

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
November 8, 2021 – REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Monday, November 9, 2021 at 4:00 p.m. in Commissioners Chambers at the County Administration Building, located at 101 S. Broad Street, Brevard, NC.

Commissioners present were Larry Chapman, Chairman Jason Chappell, Vice-Chairman Jake Dalton, David Guice, and Teresa McCall. Also present were County Manager Jaime Laughter and Clerk to the Board Trisha Hogan. County Attorney Patrick Scott participated remotely via Zoom meeting software.

Media: Dan Dewitt – *Brevard Newsbeat*
Alex Perri – *The Transylvania Times* (participated remotely)

There were approximately 25 people in the audience.

CALL TO ORDER

Chairman Jason Chappell presiding declared a quorum was present and called the meeting to order at 4:02 p.m.

WELCOME

Chairman Chappell welcomed everyone to the meeting. He introduced Commissioners and staff in attendance.

PUBLIC COMMENT

The comments made by the public represent the individual speaker's opinion or point of view. The Clerk to the Board did not attempt to vet their statements for accuracy or modify them based on facts.

Rebecca Suddeth: Ms. Suddeth is the director and curator of the Transylvania Heritage Museum which is housed at the Silvermont Mansion. She also serves on the County's Joint Historic Preservation Commission and Abandoned Cemeteries Board. She has an extensive background, experience, and a love of history and heritage-related topics. She asked the Board to consider repurposing the current courthouse as a history museum when they decide to relocate court functions to a new location. She envisioned the historic town square becoming an epicenter of Transylvania County history as historic courthouses have become the perfect destinations for heritage and cultural tourists. Because these tourists tend to spend more money and stay longer than traditional tourists, promoting the downtown square as a cultural destination will bring in visitors and ease the Board's concerns that relocating the courthouse will lead to a loss of revenue for local businesses. Ms. Suddeth stated that old courthouses should become a place to preserve, promote, and honor history. She provided additional resources for the Board, as well as examples of how our neighboring counties have used their historic courthouses in this way. She thanked the Board for their time, consideration, and service to Transylvania County.

Phil Davis: Mr. Davis serves on the board of directors and as a docent for both the Transylvania Heritage Museum and the Veterans History Museum of the Carolinas, both of which he says were founded in the roots of this County. He wished wisdom upon the Board as they continue their courthouse discussions during this meeting. Mr. Davis emphasized the current historic courthouse would be a great asset to the

community and he offered his service on a citizen advisory committee to help the Board decide on the best use of the facility once they decide to build a new courthouse.

Brittany Summey: Ms. Summey stated that Transylvania County Schools' officials informed citizens years ago that the schools were in crisis, and they needed funds immediately to remediate the horrible conditions of the two high schools. On November 6, 2018, voters approved a school bond referendum for \$68 million. With the passage of the school bond being three years ago, she was concerned that ground has not been broken on any of the projects. In addition, she was unaware of any plan that had been approved. In the meantime, Ms. Summey stressed that the conditions of the schools continue to fall into disrepair with condemned areas, moisture, and mold issues. She stated the schools do not provide a healthy environment for students. Ms. Summey questioned why the School System portrayed the issues as a crisis but has yet to act since the bond was passed. She asked why the schools are in such a dilapidated state especially with the amount of funding provided by taxpayers each year.

AGENDA MODIFICATIONS

There were no agenda modifications.

Commissioner McCall moved to approve the agenda as submitted, seconded by Commissioner Chapman, and unanimously approved.

CONSENT AGENDA

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

The following items were approved:

MINUTES

The Board of Commissioners met in regular session on June 14, 2021, which included public hearings on the FY 22 Budget and NCGS 160D Local Planning and Development Regulations and following met in closed session in which the minutes were sealed. The Board approved the minutes as submitted.

CANCELLATION OF 2ND MEETING IN NOVEMBER

The Board of Commissioners' second meeting in November falls during the week of Thanksgiving. County offices are closed on Thursday, November 25, and Friday, November 26. In addition, Commissioner David Guice will not be able to attend the November 22 meeting. The Board approved staff's request to cancel the November 22 Board of Commissioners' meeting and instructed the Clerk to post and publish appropriate notice.

REQUEST TO CLOSE COUNTY OFFICES ON DECEMBER 17

Traditionally, the Board of Commissioners has closed County offices on the afternoon following the Annual Employee Christmas Luncheon. Due to COVID-19 restrictions, County employees will not be able to gather this year for the luncheon. Human Resources is planning a modified event similar to a street festival. To continue with tradition, staff requested Commissioners close County offices on Friday, December 17 from 1 pm-5 pm. The Board approved closing County offices from 1 pm-5 pm on December 17. The Board instructed the Clerk to publish notice and for staff to post the notice at their facilities.

VAYA HEALTH FISCAL MONITORING REPORT

Per N.C.G.S. § 122C-117 (c), the quarterly Fiscal Monitoring Reports (FMR) for the Local Management Entities must be presented to the Board of County Commissioners. Staff presented the fiscal monitoring report from Vaya Health for the third quarter of FY 2022.

Vaya Health reported their current actual revenues \$122,827,936 (102.76% of annualized budget) and their current actual expenditures as \$120,028,306 (100.42% of annualized budget). This equates to a current net income of \$1,725,121. They also reported total operating cash of \$89,770,165 net of risk reserves and a total spendable cash estimate of \$12,689,573.

