

**MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
July 14, 2014 – REGULAR MEETING**

The Board of Commissioners of Transylvania County met in regular session on Monday, July 14, 2014 at 7:00 p.m. in the large courtroom of the Transylvania County Courthouse.

Commissioners present were Vice-Chairman Larry Chapman, Jason Chappell, Chairman Mike Hawkins, Daryle Hogsed, and Page Lemel. Also present were County Manager Artie Wilson and Clerk to the Board Trisha Hogan.

Media: *The Transylvania Times* – Jeremiah Reed

There were approximately 150 people in the audience.

CALL TO ORDER

Chairman Mike Hawkins presiding called the meeting to order at 7:06 p.m.

WELCOME

Chairman Hawkins welcomed everyone to the meeting and thanked the members of the audience for participating in their County government. He introduced the members of the Board of Commissioners and staff.

PUBLIC HEARING

HIGH IMPACT INDUSTRIES ORDINANCE

Over the last few years several businesses and/or industries which were considered “high impact” have opened or attempted to open in Transylvania County and were received with much opposition. Most notably were the motor cross racetrack and biofuels facility. On July 22, 2013 the Board of Commissioners enacted a moratorium entitled "Bio-Mass Electricity Generating Facility Using a Pyrolysis Process and a Materials Recovery Facility and any Facility Using Municipal Solid Waste as a Feedstock". The moratorium was enacted in order to address citizens’ concerns about a proposed biomass facility and its impact on public safety. During the period of the moratorium the County was charged to prepare draft regulations deemed appropriate to address the potential impacts of such facilities on the community and undertake appropriate procedures to review and discuss potential regulations with the developer, along with input from citizens. The Planning Board worked on a draft High Impact Industries Ordinance for many months and recently approved a draft ordinance which was submitted to the Board of Commissioners for a public hearing and consideration. The moratorium expires July 31, 2014.

Planning Board Chairman Wayne Hennie showed a PowerPoint presentation highlighting the major areas of the proposed draft ordinance. This is a summary of the presentation:

Planning Board Research and Process

- Reviewed Draft High Impact Land Use Ordinance received from County Commissioners
- Researched and compared existing High Impact Land Use Ordinances in North Carolina
 - High impact industries
 - Definitions
 - Separation distances and setbacks

- Protected facilities
- Positive/negative economic impacts
- Listened to and incorporated comments from citizens, business owners, and elected officials
 - Keep it simple and short
 - Ensure that the proposed ordinance accommodates existing businesses, prospective businesses and property owners
- Considered a performance based ordinance with no setbacks or separation requirements, but required businesses to mitigate nuisances on the site (i.e., traffic, noise, air pollution, light and dust)
- Decided on an ordinance that focuses on separation distances, a public hearing process and a performance based variance request
- Held three regular and two special meetings
- Submitted a draft to County Attorney and UNC School of Government for legal review

Other Counties with High Impact Land Use Ordinances

- Alamance
- Alleghany
- Ashe
- Avery
- Jackson
- Macon
- Rockingham
- Watauga
- Wilkes

Purpose of the High Impact Industries Ordinance (Section 2)

- Protect health, safety, and general welfare of the citizens
- Protect rural nature and character
- Protect property owners
- Protect existing business owners from the impacts of the high impact industries
- Provide new high impact industries with a defined process

Highlights

- Defines High Impact Industries (Section 6)
 - A business that contains operating machinery that will exceed, by the nature of its structure, the provisions of the Transylvania County Noise Ordinance; operations that release excessive odors, vibrations, fumes, light, smoke, or dust onto or near adjacent properties; operations that produce vehicular traffic incompatible with existing infrastructure (capacity, volume, and/or weight); or businesses whose placement and/or location results in an unacceptable risk to County residents, the public, or employees.
- Includes High Impact Industry examples, but are not limited to:
 - Airports, asphalt plants, bulk flammable storage facilities, chip mills, commercial incinerators, concrete plants, electricity generating facilities, helicopter sightseeing operations, junkyards, medical waste facilities, mining and extraction operations, motor sports facilities, sawmills, slaughtering and processing plants, waste management facilities
- Exempts Bona fide Agricultural or Forestry Operations (Section 9)
- Identifies preferred locations (Section 10)
 - Adjacent to existing high impact industries
 - Adjacent to existing commercial or industrial businesses

- Brownfield or redevelopment sites
- Greenfield sites
- Includes Administrative Requirements (Section 11)
 - Permit required
 - Public notice and certified letter to abutting property owners
 - Public hearing
 - Retain, at applicants expense, consultant to help evaluate application if applicable
- Contains Application Requirements (Section 12)
 - Site plan information
 - Applicable Federal and State permits
 - Standards being met (i.e., setbacks, buffers, traffic counts, etc.)
 - Mitigation plans, if applicable, for items such as noise, light, dust and traffic
- Includes Permitting Standards (Section 13)
 - Major focus is on separating high impact industries from protected facilities (educational facility, child care, nursing care or medical care) and dwelling units
 - Other standards (i.e., buffers, traffic counts, screening)
- Protects Existing Businesses or Nonconforming High Impact Industries (Section 14)
 - May expand without obtaining a permit as long as operations do not change and applicant owns/leases property as of ordinance adoption date
 - Allows nonconforming to be rebuilt to previous square footage
- Allows for Variances and Appeals (Section 15)
 - Allows for variances with performance based mitigations

Recommendation

- At the June 26, 2014 Special Meeting, the Planning Board voted to recommend the draft High Impact Industries Ordinance by a 4-2 decision.

Before Chairman Hawkins opened the public hearing, Commissioners were allowed an opportunity to comment.

