said he believes Morton Buildings can still build the facility at a cheaper cost as long as the site location remains the same.

After some discussion, Commissioners instructed the Manager to meet with the group that has been involved in the process to review the specifications. The group should also include the architect and possibly some local veterinarians. Staff should then move forward with a recommendation to the Board.

MAINTAINING THE PUBLIC SAFETY FACILITY STEEP BANKS

At the previous meeting, Commissioners instructed staff to explore other options for maintaining the steep banks at the Public Safety Facility and to provide a cost analysis comparing mowing to other options. One option staff reviewed was the possibility of planting cotoneaster and a variety of other plants on the banks. After their research they determined cotoneaster was not a viable ground cover, particularly based on the upfront costs and the time it would take to break even on the costs.

Richard Fry, County horticulturist, pointed out that the slopes that were left on the landscape at the site are extremely steep which limits what staff can do with them. He said Commissioners had previously recommended landscaping with shrubbery and other types of materials which he believes will not address erosion control issues. Also, to cover the landscape with other materials would require eliminating the grass on the slopes and covering the slopes with mulch before planting other materials which is not aesthetically pleasing. In looking at the figures, other options are much more expensive than maintaining the landscape with the grass on the slopes. Staff again recommended moving forward with the purchase of a remote mower which has been demonstrated to prove an efficient and safe way of maintaining and mowing the banks.

The Manager reported that at the previous meeting Commissioners had inquired about other businesses or governments in which the remote mowers are being used. He provided a list of references which showed that the mowers are being used in other states for various purposes.

Commissioner Phillips said he was expecting to receive cost estimates on a variety of planting materials, not just cotoneaster, and the cost of reforestation was to be an option as well. He said he obtained some estimates from landscapers that were less expensive than the estimates staff provided. He would like to continue exploring different alternatives and determine what is best to plant on the slopes. Commissioner Phillips said other options may be a better deal for taxpayers in the long term since the purchase of the mower would create ongoing costs on an annual basis.

Mr. Fry said the estimates he provided are retail prices for the materials and includes a percentage for planting. He again pointed out that all the grass must be eliminated first if going with another alternative which is an additional cost, and the slopes will have to be mulched for a number of years. Once the grass is eliminated the erosion control factor has been eliminated. He pointed out that cotoneaster is not an easy plant to maintain and must be mulched on a regular basis and weeded by hand.

Parks and Recreation Director Rick Pangle commented about the reforestation option. He noted that an area at the Recreation Department took several years to reforest and in the mean time they received several complaints about the area. He and other staff decided to clean up the area this past winter.

Commissioner Bullock asked if staff had contacted other landscapers to discuss other options. The Manager said the estimates were provided by Mr. Fry and staff did not check with other companies to obtain bid prices.

Commissioner Phillips again expressed that he wants to see more options and the costs associated with those options. Although the upfront costs may be more expensive, he feels other options will save taxpayers money in the future. The Manager reported the upfront costs at over \$200,000, while the remote mower costs \$14,100. He also noted that the area may also be the site of the future courthouse, so he would prefer to move forward with the lower upfront cost option. The expected life of the mower is seven to eight years which gives the Board time to explore other options in the mean time.

Commissioner Bullock said he does not feel comfortable spending \$200,000 in order to save \$14,100.

Commissioner Hawkins pointed out that staff has spent a considerable amount of time researching this issue and each time they have recommended purchasing the mower. He agreed with the Manager that the Board can continue to explore its options while maintaining the slopes.

Commissioner Hawkins moved to authorize staff to purchase a remote mowing machine to mow all the grass areas and explore other options in the mean time. The motion was seconded by Commissioner Hogsed and passed by a vote of 4 to 1, with Commissioner Phillips voting against.

NEW BUSINESS

BINDER PAVEMENT AT THE PUBLIC SAFETY FACILITY

The Manager reported that the binder pavement put down at the Public Safety Facility in September 2008 does not meet the density requirements as specified by the North Carolina Department of Transportation. MACTEC has recommended cutting out and replacing the sections that have "spidered".