Vaya also reported the following fund balances:

- \$56,626,180 restricted for risk reserve
- \$15,650,474 restricted for statute, prepaids, and investments in fixed assets
- \$28,457,183 unrestricted

The Board of Commissioners received the report.

2021 RECORDS RETENTION SCHEDULE UPDATES

The NC Department of Cultural Resources updated the Records Retention and Disposition Schedule for County Management. This schedule contains specific functions of government at the county and municipal levels. It is the governing board's responsibility to approve the schedules. The Board approved the updated Records Retention and Disposition Schedule and directed the Clerk to forward the signature page to the Records Management Analyst as required.

RESOLUTION ON COMPENSATION AND BENEFITS FOR TRANSYLVANIA COUNTY ELECTED OFFICE DEPARTMENT EXECUTIVES

Transylvania County contracted with Evergreen Solutions to conduct a market compensation study for County employees, including evaluating job responsibilities, establishing pay grades to classify equitable positions, and revising job descriptions to establish minimum education and experience for each position. Commissioners adopted the plan in 2019 with implementation to include pay calculations based on education and experience within each pay range via a formula. The plan included compensation implementation for elected office department executives in the same formula to assure equity for all full-time employees within the compensation philosophy.

Per statute, elected official pay is set by the Board of Commissioners. This resolution clarifies the compensation formula and benefits offered to those elected leaders and is supplemental and complementary to the plan already adopted and implemented by the governing board. The County Attorney recommended the resolution as an additional affirmation of the decision in 2019 for application to the two elected official executives - Sheriff and Register of Deeds.

The Board approved Resolution 34-2021 Compensation and Benefits for Transylvania County Elected Office Department Executives in keeping with the approvals already made in 2019 for the County compensation plan.

Resolution #34-2021

Compensation and Benefits for Transylvania County Elected Office Department Executives

WHEREAS, The Transylvania County Board of Commissioners adopted a new comprehensive compensation plan that factors in education and experience to determine salary in July 2019; and

WHEREAS, The Transylvania County compensation philosophy is designed to create equity in pay across the organization by recognizing the education and experience of employees; and

WHEREAS, The Registrar of Deeds and Sheriff are elected political offices with salaries set by the Board of Commissioners per statute; and

WHEREAS, Both positions were included in the pay study and incorporated into the compensation tables approved by the Board of Commissioners based on the unique responsibilities and requirements of the job titles in addition to market comparisons;

NOW, THEREFORE, BE IT RESOLVED by the Transylvania County Board of Commissioners that:

1. Salaries for both positions shall be calculated by reviewing relevant education and experience. Associates degrees shall count for two years of experience equivalent, Bachelors for four years, Masters for six years, and Doctorates for eight years.
2. The Sheriff's Salary will be classified as a grade 126. The minimum salary assumes a minimum of seven years' relative work experience. For every year above seven years, the salary shall be calculated by increasing by 1.8% per year.
3. The Registrar of Deeds' salary shall be classified as a grade 120. The minimum salary assumes a minimum of five years' relative work experience. For every year above five years, the salary shall be calculated by increasing by 1.8% per year.
4. Both positions shall be granted any increases granted to county employees through COLA or other means approved by the Board of Commissioners, in addition to being offered the same benefit packages as approved for county employees.

This the 8th day of November, 2021.

S://Jason R. Chappell, Chairman
Transylvania County Board of Commissioners

PRESENTATIONS/RECOGNITIONS

NC ASSOCIATION OF COUNTY COMMISSIONERS BOARD OF DIRECTORS UPDATE – HENDERSON COUNTY COMMISSIONER REBECCA MCCALL

Henderson County Commissioner Rebecca McCall represents District 16 on the NC Association of County Commissioners Board of Directors. District 16 includes Buncombe, Henderson, Madison, and Transylvania Counties. Commissioner McCall updated the Board of Commissioners on the work of the NCACC and the impact on District 16. This is a summary of her presentation:

- Worked on legislative goals submitted by counties
- Annual Conference held in-person in August
- County maps have been updated and distributed to counties
- The Board of Directors met on October 22 & 23 in Guilford County
 - Heard from President of NC Community College System focusing on how community colleges benefit counties; tied presentation to "100 Counties Prepared" initiative informing that community colleges offer emergency preparedness courses
 - Appointed new members to the NC Property Tax Oversight Committee, one of whom comes from Henderson County

- Received an update from NCACC on their building that burned; need to determine what to do with the building that is located in downtown Raleigh; current operations housed in another facility
- New NCACC President Frank Williams of Brunswick County embarked on his presidential initiative called “100 Counties Prepared” which seeks to empower boards of commissioners to be a source of hope and reassurance for residents in times of emergencies, like hurricanes, flooding, tornados, etc. Transylvania County Commissioner Teresa McCall was appointed to serve on this task force which has been charged with developing a training and education program and compiling emergency readiness resources for county commissioners across the State
- Focused on American Rescue Plan funding and gaining an understanding of the guidelines for use of those funds; working on developing tools to help counties understand how to effectively use those funds; created a website that will be updated routinely and provide more information on spending guidelines
- NCACC available to counties throughout pandemic and continued working within a budget, but they found a need for additional employees as their services continue to expand
- Opioid Settlement Agreement should be settled soon; North Carolina is expected to receive \$750 million to be paid out over 18-years; drug companies were found to be responsible for creating the opioid pandemic; monies with help fight the opioid addiction issues facing communities

Ms. McCall urged the Board to reach out to her on any issue they would like to take before the NCACC. From a local perspective, she invited Commissioners to tour Henderson County's historic courthouse and museum.

