

**MINUTES**  
**TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS**  
**July 13, 2020 – REGULAR MEETING**

The Board of Commissioners of Transylvania County met in regular session on Monday, July 13, 2020 at 4:00 p.m. in Commissioners Chambers at the County Administration Building, located at 101 S. Broad Street, Brevard, NC.

Commissioners present were Jason Chappell, Jake Dalton, David Guice, Chairman Mike Hawkins, and Vice-Chairwoman Page Lemel. Also present were County Manager Jaime Laughter and Interim Budget and Management Analyst Kate Hayes. Clerk to the Board Trisha Hogan was absent. The County Attorney participated remotely.

Media: *The Transylvania Times* – Derek McKissock participated remotely.

There were 21 people in the audience, including staff.

**CALL TO ORDER**

Chairman Mike Hawkins presiding declared a quorum was present and called the meeting to order at 4:01 p.m.

**WELCOME**

Chairman Hawkins welcomed everyone to the meeting participating both in person and remotely. He introduced Commissioners and staff in attendance.

**PUBLIC COMMENT**

Due to COVID-19, the Board of Commissioners has been accepting public comments sent electronically.

Lee McMinn: Lee McMinn, Chair of the Transylvania Natural Resources Council, sent his comments via email which were read aloud by Chairman Hawkins. His comments were pertaining to the subsequent presentation by Terry Foxx (NC Floodplain Administrator) related to the Transylvania County Flood Damage Prevention Ordinance. The email mentioned the lawsuit and settlement with Dollar General related to sediment and erosion control measures and provided recommended changes to the County's Flood Ordinance. Mr. McMinn encouraged the Board to look at flooding, sediment, and erosion as they relate to overall water quality. He noted that sediment is the largest pollutant to rivers in the area and he hoped the Board would consider the broader issue of maintaining water quality throughout the County. He also mentioned landslide maps that are currently being created through the NC Department of Environmental Quality which would relate to steep slope development and land use decisions

**AGENDA MODIFICATIONS**

There were no agenda modifications.

**Commissioner Lemel moved to approve the agenda, seconded by Commissioner Guice and unanimously approved.**

## CONSENT AGENDA

**Commissioner Lemel moved to approve the Consent Agenda, seconded by Commissioner Chappell and unanimously approved.**

The following items were approved:

### CANCELLATION OF THE AUGUST 10, 2020 BOARD OF COMMISSIONERS' MEETING

Usually following the passage of the annual budget, the Board of Commissioners cancels a summer meeting to allow staff vacation time. There is no pressing business for the August 10, 2020 meeting. Commissioners cancelled the August 10, 2020 Board of Commissioners' meeting and instructed staff to post appropriate notice.

### INTENT TO DONATE SURPLUS MOWER TO THE BLUE LINE FOUNDATION OF TRANSYLVANIA COUNTY

North Carolina General Statute § 160A-280 allows the County to donate surplus personal property to another governmental unit or nonprofit organization incorporated in the United States. Prior to donation, the County must post public notice of its intent to donate the property. Staff has already complied with the statutory notice requirements. Staff recommended the donation be approved through adoption of a resolution. Commissioner adopted Resolution 23-2020 as follows:

## RESOLUTION 23-2020

### **Approving Donation of John Deere Riding Mower to the Blue Line Foundation**

WHEREAS, Transylvania County has declared a John Deere Riding Mower as surplus and it has been removed from service; and

WHEREAS, the County Manager has declared the item surplus and requested the Transylvania County Board of Commissioners convey the surplus mower to the Blue Line Foundation of Transylvania County at no cost; and

WHEREAS, North Carolina General Statute § 160A-280 allows the County to donate surplus property to a nonprofit incorporated in the United States upon posting public notice at least five days prior to the adoption of a resolution approving the donation; and

WHEREAS, Transylvania County has met the posting requirements outlined in North Carolina General Statute § 160A-280;

NOW, THEREFORE, the Board of Commissioners of Transylvania County does hereby approve the donation of a John Deere Riding Mower to the Blue Line Foundation of Transylvania County at no cost.

Adopted and approved this the 13th day of July, 2020.

S://Mike Hawkins, Chair  
Transylvania County Board of Commissioners

## **PRESENTATIONS/RECOGNITIONS**

### RECOGNITION OF CITIZEN ADVISORY COUNCIL MEMBERS

Chairman Hawkins stated that the recognition of Citizen Advisory Council members serves as a structured “thank you” to those who have served on the County’s boards and committees.

