

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
April 28, 2008 – REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Monday, April 28, 2008 at 7:00 p.m. in the large courtroom of the Transylvania County Courthouse.

Commissioners present were Lynn Bullock, David Guice, Daryle Hogsed, and Vice-Chairman Kelvin Phillips. Chairman Jason Chappell was absent. Also present were County Manager Artie Wilson, County Attorney David Neumann, and Clerk to the Board Trisha McLeod.

Media: *Transylvania Times*: Mark Todd

There were approximately 30 people in the audience.

CALL TO ORDER

Vice-Chairman Kelvin Phillips presiding called the meeting to order at 7:05 p.m.

WELCOME

Vice-Chairman Phillips welcomed everyone to the meeting. He announced that Chairman Chappell was absent due to a death in his family. He asked everyone to remember Chairman Chappell and his family during this time.

PUBLIC COMMENT

There were no comments from the public.

AGENDA MODIFICATIONS

There were no Agenda modifications.

Commissioner Hogsed moved to approve the Agenda, seconded by Commissioner Guice and unanimously approved. (4-0, Chairman Chappell absent)

CONSENT AGENDA

Commissioner Guice moved to approve the Consent Agenda, seconded by Commissioner Bullock and unanimously approved. (4-0, Chairman Chappell absent)

The following items were approved:

MINUTES

The Minutes of the April 14, 2008 Secondary Roads Meeting and the April 14, 2008 regular meeting were approved.

DISCOVERY AND RELEASE REPORT

The Discovery and Release Report for accounting period March 1, 2008 through March 31, 2008 was approved.

PRESENTATIONS/RECOGNITIONSCOMMUNITY APPEARANCE INITIATIVE ANNUAL REPORT

Chairman Terry Crowe gave an update of the committee's accomplishments during its first year in operation. He reported the following:

- Organized Advisory Council and established regular meeting schedule. Every meeting thus far has had a quorum.
- Researched applicable NC and federal laws and met with NC Department of Transportation officials.
- Surveyed main roads in the County to identify potential projects.
- Met with Land-of-Sky Regional Council LandCare Coordinator regarding how the Initiative fits into the broader LandCare concept. Received \$1,500 LandCare Grant.
- Received 10 calls on potential projects.
- Identified 31 potential projects. Prioritized and assigned project teams.
- Contacted 24 property owners to explore possibilities for improvement.
- Closed/completed 7 projects.
- In working with owners and residents, facilitated/encouraged the following:
 1. Demolition or removal of 5 deteriorated mobile homes
 2. Removal of 9 containers of solid waste
 3. Removal of 4 containers of tires
 4. Cleaned up trash and junk on 5 properties
 5. Removal of 36 vehicles
- Separated and recycled 20,000 lbs. scrap metal, 1,500 tires, 20 appliances
- Expended funds: \$2,430; Committed funds: \$3,400 (Total \$5,830)

Mr. Crowe recognized the members that were present: Jim Meyer, Don Surette, and Mike Thomas. He discussed other projects of interest, noting that committee member Jim Robards is working diligently on a project where a home was displaced off its foundation a couple of years ago on Quebec Mountain. Mr. Robards has faced many obstacles but is hopeful to begin working with the property owners in the near future. Mr. Crowe also stated that bids have gone out for the demolition of two mobile homes in the western part of the County.

Commissioner Bullock inquired about the status of the project on US Highway 64 West near NC 215. Mr. Crowe responded that weather and family conflicts have delayed the project, but the committee is hopeful the project will be completed in approximately one month. He noted that a large part of the property has been cleaned up.

Commissioner Guice asked Mr. Crowe how much funding the committee felt was necessary to continue operating in the future to address these issues around the County. In addition, he inquired about the costs to demolish and clean up mobile homes. Mr. Crowe said the committee would appreciate Commissioners replacing the \$5,830 that has been spent or committed which he believes would allow the committee to continue operating for another year. Mr. Crowe also stated that it costs approximately \$1,500 to demolish old mobile homes.

Commissioner Bullock asked if the County contracts for the removal of scrap metal. County Planner Mike Thomas responded that the property owners work with dealers on the removal of scrap metal which is removed at no cost to the County.

After further comments, Commissioners commended Mr. Crowe and the committee for the work they do in the community.

FLOOD STUDY REPORT

Mr. Jason Gillespie with McGill Associates presented the Flood Study Report to Commissioners. The County contracted with McGill Associates, along with the City of Brevard, to compare and evaluate flood ordinances. A Project Oversight Committee was formed consisting of members of both the City and the County.