Commissioners thanked Ms. McCall for her detailed report and for her time and effort serving on the Henderson County Board of Commissioners, as well as working on behalf of all counties through her service on the NCACC.

COVID-19 UPDATE

Public Health Director Elaine Russell updated the Board on the COVID-19 pandemic and the vaccine program. This is a summary of her presentation:

- In Transylvania County:
 - 51% fully vaccinated (17,694)
 - 53% partially vaccinated (18,271)
- Transylvania Public Health has given:
 - 11,706 first doses
 - 7,673 second doses
 - 1,534 third/booster doses
 - 13,192 doses of Moderna
 - 3,726 doses of Pfizer
 - 3,995 doses of Janssen (J&J)
- Pfizer COVID-19 vaccine is now recommended for all children ages 5-11
 - One-third of the dose currently available for teens and adults
 - Two-dose series given 21 days apart
- Providers began offering last week; most will begin this week:
 - Public Health clinic at Transylvania County Library on Friday, November 12; will begin offering in-office on Thursday, November 18
 - Hendersonville Pediatrics to begin on Monday, November 15
 - FEMA mobile clinic at Transylvania County Library on Saturday, November 20
 - Also available at Blue Ridge Health-Brevard and Ingles Pharmacy

- Public Health offering COVID-19 vaccines and boosters in office Monday-Friday, 8:30 am-11:15 pm and 1 pm-4:15 pm
 - Single doses of Johnson & Johnson for ages 18+
 - 1st and 2nd doses of Pfizer for ages 12+
 - 1st and 2nd doses of Moderna for ages 18+
 - Additional doses of Pfizer and Moderna for immunocompromised people
 - Pfizer booster for eligible individuals
 - Moderna booster (½-dose) for eligible individuals
 - Johnson & Johnson booster for eligible individuals
 - Starting November 18: Pfizer for ages 5-11
- In Transylvania County
 - 36 new cases reported in the past 7 days
 - 11% (4) of the 36 are 0-17 years of age
 - 3% (1) of the 36 are 0-11 years of age
 - 152 hospitalizations since the start of the pandemic

This concluded Ms. Russell's report.

Commissioner McCall thanked Ms. Russell and the Health Department for all they do. She said she remains concerned about several issues. First, she debunked reports that she has minimized the pandemic. Secondly, based on the data, she was concerned that students are still subjected to daily mask-wearing in the schools when there have been only five students who have tested positive in the last seven days. Additionally, the State and federal governments continue to change the protocols and have continually contradicted themselves since the start of the pandemic. Commissioner McCall reported she reviewed the data for North Carolina which indicated that as of November 5, 56% of the population had been fully vaccinated (ages 12+ 65%; ages 18+ 67%; ages 65+ 90%). To her, the data does not describe an emergency. Commissioner McCall stated that the OSHA mandates that are being touted as temporary emergency measures do not make sense. The OSHA mandates have been stayed at the moment because some states have recognized there are statutory and constitutional issues with the mandate. She supported everyone's right to take the vaccine, but she felt strongly that it should not be forced upon citizens who have no desire to take it or who have natural immunity. Due to federal and state government mandates, upwards of 80 million Americans will have to choose between their livelihood and taking a vaccine when there is no evidence that a vaccine will eradicate the virus. She was concerned about where we were headed as a nation.

Commissioners thanked Ms. Russell and the Health Department for their continued work to fight the pandemic. Ms. Russell thanked the Board for their continued support of public health.

APPOINTMENTS

NURSING AND ADULT CARE HOME ADVISORY COMMITTEE

Ben Lamm resigned from the Nursing and Adult Care Home Advisory Committee last year when the committee's work was halted due to the pandemic. He has requested to be reappointed. He attended training sessions to fulfill statutory requirements before his reinstatement. The State Ombudsman and Land of Sky have approved him for reinstatement. There are other vacancies on this committee. The Clerk continues to recruit applicants. Applicants must complete training and have no conflicts of interest, then be approved by the State before the local governing board may appoint members.

Commissioner Guice moved to appoint Ben Lamm to the Nursing and Adult Care Home Advisory Committee, seconded by Commissioner Chapman and unanimously approved.

VAYA HEALTH COUNTY COMMISSIONER REGIONAL BOARD

The Manager informed the Board that Vaya Health would be merging with Cardinal Health to create the largest local management entity (LME)/managed care organization (MCO) in the State of North Carolina. With the merger, the organization has explored changing its governing structure to help manage a large catchment area. The new structure would establish four regional boards. Transylvania County would become part of region 2. The regions were developed based on the general population and by counties with common elements.

On October 13, 2021, the Vaya Health County Commissioner Advisory Board passed a resolution that authorized Vaya Health to proceed with establishing an alternative board structure, subject to the approval of the DHHS Secretary. The NCDHHS Secretary has approved the new structure.

To establish the regional boards, Vaya Health requested that each board of commissioners appoint two representatives, at least one of whom should be a County Commissioner. The regional boards will become part of a larger governing body that is expected to be in place in January 2022. Commissioner McCall currently represents Transylvania County on the Vaya Health County Commissioner Advisory Board under the present structure.