Allen Hughes with MACTEC presented a short Power Point presentation explaining the pavement situation at the Public Safety Facility. He also outlined the history of the project in terms of the paving and pointed out that tests conducted proved the cores did not meet the specifications. Mr. Hughes also noted that some of the areas still performed well during the winter months.

MACTEC's recommendations included the following:

- Adding ¼ inches of binder pavement prior to placing 2 ¼ inches of surface pavement (area 9-08-1A)
- Removing existing binder and replacing – 15-20 square yards (area 9-08-1B and 1C)
- Removing and replacing binder after installing curb (area 9-08-1D)
- Replacing 2 ¼ inches of surface (area 9-08-1)
- Removing existing binder and replacing with new binder – approximately 8 square yards (area 9-09-3A)

Mr. Hughes noted the contractor will make the repairs to the pavement and extend the warranty from one year to two years. The average life span of the pavement is approximately 15-20 years. The contractor also agreed to change the top/surface coat to a mixed material at no additional cost at the recommendation of MACTEC.

In response to a question from Commissioner Phillips, Mr. Hughes explained that once the County accepts ownership of the property the County has two years from that date to report any problems that would be covered under the warranty. He said he feels the County will get the expected lifespan out of the pavement based on his reports and experience. Furthermore he feels that any problems with the pavement would have already occurred and the contractor feels comfortable with the materials they have used and the work they have done.

Commissioner Hawkins moved to approve MACTEC's recommendation, seconded by Commissioner Bullock and unanimously approved.

CHANGE ORDERS-PUBLIC SAFETY FACILITY

The Manager submitted the following change orders for the Board's consideration:

1. Change Order #54 – Rework circuits to Norment's air compressors; individual disconnects were left off (\$1,348)
2. Change Order #55 – Add light fixtures at corridor H200 on upper level (\$2,332)
3. Change Order #65 – Add steel tubing at bottom of curtain wall in entrance (\$2,214)
4. Change Order #66 – Add 10 concrete pads at exterior doors (\$2,990.50)

These change orders total \$8,884.50. The original contingency budget was approved at \$856,405. Commissioners have already approved \$62,250 for Communications equipment, leaving a total of \$794,155 remaining in contingency for the project. Total change orders to date are \$150,996.30, leaving a remainder of \$643,158.70.

The project is expected to be substantially complete in two months. There will potentially be more change orders as the project is finalized.

Commissioner Hogsed moved to approve the change orders as submitted, seconded by Commissioner Phillips and unanimously approved.

BUDGET AMENDMENTS FOR FOURTH QUARTER OF FY 2009

Finance Director Gay Poor highlighted the Budget Amendments for the Fourth Quarter of FY 2009 as follows:

During the fourth quarter of FY 2009, the General Fund Budget increased by \$7,624,731, bringing the total amended budget up to \$50,793,931.

One amendment accounted for almost all of this increase. In accordance with the bond refunding initiated in FY 2008, on May 1 of this year the County retired all of the 1999 School Series Bonds that were scheduled to mature on or after that date. The County received \$7,387,000 from the escrow agent for payment of \$6,900,000 in principal, \$372,000 in accrued interest, and \$115,000 in premiums for early redemption. These funds had been deposited with the escrow agent for this purpose as part of the bond refunding arrangements.

Another \$337,000 was attributable to grants and State and federal funding. Of that total, \$113,000 came from the Division of Water Resources for stream bank stabilization projects managed by the Soil and Water Conservation office. Human Services programs received \$198,000 more in funding, led by an increase of \$85,000 in the State/federal subsidy for subcontracts for child care providers and an increase of \$86,000 for the Health Department, which included \$48,000 in General Aid to Counties and \$22,000 for Immunization Special Projects. Additional funding was also authorized for several Social Services programs, and both the Library and Cooperative Extension benefited from grant programs.