Commissioner Chapman emphasized that this ordinance does not prohibit businesses from coming into Transylvania County. Only those businesses considered high impact must go through the permitting process.

Commissioner Lemel inquired about how the ordinance would affect existing businesses. Mr. Hennie stated that according to the ordinance, existing businesses would be able to continue operating as they do now as long as they do not change their method of operation. They can also expand their business.

Commissioner Lemel asked for confirmation that businesses may apply for a variance if the ordinance places undue hardship on their business. Mr. Hennie confirmed and stated that the variance request would go before the Planning Board who serves as the enforcement officer.

Chairman Hawkins declared the public hearing open at 7:19 p.m.

Lori Swank: Ms. Swank wanted to know if the County had actually done its research on the biomass facility as charged by the moratorium. She believes the ordinance as written is vague, ambiguous, and leaves too much open to interpretation. Ms. Swank does not believe this ordinance is good for the County. All citizens want to protect this beautiful County but not at the expense of their livelihood. Besides, she said high impact industries are not rushing to locate in Transylvania County. She considers this ordinance a form of zoning and she asked Commissioners not to pass the ordinance, and rather deal with issues as they arise.

Gerry Hunsicker: Mr. Hunsicker spoke up for private property rights, saying that anything that destroys private property rights essentially destroys private property itself. He noted there are many businesses that did not locate here because of the restrictiveness of the City's Unified Development Ordinance. The County passing an ordinance of this nature adds to the problem. Mr. Hunsicker stated that other counties are experiencing successful growth of business and industry in their area and he wondered what Transylvania County is doing wrong. He asked Commissioners to stop denying growth and not consider this ordinance any longer.

Karla Marr: Ms. Marr stated that the need to protect residents from high impact industries has been evident for many years. In the late 1970's an asphalt plant was built in the Penrose community and residents there, including herself, had to live for many years with the dust, noise and odor. It has taken a constant vigilance on the part of the citizens to ensure conditions did not worsen. The effects of the asphalt caused adverse conditions in neighboring properties. Ms. Marr said the high impact land use ordinance is not perfect, but it is a start, and she asked Commissioners to approve the ordinance.

Dick Thompson: Mr. Thompson spoke in opposition to the ordinance. He believes the ordinance is bad for the County in many ways. First of all, communities need industries that provide propane, gravel, etc. Also, the ordinance will prohibit businesses from expanding which will deter businesses from wanting to locate here. Mr. Thompson believes the ordinance will handicap Commissioners' economic development efforts. He asked Commissioners not to pass the ordinance and instead allow the new economic development organization to become organized and staffed and for that organization to come back to the Board if they feel this is needed for Transylvania County.

Charles Blunt: Mr. Blunt is a former business consultant. He said if he were a business consultant today, he would not recommend businesses come to Transylvania County. The ordinance is confusing and no business would ever be able to comply.

Larry Wilson: Mr. Wilson said the topic of tonight's discussion should be "ask the neighbors". He reported that in 1999 when he was searching for a location to move his business and had inquired about a particular piece of property in Pisgah Forest, he talked with the neighbors first who then openly welcomed him to establish his business there. Mr. Wilson said the leaders of this County need to show this is a business friendly community or no one will want to locate here. He also noted that this ordinance would not have been considered were it not for the biomass facility, and the problem could have been resolved very easily if the neighbors had been asked first. He asked Commissioners to carefully consider this ordinance before making a decision because it could be the final blow to this County.

Kelvin Phillips: Mr. Phillips spoke in opposition to the ordinance. He reminded Commissioners that the County is already very restrictive in terms of land use since over 50% of the land mass is made up of State and federal forestland. He also reminded Commissioners that this County began with such businesses like tanneries and lumber companies, and later the Ecusta Paper Mill. He said if this ordinance would have been in place during those years, these businesses would have never been able to operate here. Transylvania County would look very different today if those businesses would not have had success. Mr. Phillips said he resented the Planning Board for studying examples of other counties because Transylvania County is unique and leaders should care about what is best for this County, not mirror other counties. He urged the Board not to pass the ordinance.

Susan Sunflower: Ms. Sunflower thanked the Planning Board for their hard work and particularly for noting the importance of native plants. She recommended several changes to the ordinance. One dealt with changing language from "suggests" the use of native plants to "recommends" because it is a stronger word. Also, stream bank setbacks should include appropriate riparian buffer plantings, especially natives. Under the section about lighting, Ms. Sunflower wanted Commissioners to add to more lighting

restrictions to protect the night environment for star watching and migrating birds. She reminded everyone that they all part of the environment and that Transylvania County's natural heritage needs to be protected for future generations.

Ned Doyle: Mr. Doyle noted it has been one year since the biomass business proposal. He thanked Commissioners for listening to citizens by enacting a moratorium with the goal of developing a polluting industry ordinance. He believes there needs to be an extension of the moratorium so there could be more work done to perfect this ordinance. Furthermore, there was no time allowed for review of the ordinance by many groups who have a vested interest in the community.

Diane Keane: Ms. Keane said while there are opposing views about this ordinance, there is common ground. For instance, everybody agrees that economic development and job growth are important to the County. Most places in the country have ordinances or zoning laws in place and even in the most desirous communities these regulations have not deterred new business. Ms. Keane believes businesses would much rather know there are rules established for them to follow and she believes this draft ordinance does just that. Another common ground is the opposition to the biomass plant which was far reaching across the County, not just from those in the particular community. Commissioners did not have the tools at their disposal to deal with the biomass situation so enacting the moratorium was all they could do. However, if regulations had been in place, the time and energy spent on this matter, as well as the moratorium, could have been avoided. She asked Commissioners to approve the ordinance. Finally, she stated that she understands personal property rights advocates, but personal property rights should not supersede the good of the community.