Chairman Chappell nominated and moved to appoint Commissioner Teresa McCall to the Vaya Health County Commissioner Regional Board, seconded by Commissioner Guice and unanimously approved.

The Board discussed potential nominees for the second appointment. The Manager advised the second appointment should be someone from the community who would serve well on this board, possibly a department head with shared interests. Without speaking to potential nominees ahead of this meeting, Commissioners were hesitant about making the second appointment. It was the consensus of the Board to table the second appointment until the first meeting in December. The Board instructed staff to solicit interest and provide a recommendation at that time.

OLD BUSINESS

REOPENING OF COURTHOUSE DISCUSSION

Chairman Chappell asked for this item to be placed on the agenda. He clarified that he did not expect the Board to make any decisions during this meeting. He simply wanted to reopen discussions. He noted that earlier in the year he had charged the Board with deciding by year's end, but with only one more meeting remaining in the calendar year and other factors beyond the Board's control, he did not expect the Board to make a decision due to the impact on future budgets, staff time, etc.

The Manager informed the Board that their agenda packet included a copy of the most recent study and a link to the County website (Special Projects tab) that provides documentation of the full scope of conversations and work completed since 2005. This information is available for public viewing as well. Moseley Architects conducted a revised program study in 2015. The programming study was applied to four potential sites, three of those being in downtown Brevard. The Manager sought direction from the Board on the next steps, including the potential for additional research or study.

Chairman Chappell reemphasized that this is simply a reopening of the courthouse discussion. He asked Commissioners to determine whether they need additional information on programming or potential locations. He wondered how the federal infrastructure bill will impact the building industry because there is going to be a tremendous amount of money flowing into the community tying up contractors with work. Whatever the Board's decision, Chairman Chappell emphasized that the courthouse will be a major part of the County's budget and will take long-term planning to accomplish. He went on record

saying he would support a half-cent tax increase for the next three years to resolve the courthouse issue which will be part of the budget process beginning in early 2022.

Commissioner Chapman emphasized that the courthouse has been under study for years and thus he did not feel like further study was warranted. He commented that the only consistent change has been the cost. He asked if the Board was willing to raise taxes to pay for a new courthouse that is expected to cost upwards of \$30 million+, especially with the school bond projects remaining outstanding and the County's other needs. He felt the only decisions left to be made were the size and location and then for the Board and staff to start the planning process.

Commissioner McCall inquired about the possibility of using the ARPA infrastructure funds to help bring down the budgetary impact of a new courthouse. The Manager informed the Board that current guidance on ARPA funds indicates use for roads, bridges, and broadband-related projects. However, counties continue to receive clarification on the guidance. She noted that the Board had initially considered a USDA loan to pay for the courthouse over a 40-year term. She expected the federal government to continue funding these types of loan programs.

Commissioner Guice commented on the work done by staff to reduce the footprint of a new facility and thus lower costs. One of those research efforts focused on the average case inventory per county. He stated this research needs to be studied more in-depth to gain a better understanding of the data. He said simply looking at case averages does not give the overall picture of how local resources are utilized regardless of whether a person is tried and convicted here. In addition, Commissioner Guice stated that criminal justice laws have changed significantly over the last few years and have impacted all communities across the State, and the pandemic has caused courts to operate differently as well. He emphasized that a new facility should have a life expectancy of at least 50 years, so it must be built to accommodate today's needs and beyond. He urged the Board to take the time needed to make the right decision. He also felt it was wise to begin setting aside funds to pay for a new facility as Chairman Chappell suggested. He encouraged the Board to reengage the public, but he did not advocate for a new study.

Commissioner McCall stated she was not in favor of conducting another study, but she thought it was necessary to reengage stakeholders, like the Clerk of Court and others for input on what is needed to build a functional courthouse. She reminded Commissioners that the most recent cost estimate for a facility on Morris Road was \$39 million. With no changes to the programming and footprint, she projected at least a 30% increase over the previous estimate.

Commissioner Chapman requested the formation of a committee to explore the use of the current courthouse once vacated because the building is so important to the community.

Commissioner Guice stated he was supportive of engaging the community to find an appropriate use of the courthouse once it is vacated. He shared that he heard a rumor that Alabama was using federal funds to build new prison facilities. He wondered if there were provisions within the infrastructure bill that the County was unaware of and asked staff to explore further. He stressed that a new facility, while a great need, will be a tremendous burden to taxpayers, so he wanted to make sure staff had not overlooked other funding streams. The Manager reemphasized that current guidance on ARPA funds restricts use to certain types of infrastructure and COVID-related projects.

In terms of the next steps, Commissioners advised that this discussion would continue into early January 2022 when the Board and staff begin budget discussions. Chairman Chappell emphasized that the key decision driving costs and programming is the location of a new facility. In the meantime, Commissioners thought it would be helpful for the Manager to reengage the stakeholders and community

groups to discuss any potential changes to programming based on changes with criminal justice laws and post-pandemic operations. The Manager suggested sharing a list of the groups staff have continually worked with in the past to seek input on a new courthouse and letting the Board decide who they want staff to engage in an advisory capacity. Many of those who served on the stakeholder and citizen input committees have either retired or serve in another capacity. Commissioners were agreeable.

