

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
April 26, 2010 – REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Monday, April 26, 2010 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 David Neumann, and Clerk to the Board Trisha Hogan.

Media: *Hendersonville Times News* – Leigh Kelley
Transylvania Times – Mark Todd
WSQL Radio – Wanda Lu Paxton

There were approximately 50 people in the audience.

CALL TO ORDER

Chairman Jason Chappell presiding called the meeting to order at 7:05 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

PISGAH FOREST COMMUNITY ZONING ORDINANCE

Chairman Chappell declared the Public Hearing open at 7:07 p.m.

County Planner Mike Thomas spoke on behalf of the Transylvania County Planning Board who drafted a zoning proposal for the Board's consideration at the request of citizens in the Pisgah Forest community and as a follow up to the recommendations from the Joint Study Committee.

(Per North Carolina General Statutes 153A-323 and 153A-343, a Public Hearing is required before implementing land use regulations in the County. The Public Hearing was properly advertised and first class mail notices were sent to property owners in the affected area, as well as to adjacent property owners.)

Mr. Thomas showed a Power Point presentation explaining the proposed ordinance in greater detail.

Draft Ordinance Framework (2 Zoning Districts)

- Corridor Mixed Use (CMX) regulates non-residential uses
- Open Use (OU) regulates high impact uses
- Planned Unit Developments (PUD) require approved site plan in both districts
- Existing land use ordinances apply (subdivision, sign, cell tower, manufactured home parks)

Mr. Thomas reviewed the proposed zoning map and pointed out the areas that would be affected by either zoning district. The Corridor Mixed Use district includes the parcels that touch Highways 64 and 280. The Open Use district extends to the maximum extent of the City's possible expansion of their Extra Territorial Jurisdiction (ETJ).

Corridor Mixed Use District (CMX)

- NC 280 and US 64 corridor parcels
- All uses except 3 allowed by right
- Hazardous/Radioactive waste disposal and adult entertainment facilities prohibited
- New/expanded non-residential uses are regulated (if use is expanded 50% or more)

Summary of CMX Regulations

- Access – may restrict driveways
- Setbacks (ft) – 10/10/10 front, side, rear
- Buffers (ft) – 15-20 (required if a nonresidential use came adjacent to a residential use)
- Storm Water – control 1 year storm (4")
- Surface Water – 20' buffer
- Parking/Loading – based on use
- 25%+ Slope – 1/1.5-10 acre (to prevent erosion and runoff; also required for new residential lots created)
- Building Height – 50 feet maximum

Open Use District

- Applies to parcels off the two corridors (residential areas included because NC law requires a minimum of 640 contiguous acres in order to implement zoning regulations)
- All uses allowed except hazardous/radioactive waste or adult entertainment
- 11 high impact uses allowed conditionally
- Planned Unit Developments (2 or more uses, 35,000 sq. ft. buildings, 5+ residential units) allowed conditionally

High Impact Uses

- Industry
- Mining
- Incinerator
- Junkyard
- Chip Mill
- Amusement Park
- Solid Waste Site
- Concrete Plant
- Asphalt Plant
- Motor Sports
- Slaughterhouse

Approval Authority

- High Impact Uses (PUD's)
 - Planning Board recommendation
 - Board of Commissioners approval/denial
- Corridor Mixed Use Non-residential
 - Zoning Administrator approval

- Appeals/Variances – Board of Adjustment (Planning Board)

Trish Hamilton: Ms. Hamilton is a resident of Pisgah Forest and her property was recently taken into the ETJ by the City of Brevard and classified as Downtown Mixed Use. She said under this zoning district, she can not rebuild her home if it were destroyed by fire, severe weather, etc. She urged the Board to adopt the proposed ordinance to ensure that other citizens in Pisgah Forest do not have to endure these same type regulations on their property.

Sarah Mathis: Ms. Mathis is a resident of Pisgah Forest. She expressed opposition to her property being controlled by any government; however she believes the County's zoning ordinance is better than being controlled by the ETJ. She urged the Board to move forward. Ms. Mathis also pointed out a mistake on the proposed zoning map and asked Mr. Thomas to make the correction. Mr. Thomas confirmed the mistake and said he would make the correction to the map.

