

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
July 13, 2009 – REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Monday, July 13, 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 50 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

GRANT APPLICATION FOR THE NC DEPARTMENT OF COMMERCE

In order for the County to apply for Community Development Block Grants (CDBG) through the NC Department of Commerce for FY 2009-2010 two public hearings are required.

Planning and Economic Development Director Mark Burrows reported there are several new CDBG grant funds available to help with a number of projects, including providing assistance to low to moderate income persons and various other categories. These grants would be administered through the Division of Community Assistance. Mr. Burrows announced that the purpose of this public hearing is to make the public aware CDBG funds are available for economic development needs in the community. Should the County apply for funds for a specific project, a second public hearing would be required. **Chairman Chappell declared the Public Hearing open at 7:05 p.m.**

Don Rogers: Mr. Rogers commented that the CDBG funds could best be used for infrastructure development. He is currently working with the Workforce Housing Coalition to provide housing for low to moderate income persons. He feels these funds could help their program in an effort to provide affordable housing in the County.

Karen Kiehna: Ms. Kiehna with Land-of-Sky Regional Council provided some additional information about the grant funds that are available. Under the CDBG program, there is a large variety of grants available, from housing development infrastructure, community revitalization program, and economic development. She asked all interested persons to contact her or Mark Burrows.

Lisa Landis: Ms. Landis said she has designed a glow in the dark escape route system which she believes will revolutionize the economy and benefit the community.

There being no further comments, **Chairman Chappell declared the Public Hearing closed at 7:10 p.m.**

PUBLIC COMMENT

Eleanor Mockridge: Ms. Mockridge spoke in opposition to proposed Resolution 36-09 Opposing the American Clean Energy and Security Act of 2009 for consideration under New Business. She asked who drafted and submitted the resolution for the Board's consideration and was informed that Commissioner Hogsed had drafted and submitted the resolution. Ms. Mockridge referred to some of the content of the Resolution in which she disagrees, saying there is evidence of global warming and all citizens should share the financial burden and be responsible citizens of the planet.

Jill Roberts: Ms. Roberts also spoke in opposition to the Resolution. She said the content of the Resolution is not the business of the County but rather political activism. She further commented that the Board of Commissioners was elected to act on behalf of all citizens in Transylvania County regardless of political or religious persuasion and to conduct County business regardless of partisan beliefs.

Dr. David Erickson: Dr. Erickson spoke in opposition to the Resolution. He said he is disturbed that Commissioners are considering such a Resolution, particularly with the consequences it could place upon children, the world's poor, and wildlife. He said not everyone buys into climate change and global warming, but he does believe the Act will save citizens money which he knows Commissioners support.

Marshall McCallie: Mr. McCallie opposed the Resolution. He said he believes the American Clean Energy and Security Act of 2009 is an excellent bill and is supported by a wide variety of industrial and environmental groups. Secondly, the bill promotes energy independence for the Country and will create new jobs in the energy sector. Thirdly, he said he is opposed to the Resolution because he believes it is loaded with partisan political rhetoric and bad science. Most importantly he is opposed to the Resolution because he believes national political issues should not be a subject for debate in County Commission meetings. He respectfully asked Commissioners to address local issues the County is facing.

Peter Chaveas: Mr. Chaveas also opposed the proposed Resolution. He referred to the additional costs in which the Resolution indicates will be imposed upon citizens. He did not dispute the facts, but said the Resolution fails to address two enormous costs that citizens are already paying and will continue to pay if a rational program for the use of energy is not implemented. Those costs, he said, are the billions of dollars this Nation sends to countries annually that are unstable and in many cases unfriendly to the United States and the lives of thousands of men and women in uniform lost in wars in petroleum producing countries.

Bill Read: Mr. Read urged Commissioners not to consider the Resolution Opposing the American Clean Energy and Security Act of 2009. He spoke about the history of scientific knowledge and how current scientific methods prove global warming exists.

Ken Chepenik: Mr. Chepenik also spoke against the proposed Resolution. He said the subject matter of Resolution 36-09 does not go along with the definition of the word resolution because

this matter was not a question brought before this Board. Furthermore, he said this issue is not the business of Transylvania County and he urged Commissioners to focus on local issues.

AGENDA MODIFICATIONS

The Manager reported on the Agenda modifications. He requested to add Closed Session Item XII-A per NCGS 143-318.11 (a) (3) to consult with an attorney reference the lawsuit Transylvania County versus Michael D. Baxley and Charlotte Baxley dba Baxley Off Road Motor Track and/or Baxley's Training Facility.

Commissioner Hogsed moved to approve the revised Agenda, seconded by Commissioner Bullock and unanimously approved.

CONSENT AGENDA

There were no items for consideration under the Consent Agenda.