NEW BUSINESS

REQUEST TO ADD NURSE TO HEALTH ALLIANCE CONTRACT TO ADMINISTER TESTING FOR OSHA COVID TESTING REQUIREMENT

For the past several meetings, the Manager has updated the Board on the OSHA mandates that would require counties to administer a COVID-19 test to every employee unless they provided proof of vaccination. The mandate also includes a mask requirement. On November 5, 2021, OSHA issued the referenced mandate requiring COVID testing by employers with over 100 employees. County staff has been working through the details of the mandate to ensure measures are in place for compliance effective January 4, 2022. The Manager pointed out that timing is important for having items in place to meet the mandate, particularly because in local government this time of year, counties tend to meet less due to the holidays. Another factor complicating matters is that there is currently an injunction filed against the mandate. Regardless, the County must have measures in place to comply with the mandate as an employer.

The staff has reviewed the budgetary impact of the mandate. Testing supplies are anticipated to cost \$5,000/week. To test approximately 50% of staff every week will require the addition of a nurse dedicated to this role for \$74,000. The record-keeping component of the testing and vaccination proof will be extensive, and the County must be able to produce records upon request within 24 hours, based on guidance from OSHA. The Manager recommended including an additional nurse position with the recently approved contract with the NC Public Health Alliance. The estimated total annual budgetary impact would be \$330,000

The Manager reiterated that the mandate remains in question due to legal challenges, but should the mandate go through, the County must be ready to implement it. Therefore, she requested permission to add the nurse to the NC Public Health Alliance contract and order testing supplies. The Manager stated that if the mandate becomes law, she is concerned about how it will impact employees and the level of services the County provides. She anticipated some employees leaving employment because they are not willing to test weekly or be vaccinated. She said many counties share the same concerns. The Manager has been very transparent with employees since the mandate was issued. She emphasized to them that this is not a local policy, but the County recognizes it must comply with the law.

Over the next several weeks, the Manager and staff will focus on ascertaining whether the County will be legally compelled to comply with the mandate. She pointed out she did not intend to spend money prematurely, but she also did want to put the County in a position to face hefty fines.

County Attorney Patrick Scott added that he was unaware of the date the courts would hear the legal challenge, but with the January 4 implementation date looking probable, he expected the courts to receive pressure to resolve it quickly.

Commissioner Chapman recommended the Board take no action until the County receives further guidance. He suggested the Board could call an emergency meeting if necessary. He disagreed with expending funds with the uncertainty around whether the OSHA mandate will become law.

Commissioner McCall stated she was not opposed to starting the search for the nurse position since there is no direct cost to the County. She did not support the mandate believing it to be unconstitutional, but she understood the County's legal obligations. She stated that it made no sense to implement a temporary measure that has taken six months to develop with 60 days to implement for an emergency that started in 2020.

Chairman Chappell agreed with the Manager's recommendation. He was concerned that delaying approval would put the County in a position of noncompliance, particularly with being able to purchase testing supplies and being able to fill the nurse position promptly. He emphasized that getting these things into place takes time, especially in today's labor market.

Commissioner Guice agreed the County must follow the law regardless and that the County is prepared to implement when directed to do so. He was supportive of giving the Manager the authority to move forward with contracting for the nurse position and ordering testing supplies.

Commissioner Guice moved to approve administration to pursue adding the contract position and ordering testing supplies once the OSHA guidance is reviewed and confirmed the county is required to comply and authorized the county manager to sign the contract and make orders as necessary with funds from the ARP funding, seconded by Commissioner Dalton. Commissioner McCall reiterated that she does not agree with the mandate, but she understood the importance of being prepared. Even if the mandate is implemented, she expected it to be temporary. She stressed the importance of the Manager continuing to communicate with staff that the Board of Commissioners 100% supports them. She did not want employees to lose their jobs over something she felt is being wrongly forced upon them. She felt strongly the mandate would be overturned because it is unsustainable and unconstitutional. **The motion passed by a vote of 4 to 1, with Commissioner Chapman voting against.**

IMPLEMENTATION OF CRIMINAL JUSTICE REFORM LEGISLATION

The NC State Legislature has enacted new laws related to penalties for the violation of local ordinances. The new law goes into effect on December 1. Before the new legislation, ordinances that did not specify the criminal penalty for violation automatically qualified as a misdemeanor. The new law requires that the ordinance specify the penalty imposed.

County Attorney Patrick Scott has reviewed the County's ordinances to determine which ones require amendments to comply with N.C.G.S. § 154A-123. The Board is required to conduct a first reading of the amended ordinances. Following the first reading during this meeting, the Board will be permitted to approve the amended ordinances at the first meeting in December.

The Manager reported that Commissioners will need to specifically direct staff on the penalties desired in the Abandoned Motor Vehicles Ordinance and whether to impose a penalty that is either civil, criminal or both. All the other ordinances do not reference the statute or penalty and must be amended to do so.

In addition, statutes require local governments to notice and conduct a public hearing on amendments to building code ordinances. Staff will notice the public hearing for the next meeting. None of the remaining changes necessitate a public hearing, but Commissioners may hold one if desired.

The details about the ordinances and recommended changes are described below and constitute the first reading. The Manager sought direction from the Board on the desired penalty for the Abandoned Motor Vehicles ordinance and whether the Board wanted to hold a public hearing to receive input on all changes, or the building code-related ordinance only.