Steve Owen: Mr. Owen is a resident of Pisgah Forest. He disagreed with the proposed maximum height requirements of 50 feet for the Planned Unit Developments. He said keeping the community character of Pisgah Forest has been a common theme throughout this process and he believes that community character does not support a 3-story building along the corridors. Mr. Owen also said he hopes the community realizes if zoning is not implemented at this time, the City will be able to expand its ETJ anytime and the community will be dealing with this issue again. He asked the County to move forward with the proposal which gives the residents of Pisgah Forest a voice in their government.

Ken Norman: Mr. Norman said the citizens of Pisgah Forest appreciate all the hard work that has gone into this process. He expressed disappointment that the City extended its ETJ into a portion of Pisgah Forest although the residents there were against it. He urged the County to move forward with the zoning proposal; otherwise he said the City will move forward with further expansion of their ETJ.

Michael Moore: Mr. Moore is a property owner in Pisgah Forest. He urged Commissioners to move forward with implementing the proposal because he believes it is much better than the ETJ.

Larry Wilson: Mr. Wilson is a property owner in Pisgah Forest. He thanked everyone for the time they put into this process and said he is satisfied with the Planning Board's proposal. He urged the Board to accept the proposal and move forward.

Larry Chapman: Mr. Chapman is a resident of Pisgah Forest but is not directly impacted by the proposed zoning ordinance. He pointed out that the ETJ is allowed under North Carolina law and he encouraged all citizens to contact their representatives in Raleigh and urge them to work toward abolishing the ETJ and protecting personal property rights.

Commissioner Hogsed addressed the audience and ensured them that the County has no desire to implement zoning; however because State laws allow municipalities to expand their ETJ, he said the County is being forced into this situation. He urged citizens to keep in contact with Commissioners so they can make the right decisions.

Planning Director Mark Burrows noted that letters were sent to every property owner in the potential affected area, as well as adjacent property owners. He reported that staff mailed approximately 500 letters and only 7 were returned. Mr. Thomas was able to locate the properties

and deliver 6 of the letters to the property owners. Mr. Burrows also noted that the Public Hearing was properly advertised and signs were posted around the Pisgah Forest community.

There being no further comments from the public, **Chairman Chappell declared the Public Hearing closed at 7:45 p.m.**

Commissioners asked that this item be placed on the Board's agenda for May 10, 2010 as an action item.

PUBLIC COMMENTS

Lisa Landis: Ms. Landis invited Commissioners to a benefit for the homeless to be held on June 12, 2010 from 7:00 a.m. to 9:00 p.m. at the Blue Ridge Corn Maze. She also inquired about a recent article she read regarding a partnership between the City of Brevard and Homeland Security on a security project. She was referred to Brevard City Council for answers.

AGENDA MODIFICATIONS

Commissioner Phillips requested to add an item to review the Board's recent decision to implement residential plan reviews when applying for building permits. He said he has received several phone calls from concerned citizens and he would like the Board to discuss the item again.

Commissioner Hogsed requested to remove the item dealing with increasing well and permit fees because he did not feel it was the right time to impose higher fees on citizens. Commissioner Phillips, who also serves on the Board of Health, said the fee increase was recommended in order to cover the cost of the service and ensure that the cost is not subsidized by the general public, but rather paid for by the person seeking the service.

Commissioner Hogsed moved to add the item requested by Commissioner Phillips, seconded by Commissioner Phillips and unanimously approved.

Commissioner Hogsed moved to remove Item B under New Business, Request to Increase Well Permit and Plan Review Fees. The motion died for lack of a second.

Commissioner Bullock moved to approve the revised Agenda. The motioned was seconded by Commissioner Phillips. The revised Agenda was approved 4 to 1, with Commissioner Hogsed voting against.

CONSENT AGENDA

Commissioner Hawkins moved to approve the Consent Agenda, seconded by Commissioner Hogsed and unanimously approved.

The following items were approved:

MINUTES

The minutes of the March 22, 2010 regular meeting were approved.

DISCOVERY AND RELEASE REPORT

The Discovery and Release Report for March 2010 was approved.

PRESENTATIONS/RECOGNITIONS

FIVE STAR CHILD CARE LICENSE-NEW ADVENTURE LEARNING CENTER

Commissioners recognized and congratulated New Adventure Learning Center Director Laura Owen and staff for obtaining a Five Star Child Care License from the State. The New Adventure Learning Center scored 13 out of a possible 15 points in its recent inspection.