Coty Ferguson: Mr. Ferguson is the County's appointee to the City Planning Board. He referred to sections of the ordinance and pointed out that it is ineffective because it is subjective. He specifically referred to Sections 15.1 and 15.2 with regards to variances and appeals. He believes the language "unnecessary hardship" will end up causing more problems than Commissioners are prepared to deal with.

Donald Pacine: Mr. Pacine recommended to Commissioners approval of the ordinance. He agreed with the previous speaker that the language in the ordinance dealing with appeals and variances is ambiguous and should be removed. However, the ordinance provides expectations to those who want to move here and do business.

Kathleen Barnes: Ms. Barnes stated that businesses want to know what the expectations and rules are when locating to a community. If Commissioners do not enact this ordinance, they should expect more and more requests for moratoriums as these situations with high polluting industries occur. This ordinance is not perfect but it is a good start and it can be amended as needed in the future.

Ken Norman: Mr. Norman said he has been in business here for 41 years. He wondered what this County would have been like if an ordinance such as this was in place decades ago. He wondered how the manufacturing and industrial plants would have survived. He reminded everyone how the services of asphalt plants are needed, noting that he remembered when many of the roads in the County were still dirt roads. Mr. Norman also reminded Commissioners that four years ago citizens came to Commissioners to stop zoning in their community and he said this ordinance is just another form of zoning. Mr. Norman believes a majority of the people in this County does not favor this ordinance and he asked Commissioners, as representatives of the people, to handle issues as they arise because there is no need to put additional laws and regulations in place. He urged Commissioners to focus on bringing jobs here so that future generations will stay and make Transylvania County their home.

Carl Munn: Mr. Munn spoke in support of the ordinance because he believes it is vital for the future of this County. The ordinance should not be seen as being restrictive, but rather as being protective. He pointed out that EPA statistics indicate that citizens are responsible for cleanup after polluting industries leave their community. He cited the figures for the number of sites that need to be cleaned up around the country, including North Carolina. Mr. Munn said this is serious business and he urged Commissioners to be proactive, not reactive.

Joey Galloway: Mr. Galloway commented that each time he attends a County Commission meeting it always involves defending his private property rights and that is no different tonight. He wondered what the goal of this ordinance was and feared that the outcome will be a bunch of well-educated unemployed young people. Mr. Galloway urged Commissioners to vote against the ordinance and give it no further consideration.

Randy Crane: Mr. Crane said passage of this ordinance will indicate that the County is not business friendly and does not want its young people to live and thrive here. He also strongly supported people's rights to do with their property as they fit. Mr. Crane said the children are the future of this County and the leadership should be figuring out ways to keep them here by bringing in jobs to the County for them and future generations.

Unknown (Clerk could not hear speaker's name): The gentleman pointed out there are resources available and Commissioners should travel around the community to learn what citizens want.

Daniel Nicholson: Mr. Nicholson said, like himself, there are many other residents and citizens who have served and sacrificed for the freedoms we enjoy. This ordinance restricts freedom for residents of this County and those who want to move here. He asked Commissioners to make the choice to protect freedom for everyone.

Mack McNeely: Mr. McNeely owns a business in Transylvania County; however he said he has been working in other counties because business is so slow here. He noted that the moratorium and this ordinance did not stop the biomass facility because these types of facilities are heavily regulated by the federal government. Therefore he thinks the proposed ordinance affects all other businesses except the biomass facility. Because of the potential passage of this ordinance, his family has spent a lot of money preparing for how it will affect his business, a business that is already heavily regulated. Mr. McNeely asked Commissioners to consider the future of this County which should not be diminished because some people may not want to see a porch light on at night.

Matt Crane: Mr. Crane believes the County spends money on things that do not matter. He believes Commissioners should be focused on water.

Bill McNeely: Mr. McNeely said he understands high impact industries because he has owned one in the County for decades. Because of this he also understands how to forge relationships with his neighbors. Mr. McNeely said getting along with the government has been the most difficult experience. He believes the ordinance is bad for Transylvania County and does nothing but erodes freedom. Mr. McNeely said Commissioners should be focused on jobs so people will stop moving out of the County. He also believed in protecting the environment but not at the expense of losing jobs and citizens to other counties.

Roger Eades: Mr. Eades expressed concern about the continued erosion of private property rights. He said there are legal options available to citizens to seek recourse from the effects of their neighbors. People should not look to their local government to solve their problems for them. Mr. Eades is concerned about this ordinance because already there are not many businesses trying to locate to

Transylvania County. He reminded Commissioners that most large businesses start off as a small business and the County should be doing what is necessary to recruit them to Transylvania County.

Daniel McNeely: Mr. McNeely works for his family mining business here in Transylvania County. This type of business has a very lengthy permitting process. He said his family has already spent nearly \$40,000 in preparation for the passage of this ordinance. He believes the ordinance is unclear and inconsistent in places and should not be passed by the Board.

Eric Owen: Mr. Owen said he is unclear if this ordinance is the solution, but as written it is obscure and open to interpretation. The ordinance seems to be a way to control business and private property rights. He asked Commissioners to reject the proposed ordinance.

Randy Barton: Mr. Barton has been the Pastor of Anchor Baptist Church for 30 years and operates a school out of the old Penrose Elementary School. Mr. Barton reported on how the Clean Water Act of 1994 has impacted the operation of the school through annual fees on well monitoring. He believes there are already too many regulations in place by the State and federal government and people are tired of it. Continued regulations are already costing this County businesses and jobs and he urged Commissioners not to pass the ordinance.