PRESENTATIONS/RECOGNITIONS

RESOLUTION HONORING CARSON F. GRIFFIN

Social Services Director Carson Griffin will retire from the County with 31 years of service effective August 1, 2009.

Commissioner Bullock moved to approve Resolution 37-09 In Recognition of Carson F. Griffin, seconded by Commissioner Phillips and unanimously approved.

Commissioners thanked Ms. Griffin for her many years of service to the County and its citizens and presented her with a resolution in her honor. Ms. Griffin thanked Commissioners for their support over the years.

(Resolution 37-09 In Recognition of Carson F. Griffin is hereby incorporated by reference and made a part of these Minutes.)

AFFORDABLE HOUSING PRESENTATION

Don Rogers, Director of the Workforce Housing Coalition, gave an update on the status of the affordable workforce housing project in Transylvania County. He reported that he has interviewed over 40 families since the start of this project. The Workforce Housing Coalition has partnered with Wesley Community Development Corporation, a faith based organization similar to Habitat for Humanity. They are different from Habitat for Humanity in that they provide the construction financing for new homes. Upon completion of the homes, the new owners finance the homes through a federal mortgage program.

Mr. Rogers reported that a major obstacle in providing affordable workforce housing in the County is the availability and affordability of land. He noted that the Community Land Trust bill will hopefully help in the future for providing land for affordable homes. Mr. Rogers asked the Board to consider looking at the usability of the County-owned Calvert property in Rosman on which to construct affordable housing. He is also working with potential partners in Pisgah Forest and Brevard to acquire land for affordable housing.

Commissioner Hawkins asked how many of those families that have been interviewed qualify for this program. Mr. Rogers said currently there are five families qualified and five are in the application phase and he expects them to be approved also.

Commissioners thanked Mr. Rogers for the services he provides for the community.

PLANNING BOARD'S ANNUAL REPORT

Planning and Economic Development Director Mark Burrows, on behalf of the Planning Board, presented the Planning Board's annual report to Commissioners and highlighted the following:

- The Planning Board held community meetings to learn about planning related issues that need to be addressed in communities.
- Drafted and submitted erosion control amendments to the Building and Subdivision Control Regulations, which was subsequently adopted by the Board.
- Much time spent on discussion of steep slopes.
- Most of their time has been spent on the US 64/280 Corridor.

Mr. Burrows noted the death of Planning Board Jon Wesley earlier in the year. He thanked the Board for supporting the Planning Board's efforts.

Commissioner Bullock asked if there are any plans to further study steep slopes in the Corridor. Mr. Burrows said steep slopes are not really an issue along the Corridor; however it will be addressed per the Study Committee's recommendation.

APPOINTMENTS

TRANSYLVANIA COUNTY COUNCIL ON AGING

Commissioner Phillips moved to reappoint Barbara Greene, Rick Pangle and Robert Anderson, seconded by Commissioner Hogsed and unanimously approved.

OLD BUSINESS

COMPLETE COUNT COMMITTEE – 2010 CENSUS

The Manager reported the Census Bureau has suggested that each community establish a Complete Count Committee to help ensure everyone is counted in the 2010 Census. The Complete Count Committee is charged with developing and implementing a plan designed to target the unique characteristics of their communities. The Manager asked the Board to authorize Chairman Chappell to elect a chairperson of the Committee who will be the liaison and contact person between the Complete Count Committee and the Census Bureau. The chairperson will work with Chairman Chappell to select subcommittee chairs. The Manager noted that the chair and subcommittee chairs will have to undergo some training.

Commissioner Hawkins moved to authorize the Chairman to appoint a chairperson for the Complete Count Committee and appoint other subcommittee chairs. The motion was seconded by Commissioner Phillips. Chairman Chappell asked the Manager to forward him a list of names to potentially serve as chairperson and subcommittee chairs. The motion was unanimously approved.

NEW BUSINESS

CHANGE ORDERS FOR THE PUBLIC SAFETY FACILITY

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

1. Change Order # 56 - Padding for Cell; \$16,968; responsibility for this is still being debated but this is a long lead time item
2. Change Order # 62 - Canopy Lights; \$4,598.50; responsibility of Moseley
3. Change Orders # 67 and # 72 – Delete sidewalk and filling in ramp; \$2,486; instructed to move forward with this in a recent Commissioners' meeting
4. Change Order # 69 - Revise Electrical Breakers in Kitchen; \$2,095; responsibility of Moseley or MB Kahn
5. Change Order # 70 - Revise Electrical Circuits to Mechanical Units; \$2,275.50; responsibility of Moseley or MB Kahn
6. Change Order # 71 - Add Electrical for Maintenance Doors; \$6,284; responsibility to be determined - Moseley and County
7. Change Order # 73 - Retrofit cell doors for food pass through; \$13,422; responsibility of Moseley
8. Change Order # 75 - Main Breaker for Maintenance Building; \$2,081.50; responsibility of Moseley and County

The total amount of change orders submitted is \$45,238.50. If approved, all change orders total \$196,233.80 or 24.7% of contingency.