US DEPARTMENT OF VETERANS AFFAIRS EXPENDITURES IN TRANSYLVANIA COUNTY

Veterans Services Officer Frank Pearsall provided an update on the amount of expenditures the US Department of Veterans Affairs extends to veterans in Transylvania County. He reported that there are 3,678 veterans in Transylvania County. In FY 2009 Veterans Affairs spent \$12,396,000 on various programs and services for veterans in Transylvania County, over \$5 million of which was spent on medical care at the VA Hospital for 769 Transylvania County veterans.

Mr. Pearsall reported that his office is open on Tuesdays and Thursdays all day and he is available on other days by appointment. Commissioners thanked Mr. Pearsall for all he does for veterans in this County.

APPOINTMENTS

WESTERN CAROLINA COMMUNITY ACTION BOARD OF DIRECTORS

Commissioner Hawkins moved to appoint Nicola Melby to the WCCA Board of Directors to replace Fred Tinsley per the recommendation of Executive Director David White. The motion was seconded by Commissioner Bullock and unanimously approved.

OLD BUSINESS

AWARDING OF CONTRACT FOR DESIGN SERVICES-PHASE 1 COMMUNITY PARK NEAR ROSMAN

In March, per the direction of the Board of Commissioners, staff issued a Request for Proposal (RFP) for Design Services for Phase 1 of a community park near Rosman. Phase 1 includes obtaining a No Rise Certificate.

County Purchasing Agent Michelle McCall reported that four firms expressed interest in the project, yet only three of them submitted a proposal. The three firms were T.E. Allen Engineering, McGill Associates, and KCI Technologies, Inc. The RFP required the firms to separate their proposals into two sections: one describing the services and qualifications and the other being the cost proposal. A committee of five members evaluated the proposals and assigned point values to different criteria outlined in the RFP and scored those firms based on the criteria. They ranked the firms from first to third in the following order: T.E. Allen Engineering, McGill Associates, and KCI Technologies, Inc. The committee recommended awarding the contract to T.E. Allen Engineering who had the lowest cost proposal and ranked first in the evaluation.

Commissioner Hawkins inquired about the five elements including in the RFP which are spelled out in two of the proposals but not the one from T.E. Allen Engineering. Ms. McCall responded that the proposal from T.E. Allen Engineering is all inclusive.

Commissioner Hawkins also asked if No Rise Certificates have an expiration date. The Manager said is not aware of an expiration date but he will confirm that for the Board.

Commissioner Bullock moved to award the contract to T.E. Allen Engineering for a cost not to exceed \$18,900 plus \$115/hour for construction management services in excess of 2.5 hours/week with costs to come from Contingency Funds. The motion was seconded by Commissioner Hogsed and unanimously approved.

NEW BUSINESS

PROPOSED ORGANIZATION OF LOCAL COMMUNITY CHILD PROTECTION AND CHILD FATALITY PREVENTION TEAMS AND MEMBERSHIP

Social Services Director Stoney Blevins and Public Health Director Steve Smith have been working on a revised model to combine the Community Child Protection and Child Fatality Prevention Teams into a “blended” team.

The new team would have the following advantages: clarification of roles and responsibilities; effective and efficient utilization of community experience and resources; and enhancement of case reviews and planning efforts. The new team would consist of 16 members. There are 6 individuals who are no longer active due to job changes or are otherwise not available and it is proposed that they be replaced by general members as proposed by staff and serve until June 2011. In the mean time, the team will provide additional information about the status of the membership and make a recommendation about staggered terms, etc. that will benefit the team’s functionality in the future.

The Board of Commissioners has the authority to appoint up to 10 discretionary members beyond the statutory described membership. Staff put forth 8 members for the Board’s consideration for appointment.

In response to a question from Commissioner Hawkins, it was noted that Mr. Blevins and Mr. Smith both report back to their respective Boards and they also submit reports to State Child Protection and Child Fatality Prevention Teams. Combining the two local Teams does not change the reporting requirements to the State Teams.

Chairman Chappell moved to approve a blended Transylvania County Community Child Protection and Child Fatality Prevention Team and appoint 7 new members (Heather Quinn, Kathie Williams, Rebecca Carter, Mae Clayton, Linda Schieve, Tessie Townsend, and Alice Wellborn) and reappoint 1 member (Kevin Creasman) under the general membership category. The motion was seconded by Commissioner Hogsed and unanimously approved.

