

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
May 12, 2008 – REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Monday, May 12, 2008 at 7:00 p.m. in the large courtroom of the Transylvania County Courthouse.

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

Media: *Transylvania Times*: Mark Todd

There were approximately 80 people in the audience.

CALL TO ORDER

Chairman Chappell called the meeting to order at 7:10 p.m.

WELCOME

Chairman Chappell welcomed everyone to the meeting. He announced Commissioner Guice was absent because he was attending his children's graduation ceremonies.

PUBLIC COMMENT

William McKelvey: Mr. McKelvey expressed his opposition to the City's potential expansion of the ETJ.

James Keenan: Mr. Keenan distributed a document to Commissioners dealing with the use of tasers in North Carolina. He said there was a recent death in Henderson County caused by the use of a taser and he believes this is an issue Transylvania County should study further. He asked the Manager to forward a copy of the information he distributed to the Sheriff.

The following public comments were about a bike track located in the Cherryfield Community:

Rowena Ashe: Ms. Ashe stated the noise generated by the bike track is extremely loud and annoying and she and her husband can no longer sit on their porch because of it. She further stated it is her understanding that bike riders must sign a form waiving the track owners of any responsibility for injuries and she questioned the legality of this practice. She also stated she was informed a bike track was needed to give young people something positive to do but she believes there has been alcohol on the premises.

Bob Jamerson: Mr. Jamerson said the bike track is a nuisance and the noise keeps him from sitting on his porch. He said the community is no longer a quiet and peaceful place to live and the bike track should not be located in this community.

Royce Baker: Mr. Baker said he disagrees with the location of the bike track because of the traffic and dust it generates.

Deborah McFaddon: Ms. McFaddon said there has been a history in the area of groups causing noise and using drugs and alcohol and she said she believes the owner is operating this track in the community to spite the citizens. She also noted the traffic problems have increased.

Tom Raines: Mr. Raines stated the bike track does not belong in this community because it is no longer a peaceful place to live.

Angie Gillespie: Ms. Gillespie said she has asthma and the dust generated by the track affects her breathing. She also works nights and can not get sleep during the day because of the noise. Ms. Gillespie noted that people can not open their windows on hot days because of the dust and said citizens should not have to live this way.

Justin Gillespie: Mr. Gillespie said he and his wife try to leave their home on the weekends because of the noise and dust being generated by the track. He said the people in this community are citizens and taxpayers and they should not have to live this way.

Jerri Channell: Ms. Channell stated that the bike track does not belong in this community and it affects the general health and welfare of citizens in the community. She cited the County Ordinance on regulating and controlling loud and offensive noise noting that the location of the track is incompatible with maintaining peace and good order as well as promoting the general welfare of the residents. Ms. Channell further stated that the inappropriate location of the bike track also infringes upon the quality of life and health due to unprecedented amounts of dirt and dust in the air and the constant loud and offensive noise and also makes routine maintenance to homes unreasonably difficult and nearly impossible.

Sue Horn: Ms. Horn said the idea that one individual could destroy the peace and beauty of an area with total disregard for the neighbors is a disgrace. Many people are housebound because of the noise and the dust in the air. Ms. Horn said the rights of one individual should not run roughshod over the rights of the people in the community. Ms. Horn asked Commissioners to consider these citizens as their constituents and to protect the quality of their community versus protecting the rights of a single individual who is trying to make money. She asked Commissioners to seek every avenue available to permanently close the bike track.

Troy Childers: Mr. Childers stated the community is no longer peaceful and quiet and he questioned the legality of the permits that were issued. Mr. Childers polled the audience

asking whether they were for or against the bike track. The majority of people in the audience appeared to be against the location of the bike track.

John and Teresa Hricinak: Mr. and Mrs. Hricinak said their home looks down onto the track. They stated the track is an eyesore, the noise it generates is impossible, and the oil and run off from the portable toilets are bad for the environment. Mr. Hricinak stated that he spoke with the owner who informed him that all permits for the track have been confirmed by the State, the County, the Sheriff's Department and the EPA and according to the neighbors, this is not true, and further the owner never approached the neighbors before constructing the bike track. They want to stop the operation of the track.

