

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
March 10, 2008- REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Monday, March 10, 2008 at 7:00 p.m. in the large courtroom of the Transylvania County Courthouse.

Commissioners present were Lynn Bullock, Chairman Jason Chappell, David Guice, Daryle Hogsed and Vice-Chairman Kelvin Phillips.

Also present were County Manager Artie Wilson, County Attorneys David Neumann and Curtis Potter, and Clerk to the Board Trisha McLeod.

Media: *Times News*: Leigh Kelley
Transylvania Times: Mark Todd

There were approximately 45 people in the audience.

CALL TO ORDER

Chairman Jason Chappell presiding called the meeting to order at 7:00 p.m.

WELCOME

Chairman Chappell welcomed everyone to the meeting.

PUBLIC COMMENT

There were no comments from the public.

AGENDA MODIFICATIONS

The Manager reported on the Agenda Modifications. He requested to add Item D, Change Order for Public Safety Facility under New Business, and move the Manager's Report to Item E under New Business.

Commissioner Phillips moved to approve the Agenda Modifications, seconded by Commissioner Bullock and unanimously approved.

CONSENT AGENDA

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

The following items were approved:

MINUTES

The Minutes of the February 25, 2008 regular meeting was approved.

FACILITIES USE REQUESTS

The use of the Courthouse Lawn and Gazebo by the Children's Center for "Prevent Child Abuse Month" and a Diaper Drive on April 23, 2008 from 9:00 a.m. to 7:00 p.m. was approved.

The use of the Courthouse Lawn and Gazebo by Temple Baptist Church for National Day of Prayer on May 1, 2008 from 11:00 a.m. to 2:00 p.m. was approved.

PRESENTATIONS/RECOGNITIONS

COMPREHENSIVE PARKS AND RECREATION MASTER PLAN

Recreation Director Rick Pangle offered some background on the project. He also recognized the committee members that were present. Mr. Pangle believes the Commissioners will be pleased with the Master Plan that will be presented this evening.

Mr. Mike Norris with McGill Associates showed a Power Point Presentation highlighting the Parks and Recreation Master Plan which was developed in conjunction with the City of Brevard.

The purpose of the Master Plan was to help guide the City and the County on how to proceed in the future with parks and recreation needs in order to provide a better quality of life for the residents. The community has a need to understand what parks and recreation facilities are needed, where to put them, who will pay for them, and who will use them, which is what prompted the City and County to engage in this effort.

McGill Associates inventoried current City and County parks and recreation facilities to understand the programming needs and make sure they were addressed in the future planning. They also developed surveys and held community workshops to gather input about citizens' needs. Recommendations from the surveys and community workshops included improvements to existing facilities, facilities that could be developed, and where new facilities would be located. Mr. Norris also discussed the importance of partnering with other agencies and taking advantage of grants to purchase new land or improve existing facilities. The Master Plan is a year-by-year guide for funding parks and recreation over the next 10 years.

Chairman Chappell opened the floor for public comments and questions.

Mr. Joey Galloway asked if dirt bike tracks or four-wheeler trails were included in the proposal. Mr. Morris did not recall dirt bike tracks or ATV trails being discussed in the proposals but noted there may be public lands that are able to accommodate those.

Mr. Keith Keller commented that hospital was not mentioned as a potential partner in some of these projects, particularly the aquatic center. Mr. Norris responded that he has

been engaged with developing partnerships with other agencies. He believes the emphasis of the Master Plan is to seek creative partnerships with those that are willing to work with the City and County.

Mr. Jack Hudson stated that the Transylvania Youth Association, which he is President of, has augmented recreation funds for a number of activities. Their funds come from the United Way. He encouraged the Board to consider funding these projects because of the importance of keeping kids in the community active and out of trouble.

Mr. Brian Wilson stated he has coached the County swim team for a number of years. He hopes the Board notices that the suggestion for the aquatic facility came from all over the County. Brevard High School did not have a swim team this year because they had no place to swim. He added that there are over 100 kids on the County swim team this year and the numbers continue to increase. Mr. Wilson realizes that an aquatic center is an expensive undertaking but he believes everyone will benefit. He encouraged the Board to consider the proposals.

Mr. James Keenan said he understands that the plan is preliminary but inevitably the issue will be cost.

Mr. Jack Hudson assured the Board that the Youth Association would help raise funds for an aquatic center if the Board decides to move in that direction. He also noted the importance of this to the seniors in the community as well.