REQUEST TO INCREASE NEW WELL PERMIT AND PLAN REVIEW FEES

At their April 13, 2010 meeting, the Board of Health reviewed the costs associated with inspecting new wells and plan reviews and recommends increasing the fees to cover the cost of the services being provided. Onsite inspections for well permits generally require a minimum of four visits. The average cost of providing this service ranges from \$420 to \$480 which includes the cost of the laboratory kit, employee salary, and vehicle use. The current fee is \$300. Plan reviews are similar in nature but North Carolina caps the fee at \$250. The current fee is \$200. The Board of Health endorses the concept that the cost of the service should primarily be supported by the direct beneficiary in order to avoid supplementation by the general taxpayer.

Health Director Steve Smith noted that the Board of Health via their fiscal policy has an obligation to review their fees on a regular basis and they consider the cost of the service as the primary issue thus the recommendation to the Board of Commissioners.

Commissioner Phillips, who serves on the Board of Health, said the actual cost of providing the service exceeds the fees charged for the service. He said the Board of Health had a robust discussion about the fee increase and were very conscientious about increasing fees in the current economy. Commissioner Phillips believes the increase is justified and noted that the vote by the Board of Health was unanimous.

Commissioner Hogsed asked if staff had explored ways to make the process more efficient and reduce the actual cost of the service. Mr. Smith replied that staff explored other alternatives but found no other way to reduce costs. He said State rules have requirements that must be met.

Chairman Chappell expressed concern about increasing the fees at this time. Commissioner Phillips noted that all taxpayers will be impacted if the homeowner or user of the program does not cover the cost of the service.

Commissioner Hawkins pointed out that the County is facing another budget shortfall next year and Commissioners will be looking for ways to be more efficient. He believes the Health Department is being efficient in this situation. While he does not want to negatively impact the economy, he believes the fee increase is a relatively small percentage of the total cost of building a well.

Commissioner Phillips also noted that if the program is not funded by the user, other services in the Health Department could be negatively impacted. Commissioner Bullock agreed saying that sometimes government should be run like a business.

Commissioner Hawkins moved to approve the proposed increase for new well permit fees to \$470 and plan review fees to \$250 effective July 1, 2010. The motion was seconded by Commissioner Phillips. The motion passed 3 to 2, with Chairman Chappell and Commissioner Hogsed voting against.

BUDGET TRANSFERS AND AMENDMENTS FOR THIRD QUARTER FY 2010

Finance Director Gay Poor presented the budget transfers and amendments for the third quarter of FY 2010 and highlighted the following:

During the third quarter of FY 2009-2010 the General Fund budget grew by \$195,139, bringing the total amended budget to \$40,829,172. The majority of this increase (\$102,000) is attributable to a transfer from the Accrued Vacation Reserve for vacations cashed out in lieu of leave taken or paid out to terminated employees. In addition, the County received \$51,000 more in federal and State grants and funding. Most significant was \$37,000 in the Special Projects funds for the Health Department to help cover an increase in the caseload among various programs. Proceeds from insurance claims accounted for another \$39,000, \$25,000 of which was related to damage to the Library roof from the December snowstorm.

Commissioner Hogsed moved to approve the Third Quarter Budget Transfers and Amendments, seconded by Commissioner Bullock and unanimously approved.

PROCLAMATION 15-10 NATIONAL DAY OF PRAYER

In 1988 both Houses of Congress adopted legislation declaring the first Thursday in May of each year as National Day of Prayer. Commissioners wish to designate May 6, 2010 as "A Day of Prayer in Transylvania County". They adopted a similar proclamation in 2009. Chairman Chappell noted that at 12 noon on May 6, 2010 there will be a program at the Courthouse gazebo

and the public is invited. Also at 7:00 p.m. on the same day, there will be a presentation at the Library amphitheater.

Commissioner Hogsed moved to approve Proclamation 15-10 National Day of Prayer, seconded by Commissioner Phillips and unanimously approved.

Commissioner Hogsed requested that all Commissioners sign the Proclamation as a show of solidarity to the community.

(Proclamation 15-10 National Day of Prayer is hereby incorporated by reference and made a part of these minutes.)