Commissioners recognized the Citizen Advisory Council members whose terms ended during the period January 1, 2020-June 30, 2020. Those receiving recognition were:

Judy Mathews	Brevard Board of Adjustment and Appeal
Sandy Watson	Planning Board
Betty Runion	Joint Historic Preservation Commission
William George Sullivan, III	Juvenile Crime Prevention Council
Mary Ann Duvall	Agricultural Advisory Board
Jeffrey Mills	Joint Historic Preservation Commission
Elizabeth Reshower	Transylvania Natural Resources Council
Donna Raspa	Nursing and Adult Care Home Advisory Council
Jimmy Whitmire	Agricultural Advisory Board
Marshall McCallie	Library Board of Trustees
David Neumann	Social Services Board

Those in attendance were presented with a certificate of appreciation and a coffee mug with the County’s logo. The Clerk to the Board will mail certificates to those citizen volunteers who were unable to attend.

### FLOODPLAIN ORDINANCE AND FEMA FLOODPLAIN MANAGEMENT PROGRAM PRESENTATION BY TERRY FOXX

At the request of Mike Owen, Director of Building Permitting and Enforcement, Terry Foxx from the NC Department of Public Safety, which is housed under NC Emergency Management, gave a presentation on the National Flood Insurance Program and Flood Damage Prevention Ordinances. Commissioners were also made aware of changes that have been made at the State level to the model flood ordinance.

The Manager provided some background before the presentation pertaining to questions about the Dollar General development along US Highway 276 S and how they fit into the development process, as well as land use and regulatory controls. She mentioned that floodplain administration as a County function had been reassigned to the Building Permitting Department and that Director Mike Owen has been previously named as the Floodplain Administrator for Transylvania County. Because base floor elevations are included in the NC Building Code, it made sense for building officials to have responsibility of floodplain matters. The Manager mentioned that Mr. Foxx assists in compliance as well as applying the ordinance. He brings value and expertise from the State as the acting National Flood Insurance Program (NFIP) Western Planner with the NC Department of Public Safety (NCDPS).

Mr. Foxx gave an overview of the current model ordinance, explained compliance with federal rules and that fact that these regulations are not considered land-use planning tools, and described the difference between stormwater and flood water. He agreed that it made better sense for Floodplain Administration to be with the Building Permitting Department since it is incorporated into the NC Building Code. A flood ordinance applies to everyone and the Floodplain Administrator is responsible for administering the program and ensuring compliance. No one is exempt from such an ordinance and it applies to every type of development, including agriculture. The Code of Federal Regulations is enforced fair and equitably. Mr. Foxx encouraged the Board to become familiar with their local ordinance so they can understand what makes sense for the community.

Mr. Foxx reviewed some of the important definitions related to the flood ordinance:

#### *Important Definitions*

- “Development” means any man-made change to improved or unimproved real estate, including, but not limited to:
  - Buildings or other structures
  - Mining
  - Dredging, fillings, grading, paving
  - Excavation or drilling operations
  - Storage of equipment or materials
  - Minor projects, such as erecting fence posts, do not require a permit
- Floodplain Administrator
  - Individual appointed to administer and enforce the floodplain management regulations

Mr. Foxx went on to detail sections of the current maps which can be found online.

#### *Special Flood Hazard Areas*

- Zone AE – Base Flood Elevations determined – an AE Flood Zone has a 1% annual chance of flooding in any given year often referred to as a “100-year flood zone”
- Zone X – a Zone X flood zone has a 0.2% annual chance or “500-year flood area” and is not regulated
- Non-Encroachment Area – means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot as designed in the Flood Insurance Study report

#### *Compliance*

Chapter 44 of the Code of Federal Regulations (CFR) section 60.3.10 calls for a no-rise study for development which equals expensive surveys and engineering. He mentioned that the model ordinances were created to help communities rather than having to come through the regulations in the CFR. The current model ordinance was last updated in 2019, while the Transylvania County ordinance was last updated in 2009. Mr. Foxx recommended some updates to Transylvania County’s ordinance to mirror the model ordinance, update some of the definitions, designate the Floodplain Administrator, etc.