The Project Oversight Committee first evaluated the ordinances where they found differences and similarities. They discussed land use in targeted areas, such as areas in the floodplain and where potential development could occur. The main areas of concern were Pisgah Forest and Brevard College. Mr. Gillespie reported that both the City and County prohibit building in the floodway. County ordinances allow building in the outer areas of the floodplain. City ordinances require an engineering study to be completed in order to show a no rise in elevation. City ordinances also require compensatory storage. Mr. Gillespie noted that some communities use compensatory storage as an alternative to an engineering study because of the expense.

The Project Oversight Committee made recommendations to allow the City and the County to be more consistent with each other. The recommendations are:

- Move freeboards up 2 feet above the floodplain which is consistent with the State's model ordinance.
- Increase setbacks from the banks with base flood evaluations to a minimum of 25 feet which is consistent with State stream buffer requirements.
- Remove the compensatory requirement from the City's ordinance. Use "no rise" or "no adverse impact" as an alternative.
- Only restrict areas in the floodplain where there is cause to (would require further study).
- Create a flood master plan for areas of potential development (would require further study).

Commissioner Bullock thanked Mr. Gillespie for his report and for indicating how the County rates with FEMA and Army Corps of Engineers standards.

Commissioner Guice commented that the report opens the doors for the City and County to work together to help the citizens in the County and also to retain and attract business and development within the community.

Vice-Chairman Phillips asked what the average stream setback is for the mountain areas of the State. Mr. Gillespie responded that the average stream setback is 25 feet which is consistent with the setback requirements for trout stream buffers.

The Manager asked Mr. Gillespie to further discuss no net rise and the recommendation for the City to remove their compensatory storage requirement and how it relates to County requirements. Mr. Gillespie said he does not recommend more restrictive measures for the County because of the added expense. He recommends that the floodplain areas of the French Broad River and tributaries be restricted differently.

After further comments, Commissioners suggested scheduling a joint meeting with the City to discuss the report and make possible changes to their flood ordinances. The Manager reported that the report should be presented to City Council in late May after which time Staff will schedule a joint meeting.

APPOINTMENTS

AGRICULTURAL ADVISORY BOARD

Commissioner Bullock moved to reappoint Jimmy Whitmire to a second term, seconded by Commissioner Hogsed and unanimously approved. (4-0, Chairman Chappell absent)

Vice-Chairman Phillips welcomed suggestions for getting more participation on County boards and committees. Commissioners noted that Staff currently advertises in the local newspaper for applications and also on the County's website. Commissioners suggested advertising on the local cable channel.

HUMAN RELATIONS COUNCIL

Commissioner Guice nominated and moved to appoint Judith Nebrig, seconded by Commissioner Bullock and unanimously approved. (4-0, Chairman Chappell absent)

OLD BUSINESS

LEASE OF PROPERTY AT ROSMAN

The Manager reported that Staff has been investigating the possibility of leasing property in Rosman for a community park. He noted that most of the property identified for a potential location lies within the floodway. No permanent structures can be constructed in the floodway, although backstops and chain link fences are permissible. He also reported that later in the week representatives from the Department of Environment and Natural Resources (DENR) and the Army Corps of Engineers will visit to determine what, if anything, could be done with two ditches on the property that have moving

water. The Manager recommended that Commissioners enter into a 30 year lease with an option to terminate the lease after two years. The termination clause would allow continued evaluation of the property to determine whether or not it is suitable for the construction of a community park. The estimated costs for the evaluation period to be included in the FY 2009 budget are:

1. Topography	\$5,000
2. Architectural plan	\$5,000
3. Grass mowing (30 weeks @ \$500/week)	\$15,000
4. Liability Insurance	<u>Not yet known</u> \$25,000

The Manager also asked Commissioners to authorize \$5,000 in the current year's budget for mowing grass and the cost of the lease agreement for the first year. He requested authorization to begin lease negotiations with the property owners.

Commissioners thanked the property owners for their generosity in offering their property to be leased for a community park in the Rosman.

Commissioner Guice moved to authorize the County Manager to negotiate a lease with the two property owners with the understanding that the agreement could be terminated within the first two years and also authorize \$5,000 in funds for FY 2008 for mowing, seconded by Commissioner Hogsed. Vice-Chairman Phillips asked if the property needed to be mowed closely at this time and whether or not it could mowed for hay while it is not in use. The Manager responded that Staff will be exploring all options. **The motion passed unanimously. (4-0, Chairman Chappell absent)**

Commissioner Guice noted the importance of developing recreational facilities in the County. He encouraged youth organizations along with citizens in the community to reenergize their efforts for the betterment of the youth in the community.

Vice-Chairman Phillips invited public comment. A gentleman from the audience agreed with Commissioner Guice and thanked the property owners and the County for their generosity.

Recreation Director Rick Pangle also thanked the property owners for their generosity. He said he believes the construction of a community park in Rosman will provide great recreational opportunities for all citizens in the County.