Mr. Tim Petit said Transylvania County has fallen behind in recreation compared to other counties. He asked the Board to give the Master Plan great consideration. He believes now is the time to move forward because our kids are worth that investment.

Commissioner Bullock agreed that recreation facilities in the County are lacking. After reviewing the surveys he noticed that 54% of those that completed the recreation survey were against using taxes to fund recreation. In order to implement any of these recommendations, the County would have to use taxes or grant funding. He stressed the importance of prioritizing County projects.

Commissioner Guice moved to accept the Parks and Recreation Master Plan that was presented, seconded by Commissioner Bullock and unanimously carried.

OLD BUSINESS

REPORT FOR PLANNING BOARD REFERENCE ZONING

Planning and Economic Director Mark Burrows stated that in September 2007 the Board of Commissioners discussed how to address the issue of the City of Brevard extending its incorporated area and its extraterritorial jurisdiction (ETJ). The Board asked the Planning Board for recommendations on how to prevent the extension of the ETJ. Mr. Burrows stated that in North Carolina a city can incorporate without the county's consent. City's can include, for planning purposes, an ETJ area up to 1 mile for populations less

then 10,000. Potential ETJ areas include the City of Brevard, Mills River, and Etowah. Etowah is currently exploring incorporation. In order to prevent the extension of the ETJ, North Carolina requires 3 things: 1) A county must be enforcing North Carolina Building Codes; 2) A county must enforce a subdivision ordinance; and 3) A county must have zoning. Currently Transylvania County has no zoning. The Planning Board's unanimous recommendation to the Board, if they are interested in trying to prevent a jurisdiction from extending its ETJ, would be to explore the issue of zoning. County Planner Mike Thomas was then asked to discuss the matter further.

Mr. Thomas highlighted the report which provided summaries of Planning Board discussions regarding zoning and listed the pros and cons of zoning. Mr. Thomas summarized the process to establish zoning and also provided summaries of legislation pertaining to zoning. The County's options are to have no zoning, county-wide zoning, or partial zoning. Forms of zoning include open use zoning, traditional zoning, or unified development ordinance zoning.

The Planning Board has been considering primarily open use zoning which is the lowest form of regulation. Almost all uses are allowed with open use zoning. Some jurisdictions prohibit uses such as hazardous waste dumps, radioactive waste dumps, etc. He noted that any and all other ordinances within the County would still remain valid. The Planning Board offers these recommendations to the Board for their consideration and guidance.

Mr. Joey Galloway, Planning Board member, commented that the State is inquiring about annexation by municipalities across the State because they have found that some cities are annexing areas of their respective counties to gain tax revenue but neglecting to provide the services. He asked the Board to encourage our legislators to study the current annexation laws.

Commissioner Guice asked about the benefits of one form of zoning versus another. Mr. Burrows responded that county-wide open use zoning is the simplest form of zoning. After the Planning Board discussions, members realized that other jurisdictions, not just the City of Brevard, could impose an ETJ area upon the County. He said county-wide zoning makes the best sense. Commissioner Guice commented that partial zoning would not keep other jurisdictions from extending their limits into Transylvania County.

Mr. John Dorner, Planning Board member, said the County can be proactive or can do nothing. He believes the County has a responsibility to protect its citizens.

Mr. Jeff Duvall asked if zoning would need to occur in those areas that could be affected by other jurisdictions or would the fact that the County had some form of zoning accomplish the goal. Mr. Burrows responded that zoning must be in place in the area where the ETJ would be expanded.

Commissioner Phillips stated he does not believe that a municipality has to cross county lines and have a continuous border for an ETJ to be in effect. They can extend their

jurisdiction into Transylvania County. Mr. Burrows agreed and noted that Mills River initially included parts of the County in their incorporation.

Commissioner Hogsed asked Mr. Burrows, if the County was to implement some sort of zoning, how the County could work with those areas if they desire to extend their limits. Mr. Burrows said if an area decides it is in their best interest to extend their incorporated area, they can do that. Once that has occurred, their ordinances would apply to the areas they have annexed. State law does not give counties the authority to stop annexation.

Mr. Jeff Duvall asked how zoning would affect the existing ETJ. Mr. Thomas responded that it is his understanding that it would not affect the current ETJ. Mr. Duvall added that he thought it was determined from discussions years earlier that the County could force the City to give up its ETJ. There was some question as to the impacts of the existing ETJ if the County implemented zoning.