There were no further comments. **Chairman Hawkins declared the public hearing closed at 8:23 p.m.**

The Board asked questions of the Planning Board and staff. This is a summary of the discussion:

1. The Planning Board indicated they solicited comments from citizens, business owners and elected officials and incorporated their concerns into the ordinance. Describe specific examples.

Mr. Hennie responded that approximately 10-12 citizens attended the Planning Board meetings on a regular basis during this process. Representatives from McNeely Industries attended as well. He did not recall specific interviews with public officials; however, he had personal conversations with individual Commissioners, as well as dialoged with Commissioners during County Commission meetings.

2. What was the process the Planning Board followed for giving consideration to a performance-based ordinance? Some Commissioners preferred this type of ordinance and wondered if it was given serious consideration.

Mr. Hennie reported that the Planning Board discussed a performance-based ordinance as a condition of receiving a permit and in lieu of setbacks. This would allow an industry to control their externalities.

3. What were the findings, both positive and negative, from counties that did not have a high impact land use ordinance?

Mr. Hennie stated this was not part of the Planning Board's research; however, there appears to be no correlation between a community having a high impact land use ordinance in place and its unemployment rate. He added there was no opportunity to develop an ordinance unique to Transylvania County and much of draft ordinance was copied from ordinances in other communities. Planning Board member Mark Tooley noted that the Planning Board created most of the ordinance but did use examples from other counties and some of the procedures were carried over from the Telecommunications Tower Ordinance for the purpose of consistency.

4. How much time did the Planning Board commit to this process?

Mr. Hennie reported that the Planning Board gathered for a couple of hours at each meeting.

5. Does the proposed ordinance meet the requirements set forth in the biomass moratorium?

Mr. Hennie does not believe the proposed ordinance addresses what Commissioners charged the Planning Board to do, nor does it meet the requirements outlined in the moratorium. The charge from the moratorium was to determine if a biomass facility would impact the health and wellbeing of the community. He reported that the Planning Board did not discuss this and he assumed the work had been completed by staff.

Planning Board member Maureen Copelof expressed support for the ordinance. She reported that the Planning Board members did a lot of research and put a lot of thought into this process. The Planning Board also received input from the public during its meetings. They also researched other counties and tried to adapt their ordinances to Transylvania County. Ms. Copelof feels that the Planning Board met the requirements of the moratorium. She believes this is a balanced and compromised ordinance and that it should be enacted.

Planning Board member Jackie Whitmire agreed with Ms. Copelof and stated she believes the Planning Board did what Commissioners asked them to do. She said for Commissioners to do nothing is to go backwards.

6. Did staff complete the research on how a biomass facility may impact the health and safety of the public? Was this information presented to the Planning Board?

Planning and Economic Development Director Mark Burrows reported that staff presented the Planning Board with an ordinance that was given to them by the County Commissioners, along with the moratorium. In their work, staff communicated with Commissioners, Planning Board members and a number of business people. The response from a majority of those was that if such an ordinance was needed, it should be short, simple and enforceable. He believes the ordinance adopted by the Planning Board is that. The ordinance is also business friendly and exempts existing businesses, unless there is a change in use. In addition, there is a variance process which looks at ways to mitigate negative externalities on neighbors. Mr. Burrows reported that staff met with the owners of the biomass development and learned they did not plan to pursue the project any further; therefore, staff did no more research on its impact to the County which he felt met the requirement in Section 1 of the moratorium.

The Manager noted that the County Attorney sent letters to the biomass developers asking if they intended to continue with the project. The County never received a response. Staff also mailed the developers a copy of the proposed ordinance and again there was no response. Mr. Burrows added that the County has gathered lot of information about the pyrolysis process. This was done by staff as requested by the County Commissioners and was part of the deliberation of how the County got to this point (i.e. moratorium, proposed ordinance).

7. What if there are existing businesses that are nonconforming? Are they required to go through the permitting process?

Ms. Copelof confirmed that existing businesses are exempt and do not have to go through the permitting process, unless they change the nature of the business.

8. Does the same apply if a business were to purchase additional property for expansion purposes?

Ms. Copelof responded no. This would require the business owner to go through the permitting process.

Commissioners Comments:

Commissioner Chapman stated he does not support the ordinance as currently written. He understands the moratorium will expire soon but the proposed ordinance is vague and left open to interpretation. Even though the potential biomass facility was a serious issue, this is also a personal property rights matter. As mentioned, there is a civil process in which a citizen can pursue to stop one's neighbor from impacting their personal property. There are also strict governmental agencies that regulate and monitor high polluting industries. Commissioner Chapman preferred that Commissioners waste no more time on this matter. He would like for the economic development organization to get up and running and come back to Commissioners if they feel such an ordinance is needed.

Commissioner Lemel inquired about how much the lawsuit over the motor cross track cost the County. The Manager stated that the cost was considerable and in the \$50,000 range.

Commissioner Lemel expressed concern because high impact industries have the potential of impacting others than just the immediate contiguous neighbor and that the burden of the litigation and defense will fall on citizens collectively as a community. Essentially the County will be using taxpayer dollars to fight these lawsuits.

PUBLIC COMMENT

Gerry Hunsicker: Mr. Hunsicker said the money the County spent on new government buildings and additional government jobs should have been spent to spur job growth. He is concerned about locals and natives because Commissioners only seem to focus on wealthy retirees and government employees. Mr. Hunsicker said Commissioners should put their effort into other areas and strive to change conditions in the County, noting there is no balance of industry in the County to share in the tax burden.