#### *Benefits of Being a Member of the National Flood Insurance Program*

Transylvania County is a member of the National Flood Insurance Program (NFIP) and as such, residents receive subsidized flood insurance. Otherwise, Transylvania County would not be eligible for certain flood insurance rates or have access to federal grant programs.

#### *North Carolina – A Cooperating Technical State*

As a Cooperating Technical State, North Carolina provides communities with a model ordinance that meets the minimum requirements of the CFR. The State handles its own flood maps in accordance with FEMA standards. Both the maps and the ordinance are admissible in a court because they meet the following:

- Must be properly enacted
- Must include provisions for:
  - Effective enforcement, including penalties for violations
  - Procedures for variances and appeals
  - Due process

- Nondiscrimination; uniform application
- Adequate reference to applicable flood hazard maps and flood insurance study area

#### *Administration of Ordinance*

Ordinance requirements clearly relate to preventing flood damages. Mr. Foxx stated it is important the Board recognize the impact of their future decisions and that the ordinance is enforced equitably. The ordinance is meant to be a guide for solutions to problems, while meeting or exceeding the minimum standards set forth in the CFR.

#### *Stormwater vs Floodplain Management*

Stormwater is the result of flooding and must be dealt with in a separate ordinance. Floodplain management controls development in known flooding areas and prevents loss of life, helps to mitigate damage, and helps with incident stabilization.

Mr. Foxx offered recommendations for the Board of Commissioners to consider, including requiring a second elevation certificate once reference levels are established and footings are inspected. Inspectors would then know if property were in the floodplain instead of having to wait for the final Certificate of Occupancy at which point the person would have to correct any elevations that are below base flood elevation. When asked why a county would want to increase standards from the model ordinance, Mr. Foxx replied that the goal is to achieve a cost savings to residents by reducing flood insurance premiums. (Residents can view official flood maps at <https://fris.nc.gov/fris/>.)

#### *Community Rating System*

Mr. Foxx discussed the Community Rating System (CRS) which details efforts local governments can take to receive benefits in flood insurance. The program is designed to recognize communities that go beyond the minimum regulations set forth in the NFIP. There are requirements to being in the program such as having a clean Community Assistance Visit, addressing repetitive loss properties, providing publications for citizens, and agreeing to send the Floodplain Administrator to trainings to receive certifications. Out of 500 points to receive a higher designation, Transylvania County receives 450 points from the State through which maps and trainings are provided. For each level that a community reaches, there is a 5% reduction in insurance premium rates. The online material can be found at <https://crsresources.org/>.

#### *Response to Public Inquiries*

Mr. Foxx addressed the public comments by saying that penalties for violation are already in the model ordinance. Fines can be set or adjusted when making updates to the ordinance. He also echoed the recommendation for a second elevation certificate requirement. There are currently no RV's allowed in a special flood hazard area unless they are permitted. If someone is in violation of the flood ordinance, officials can refuse a final Certificate of Occupancy and issue a stop-work order. His final remark concerning public comment was to distinguish that there are no AO shallow flooding zones in Transylvania County. He thought it was positive that citizens are concerned and informed about the issues.

Commissioner Lemel said that she appreciated the presentation and reiterated the importance of keeping maps current and its impact on development. She supported including language in an ordinance that would automatically update flood maps as they are produced by the State.

Mr. Foxx reported that he was involved with the Dollar General project on Hwy 276 and advised that if the County would have prevented that development, the company could have started litigation. The Planning Department did what was right at the time based on the County's adopted ordinance.

Commissioner Chappell thanked Mr. Foxx for his thoughtful presentation and for acknowledging the Board of Commissioners in office in 2009 enacted an ordinance that was enforceable and fair across the board.

Commissioner Guice was appreciative of having someone with expertise and historical knowledge of the topic to present to the Board.

The Manager Laughter added that compliance with Chapter 160D of North Carolina General Statutes will also impact the flood ordinance with next year's scheduled updates. These updates also require uniform penalties across the board.

Mr. Owen mentioned that his department tries to provide a fail check with each property that they permit by using a software to reference flood maps and identify each property. If there is any question of SFHA, they request an elevation certificate to ensure safeguards are in place. He noted that as more properties in the County are developed, property in the flood areas might be all that is remaining, which could require costly engineering analyses to develop. He said his staff are ready to follow the Board's lead on whichever direction they intend to go.