Excluding the amendment for the bond redemption, other miscellaneous changes reduced the General Fund Budget by \$95,000. The net impact of supplemental Secure Rural Schools forest funds added \$20,000 to the budget; however with the termination of the contract between the County and the Lake Toxaway Property Owners Association, the Lake Toxaway Patrol was eliminated, lowering the budget by \$121,000.

Net transfers to and from the fund balance also reduced the General Fund Budget by \$22,000. As a result of postponing a document preservation project, \$96,000 was returned to the Register of Deeds Enhancement Fund. Partially offsetting the effect of this transfer in were \$74,000 worth of transfers out, most notably one for \$51,000 from the Accrued Vacation Reserve for vacations cashed out in lieu of leave taken or paid out to terminated employees and one for \$15,000 from the Court Facilities Reserve to purchase a replacement x-ray machine for courthouse security.

In addition, the Sheriff's Office received \$15,000 in donations and \$3,000 was carried forward from the FY 2008 CHAF project.

While the FY 2009 General Fund Budget increased by a total of \$8,300,000 during the year, the increase related to normal activities was less than \$1 million (\$937,000).

Commissioner Phillips moved to approve the Budget Amendments, seconded by Commissioner Bullock and unanimously approved.

FY 2009-2010 BUDGET ORDINANCE

A special called public hearing was held on the proposed FY 2009-2010 Budget on Monday, June 15, 2009 at which no comments were made. The Manager reviewed the FY 2009-2010 Budget Ordinance by section and highlighted the following:

- Proposed General Fund Budget is \$39.313 million

- Undesignated Fund Balance appropriations were made to balance the budget in the amount of \$736,156
- The Budget Ordinance includes a listing of fire tax rates and budgets
- The Budget Ordinance includes a listing of departmental fees
- Revenue neutral tax rate is 0.3949 per \$100/assessed value

The Manager noted that the City did not set a revenue neutral tax rate; therefore the County will be negatively affected by a further reduction in sales tax revenues of approximately \$87,000. The Town of Rosman has not yet approved its budget. The additional shortfall can be made up by taking the additional amount from Fund Balance or increasing the ad valorem tax rate. The Manager said the budget will be modified throughout the year so staff will continue to monitor the sales tax revenues. He noted there is a contingency fund for handling these types of items if necessary.

Commissioner Phillips moved to approve the FY 2009-2010 Budget Ordinance for Transylvania County, seconded by Commissioner Bullock. Commissioner Hogsed said he would not be supporting the budget for the following reasons, although he felt department heads submitted a responsible budget: 1) he opposed the revaluation, 2) he disagreed with the Board of Education's priorities and felt teachers' positions should have been top priority, 3) he opposed the additional employees for the new Public Safety Facility, 4) the budget included no pay increase for employees, and 5) he is concerned that continuing to take monies from Fund Balance will make next year's budget process worse. Chairman Chappell felt the Board of Education prioritized its budget and commented that no one is getting raises during this economy. He thanked department heads for submitting responsible budgets. He also commented that Fund Balances are there for the purpose of being able to use the funds when needed such as times like these, so he will be supporting the budget. Commissioner Hawkins agreed with Commissioner Hogsed that next year's budget will be tougher and he urged Commissioners to begin preparing now. Commissioner Bullock also agreed saying Commissioners are going to have to explore other and more creative ways to save funds. **The motion passed 4 to 1, with Commissioner Hogsed voting against.**

(The FY 2009-2010 Budget Ordinance is hereby incorporated by reference and made a part of these Minutes.)

SOLID WASTE PLAN UPDATE

North Carolina General Statutes 130A-309.09A (b) requires counties to update their Solid Waste Plan every three years and for each entity of local government to develop its plan with public participation, including one advertised public hearing. A public hearing was held at the beginning of the meeting at which there were no comments from the public.

Commissioner Phillips commented that the County needs to aggressively start exploring alternatives to the landfill which he feels will benefit the County in the long term. Commissioner Bullock agreed with his comments.