NEW BUSINESS

BIDS FOR NICHOLSON CREEK PROJECT

The Transylvania County Soil and Water Conservation went out for bids for a stream bank stabilization project on Nicholson Creek which will be funded by a grant through the Division of Water Resources. The Manager reported that the County received six bids on the project. The lowest bidder was disqualified for a failure to respond to bid

specifications and for negative performance notes from previous work. The Soil and Water District recommends awarding the bid to Whitmire Grading, the lowest qualified bidder, for \$8,003.

Commissioner Hogsed moved to award the bid to Whitmire Grading for \$8,003, seconded by Commissioner Guice and unanimously approved. (4-0, Chairman Chappell absent)

REQUEST FROM CEDAR MOUNTAIN FIRE RESCUE DEPARTMENT

The Manager reported that Cedar Mountain Fire Rescue Department has made application for a \$30,000 matching grant from the State Fire Marshal's Office to purchase various types of equipment. The grant will be awarded on May 15 and recipients have until October 2008 to expend the funds. The Manager stated that Emergency Services Director David McNeill recommends the matching funds be included in the Department's budget request for FY 2009 and to allow the Department to use its reserves for the match requirement. Cedar Mountain Fire Rescue currently has \$14,427.57 in reserves which is expected to increase by the fiscal year's end. The Manager noted that the County does not have additional funds available for the match. He also noted when the fire district lines were redrawn that the Cedar Mountain lost a considerable amount of property valuation in their district which may be reflected in their FY 2009 budget request by an increase in their fire tax rate.

Commissioner Bullock said he understands that Cedar Mountain Fire Rescue has a great need for additional equipment which may result in a tax increase because of the loss of property valuations in their fire district. He emphasized that if Commissioners have to bear the blame for a tax increase, they will, because the loss in property valuations were a direct result of the Commissioners' approval of the new fire district maps.

Commissioner Hogsed asked for clarification in that if Cedar Mountain Fire Rescue does not receive matching funds for the grant, they will have to raise the fire tax rate in their district. Ms. Cindy Bellefeuil with Cedar Mountain Fire Rescue Board of Directors replied yes. She stated that her understanding of the budget process was that grants were not supposed to be included in fire departments' budget requests and that they are supposed to bring forth their requests to Commissioners when grants become available. She further stated that if fire departments are not allowed to include grant funding in their budget requests it appears as though Commissioners do not want fire departments to apply for grants.

Emergency Services Director David McNeill responded. He said if a department knows they have grant funds, then they should include the funds in their budget request. Departments are not allowed to include matching funds for grants that they are not yet aware of. If a grant becomes available, departments should bring forth their request to Commissioners for their approval and the decision about how to fund the match requirement. Mr. McNeill noted that if these funds were included in the current year's budget for Cedar Mountain Fire Rescue, then their fire tax rate would have been increased this year. The fire tax rate increase is essentially being deferred to FY 2009.

Mr. McNeill recommends that funds for the grant be included in their FY 2009 budget request.

Commissioner Guice said it appears that Cedar Mountain has followed the process for obtaining grant funding. He asked why they would not use their reserves for the match requirement. Mr. McNeill explained that Cedar Mountain has expressed an interest in using their reserve funds for future equipment and capital investments. He said his recommendation to Cedar Mountain would be to set their priorities for operational needs and how to fund those needs. Commissioner Guice emphasized there are no County funds available to fund the match requirement.

Commissioner Hogsted asked Ms. Bellefeuil how a deferment to their FY 2009 budget request would impact the department. She responded that all fire departments are operating on very tight budgets and do not have excess funds available to plan for future grants. She noted that if the choice comes down to raising their fire tax rate or using their reserve funds, they will opt to use their reserve funds.

Vice-Chairman Phillips said it is not Commissioners' intent to discourage departments from seeking grants especially when there is such a great need for additional equipment. Commissioner Hogsted agreed, adding that the County should assist them in keeping their tax rate low. He said he believes the County has the available funds to assist them. Commissioner Guice disagreed, noting the potential shortfall in the FY 2009 budget because of the many new positions the County will be adding for the new Public Safety Facility. He asked the Manager what options were available other than what has been recommended. The Manager noted that the grant will not be awarded until May 15 and, if awarded, Cedar Mountain Fire Rescue would have until October 2008 to purchase equipment. He suggested waiting until they have submitted their budget request. He added that Commissioners should be careful about setting such precedents and using County funds to subsidize or replace fire tax funds because the fire tax was created to fund fire departments.

After further discussion, **Commissioner Guice moved to table this matter until additional information is received, seconded by Commissioner Bullock and unanimously approved. (4-0, Chairman Chappell absent)**

BIDS FOR CALVERT HOUSE AND OUTBUILDINGS

The Manager reported that the County has received two bids for the house and outbuildings on the Calvert site. The first bid is by Robert and Kim Smith. They propose to pay \$500 for the house and outbuildings. They would be responsible for the removing the house and outbuildings and any debris within six to eight weeks. The second bid is by Michael Hosey. He proposes to pay the County \$1 for the corn crib and shed located on the property.