Chris Whitmire: Mr. Whitmire said the small communities surrounding the bike track define the peace and serenity that people coming to this County want to find. He said there is total disrespect for people who have lived in these communities for generations. From an economic development standpoint and County's dependence on second homes and tourism, he said the bike track does no good for the community and the County.

Andy Von Cannon: Mr. Von Cannon referred to a phrase "not in my backyard". He said a dirt bike track creates aesthetic and noise pollution and no one wants one in their backyard. He asked for clarification of the Noise Ordinance. He asked about "noises prohibited" versus "exempt noises" and which one takes precedent. "Exempt noises" include all noises coming from motor vehicles that are properly equipped by the manufacturers' muffler or noise reducing equipment. "Noises prohibited" are noises that are incompatible with the location and noises that are perceived by a person of ordinary and reasonable sense. Mr. Von Cannon said the bike track interrupts the normal peace and calm of the community. He also asked Commissioners to clarify how the noise is measured and if decibel levels had been obtained.

Cornelia Stewart: Ms. Cornelia said she is opposed to the bike track in this community.

Chase Hooper: Mr. Hooper said he works at the bike track on weekends. The owner has attempted to alleviate the dust by bringing in water trucks and installing an irrigation system. Mr. Hooper pointed out the track brings hundreds of people into the County every weekend. He further stated he understands people's opposition to bike tracks but noted that over 30,000 off road bikes were sold in North Carolina last year. He said the owner has obtained the permits and followed registration requirements necessary for the operation of the bike track. Also, parents and children sign a waiver which is standard at all motor bike tracks stating that riders participate at their own risk. Mr. Hooper concluded saying not all children play sports but prefer to ride bikes, including his son. He asked Commissioners to consider looking at this situation from this standpoint.

AGENDA MODIFICATIONS

The Manager requested the following Agenda modifications: to remove Item B, Facilities Use Requests from the Consent Agenda, to add Item D, EMS Week under Presentations

and Recognitions, to add Item E, Revision to the Noise Ordinance under New Business, and to move the Manager's Report to Item F under New Business.

Commissioner Bullock made a motion to accept the revised Agenda, seconded by Commissioner Phillips and unanimously approved. (4 to 0, Commissioner Guice absent)

CONSENT AGENDA

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

The following items were approved:

MINUTES

The Minutes from the April 12, 2008 Planning Workshop and the April 28, 2008 Regular Meeting were approved.

FACILITIES USE REQUESTS

This item was removed from the Agenda.

PRESENTATIONS/RECOGNITIONS

IN RECOGNITION OF LINDA O. THOMPCKINS

On June 1, 2008, Ms. Linda Tompkins will retire from Transylvania County where she has worked in the Health Department as a Public Health Nurse since 1977. Chairman Chappell read Resolution 19-08 In Recognition of Linda O. Thompkins.

Commissioner Bullock moved to approve Resolution 19-08 In Recognition of Linda O. Thompkins, seconded by Commissioner Hogsed and unanimously approved. (4 to 0, Commissioner Guice absent)

Commissioners recognized Ms. Thompkins and presented her with the Resolution. Health Director Steve Smith said Public Health is about helping people and this is a real testament that Ms. Thompkins has spent her lifetime helping people. Ms. Thompkins thanked everyone for the privilege of working in Transylvania County.

(Resolution 19-08 In Recognition of Ms. Linda O. Thompkins attached as part of these Minutes.)

PRESENTATION FROM THE TRANSYLVANIA COMMUNITY ARTS COUNCIL

Ms. Ellen Harris, from the Transylvania Community Arts Council, gave a presentation about the impact the Arts Council is having on the community and discussed upcoming summer activities. She first introduced Tammy Hopkins, the Executive Director of the Arts Council.