The Manager reported that the project is moving along and a substantial completion date is scheduled for August.

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

PROPOSED RESOLUTION 36-09 OPPOSING THE AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009

Some members of the Board of Commissioners have expressed opposition to the American Clean Energy and Security Act of 2009 which is being considered by the United States Congress. Commissioner Hogsed submitted a resolution for the Board's consideration. He asked Commissioners to approve Resolution 36-09 Opposing the American Clean Energy and Security Act of 2009 because, if the Act is approved by Congress, it will impact the citizens of Transylvania County relating to higher energy costs.

Chairman Chappell agreed with Commissioner Hogsed about the concern over higher energy costs for citizens. Commissioner Bullock also agreed additional energy costs may be incurred by citizens; however he said it is important the Country move away from the use of fossil fuels and believes this Act is trying to address that issue. Commissioner Phillips said while this Resolution may not affect anyone's vote, it is the Board's obligation to inform its representatives how they feel about the proposed Act and that they care about the citizens of Transylvania County.

Commissioner Hawkins said in terms of global warming, different studies produce different results, especially on this issue because there is a great divergence of opinion. He said there are parts of the Resolution he does not agree with that appear to be matters of opinion or speculation. Commissioner Hawkins asked if the Resolution had already been sent to representatives in Washington, D.C. Chairman Chappell responded yes, saying a majority of Commissioners

responded they were supportive of the resolution. Commissioner Hawkins said he was unaware the Resolution had already been sent and commented that the people should have been given an opportunity to offer input on the Resolution before the Board approves it.

Commissioner Hogsed responded saying his email to Commissioners clearly stated the Resolution would be forwarded to representatives and then approved at the next regular meeting as Commissioners have done with other resolutions in the past. Commissioner Hogsed further commented that the fact that the Act is unconstitutional has not been debated. He reminded Commissioners they take an oath to support and maintain the Constitution and laws of the United States and North Carolina and they would not be upholding their oath of office if they did not vote for the Resolution opposing the Act.

After further comments, **Commissioner Hogsed moved to approve Resolution 36-09 Opposing the American Clean Energy and Security Act of 2009. The motion was seconded by Chairman Chappell and passed by a vote of 3 to 2, with Commissioners Bullock and Hawkins voting against.**

(Resolution 36-09 Opposing the American Clean Energy and Security Act of 2009 is hereby incorporated by reference and made a part of the Minutes.)

THIRD QUARTER REPORT FY 2009 WESTERN HIGHLANDS NETWORK

The Manager submitted the Third Quarter FY 2009 Fiscal Monitoring Report for Western Highlands Network Local Management Entity (LME) and highlighted the following:

- Year-to-date cash balance is -\$2,069,722.
- Over the past year there has been significant reduction in funding for the mental health system.
- In order to provide the required services, the LME had to dip into its reserves to provide those services.
- The LME remains in good financial shape.

Commissioner Hawkins moved to accept the Third Quarter FY 2009 Fiscal Monitoring Report for Western Highlands Network, seconded by Commissioner Bullock and unanimously approved.

CONTRACT SERVICES – USABILITY OF CALVERT PROPERTY

The Manager asked for the Board's approval in securing the services of McGill Associates to evaluate the usability of the Calvert property which consists of 25 acres and is owned by the County. The Calvert location is the current proposed site for a new animal shelter. Organizations are interested in the property for affordable housing.

He submitted a cost proposal from McGill Associates to provide master planning services to determine the usability of the property. The cost proposal will not exceed \$7,000 and will address the environmental concerns on the property. McGill Associates should complete their report within 30 days.

Commissioners noted there are complications with the property and agreed it should be determined how the property could best be used.

Commissioner Phillips moved to authorize McGill Associates to proceed with evaluating the usability of the County's Calvert property with funds for come from the contingency line item. The motion was seconded by Commissioner Bullock and unanimously approved.