Commissioner Guice agreed with the recommendation for a second elevation certificate if the department is already doing that in practice.

Commissioner Dalton mentioned that flood insurance is not easy to understand so it is important to make more information available to the public.

## **APPOINTMENTS**

### JUVENILE CRIME PREVENTION COUNCIL

At the previous meeting on June 22, the Board of Commissioners approved a recommendation from staff to consolidate and/or eliminate positions on the Juvenile Crime Prevention Council thereby reducing the membership from 26 to 19. This move should help reduce absenteeism and would be more consistent with the attendance which averaged 12 over the last two years.

The Board's action resulted in a membership roster that reflects the following:

1. Chief Court Counselor or Designee – Adrienne Becton-Marsh
2. County Commissioner – Jake Dalton
3. County Commissioner Appointees (7)
  - a. Dr. Brian Weaver
  - b. Jerry Stone
  - c. Ricky Lambert
  - d. Jeffrey Patterson
  - e. Susan Huter
  - f. Andrea Muirhead
  - g. Vacant
4. County Manager or Designee – Jonathan Griffin
5. County Health and Human Services – Kristen Gentry
6. Local School Superintendent of Designee – Alan Justice
7. Member of Business – Vacant
8. Member of Faith Community/Nonprofit – Jim Felty
9. Mental Health or Designee – Sarah Hatch
10. Parks and Recreation – Chase Lance

11. Local Law Enforcement – Greg Stroup
12. Student/Individual Under the Age of 18 - Vacant
13. Judicial System Representative - Vacant

Three of these members' terms expired at the end of June and it is staff's recommendation that they be reappointed to another term. Staff will continue to recruit for the vacancies.

**Commissioner Lemel moved to reappoint Jerry Stone (Commissioner Appointee), Dr. Brian Weaver (Commissioner Appointee) and Chase Lance (Parks and Recreation) to another term on the Juvenile Crime Prevention Council, seconded by Commissioner Guice and unanimously approved.**

## OLD BUSINESS

### HVAC FOR COMMUNITY SERVICES PHASE 4

Assistant County Manager David McNeill updated the Board that Phase 3 of the Community Services HVAC project was nearing completion for Planning and Transportation. The current HVAC system for Phase 4 is now out of service. The cost of implementing Phase 4 will be \$44,452.40, which includes the HVAC replacement, HVAC roof stand, concrete coring for exhaust fan, ceiling replacement, and an 8% contingency. Staff stands ready to order the equipment pending Board approval

**Commissioner Chappell moved to authorize the continuation of the Community Services HVAC replacement Phase 4, seconded by Commissioner Lemel and unanimously approved.**

Chairman Hawkins asked if the project had utilized a competitive bid process to which Mr. McNeill responded they had for the first phase, but in order to stick with the same equipment, they are using the same contractor throughout the project.

## NEW BUSINESS

### REQUEST BY BREVARD/TRANSYLVANIA CHAMBER OF COMMERCE TO USE COMMISSIONERS CHAMBERS FOR CANDIDATE FORUM

The Brevard/Transylvania Chamber of Commerce requested the use of Commissioners Chambers on Thursday, September 10 to hold a candidate forum. The nature of the business they conduct has led the Chamber to host a candidate forum annually.

Due to the pandemic and so many unknowns at this time, they have requested to hold the forum virtually, meaning no public access will be allowed. The use of the AV/electronic equipment in Commissioners Chambers will allow them this opportunity. They anticipate attendance to be between 10-20 people, which includes candidates, a moderator, three Chamber staff, and County IT staff. The Chamber is willing to stagger attendance in the room to ensure social distancing and the safety of others.

**Commissioner Lemel moved to approve the use of the chambers by the Chamber of Commerce for the Candidate Forum according to attendance guidelines in place at the time of the forum, seconded by Commissioner Guice and unanimously approved.**

### CONCRETE AND PAVING CONTRACTS FOR TRANSYLVANIA COUNTY SCHOOLS FY20 PROJECTS

The Finance Directors for both Transylvania County and Transylvania County Schools, Jonathan Griffin and Norris Barger respectively, were present to discuss a request from Transylvania County Schools to allow use of surplus funding from previously authorized projects and consider whether to reappropriate a budget for the project in FY2021. The projects were previously appropriated in the FY 2020 budget and

endorsed, but the County's policy requires approval to move forward into FY 2021 and reappropriate funds.