AGENDA MODIFICATIONS

There were no agenda modifications from staff. Commissioner Chapman requested to add to the agenda under Old Business the proposed High Impact Industries Ordinance for a decision by Commissioners.

Commissioner Chapman moved to approve the revised agenda, seconded by Commissioner Hogsed and unanimously approved.

CONSENT AGENDA

Commissioner Hogsed moved to approve the Consent Agenda as submitted, seconded by Commissioner Lemel and unanimously approved.

The following items were approved:

MINUTES

The minutes of the April 14, 2014 regular meeting were approved.

DISCOVERY AND RELEASE REPORT

The Discovery and Release Report for June 24-30, 2014 was approved. Total tax dollars released was \$65.39. Refunds totaled \$115.36.

RESCHEDULE FIRST COUNTY COMMISSION MEETING IN AUGUST

All Commissioners will not be able to attend the August 11, 2014 regular meeting of the Board. There are some important issues and decisions facing the County and all Commissioners need to have input. Commissioners rescheduled the August 11, 2014 County Commission meeting to August 4, 2014 and instructed the Clerk to the Board to properly advertise.

PRESENTATIONS/RECOGNITIONS

RECOGNITION OF YOUTH DELEGATE TO THE NCACC ANNUAL CONFERENCE

Cady Suddeth will serve as the Youth Delegate to the 2014 Youth Summit at the NCACC Annual Conference in Asheville August 15-16. She is a rising sophomore at Rosman High School where she was an outstanding member of this year's Youth Speak. Cady intends to meet with the County Manager and Commissioner Chapman to learn more about county government and then she will submit a report on what she has learned before attending the NCACC Annual Conference. Commissioners recognized Cady Suddeth and congratulated her on her hard work and eagerness and willingness to learn more about county government and for being a leader for youth today.

APPOINTMENTS

BLUE RIDGE COMMUNITY COLLEGE BOARD OF TRUSTEES

Dr. Scott Elliott resigned from the Blue Ridge Community College Board of Trustees effective June 30, 2014. He has accepted the position of Superintendent of Watauga County Schools. There are three applications on file. If the appointment is not made by the Board of Commissioners within a certain timeframe, the appointment will be filled by the Governor. Staff recommended Commissioners appoint one of the three applicants to replace Dr. Scott Elliott on the Blue Ridge Community College Board of Trustees, with the term expiring June 2015.

Commissioner Lemel moved to nominate and appoint Jeremy Gibbs to replace Dr. Scott Elliott on the Blue Ridge Community College Board of Trustees, with the term expiring June 2015. The motion was seconded by Commissioner Hogsed and unanimously approved.

JUVENILE CRIME PREVENTION COUNCIL

The following terms expired at the end of June:

1. Kelley Eyster - Commissioner Appointee
2. Sammy Kicklighter - Member of Business
3. James "Tripp" Griffin - District Attorney/Designee
4. Steve Woodson - Chief of Police/Designee
5. Haley LeAnn Putman - Student
6. Candace Katilyn Petit - Student
7. Matt Walsh - Commissioner Appointee
8. Mandi Bentley - Parks and Recreation Representative
9. Steve Smith - Health Director/Designee
10. Jerry Stone - Commissioner Appointee
11. Scott Elliott - Transylvania County Schools

Staff recommended the following:

1. Reappoint Kelley Eyster - Commissioner Appointee
2. Reappoint Matt Walsh - Commissioner Appointee
3. Reappoint Mandi Bentley - Parks and Recreation Representative
4. Reappoint Jerry Stone - Commissioner Appointee

5. Appoint Jake Dalton to replace Sammy Kicklighter as the Member of Business (Mr. Kicklighter did not wish to be reappointed)
6. Appoint William Sullivan to replace James "Tripp" Griffin as the District Attorney/Designee (Mr. Griffin relocated to Charlotte)
7. Appoint Brian Weaver to replace Dr. Scott Elliott as the representative from Transylvania County Schools (Dr. Elliott resigned effective June 30, 2014 because he has accepted the position of Superintendent of Watauga County Schools.)

The Clerk will work with the JCPC Facilitator to fill the following vacant positions (there are no other applications on file):

1. Chief of Police/Designee
2. Student (will be filled when school starts back)
3. Student (will be filled when school starts back)
4. Health Director/Designee (Steve Smith is no longer Health Director or employed by the County)

Commissioner Hogsed moved to reappoint Kelley Eyster, Matt Walsh, Mandi Bentley, and Jerry Stone and to appoint Jake Dalton to replace Sammy Kicklighter, William Sullivan to replace James "Tripp" Griffin, and Brian Weaver to replace Scott Elliott. The motion was seconded by Commissioner Chapman and unanimously approved.

PARKS AND RECREATION COMMISSION

Earlier this year, Commissioners combined the Parks Commission and Recreation Advisory Board to form the Parks and Recreation Commission. Those members whose terms had not expired and still wanted to serve became members of the new Commission. This resulted in three vacancies. The Clerk advertised for the vacancies and received some applications. There were also some applications remaining on file from when the previous two committees were still intact. Staff recommended appointing three of the applicants to fill the vacancies on the Parks and Recreation Commission.

Commissioner Lemel nominated and moved to appoint Nicola Karesh, Danielle Major and Gordon Murray. She noted that two of the other applicants did not reside in Transylvania County and should not be considered. **The motion was seconded by Commissioner Hogsed and unanimously approved.**

DESIGNATION OF VOTING DELEGATE TO THE NCACC ANNUAL CONFERENCE

The NC Association of County Commissioners will hold its Annual Conference in Buncombe County August 14-17, 2014. Each County is asked to designate a Voting Delegate to the Annual Conference. Commissioner Chapman plans to attend the Annual Conference. He serves on the NCACC Board of Directors.