Ordinance	Noncompliance Issue	Recommendation
Abandoned Motor Vehicles	It is unlawful to abandon a vehicle but does not prescribe criminal punishment.	<p>If the county wants to prescribe a punishment, it must state so within the ordinance.</p> <p>If a civil penalty is desired:</p> <p>Any act constituting a violation of the provisions within this code of ordinances or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$100 for each day the violation continues. If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the county in a civil action in the nature of the debt.</p> <p>If a criminal penalty is desired:</p> <p>Any violation of the provisions within this code of ordinances or a failure to comply with any of its requirements shall constitute a misdemeanor according to North Carolina General Statute §14-4. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the county from taking other lawful action as is necessary to prevent or remedy any violation.</p> <p>Can be combined to prescribe civil and criminal penalties</p>
Buildings: Construction and Related Activities	<p>The ordinance fails to mention §14-4.</p> <p>Mentions misdemeanor.</p>	<p>Amend to: 4-76-Any violation of this article or failure to comply with any of its requirements shall constitute a misdemeanor under North Carolina General Statute §14-4. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be punished as provided in sections 1-8 and, in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the county from taking other lawful action as is necessary to prevent or remedy any violation. (Ord. of 3-27-95)</p>
Emergency Management	<p>The ordinance fails to mention §14-4.</p> <p>Mentions misdemeanor.</p>	<p>Amend to: Unless otherwise provided by law, it shall be a misdemeanor under North Carolina General Statute §14-4 for any person to violate any of the provisions of this Chapter,</p>

		proclamations, or plans issued under the authority contained in this Chapter, or to willfully obstruct, hinder, or delay any member of the emergency management organization in the enforcement of this Chapter or any proclamations or plans issued according to this Chapter.
Flood Damage Prevention	The ordinance fails to mention §14-4. Mentions misdemeanor.	Amend to: Article 3-Section H. <u>PENALTIES FOR VIOLATION</u> -Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of the conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor under North Carolina General Statute §14-4. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Transylvania County from taking such other lawful action as is necessary to prevent or remedy any violation. Article 4-Section D. <u>CORRECTIVE PROCEDURES</u> (5) Failure to Comply with Order-If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor under North Carolina General Statute §14-4 and shall be punished at the discretion of the court.
Garbage, Trash, Weeds, and Junk	The ordinance fails to mention §14-4. Mentions misdemeanor.	Amend to: Section 8-18(e)- In addition to, or in lieu of, the civil penalties described herein, violations of this article may be prosecuted as criminal misdemeanors under North Carolina General Statute §14-4. In the case of criminal violations, each day a violation occurs or continues to occur shall be a separate offense and that person or firm in violation of this article shall be subject to a fine not exceeding fifty dollars (\$50.00) and imprisonment not exceeding thirty (30) days for each offense, or both fine and imprisonment.

Lodging Sales Tax	The ordinance fails to mention §14-4 but does mention NCGS G.S. 105-236 which permits criminal penalty for not paying taxes or filing tax returns	Amend to: SECTION 7-23. Violations-A person, firm, corporation, or association who fails or refuses to file a room occupancy tax return or pay a room occupancy tax as required by law is subject to the civil and criminal penalties as a misdemeanor under North Carolina General Statute §14-4 and North Carolina General Statute §105-236 for failure to pay or file a return for state sales and use taxes. The board of commissioners may, for good cause shown, compromise or waive the penalties imposed by this section.
Mass Gathering Ordinance	The ordinance fails to mention §14-4 Mentions misdemeanor.	Amend to: Section 5(B)-If there are applicable health, safety, or environmental violations, then the County may recommend and enforce criminal prosecution against event sponsor and/or attendees or invitees, as allowed under the laws of the State of North Carolina and the United States of America. Such violations shall constitute a misdemeanor under North Carolina General Statute §14-4. Section 9- In addition to the remedies noted above in Article 5 above, the following penalties may be assessed against any person or entity who willfully holds mass gatherings (or willfully fails to perform any requirement of this ordinance) as defined herein (or who holds an ineligible mass gathering): <u>finer up to \$500 and/or imprisonment of up to 30 days</u> . Any person who willfully violates this ordinance shall be guilty of a misdemeanor under North Carolina General Statute §14-4. <i>(The fine was reduced from \$5,000 and the imprisonment was reduced from 60 days to comply with §14-4, which limits punishment of ordinance violations to \$500/30 days of jail)</i>
Noise Control Regulations	The ordinance fails to mention §14-4. Mentions misdemeanor.	Amend to: Article VII(A)-Criminal penalties: Any Deputy Sheriff of Transylvania County, having first investigated this matter, under Article VI above, may obtain criminal process for violation of this Ordinance. A violation of any Ordinance provision shall constitute a Class 3 misdemeanor under North Carolina General Statute §14-4 and may be punished by a fine in the discretion of the Court, up to a maximum of \$500 per offense.