Chairman Hawkins asked if there was a competitive bid process. Mr. Barger responded that the School System received two competitive bid offers.

**Commissioner Chappell moved to utilize funding from previously allocated projects, seconded by Commissioner Guice and unanimously approved.**

**Commissioner Chappell moved to reappropriate the funds to FY 2021, seconded by Commissioner Guice and unanimously approved.**

#### CARES ACT FUNDS

In response to CARES Act funds received at the State level, counties must submit a spending plan to use COVID Release Funds. Transylvania County initially earmarked funds to meet supply needs for the City of Brevard and Town of Rosman. Of the allocation for Transylvania County, 25% must be spent on municipal expenses.

The Board of Commissioners is responsible for determining the funding split between the two municipalities. Staff recommended splitting the funding equitably between the municipalities because, although the population is different, the economic impact to Rosman is greater. Staff will work with the municipalities to identify ways they can spend those funds to meet their community needs.

Commissioner Guice asked if the County would be responsible for reviewing the municipalities' plans and approving funding requests. The Manager stated that the municipalities would be responsible for any claw backs on the misuse of those funds according to the Act. The County must decide how much goes to each municipality and then they must submit their spending plans and reports to the County. She noted the biggest difference in spending, from a County government standpoint, is that the County is responsible for functions like Public Health and Emergency Management. However, there could be some funding coming from the federal level in these areas to help cover costs.

**Commissioner Lemel moved to authorize staff to develop an interlocal agreement articulating county staff review of funds allocated to municipalities with a process for leveraging funds with an equitable split between the City of Brevard and Town of Rosman for the allocation of \$369,199 of CARES money, seconded by Commissioner Guice.** Commissioner Chappell agreed with the motion and stated it was a smart way to allocate the funds. He advised staff to be specific with the expectations for the disbursements and the timeline for reporting. Commissioner Guice agreed that the municipalities should receive an equitable distribution of funds because there are a lot of needs in Rosman. Chairman Hawkins commended the Manager on her idea to split the funding based on need and stated it was a very innovative way to get the most benefit for the most people in the County. **The motion was approved unanimously approved.**

#### MANAGER'S REPORT

The Manager reported the following:

- Encouraged the public to participate in the Cedar Mountain Small Area Plan survey that is open until July 20
- Census is ongoing; encouraged everyone to make sure everyone they know has completed it; door-to-door knockers are coming soon; kudos to Interim Planning and Community Development Director Allen McNeill for putting together a plan to leverage grant dollars awarded by Dogwood Health Trust

- Kudos to Health Director Elaine Russell for being recognized by the National Association of County and City Health Officials (NACCHO) for the department's work in long-term care facilities and strategic prevention work; County staff is on the front lines protecting the community; Transylvania County remains 5<sup>th</sup> in the State for the best case rate per capita

### PUBLIC COMMENT

There were no public comments.

### COMMISSIONERS' COMMENTS

Commissioner Chappell mentioned the passing of a true public servant in Henderson County this week with the death of long-time County Commissioner Charlie Messer.

Commissioner Dalton thanked Terry Foxx for his insights into the flood program.

**Chairman Hawkins moved to enter into closed session per North Carolina General Statute 143.318.11 § (a)(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege, which privilege is hereby acknowledged, after a five minute recess, seconded by Commissioner Lemel and unanimously carried.**

### CLOSED SESSION

Pursuant to North Carolina General Statute 143.318.11 (a)(3) § to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege, which privilege is hereby acknowledged, closed session was entered into a 6:00 p.m. Present were Chairman Hawkins, Commissioners Chappell, Dalton, Guice and Lemel, County Manager Jaime Laughter, and Interim Budget and Management Analyst Kate Hayes. The County Attorney participated remotely.

The Board and Manager consulted with the County Attorney on a privileged legal matter.

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

### OPEN SESSION

**Chairman Hawkins moved to seal the minutes of the closed session until such time that opening the minutes does not frustrate the purpose of the closed session, seconded by Commissioner Chappell and unanimously approved.**

### ADJOURNMENT

There being no further business, **Chairman Hawkins moved to adjourn the meeting, seconded by Commissioner Guice and unanimously approved.**

ATTEST:

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Mike Hawkins, Chair  
Transylvania County Board of County Commissioner

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Trisha M. Hogan, Clerk to the Board