North Carolina General Statute allows the County to sell any real or personal property by a negotiated offer and upset bids. The procedure begins when Commissioners accept an offer to purchase the specified property. The offeror would then be required to deposit a

5% bid deposit with the Clerk to the Board and causes a notice of the offeror to be published. The notice must describe the property, specify the amount and the terms of the offer and give notice that the bid may be raised by not less than 10% of the first \$1,000 originally bid plus 5% of any amount above \$1,000 of the original bid. Upset bids must also be accompanied by a 5% bid deposit. Prospective bidders have ten days from the date on which the notice is published to offer an upset bid. The procedure is repeated until 10 days have elapsed without the Commissioners receiving an upset bid. After that time the Board may sell the property to the final offeror. At any time in the process, the Board may reject any and all offers and decide not to sell the property.

The Manager recommended that the Board declare the house and outbuildings as surplus and accept the offer from Robert and Kim Smith pursuant to the negotiated bid process.

Commissioner Guice moved to declare the house and outbuildings owned by the County at Calvert as obsolete and accept the offer from Mr. and Mrs Smith for the house and outbuildings pursuant to the negotiated bid process, seconded by Vice-Chairman Phillips and unanimously approved. (4-0, Chairman Chappell absent)

CHANGE ORDER – ROCK WALL PROJECT

The Manager reported that the contractor has determined the amount of estimated shoring required for the rock wall project will not be needed resulting in a credit of \$9,200, thus reducing the total cost of the project to \$295,861. He asked Commissioners to approve change order #1 in the amount of \$9,200.

Commissioner Hogsed moved to approve change order #1 for \$9,200, seconded by Commissioner Guice and unanimously approved. (4-0, Chairman Chappell absent)

MANAGER'S REPORT

The Manager reported the following:

- The County has requested permission from the City to remove some debris along Morris Road at the Public Safety Facility site. Staff may seek help from inmates for the clean up.
- The Manager recently attended a public hearing regarding the reclassification of the Horsepasture River in Transylvania County. The Chairman has already sent a letter to DENR opposing the reclassification and based on the information from the public hearing, the Manager has prepared a follow up letter to DENR opposing the reclassification. He noted that the reclassification efforts began as a result from a single request from the Sierra Club. There were several people at the public hearing who expressed their opposition to the reclassification of the river and are concerned about the negative economic impact it could have on LMB Industries and Transylvania County.
- Courthouse Committees A and B met recently. They are finalizing their projects and will report to the Commissioners in late May or early June. Committee B is estimating the gross square footage for a new court facility at approximately 80,000 square feet. Committee A is circulating a survey to the general public,

- downtown businesses and staff in the Courthouse to gain feedback about the possibility of moving court functions away from the downtown area.
- Staff continues to work on the budget and will present the information to Commissioners once the Board of Education's budget request is received.

PUBLIC COMMENT

Ms. Gay Poor: Ms. Poor asked if it was necessary to accept Michael Hosey's proposal for the corn crib and shed on the Calvert property. The Manager explained that it is only necessary to accept one bid offer. Mr. Hosey's bid offer included only the outbuildings and did not include the removal of the house.

Mr. Terry Crowe: Mr. Crowe thanked Commissioners for keeping considering the fire departments' budgets. He said he understands the difficulties Commissioners are faced with. Mr. Crowe noted that he is a member of Rosman Fire Rescue and also a taxpayer so it is difficult for him to speak on both sides of this issue.

COMMISSIONERS' COMMENTS

Commissioner Guice commented on DENR's efforts to reclassify the Horsepasture River. He said LBM Industries has been a good steward of the river and he does not understand how the reclassification process has gotten this far without the Board being involved in the process. He thanked Mr. Crowe for his comments and said he is appreciative of those that take the time to understand the County's budget process. Commissioner Guice also announced that Thursday, May 1 is National Day of Prayer. He announced the day's event and encouraged everyone to participate.

Vice-Chairman Phillips also commented on the reclassification of the Horsepasture River noting that the water quality has changed from poor and fair to good and excellent over the last few years. LBM Industries has been good stewards of the river. He said DENR has been negligent in informing Commissioners of this process. Vice-Chairman Phillips asked everyone to pray for Chairman Chappell who lost his grandfather and Social Services Director Carson Griffin who recently lost her father.

ADJOURNMENT

There being no further business to come before the Board, **Commissioner Bullock moved to adjourn, seconded by Commissioner Guice and unanimously carried. (4-0, Chairman Chappell absent)**

The meeting adjourned at 9:05 p.m.

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha D. McLeod
Clerk to the Board