Registered Sex Offenders, Prohibition on County Park	<p>The ordinance fails to mention §14-4</p> <p>This ordinance supplements the North Carolina State Statute §14-208.18 which already criminalizes this behavior</p>	<p>Amend to: Anyone who is found in violation of this ordinance shall be subject to a fine of not less than \$500.00 per offense and/or thirty (30) days in jail. Each entrance into a park, recreation facility, or county-owned childcare facility, regardless of the time involved, shall constitute a separate offense under this ordinance. Any person who violates this ordinance shall be guilty of a misdemeanor under North Carolina General Statute §14-4.</p>
Road Naming Ordinance	<p>The ordinance fails to mention §14-4.</p> <p>Mentions misdemeanor.</p>	<p>Amend to: 16. Enforcement- After the effective date of this ordinance, any person, firm, or agent thereof who intentionally violates this ordinance shall be guilty of a misdemeanor under North Carolina General Statute §14-4, for the conviction of which, the maximum penalty by law may be imposed. Each day's continuing violation is a separate and distinct offense. Owners or occupants of buildings already constructed which do not comply with this ordinance will be notified and requested to meet these requirements within thirty (30) days from the date of the notification. A warning notice will be issued after sixty (60) days if the requirements have not been met. If the owner or occupant does not comply voluntarily with this ordinance within thirty (30) days of delivery of a warning notice by mail or by hand delivery to the building in violation, enforcement action under NCGS 153A-123 may be initiated.</p>
Sign Control Ordinance	<p>Ordinance fails to mention §14-4 and misdemeanor</p> <p>The ordinance is unclear if violations will be criminally enforced.</p>	<p>If criminal enforcement is desired, propose the following revision: SECTION 19: Penalties - Upon receipt of the Compliance Order, the Sign Enforcement Officer, County Attorney, <u>or a sworn member of the Transylvania County Sheriff's Office</u> may issue a citation imposing a <u>civil</u> penalty of not more than one hundred dollars (\$100.00) to the owner of the sign in question or to the owner of the record of the real property whereon the sign is located whenever the owner of the sign cannot be located and notified of said citation. Each twenty-four (24) hour period in which the violation exists shall constitute a separate violation. In addition to the above-described <u>civil</u> penalty, the county may criminally enforce <u>any violations of this Ordinance as a misdemeanor under North Carolina General Statute §14-4.</u></p>

Commissioners discussed the various ordinances briefly and were hesitant about creating any further criminal penalties for those ordinances in which they had discretion.

Commissioner Guice moved to create a civil penalty for the Abandoned Motor Vehicles ordinance. The ordinance shall state that “Any act constituting a violation of the provisions within this code of ordinance or a failure to comply with any of its requirements shall subject the offender to a civil penalty of \$100 for each day the violation continues. If the offender fails to pay this penalty within 10 days after being cited for a violation, the penalty may be recovered by the County in a civil action in the nature of the debt.” Commissioner McCall seconded the motion. Commissioner Chapman asked if a violator of this ordinance is given time to move or remove a vehicle before being assessed the penalty. The Manager responded that, short of criminal activity, staff provides adequate time and notice to seek compliance and without having to use civil penalty measures. **The motion was unanimously approved.**

The Board was in consensus to hold a public hearing on the building-code-related ordinance at their December 13 meeting. The Board did not feel a public hearing was warranted on the remaining ordinances being that the changes are simply statutory references.

In addition, Chairman Chappell asked the Clerk to place on the calendar for the 2nd meeting in February a thorough review of the County’s ordinances by the Board.

REPORT ON ACTUAL FINANCIAL ACTIVITY THROUGH Q1 FY 2022

Finance Director Jonathan Griffin presented a report on the County’s financial activity through the first quarter of FY 2022. The report focused on the general fund which represents 88% on average of all financial activity each year. He also reported on the enterprise fund (Solid Waste) and special revenue funds (Fire Departments). He provided further detail for the Board’s agenda packets.

This is a summary of his report:

General Fund Revenues

FY 2022 General Fund revenues through September 30 totaled \$16.1 million. For comparison purposes, Mr. Griffin reported that revenues through the same time last year were \$15.2 million. Property taxes are the County’s largest source of revenue. All other revenues will pick up later in the year.

General Fund Expenditures (by function)

General Fund expenditures by function describe spending by departments. Through September 30, General Fund expenditures totaled \$16.9 million, compared to \$16.1 million the previous year. The largest contributor to the increase is capital projects. This time last year, most projects were halted due to the pandemic. There have also been new positions hired in Emergency Management due to the County taking over the City of Brevard’s dispatch, with costs being offset by a contract for services. The County’s two highest expenditure categories by function are Public Safety and Education.

General Fund Expenditures (by type)

General Fund expenditures by function describe the types of expenditures rather than responsible departments. Mr. Griffin reported that the positions hired in Emergency Management fall under personnel, as does the cost-of-living adjustments awarded to employees. Like others, the County has experienced supply chain issues. Utilities are lower now because the County successfully implemented a project to seek the appropriate rate for each facility with Duke Energy and negotiate a new fixed contract price with Comporium for most of the County’s phone lines. Utility costs are down overall resulting from a successful utility study. Due to some relaxation in pandemic restrictions, employees have begun to travel and attend training and certification courses. To align the County’s quarterly financial reports with

the new Board policy, Finance has begun transferring resources between funds earlier in the year. Staff's prior practice was to record these transactions at year's end when transfers were not a significant component of the General Fund budget.

The current difference between General Fund revenues and expenditures is \$800,000 which is typical this time of year because most taxpayers do not pay property taxes until December or January.

Other Major Financial Items Solid Waste Fund

Solid Waste Revenues in the first quarter are approximately \$80,000 higher than the prior year. Total revenues are up \$359,000 over 2021's first quarter. This indicates that there have been marginal improvements to revenues under the increased tipping fee. Most of the improvement in the financial position of Solid Waste is due to the implemented transfer from the General Fund.