Mr. Rick Lasater, a resident of the ETJ and a member of the City Planning Board, informed the Board that the City Planning Board has formed a subcommittee to study the expansion of the ETJ. The purpose of the subcommittee is to determine all areas where the ETJ can be expanded. The subcommittee is to report back to the City Council before the end of May. He added that zoning will come to those areas one way or the other. The question is how restrictive will it be and will he and others in the ETJ continue to be the overregulated yet unrepresented residents.

Mr. Jack Hudson noted that the County can not overlook the Town of Rosman because they also have a right to an ETJ.

County Attorney David Neumann said he would research the questions posed this evening and provide a report to the Board.

Mr. Burrows urged the Board to seek input and guidance from the community. With the help of legal council and staff the Planning Board should be able to come up with a fairly solid time table in terms of how long the process of implementation would take.

Commissioner Guice responded that it is essential to give the Planning Board some direction and for the Commissioners to take some action. He believes if the Commissioners are going to move forward he recommends moving forward with county-wide open use/existing zoning. The UDO regulations are imposed on citizens within the ETJ and those citizens do not get to vote on the issue.

Commissioner Hogsed stated that North Carolina is 1 of 6 states that allows involuntary annexation and the League of Municipalities has strong lobbyist support. He also commented that zoning in the mountains is not popular and the only form of zoning he would support is county-wide open use zoning. He believes zoning is an infringement upon people's property rights but the Board should move forward or citizens will be further hurt. Commissioner Hogsed also stressed the importance of maintaining good

relationships with surrounding jurisdictions. He added that it is irresponsible for the Board not to protect the citizens.

Chairman Chappell said he despises zoning and commented that open use zoning always turns into more restrictive zoning. He believes zoning is a basic infringement of people's property rights and he will not support county-wide zoning. Commissioner Hogsed pointed out that any Board can make a decision to implement zoning.

Commissioner Guice said his main concern is whether this Board is going to act in the best interest of the citizens of this County. He emphasized that citizens in the ETJ have no voice in this matter and must comply with City regulations. The Board has to make a decision to protect its citizens. Commissioner Guice stated he prefers the county-wide zoning option because it protects citizens from other jurisdictions. He has no intent to affect anyone's property but noted that future Boards could pass more restrictive zoning. He asked the Board to give the Planning Board some direction.

Commissioner Phillips said, while all the comments that have been made are valid, the Board's intent is to help the citizens that are affected by the City of Brevard's ETJ. He would like to know how those citizens feel about the ETJ and zoning. Commissioner Phillips also stated he will not support county-wide zoning. He believes the citizens should decide what would best help them so he would like to hear from them first.

Commissioner Bullock believes the question should be answered whether zoning would affect the existing ETJ. He also asked how much time the County would have to implement zoning in an area once the City began to expand their jurisdiction. He is in favor of zoning where it is needed and wanted. Commissioner Bullock said it is important to hear from the citizens on this issue.

Commissioner Guice asked if Commissioners could get a copy of the overlay of the current City limits, the current ETJ and the 1-mile area surrounding the City limits. He believes it is important to hear from the citizens and afterwards the Board will be able to provide citizens with a great deal of information as to why it is having these discussions.

Commissioner Hogsed noted that the Board has dealt with three recent situations in which their hands were tied because there was no zoning in the County. He supports holding a meeting to find out what those citizens in the ETJ would like to see happen as well as those that may be affected by future expansion of the ETJ.

Mr. Duvall asked for the current population of the ETJ. Mr. Burrows did not have the information. Chairman Chappell directed staff to find out the current population of the ETJ.

Mr. Burrows stated that the Planning Board can have an outline by the next Commissioners' meeting of a process of getting information out to the public and staff's recommendation for a process and timeline for implementing zoning around the City of Brevard. Staff will also make sure everyone's questions have been answered correctly

and if zoning will affect the existing ETJ. Commissioner Guice would like to know if Mills River has intent to expand its borders in the future. His support of county-wide zoning is based on the possibility of other areas being able to extend their limits. Mr. Phillips would also like to know definitively whether action by the County would override the ETJ.

Mr. Burrows asked for clarification if the Board of Commissioners would like the Planning Board to look at open use/existing zoning in those areas that would be defined around the City of Brevard and Mills River.

Commissioner Guice made a motion to ask the Planning Board to explore open use/existing zoning for the areas surrounding the City of Brevard and Mills River and bring back recommendations, seconded by Commissioner Bullock.