Ms. Harris stated over the past three years their programs and activities have become an integral part of the community with emphasis on Arts-In Schools, Arts-In-Community, and art opportunities for local artists. These programs enhance the quality of life in Transylvania County and support economic development by promoting the community to visitors. Arts-In-Schools touched every student in the Transylvania School System during the last year through a wide variety of programs such as performing arts, music, story telling, visual art and the Take Art to Heart program. During the 2007-2008 school year, the Arts Council will have spent approximately \$6 for every student in the County totaling about \$22,000.

The Arts Council on Caldwell Street serves as the Arts Community Center. With gallery space for 10 exhibits each year, the center also houses numerous programs and performances which were attended by over 15,000 people during last year. On one evening several weeks ago, over 200 people attended the opening of their annual Student Art Show.

TC Arts Council also promotes the work of local artists through the gallery and the Number 7 Fine Arts and Crafts Cooperative. They are working with local and other artists' organizations in town through a newly formed group, the Transylvania Arts Promotion (TAP), to promote all the arts in the community. They have also been active with the downtown culture project with the popular 4th Friday Gallery Walk which supports economic development by bringing people to downtown. TC Arts participates in the July Fourth Celebration by bringing art to Main Street. Like other nonprofits, they are striving to maintain all these programs from a financial standpoint. Ms. Harris said they look forward to continuing to involve the community in the arts. The interest and the excitement are strong.

Ms. Harris said they are excited about the positive coverage they are getting from the press. Transylvania County has become an art hub and the arts will continue to be an important part of life and economic development in the County.

PROPOSED WORK PLAN FOR COOPERATIVE EXTENSION

Mr. Eric Caldwell, County Extension Director, thanked the Board for their continued support of the Cooperative Extension Program. He stated that every four years they develop a Plan of Work for the Extension Service.

The Extension Service developed and submitted surveys to community and advisory groups. Then they gathered input and held a series of focus groups and advisory committee meetings to refine some of the major issues in the County. The three major topics addressed were developing a sustainable economy, addressing impacts of changing land use, both urban and rural, and individual involvement and responsibility. They sent the information to Raleigh which was compiled and developed into a State program.

They currently have two vacancies in their office. One vacancy occurred as a result of a retirement and is now only funded by the State at 50%. The other position is vacant due

to the death of an employee. They are creating a position description that will reflect their current Plan of Work.

Mr. Caldwell listed some of their major focus areas:

- Developing positive youth and family life skills
- Science and math literacy
- Positive decision making
- Leadership and peer mentoring
- Developing assets that are research based for youth
- Cultivating local horticulture and food systems
- Growing traditional and new commodities
- Developing local markets and community gardening
- Preserving productive and profitable farmland
- Working with growers on their management plans, production management, transition planning, etc.
- Land use and natural resources
- Growth and development issues
- Best practices for sediment and erosion control, storm water and development
- Community leadership development
- Empowering citizens and decision makers by providing information on a lot of these issues

Mr. Caldwell noted the target audiences will include youth and family education professionals, traditional and new agriculture producers, property owners and managers, the summer camping industry, construction professionals and local officials. Their task for the next month is to develop individual plans of action and develop a position description for the vacant position which they will present to Commissioners.

Chairman Chappell said he is amazed at all the work the County Extension does for the County. He thanked Mr. Caldwell for all the work he and his staff do.

EMS WEEK PROCLAMATION 20-08

Chairman Chappell read EMS Week Proclamation 20-08 designating the week of May 18-24, 2008 as Emergency Medical Services Week.

Commissioner Hogsed made a motion to approve EMS Week Proclamation 20-08, seconded by Commissioner Phillips and unanimously approved. (4 to 0, Commissioner Guice absent)

(EMS Week Proclamation 20-08 attached as part of these Minutes.)