Commissioner Lemel moved to appoint Commissioner Larry Chapman as Transylvania County's delegate to the NCACC Annual Conference, seconded by Commissioner Chappell and unanimously approved.

ECONOMIC DEVELOPMENT ORGANIZATION BOARD OF DIRECTORS

On April 14, 2014 the Board of Commissioners approved the formation of an 11-member Board of Directors for the new economic development organization. Almost all of the appointments have been made. The Board of Commissioners needs to make its appointment. Here are the current appointments (note: the at-large members were selected by the Independent Economic Development Task Force as directed by the Board of Commissioners).

1. At-large business owner - Roger Frisbee

2. At-large business owner - Parker Platt
3. At-large business leader - Linda Coye
4. At-large business leader - Mark Tooley
5. Agri-business (Farm Bureau) - Andy VonCanon
6. Tourism Development Authority - Dee Dee Perkins
7. Chamber of Commerce - Libby Freeman
8. Heart of Brevard - Jeremy Owen
9. Town of Rosman - Jake Dalton
10. City of Brevard - David Watkins
11. Transylvania County - TBA

Commissioner Hogsed nominated and moved to appoint Ruth Harris as Transylvania County's representative to the Board of Directors of the economic development organization. The motion was seconded by Commissioner Chapman. Commissioner Chapman noted that Ms. Harris served on the Independent Economic Development Task Force. She is heavily involved in the community and she has a background in industry. Chairman Hawkins said Ms. Harris will be a terrific addition to the EDO; however, he asked another citizen to consider serving on the EDO and for that reason he will not support the motion. **The motion passed by a vote of 4 to 1, with Chairman Hawkins voting against.**

SMOKY MOUNTAIN LME/MCO COUNTY COMMISSIONER ADVISORY COUNCIL

The Smoky Mountain LME/MCO is working to establish a County Commissioner Advisory Council representing each county in the 23-county catchment area. This County Commissioner Advisory Council was established in NCGS 122-C when changes were made to the Board structure of the LMEs/MCOs. A draft proposal for the structure of the County Commissioner Advisory Council is included in the agenda packets and will be reviewed and adopted at a kickoff meeting on Saturday, August 16. The meeting will be held from 12:00 noon - 2:30 p.m. at the Renaissance Hotel in Asheville, as part of the NCACC Annual Conference.

Commissioner Chapman moved to appoint Commissioner Hogsed to the Smoky Mountain LME/MCO County Commissioner Advisory Council. Commissioner Hogsed will serve in this role until his County Commission term ends. **The motion was seconded by Commissioner Chappell and unanimously approved.**

OLD BUSINESS

HIGH IMPACT INDUSTRIES ORDINANCE

Commissioner Chapman moved that Commissioners not approve the current High Impact Industries Ordinance for Transylvania County as presented. The motion was seconded by Commissioner Hogsed.

Commissioner Chapman stated that some regulation is important, but overall society is overregulated. Citizens have legal recourse against those impacting their personal property. Commissioner Chapman wanted to emphasize that Transylvania County is open for business and there are few County ordinances that impact citizens and businesses. He preferred to wait until the economic development organization is established to determine if such an ordinance is needed for Transylvania County.

Commissioner Lemel concurred with Commissioner Chapman's comments about overregulation. She shared Pastor Barton's experience with the Clean Water Act and said she too has thousands of dollars invested in a water and sewer system and annual testing fees for her business, which is located within the City of Brevard's extraterritorial jurisdiction. Commissioner Lemel said the problems could be easily solved if they involved neighbors and contiguous properties; however, the experience with the biomass was

such that it impacted more than just the contiguous neighbors. Commissioner Lemel believes the County needs to be prepared to address the impacts on the entire community. The ordinance is not perfect but it can be changed as needed in the future. She believes this ordinance is an opportunity for the County to protect the little bit of land left on which can be built, instead of having to deal with issues like the biomass facility and potential litigation. Commissioner Lemel feels that being proactive is more important and of greater value to the community.

Commissioner Chappell voiced concerns that the proposed ordinance is a potential job killer and that it hinders economic development at a time when the County is working hard to encourage economic development. He also believes this ordinance is an invasion of private property and disagrees that this is what is best for the community.

Commissioner Hogsed is concerned that this ordinance is being proposed during a time when the County is putting forth a renewed effort and focus on economic development. The County should be focusing on jobs, not regulations. He disagreed that more regulation is favorable to business because he has seen it firsthand. Commissioner Hogsed voiced concern that the County is attempting to regulate the small percentage of land that is not already regulated by State, federal and other local government.

Chairman Hawkins clarified that the intent of the motion is that the ordinance should be a nonissue until the new economic development organization comes to the Board with a request for such an ordinance in the County because they feel it is needed. Commissioner Chapman clarified this is correct.

Chairman Hawkins stated that he is concerned about several parts of the ordinance and he does not support the ordinance as proposed. He heard tonight from a local business owner that they spent a considerable amount of money in defense of what they thought might come from this ordinance. He was apologetic and said this is something that should not have occurred as a result of this ordinance. Chairman Hawkins agreed the ordinance is ambiguous. He also agreed with statements made about personal property rights, while recognizing there are uses that are onerous and should not be allowed. The ordinance approach gives the County a mechanism for addressing issues proactively; however, this ordinance as currently written needs to be improved upon; therefore he is not supportive of it. He thanked the members of the Planning Board for the hard work they put into this process and noted that this is an issue that will not go away.

The motion passed by a vote of 4 to 1, with Commissioner Lemel voting against.