Commissioners and staff had a lengthy discussion to clarify the Board's direction to the Planning Board. Commissioners requested to remove Mills River from the scope of discussion. Commissioner Hogsed suggested holding a public meeting to get citizens' opinions and inform those citizens that should any zoning be enacted by the Board it would be open use zoning. Commissioner Guice asked the Clerk to read the motion removing Mills River and using Commissioner Hogsed's wording. The Clerk read the motion. After further discussion, **Commissioner Guice withdrew his motion.**

Commissioner Guice requested a 2 minute recess, seconded by Commissioner Phillips and unanimously carried.

The meeting reconvened at 9:00 p.m.

Commissioner Guice made a motion to ask the Planning Board to set up a meeting with citizens in the current ETJ and possible ETJ expanded areas to discuss the impacts of the expansion of ETJ on them and the impacts of possible open use zoning that is allowed by North Carolina General Statute. In addition, the Board asks the Planning Board to bring back to the Board at its next meeting a process and time frame as to how this will be carried out. The motion was seconded by Commissioner Phillips.

Chairman Chappell allowed comments from the audience.

Mr. John Dorner said the Planning Board needs direction. What he hears is that the Planning Board has two options: to hold a public hearing to discuss zoning in the ETJ or no zoning at all. The Planning Board will not have an opportunity to hear how citizens feel about zoning. He would like to hear from citizens from all over the County and asked who would be responsible for holding the public meeting.

Mr. Burrows responded that staff, along with the Planning Board, would conduct the public meeting and also work on a process for the Board. He stressed that timing is important. The Planning Board will have the information for the Board at their March 24th meeting. The Planning Board will first target the area surrounding the City of Brevard and also answer the questions that have been posed at this meeting.

Commissioner Phillips commented that there may be communities within the ETJ that may want more restrictive zoning but the Board needs to move forward with initial discussions and planning with those citizens. Commissioner Hogsed asked for clarification that the Planning Board would hold a public meeting for only those citizens in the ETJ. Commissioner Guice said it is the Board's desire to deal with the current issue regarding the City's possible plans to expand its ETJ.

The motion passed unanimously.

ROCK WALL AT COURTHOUSE

The Manager explained that a long section of the rock wall next to the Courthouse on North Broad Street is in need of repair. The project was first designed to be replaced with a concrete wall using the current rock from the wall as veneer. The initial bids came in significantly higher than anticipated so all bids were rejected and another design was proposed. Recently staff went out to bid with a new design. H & M Constructors was the lowest bidder at \$282,265. At the last Commissioners' meeting the Board asked staff to look at other alternatives. The other alternatives staff explored included:

1. Using cultured stone in place of cleaning the old stone for the wall section on North Broad Street: \$344,150
2. Replacing the entire wall with cultured stone: \$451,594
3. Using river stone on the North Broad Section: \$282,265 (same as proposed option)
4. Replacing the entire wall with river stone: \$382,529
5. Using Mesa Block to replace the section of wall on North Broad Street (Not Recommended)
6. Using Mesa Block on the entire wall (Not Recommended)

The Manager noted that all of the above costs were based on budget estimates and are anticipated to be higher if the Board decides to proceed in that direction. H&M Constructors recommended not using the Mesa Block for this project. Based on the historical significance of the wall and its enhancement to downtown staff recommends that the Board move forward with the scope of replacing the wall with the existing stone. According to Ms. Harris of Harris Architects the wall has shown evidence of further leaning over the past year and is a safety hazard. The Manager asked Ms. Harris and Emergency Services Director David McNeill to comment further on the situation with the rock wall.

Ms. Harris stated that the recommendation to the Board is the least expensive option for repairing the rock wall. The costs are elevated because of the site conditions. Mr. McNeill added that since the County has already gone through the bid process, negotiations on the alternates can only be made with the lowest bidder.

After further comments, **Commissioner Guice moved to approve the bid from H& M Constructors including Alternates 2 (re-pointing 100% of the remainder of the rock wall: \$22,796) and 3 (replacement of steps located in front of the courthouse: \$4,500) for a total bid price of \$309,561 for the repair of the rock wall and further that the**

approval for the contractor to proceed with Alternate 3 (steps for Courthouse) would be held until a decision was made on what was going to be done at the Courthouse and to approve a project budget of \$325,039. The motion was seconded by Chairman Chappell and unanimously approved.

NEW BUSINESS

PAYMENT-IN-LIEU-OF SIDEWALKS FOR THE PUBLIC SAFETY FACILITY

The Manager stated that the City of Brevard has agreed to accept payment-in-lieu-of sidewalks on Morris Road. The alternate bid from M. B. Kahn for the sidewalk was \$84,100. M.B. Kahn's alternate bid was the lowest of all bids received for the sidewalk. The project budget includes the amount of \$84,100 for payment to the City of Brevard.