APPOINTMENTS

JOINT HISTORIC PRESERVATION COMMISSION

Commissioner Phillips moved to reappoint Pat Childers and Reid Wood to an additional term, seconded by Commissioner Hogsed and unanimously approved. (4 to 0, Commissioner Guice absent)

Commissioner Phillips moved to reappoint Pat Childress as Chairman, seconded by Commissioner Hogsed and unanimously approved. (4 to 0, Commissioner Guice absent)

CRIMINAL JUSTICE PARTNERSHIP PROGRAM

Commissioner Bullock nominated and moved to appoint John Flynn and David Carter, seconded by Commissioner Phillips and unanimously approved. (4 to 0, Commissioner Guice absent)

AGRICULTURE ADVISORY BOARD

Commissioner Phillips nominated and moved to appoint George Lenze and Mark McCall to fill the expired terms of Gerald Grose and Wendell Hogsed and further nominated and moved to appoint Harold Paxton to fill a vacant term. The motion was seconded by Commissioner Hogsed and unanimously approved. (4 to 0, Commissioner Guice absent)

Commissioner Bullock nominated and moved to appoint Brittany Whitmire as Chairman, seconded by Commissioner Hogsed and unanimously approved. (4 to 0, Commissioner Guice absent)

NEW BUSINESS

CONVEY OBSOLETE MEDIC 5 TO BREVARD RESCUE SQUAD

The Manager explained that Brevard Rescue Squad has requested that Transylvania County donate the obsolete Medic 5 Ambulance to them. Currently the County contracts with Brevard Rescue Squad to provide backup emergency and non-emergency responses in the County. The retired ambulance will help support its athletic standby and transportation needs. He noted that Emergency Services Director David McNeill supports the recommendation to donate the ambulance to Brevard Rescue Squad. The Manager referred to North Carolina General Statute 160A-279 which allows the County to donate the ambulance to a nonprofit agency.

Commissioner Bullock moved to declare the Medic Ambulance 5 as obsolete surplus and convey the ambulance to the Brevard Rescue Squad as allowed per North Carolina General Statute 160A-279, seconded by Commissioner Hogsed. Commissioner Phillips inquired about the value of the ambulance. The Manager responded that the ambulance was declared surplus last year. **The motion passed unanimously. (4 to 0, Commissioner Guice absent)**

CITY'S REQUEST TO HELP WITH 140TH YEAR CELEBRATION

The Manager explained that in July the City of Brevard will celebrate its 140th Anniversary as a municipality. They are planning an all day family event in the community. Mayor Harris has asked for financial assistance from the County and has promised if the donations for this event are exceeded all funds above the cost for the celebration will be earmarked by resolutions for a recreation path that would connect two public schools where no sidewalk exists. The Manager recommended the County consider a donation of \$1,000 for their 140th Celebration.

Commissioner Hogsed moved to approve a donation of \$1,000 to the City of Brevard in Recognition of its 140th Anniversary as a Municipality with funds to come from Contingency. The motion was seconded by Commissioner Phillips and unanimously approved. (4 to 0, Commissioner Guice absent)

REQUEST FROM LITTLE RIVER FIRE DEPARTMENT

The Manager reported that Little River Fire Department has requested permission to utilize \$30,000 from its reserve account to purchase equipment for its new pumper tanker. As of April 30, 2008, the Little River Fire Department has \$44,385.22 in its reserve account. Chairman Chappell noted that \$2,939.15 will be transferred to the Little River Fire Department reserve account for the newly acquired Etowah Horseshoe area effective July 1, 2008.

Commissioner Hogsed moved to authorize the release of \$30,000 of Little River Fire reserve funds for Little River Fire Department, seconded by Chairman Chappell and unanimously approved. (4 to 0, Commissioner Guice absent)

WESTERN HIGHLANDS NETWORK FISCAL MONITORING REPORT

Finance Director Gay Poor explained that at the end of the Second Quarter of FY 2007-2008, Western Highlands Network (WHN) reported actual revenues of \$10.4 million. This includes \$5 million for Medicaid "fee-for-service" which was increased at the December Board meeting to reflect expected future utilization of pass through Medicaid funds. WHN will monitor the budget and adjust as necessary. The budgeted revenues for CAP were also increased at the December Board meeting to reflect expected future utilization of pass through CAP funds and will also be monitored and adjusted as necessary by WHN.