Commissioner Hogsed moved to approve Resolution 33-09 A Resolution Accepting and Endorsing the Solid Waste Management Plan for Transylvania County for 2009. The motion was seconded by Commissioner Phillips and unanimously approved.

(Resolution 33-09 A Resolution Accepting and Endorsing the Solid Waste Management Plan for Transylvania County for 2009 is hereby incorporated by reference and made a part of these Minutes.)

CENSUS 2010

The U. S. Constitution requires a national census once every 10 years. In March 2010 the Census Bureau will be sending out questionnaires for all households to complete regarding their status as of April 1, 2010. The Census Bureau is seeking help from local governments by asking them to become a Complete Count Partner in the census process. In order to be a partner the Board of Commissioners must adopt a resolution in support of and partnership with the 2010 Census and authorize the Chairman to sign the 2010 Partnership Agreement Form. The 2010 Census is very important in that over \$300 billion of government funding is distributed annually based upon the census. It is very important that everyone be counted so that Transylvania County will get its fair share.

The Manager expressed concern about those with secondary homes in the County not being counted. He plans to ask local fire departments and rescue squads for their assistance in getting the word out about the 2010 Census. He also said he would like to urge the schools to educate the children about the Census. The Manager recommended the County become a partner in the 2010 Census and noted there are no County dollars involved. Staff has already requested \$30,000 to pay for education materials.

Commissioner Hogsed moved to approve Resolution 34-09 A Resolution Affirming Transylvania County's Support of and Partnership with the 2010 Census and to remove the third line (whereas, more than \$300 billion per year in federal and state funding is allocated to communities, and decisions are made on matters of national and local importance based on census data, including healthcare, community development, housing, education, transportation, social services, employment and much more). The motion died for lack of a second. Commissioner Hogsed said this statement makes it appear the County is just participating for the money.

Chairman Chappell moved to approve Resolution 34-09 A Resolution Affirming Transylvania County's Support of and Partnership with the 2010 Census and authorize the Chairman to sign the 2010 Partnership Agreement Form and establish a Complete Count Committee with members to be appointed at the next Commissioner's meeting. The motion was seconded by Commissioner Hawkins and unanimously approved.

(Resolution 34-09 A Resolution Affirming Transylvania County's Support of and Partnership with the 2010 Census is hereby incorporated by reference and made a part of these Minutes.)

ASSISTANCE FOR US MERCHANT MARINE SEAMEN OF WW II

Mr. Don Horton of Camden, NC, a former US Merchant Marine in WW II and the Korean War, is requesting all 100 counties support a resolution assisting some 10,000 merchant seamen who, according to Mr. Horton, have been denied their recognition as veterans thus denying them their due benefits. Public Laws 95-202 and 105-368 gave these merchant seamen veterans status; however those seamen, and again according to Mr. Horton, who worked coastwise vessels such as tugs, towboats, and seagoing barges "have been denied their rights". He is asking Commissioners to support by way of resolution legislation that will recognize these seamen and provide veterans' status for those in the US Merchant Marine.

The following individuals and groups are considered to have performed active military, naval, or air service:

1. United States Merchant Seamen Who Served on Block Ships in Support of Operation Mulberry in the WW II Invasion of Normandy.
2. American Merchant Marines in Oceangoing Service during the Period of Armed Conflict, December 7, 1941 and August 15, 1945.

In speaking with the Veterans Affairs office, staff learned that determination for benefits is only made after all the necessary paperwork is submitted by or on behalf of the veteran. The VA's 2008 edition of Federal Benefits for Veterans and Dependents states, under the heading of World War II Era Merchant Marine Seamen, that "certain Merchant Marines seamen who served in World War II may qualify for veterans' benefits". It does not indicate those who do not qualify for those benefits. Calls to the US Coast Guard National Maritime Center were not returned.

In the research staff has done, it has been difficult to determine if what Mr. Horton is claiming is correct, in that those who served on tugs, towboats, and seagoing barges do not qualify for benefits.