Commissioner Hogsed moved that Commissioners prevent reintroduction of the High Impact Industries Ordinance for a period of 6 months. The motion was seconded by Commissioner Chappell. This is allowed per the Board of Commissioners Rules of Procedure. The motion passed by a vote of 3 to 2, with Chairman Hawkins and Commissioner Lemel voting against.

Chairman Hawkins called for a 5 minute recess at 9:30 p.m. The meeting was reconvened at 9:35 p.m.

NEW BUSINESS

REQUEST FOR RESERVE FUNDS FOR CONNESTEE FIRE RESCUE

Connestee Fire Rescue plans to pay down the loan they have on Engine 94. Engine 94 is a 2005 Freightliner/American LaFrance that was purchased new at an interest rate of 3.75%. The loan was originally scheduled to be paid off in 2019, but the department has been working hard to pay it off much earlier. Connestee Fire Rescue President Danny Britt reported the department will save approximately \$8,900 by paying off the loan early. The total amount remaining on the loan is \$78,961.51. Staff recommended disbursement of the funds to Connestee Fire Rescue to pay on debt service for Engine 94.

Commissioner Lemel moved for the disbursement of funds to Connestee Fire Rescue to pay on the debt service. The motion was seconded by Commissioner Chappell and unanimously approved.

AMBULANCE FRANCHISE REQUEST

Round-A-Bout Transportation has requested an ambulance franchise to operate a non-emergency convalescent ambulance service in Transylvania County. They submitted an application based on the requirements of the Transylvania County Ambulance Ordinance, Chapter 2.5. Per the Ambulance Ordinance, a hearing was held to review the application with the owners, County Manager, County Attorney, County Operations Manager, and County EMS Director, and it was recommended that Commissioners approve the application.

Commissioner Lemel moved to approve the Ambulance Franchise cited in Ordinance No. 23-2014, seconded by Commissioner Hogsed. Commissioner Lemel asked if this agreement will help the County with its out-of-box situations. The Manager informed Commissioners that it can, especially with non-emergency convalescent transports. This will definitely supplement the County's emergency services. In response to Commissioner Chapman, there is no liability to the County. **The motion was unanimously approved.**

(Ordinance No. 23-2014 Ordinance Granting A Franchise To Operate A Convalescent Ambulance Service In Transylvania County To Mobility Transport Solutions III, LLC d/b/a Round-A-Bout Transportation Company is hereby incorporated by reference and made a part of these minutes.)

2013 TAX SETTLEMENT REPORT

Each year the Tax Administrator shall make a sworn report to the governing body of the taxing unit per NC General Statute 105-373. Tax Administrator David Reid reported the following:

- Total levy for all jurisdictions-\$33,041,381.56; of that, \$26,022,084.82 is Transylvania County taxes.
- All taxes were collected except for \$50,114.68; of that, \$9,611.51 was in bankruptcy and there are no forced collection remedies available to collect those.
- Total amount uncollected was \$65,503.87; of that, \$12,336.10 was in bankruptcy.
- Overall collection rate in 2013-99.81% on real estate and personal property; excluding motor vehicles, the collection rate was 99.83%; collection rate on motor vehicles taxes was 98.72%.
- This year the new motor vehicle legislation was in effect where taxes and tag fees must be paid at the same time.
- Collected over \$90,000 in interest and fees associated with delinquent taxes; these monies are not included in the tax collection rate.
- The 2013 collection rate when delinquency efforts started on January 1, 2014 was nearly 87%. Staff began working on collecting the delinquent taxes which totaled \$4,461,498.74. In addition to the regular charge, there are also delinquent taxes from prior years. This year staff collected \$63,636.52 in previous years' taxes.
- In North Carolina once the Tax Administrator is charged by the Board of Commissioners to collect taxes, he or she will employ every means possible to collect taxes; staff did 292 bank attachments, 52 wage garnishments, 334 payment plans, sent 1 demand letter which was collected without foreclosure, sold 3 pieces of foreclosed property, mailed 2,942 letters for debt setoff where counties can collect on NC income tax returns and lottery winnings if taxes are owed; collected \$17,832.51 with these efforts.
- There are some taxpayers that are late paying every year. Staff mailed letters them to earlier and encouraged them to start payment plans sooner. Staff mailed 274 of those letters.
- Their most effective collection tool is phone calls and direct communication with citizens. Staff made over 17,000 phone calls to citizens.

- From 2004-2013, there is \$177,798.49 remaining in unpaid taxes. The Tax Administrator is statutorily allowed to collect taxes that are no older than 10 years.
- Staff continues to work on collecting taxes throughout the year. Since June 30, staff collected another \$8,462.50 which is not counted toward the collection rate.

Commissioner Lemel moved to approve the 2013 Tax Settlement Report. The motion was seconded by Commissioner Chapman. Commissioners commended Mr. Reid and his staff for their exceptional work. Citizens benefit from the high collection rate because it helps the County pay its bills. The County is fortunate to have such outstanding staffs who continue to produce stellar results years after year. **The motion was unanimously approved.**

ORDER TO COLLECT TAXES

The Tax Collector must be charged with the 2014 Tax Bills which gives full and sufficient authority to collect taxes with forced collection remedies, if necessary, per NC General Statute 105-321.

Commissioner Lemel moved to order the Tax Administrator to collect the 2014 tax bills, seconded by Commissioner Chapman and unanimously approved.