So far, increases at the Woodruff scales (a \$15 minimum and increased tonnage rate) appear on track on an annualized basis to generate \$174,000 in additional revenue. However, the \$3 fee at the convenience sites does not appear on track to meet the budget estimate and appears on track to fall \$28,000 short, so if this trend holds, staff expects an additional \$145,000 in revenue for the Solid Waste department.

Expenditures in the Solid Waste Fund are lower, driven by lapsed salaries, slightly lower expenditures on maintenance and repairs, and that the major projects for this year have not yet begun.

Fire District Special Revenue Fund(s)

The County operates eight distinct fire service districts to meet needs for fire protection services across both the incorporated and unincorporated areas of Transylvania County. For the current fiscal year and the prior fiscal year, at Board direction, County staff built a single rate across the eight districts. For FY 2021, this rate was set at six cents per one hundred dollars of value (\$.06), and the expenditures were set at levels that most departments were split between the Fire District Funds and the General Fund. Property tax collections in the districts appear higher but this appears mostly to be a timing issue. Payments represent the first quarter appropriations from districts to rescue agencies.

Self Insurance Fund

The County pays Blue Cross Blue Shield directly for health insurance claims filed on behalf of County employees and their families under the self-insurance model. Medical and pharmaceutical claims paid represent over 70% of the annual budget for the County's self-insurance plan. Compared to the first quarter of the last fiscal year, the County is experiencing an approximate 20% increase in health claims, mostly driven by a sharp spike in September.

There is little financial activity attributable to the Retiree Health Plan at this time, and the pattern seen in FY 2021 of a sharp decline after several members aged off the plan in FY 2020 has continued.

MANAGER'S REPORT

The Manager reported the following:

- On September 27, Commissioners approved a request by Transylvania County Schools to purchase the property formerly known as Paul's Quick Service in Rosman. The Phase 2 Environmental Assessment was completed and there were no findings at the actionable level with

the underground storage tanks. Some chemicals associated with the municipal water supply treatment were detected but not at actionable levels

- Veteran's Day Ceremony at the Courthouse Thursday at 11 am hosted by the Veterans History Museum of the Carolinas
- Kudos to April Alm in Planning- grant coming to fund bus shelters for the fixed-route service
- OSHA Mandate: The US Court of Appeals for the 5th Circuit stayed the mandate, OSHA response is due today
 - NCDOL has 15 days to respond from last Friday regarding the mandate
 - NCDOL will have a call with NCACC managers on Thursday to talk about concerns of counties in providing services under the mandate

PUBLIC COMMENT

Kristi Brown: Ms. Brown is the Clerk of Superior Court. She thanked the Board for revamping the courthouse discussion and said she looks forward to working with the Board on a solution. She noted that the Henderson County Courthouse is only 26 years old, and the Henderson County Board of Commissioners is already working with an architect on expansion efforts. She asked Commissioners to keep this in mind as they continue their planning efforts. Ms. Brown stated her goal would be for the Board to build a new facility that is long-lasting, much like the current facility.

Commissioner Guice commented that the record will reflect Ms. Brown's efforts to bring to the Board's attention the issues with the current facility. The Board will continue to work with her moving forward.

COMMISSIONERS' COMMENTS

Commissioner Chapman stated one of the major issues he continues to hear from citizens about is the status of the school bond projects. He encouraged the Board of Education to be as transparent as possible about the projects because citizens are eager for them to move forward. In response to comments made by Ms. Summey who spoke during public comment about the current conditions of the schools, he suggested the Board discuss assisting with the maintenance of some of the school buildings.

Commissioner Guice stressed that the challenges in front of this Board and County are great. For this reason, he encouraged the Board to have a cooperative and collaborative attitude, be good listeners of the public and stakeholders, and become educated on the issues so that they may educate the public and make the best decisions on their behalf.

Commissioner McCall shared that all Commissioners received an anonymous complaint letter. She wanted to go on record stating that she does not respond to anonymous complaints unless it involves a criminal issue.

Chairman Chappell moved to enter closed session per North Carolina General Statute § 143-318.11 (a) (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease, following a 10-minute recess, seconded by Commissioner McCall and unanimously carried.

CLOSED SESSION

Per North Carolina General Statute § 143-318.11 (a) (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by

purchase, option, exchange, or lease, a closed session was entered into at 6:30 p.m. Present were Chairman Chappell, Commissioners Chapman, Dalton and Guice, County Manager Jaime Laughter, Assistant County Manager David McNeill, County Attorney Patrick Scott, and Clerk to the Board Trisha Hogan.

The Board received information from the County Manager, who serves as their negotiating agent, on property negotiations and then directed the Manager on how to proceed.

Commissioner Dalton moved to leave the closed session, seconded by Commissioner McCall, and unanimously approved.

OPEN SESSION

Chairman Chappell 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 Dalton and unanimously approved.

ADJOURNMENT

There being no further business to come before the Board, **Chairman Chappell moved to adjourn the meeting at 6:50 p.m., seconded by Commissioner Dalton and unanimously carried.**

Jason R. Chappell, Chairman
Transylvania County Board of Commissioners

ATTEST:

Trisha M. Hogan, Clerk to the Board