The Manager offered the following options to the Board in response to Mr. Horton's request:

1. Pass a resolution in support of those Merchant Marines to receive benefits (similar to the resolution Pasquotank County Board of Commissioners approved)
2. Draft a letter to Mr. Horton saying while the Board of Commissioners understands his dilemma, he should direct his request to Veterans Affairs since benefits are awarded on an individual basis

Commissioners Hogsed and Phillips said they would prefer option 1 saying the Merchant Marines should be classified as veterans if they served in any wars.

Commissioner Hawkins expressed concern about the lack of evidence proving Mr. Horton's case and he felt that supporting this resolution would be out of the Board's scope of concern. Chairman Chappell also shared the same concerns but said every veteran should receive all benefits they are entitled to. He said if it is true that records were destroyed, these seamen will not be able to prove their veterans' status and said by passing this resolution representatives in Washington, DC may be motivated to review the public laws for this case.

After further comments, **Commissioner Hogsed moved to approve Resolution 35-09 Supporting An Alternative Method of Recognition for Veterans Status to Merchant Seamen of WWII, seconded by Commissioner Phillips. The motion passed 4 to 1 with Commissioner Hawkins voting against.**

(Resolution 35-09 Supporting An Alternative Method of Recognition for Veterans Status to Merchant Seamen of WWII is hereby incorporated by reference and made a part of these Minutes.)

MANAGER'S REPORT

The Manager reported the following:

- A draft for zoning in Pisgah Forest has been placed on the County's website and a copy has been delivered to the Library
- Staff will bring Commissioners a draft flood ordinance for the consideration in July which has to be approved no later than September

PUBLIC COMMENT

Nita Hunt: Ms. Hunt spoke in support of a new animal shelter. She said she is glad to see the Board discussing the matter as well as scheduling a meeting to review the specifications. She asked about the current site plan location and if an alternate site location had been determined. Commissioners informed her they would be meeting with the Town of Rosman in the near future to discuss the proposed site.

Mike Baxley: Mr. Baxley asked Commissioners if they had any questions about the measures he has taken to reduce noise at his bike track. He said he wants to do anything he can to move forward. Commissioner Hawkins asked if the Mr. Baxley felt the measures he implemented were helping to reduce the noise. Mr. Baxley said he felt the barrier he installed and changing the direction of the track is helping to reduce the noise.

COMMISSIONERS' COMMENTS

Commissioner Hogsed pointed out that the County budgets \$8.7 million to enforce the law in Transylvania County.

Chairman Chappell congratulated Chris Whitmire and Tawny McCoy as the new Chair and Vice-Chair of the Board of Education.

Chairman Chappell moved to enter into Closed Session per NCGS 143-318.11 (a) (3) to consult with an attorney in reference to the lawsuit Transylvania County versus Michael Baxley and Charlotte Baxley, after a 10 minute recess. The motion was seconded by Commissioner Phillips and unanimously carried.

CLOSED SESSION

Pursuant to NCGS 143-318.11 (a) (3), to consult with an attorney in reference to the lawsuit Transylvania County versus Michael Baxley and Charlotte Baxley, closed session was entered into at 9:25 p.m. Present were Chairman Chappell, Commissioners Bullock, Hawkins, Hogsed and Phillips, County Attorney Curtis Potter, County Manager Artie Wilson, and Clerk to the Board Trisha McLeod.

The Attorney updated Commissioners on the status of the lawsuit. Commissioners instructed staff on how to proceed.

Chairman Chappell moved to leave Closed Session, seconded by Commissioner Bullock and unanimously carried.

OPEN SESSION

Chairman Chappell moved to seal the minutes of the Closed Session until such time that unsealing the minutes would not frustrate the purpose of the Closed Session, seconded by Commissioner Bullock and unanimously approved.

ADJOURNMENT

There being no further business to come before the Board, **Chairman Chappell moved to adjourn the meeting, seconded by Commissioner Bullock and unanimously carried.**

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha D. McLeod
Clerk to the Board