MANAGER'S REPORT

1. Renovation of the old Library progresses. The project is approximately 75% complete and remains within budget.
2. The bid documents for the up-fit of the Register of Deeds and Tax Administration Building are almost complete. The final documents will be available on July 15 with a bid opening scheduled for August 15.
3. The bid documents for the second phase of the renovation of Silvermont are almost complete. The final documents are scheduled to be available on July 18.
4. McGill and Associates has completed the water study and it will be presented at the July 28 Commissioners' meeting.
5. County staff continues to work with Company "X" which recently purchased the assets of a local company. The company is considering moving the assets to another state. Commissioners and staff will be discussing additional incentives to keep the assets and jobs here. This could possibly mean another public hearing at the next meeting.
6. Community Park near Rosman-Staff has been working on the modifications to the PARTF grant to stay within the funding limits of the grant. Staff is in the process of sending a letter to the State requesting a modification to the grant.
7. Davidson River Connector Road-A \$3 million Appalachian Regional Commission Grant application for Phase 1 of the Connector Road was submitted last week to the State. There is a follow up meeting with Commerce Secretary Decker and Transportation Secretary Tata, Renova Partners, NC Department of Transportation and County officials in Raleigh on August 8.
8. On July 1, representatives from the City of Brevard, Town of Rosman and Transylvania County were invited to score local transportation projects. The local scoring will be presented to the Land of Sky Rural Planning Organization for further ranking. The Manager believes several of the local projects will rank very well.
9. Staff has been working on gathering information from counties that have moved forward with establishing an Integrated Human Services Agency. A meeting with representatives from the Board of Health, Social Services Board, two County Commissioners and Manager is scheduled for July 16 for the purposes of discussing the findings and next steps.
10. EDO Board-With the selection of the County's appointee, the 11-member Board of Directors is finalized. Frank Porter, Chairman of the Transylvania Partnership, informed the Manager that the Partnership will become the entity for the new EDO Board of Directors. Mr. Porter hopes the EDO Board will be in place the week of July 14.

11. The Courthouse Study is almost complete. The plan is to present the information to the Board of Commissioners at the July 28 meeting.
12. Staff intends to hold a public hearing on an incentive grant at the next meeting on July 28.
13. Staff has been gathering information regarding a potential referendum on alcohol sales in the County. If there is to be a referendum in November the Board of Commissioners needs to adopt a resolution to that effect no later than August 11.
14. Reminded Commissioners that the August 11 meeting has been rescheduled to August 4.
15. Reminded Commissioners they need to make an appointment to the Social Services Board.

PUBLIC COMMENT

Peter Mockridge: Mr. Mockridge stated that, as noted, Transylvania County does not have any business regulations, but there are also no businesses beating down the door to get here. So it seems to him that regulations must not be what are necessarily keeping business away. Secondly, in the discussions about the high impact industries ordinance, several people raised concerns about private property rights being abrogated, which is a legitimate concern. As an alternative to such an ordinance, these folks suggested litigation. Mr. Mockridge pointed out the problem with this is that litigation almost inevitably occurs after the damage has been done. This turns into a process of remediation which is expensive. He believes at least a well written ordinance can discourage that kind of legal action.

Karla Marr: Ms. Marr thanked the Planning Board for their work on the high impact industries ordinance but expressed disappointment in the Planning Board Chairman's comments during the presentation. She perceived his comments to be a lack of leadership.

COMMISSIONERS' COMMENTS

Commissioner Chapman thanked the public for their participation and voicing their concerns this evening. He thanked the Board for listening to those people and for voting their conscience.

Commissioner Hogsed responded to Mr. Mockridge's comments that regulation is not deterring business from coming here. He disagreed with this observation because he said he has seen regulations in the City of Brevard be a huge obstacle to economic development. It has caused existing businesses to leave and prevented new business from locating here. He believes others will express the same sentiment if asked.

Chairman Hawkins made a motion to enter into closed session per NCGS 143-318.11 (a) (3) to consult with an attorney and (a) (4) to discuss matters relating to the expansion of business or industries, after a 5 minute recess. Those to attend the first closed session are Commissioners, Manager, Social Services Director, Social Services Board members Sheila Mooney and James Felty, Attorney Sean Perrin, and Clerk to the Board. Those to attend the second closed session are Commissioners, Manager, Planning and Economic Development Director, and Clerk to the Board. The motion was seconded by Commissioner Chappell and unanimously carried.

CLOSED SESSION

Pursuant to NCGS 143-318.11 (a) (3) to consult with an attorney, closed session was entered into at 10:00 p.m. Present were Chairman Hawkins, Commissioners Chapman, Chappell, Hogsed, and Lemel, County Manager Artie Wilson, Social Services Director Stoney Blevins, Social Services Board members Sheila Mooney and James Felty, Attorney Sean Perrin and Clerk to the Board Trisha Hogan.

Commissioners consulted with Attorney Sean Perrin on a matter and instructed staff on how to proceed.

Pursuant to NCGS 143-318.11 (a) 4) to discuss matters relating to the expansion of business or industries, the second closed session was entered into. Present were Chairman Hawkins, Commissioners Chapman, Chappell, Hogsed and Lemel, County Manager Artie Wilson, Planning and Economic Development Mark Burrows, and Clerk to the Board Trisha Hogan.

Planning and Economic Development Mark Burrows updated Commissioners on a potential economic development project. Commissioners directed staff on how to proceed.

Chairman Hawkins moved to leave closed session, seconded by Commissioner Lemel and unanimously approved.

OPEN SESSION

Chairman Hawkins moved to seal the minutes of both closed sessions until such time that opening the minutes does not frustrate the purpose of the closed sessions. The motion was seconded by Commissioner Lemel and unanimously approved.

ADJOURNMENT

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

Mike Hawkins, Chair
Transylvania County Board of Commissioners

ATTEST:

Trisha M. Hogan, Clerk to the Board