REVISIT BUILDING PERMITTING PLAN REVIEWS

Commissioner Phillips requested that this topic be brought back up for discussion. He believes this item was passed hastily. He said he has heard from several contractors who have voiced concerns about the new policy and therefore requested to delay the implementation of the new policy until more input is received from homebuilders and citizens.

The Manager suggested that Commissioners direct their questions and concerns to him. He will then ask Building Director Jeff Fisher to address their concerns.

Commissioner Bullock disagreed with delaying the new policy because he feels it will help catch mistakes in the office rather than in the field; however he is open to reviewing the policy if that is the Board's desire.

Chairman Chappell noted that the action taken by the Board was to implement the new policy effective May 1, 2010 and review its progress in six months. He said he also received some comments from the public who have concerns about the new policy so he believes it is appropriate to review the policy again.

Commissioner Hogsed moved to delay the implementation of the building plan review inspection process indefinitely until further review. The motion was seconded by Commissioner Phillips. The Manager asked that any concerns from Commissioners or builders be forwarded to him. Commissioner Hawkins referred to the minutes of the March 22, 2010 when the policy was passed and cited the benefits for implementing the policy. The minutes also stated that Mr. Fisher reported that he met with the Homebuilders Association and they were supportive of the change. Commissioner Hawkins asked why there are homebuilders coming forth now with concerns. It was noted there are many homebuilders in the County that do not belong to the Association. After further comments, **the motion was unanimously approved.**

MANAGER'S REPORT

The Manager reported the following:

- The False Alarm Ordinance is being reviewed by the Chief's Association; staff is waiting for a response from them
- The School of Government is reviewing a new County Animal Control Ordinance
- On May 6, 2010 from 7:00 a.m. to 9:00 a.m. Fox News Carolina will be broadcasting live from the Courthouse gazebo which will be good exposure for Transylvania County; they are taking preliminary photos of different areas of the County today
- Staff continues to work on the budget
- Staff plans to present the budget on May 24, 2010

- Staff is planning the dates for the budget workshops and has reserved the Rogow Room at the Library for the following dates: May 26-28, June 1-4, and if necessary, the following week; workshops will begin on May 26, 2010
- The City of Brevard is holding a public hearing on the ETJ on Monday, May 3, 2010
- The Clerk is working on a resolution for the NC General Assembly to commemorate the County's 150th Anniversary in 2011; the resolution will be presented to the Board for their review in the near future

PUBLIC COMMENT

Larry Chapman: Mr. Chapman said that Veterans Services Officer Frank Pearsall is the most valuable asset in the County for veterans and he goes above and beyond the call of duty. He asked Commissioners to recognize him in some way.

Sheila Cozart: Ms. Cozart reminded Commissioners of the employee awards recognition ceremony on Friday morning from 8:30 a.m. to 10:00 a.m. and invited them to attend. She also noted Commissioners should have received an email regarding supplemental vision care insurance. She will be bringing back a recommendation to the Board in the near future.

Judy Mathews: Ms. Mathews reported that the turnout for One Stop Voting has been extremely low. This is the last week of early voting. One Stop Voting is being held at the old Library from 8:30 a.m. to 5:00 p.m. Monday through Friday of this week and on Saturday from 8:30 a.m. to 1:00 p.m. Ms. Mathews also reported there may be a second primary.

COMMISSIONERS' COMMENTS

There were no comments from Commissioners.

Chairman Chappell moved to enter into closed session per NCGS 143-318.11 (a) (3) to consult with an attorney reference Transylvania County versus Michael and Charlotte Baxley, after a five minute recess. The motion was seconded by Commissioner Hogsed and unanimously carried.

CLOSED SESSION

Pursuant to NCGS 143-318.11 (a) (3) to consult with an attorney reference Transylvania County versus Michael and Charlotte Baxley, closed session was entered into at 9:20 p.m. Present were Chairman Chappell, Commissioners Bullock, Hawkins, Hogsed and Phillips, County Manager Artie Wilson, County Attorney David Neumann, Attorney Sean Perrin, and Clerk to the Board Trisha Hogan.

Attorney Sean Perrin updated the Board on the status of the lawsuit with Michael and Charlotte Baxley.

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 opening 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, **Chairman Chappell moved to adjourn, seconded by Commissioner Hogsed and unanimously carried.**

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha M. Hogan
Clerk to the Board