Commissioner Bullock said the sidewalks are not needed or wanted and he does not understand why the County should have to pay this fee.

Commissioner Bullock made a motion to not pay the payment-in-lieu-of amount of \$81,400, seconded by Commissioner Phillips.

Commissioner Phillips said he has yet to see or understand the rationale behind this payment. Commissioner Guice responded that while he is not happy about paying the money for a sidewalk that will not exist, the County has a legal and contractual arrangement with City. Commissioner Hogsted added that the City sets these funds aside to pay for City improvements and noted that the condition is spelled out in the UDO.

The Manager explained further and offered the history and background on this project. He stressed that this was a condition for which the County was able to build on this site.

After further discussion, Commissioner Bullock called the question which was not seconded.

Chairman Chappell added that the County has a duty and responsibility to comply. Commissioner Bullock again called the question which did not receive a second.

After further comments, **the motion failed 3 to 2, with Chairman Chappell and Commissioners Guice and Hogsted voting against the motion.**

Commissioner Guice moved to approve the payment of \$84,100 to the City of Brevard as payment-in-lieu-of construction of a sidewalk along Morris Road, seconded by Commissioner Hogsted. The passed 3 to 2, with Commissioners Bullock and Phillips voting no.

RENOVATION OF 3RD FLOOR DSS FOR HEALTH DEPARTMENT

The Manager stated that in mid January the County advertised for bids for the renovation of the third floor of the DSS Building for the Health Department. Seven Bids were received for the project. Rafferty Construction Corp. was the lowest responsible bidder

at \$687,000. Staff recommended awarding the contract to Rafferty Construction Corp. including Alternate 1, sound attenuation insulation between rooms for privacy purposes. Staff also recommended one change to a storage door to meet the required fire rating. The total bid from Rafferty Construction Corp. is \$696,135. The total project cost is \$819,037 which includes furniture, fixtures, equipment and a 5% contingency.

After some brief comments, **Commissioner Phillips moved to approve the bid from Rafferty Construction Corp. for \$687,000, plus Alternate 1, bringing the construction bid total to \$696,135 and to approve a project budget of \$819,037. The motion was seconded by Commissioner Guice and unanimously approved.**

LETTER OF SUPPORT FOR CERTIFICATE OF NEED FOR DAVITA, INC.

Health Director Steve Smith asked the Board to approve a letter of support for Certificate of Need for DaVita, Inc. The plan for a dialysis center was approved by the NC State Health Coordinating Council in December 2007. DaVita, Inc. currently operates a facility in Henderson County that most Transylvania County citizens utilize. A group of individuals interviewed DaVita, Inc. and believes that the County's existing dialysis patients would be better served by DaVita, Inc.

Commissioner Hogsed moved to approve a letter of support for DaVita, Inc., seconded by Commissioner Bullock and unanimously approved.

CHANGE ORDER- PUBLIC SAFETY FACILITY

The Manager stated that MB Kahn has been working with the City of Brevard and Moseley Architects on the tie-in of water to the Public Safety Facility. The current location requires significant disturbance of the current tree barrier and restraints on the water line that were not previously indicated. The location of the lines has been extended approximately 100 feet up the highway and will not require constraints and further will have less impact on the buffer line. The cost of the change order is for \$3,030.

After clarification on the change order, **Commissioner Bullock moved to approve the change order, seconded by Commissioner Guice and unanimously approved.**

MANAGER'S REPORT

The Manager reported the following:

- Committee A meets Thursday night at 7:00 p.m. in the Rogow Room. Committee B has already held its first meeting. Almost all the surveys have been returned. Committee B meets again on March 25th at 5:30 p.m. They will have a draft report on May 8th and a final report to the Board in June.
- The Manager is going to Washington, D.C. on Wednesday to meet with representatives in hopes of getting funding for a cell tower at the Public Safety Facility and for extending sewer lines in Rosman.
- Staff is working on their budgets.

PUBLIC COMMENT

Mr. Joey Galloway, a member of the Planning Board, said he understands the Board's direction, but commented that he does not approve of zoning.

Mr. Jack Hudson asked who replaced Mike Hawkins on Committee B since he is a candidate for the County Commission. Mr. Wilson responded that Al Platt has been named chairman.

COMMISSIONERS' COMMENTS

There were no comments from Commissioners.

ADJOURNMENT

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

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha D. McLeod
Clerk to the Board