MANAGER'S REPORT

The Manager reported the following:

- Reminded Commissioners of Secondary Roads Meeting with the Department of Transportation on Wednesday, July 15, 2009 at 3:00 p.m. in the Community Services Building Conference Room.
- Staff will meet with the Board of Adjustment tomorrow night to hear the issue of the variance request on the sidewalks at the Public Safety Facility.
- Suggested scheduling a workshop to discuss the animal shelter after McGill Associates submits their report and before scheduling a joint meeting with the Town of Rosman.
- A public hearing is scheduled for the next meeting regarding a document imaging project for the Department of Social Services. Staff will be requesting to piggyback with Orange County on the RFP for the software. The cost of the project is \$228,650.38 and the County will be reimbursed \$77,786.86 from the State. The payback is over 3.2 years. Staff will be asking for approval by the Board at the first meeting in August.
- The NCACC Conference is scheduled for August 27 – 30, 2009 in Hickory. At the next meeting Commissioners will need to appoint a voting delegate if a Commissioner decides to attend.
- Announced that Communications Director Kevin Shook had emergency surgery over the weekend and will be out for the next few weeks. He asked Commissioners to wish him a speedy recovery.

PUBLIC COMMENT

Marshall McCallie: Mr. McCallie asked for clarification about whether Resolution 36-09 was sent to representatives in Washington, D.C. before being discussed and voted on by the Board. Chairman Chappell explained that Commissioner Hogsed had polled Commissioners asking for their support of Resolution 36-09 which he requested to send as soon as possible due to the timing of the vote by the House. Once it was determined that a majority of Commissioners supported the resolution, the Clerk was instructed to send the Resolution. Mr. McCallie said public business should be conducted publicly and should not have been sent in the name of the County until after the vote.

Lisa Landis: Ms. Landis explained that history and other ancient studies suggest there have been several changes to the Earth and she would like to see people use renewable resources.

Peter Chaveas: Mr. Chaveas said it is obvious the Board violated its rules in the way that the Resolution was handled. He asked how this Board could question how the State and federal government conducts itself, if this Board can not follow its own rules. He said it would be the duty of the Commission to withdraw the Resolution because the people did not have the opportunity to comment on it first.

Jim Wright: Mr. Wright commented about the Resolution saying the Board broke the State open meetings law and suggested the County attorney review the matter and report back to the Board as to whether laws were actually broken.

Ken Chepenik: Mr. Chepenik said he came to this meeting hoping there would be an opportunity to persuade the Board on how to vote on the Resolution but he now finds there was no opportunity given to the people to persuade the Board. He said the people were deceived and he attended this meeting under the false pretenses of an open meeting. He expressed his displeasure with the Board's actions.

Jerry Beddingfield: Mr. Beddingfield asked which Commissioners gave support for the Resolution to be sent before a vote of the Board and further asked why it was so important to send it before a vote of the Board, specifically because the House had voted on the matter already. Commissioner Hogsed explained the reason for the urgency was because the House put it on the calendar for a vote overnight and pushed it through rapidly. Commissioners became aware early in the week before that the bill would be discussed on Friday of the same week. He sent an email to Commissioners on Wednesday asking for support of a resolution to send to Congressman Shuler before the vote was taken on Friday, which was the reason for the urgency. The House's schedule was released and this Board had no meeting scheduled before the vote in the House was to take place. The Resolution was sent to Congressman Shuler before he voted on it. Mr. Beddingfield said it was not right to send the resolution before it was voted on in public.

COMMISSIONERS' COMMENTS

Commissioner Hogsed said he felt there was no violation of the rules, noting that resolutions had been delivered in the past before being officially approved at a meeting. Commissioner Hawkins responded that he could not recall a time where the Board had authorized sending a resolution before its approval in an open meeting. He further commented that the people of Transylvania County should have the opportunity to offer input before voting on resolutions.

Commissioner Bullock said he was sorry the urgency came up in which Commissioners felt like they had to act quickly and apologized that the public felt deceived. He agreed with Commissioner Hawkins that it shows poor leadership to send resolutions without giving the people the opportunity to have a voice.

Chairman Chappell clarified that resolutions that had been delivered in the past without an official vote by the Board were resolutions honoring those who had retired.

Chairman Chappell moved to enter into Closed Session per NCGS 143-318.11 (a) (3) to consult with an attorney reference the lawsuit Transylvania County versus Michael D. Baxley and Charlotte Baxley dba Baxley Off Road Motor Track and/or Baxley's Training Facility, after a 5 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 reference the lawsuit Transylvania County versus Michael D. Baxley and Charlotte Baxley dba Baxley Off Road Motor Track and/or Baxley's Training Facility, closed session was entered into at 9:15 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 Phillips and unanimously approved.

Chairman Chappell moved to enter into Closed Session per NCGS 143-318.11 (a) (3) to consult with an attorney, seconded by Commissioner Bullock and unanimously carried.

CLOSED SESSION

Pursuant to NCGS 143-318.11 (a) (3), to consult with an attorney, closed session was entered into at 9:45 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.

Commissioners consulted the County attorney on a matter in closed session in order to protect attorney-client privilege and 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 Phillips and unanimously approved.

ADJOURNMENT

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

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha D. McLeod
Clerk to the Board