WHN noted that \$776,000 was appropriated from Fund Balance for one-time expenditures for reserves for unemployment claims expected from the June 30, 2006 reduction-in-force, denied claims appealed to the State, expansion and continuation of initiatives including WRAP, Telepsychiatry, Medicine Management, Network Capacity Peer Support and Housing. It also includes \$56,000 of Transylvania County FY 2006 MOE Funds and \$68,112 of Rutherford County FY 2007 MOE Funds returned by New Vistas to WHN in FY 2007 and expended in FY 2008. Additionally, it includes Polk County Dissolution Funds received in FY 2007 to be utilized for Crisis Intervention.

WHN had not received MOE Funds as of December 31, 2007 from Mitchell, Polk and Rutherford Counties. Henderson County and Yancey County are submitting MOE Funds in installments. Transylvania County had fulfilled their commitment for this year. Service Delivery Funds in the amount of \$10.5 million had been received by December 31, 2007. The final continuation allocation included Crisis Expansion Funds which were budgeted at the December 2007 Board meeting. Contracts for utilization of these funds are being processed and funds set aside for supporting a new Crisis Facility expected to open March 1, 2008. WHN expects to utilize all these funds during FY 2008.

The expenditures for the first half of the year totaled approximately \$20 million, with \$15.2 million being paid to providers. The Second Quarter ended with \$445,000 in surplus funds. By the end of the Third Quarter, the surplus rose to \$2.3 million and revenues increased by \$13.6 million. The Medicaid “fee-for-services” raised almost \$3 million in the Third Quarter with \$4 million needed to reach the budgeted level. Providers have 365 days to bill Medicaid and Medicaid CAP.

WHN received \$893,000 in funds from the final settlement of Trend, Rutherford/Polk and other area programs. By the end of the Third Quarter, WHN had still not received MOE Funds from Mitchell County and they continue to receive installments from Henderson and Yancey Counties. \$18 million had been received in Service Delivery Funds. The utilization of the Crisis Expansion Funds has been restricted due to unexpected delays in the opening of the new Crisis Center. The Crisis Center opened April 16. In expenditures, by the end of the Third Quarter, WHN had spent \$31.7 million with the largest portion, \$25.6 million, going toward provider payments.

Commissioner Phillips moved to approve the Financial Report for the quarters ending December 31, 2007 and March 31, 2008, seconded by Commissioner Hogsed and unanimously approved. (4 to 0, Commissioner Guice absent)

REVISIONS TO NOISE ORDINANCE

The Manager reported that Staff began to receive complaints about one month ago about a dirt bike track. Staff’s attempts to meet with the owner have been unsuccessful. The Sheriff’s Department has issued citations to the owner in accordance with County’s current Noise Ordinance. A meeting with the Sheriff, District Attorney, and County Attorney prompted Staff to begin looking at revising the Noise Ordinance to further clarify the Ordinance.

County Attorney Curtis Potter reviewed the proposed Noise Ordinance.

- Article I cites the title to the Ordinance.
- Article II cites the statutory authority that allows the County to adopt the Noise Ordinance. This is an Ordinance adopted under the Police Power as opposed to the Zoning Power.
- Article III cites the jurisdiction.
- Article IV refers to items or situations that can be regulated under the Noise Ordinance. It defines what would be unreasonably loud and disturbing and gives

- more clarity to what noises will be regulated. These factors must be considered in their totality. Article IV also cites examples of violations of the Noise Ordinance.
- Article V sets forth some specific exemptions to the Noise Ordinance.
 - Article VI explains the noise complaint procedure and what sorts of action will be taken if a report of the noise violation occurs. This ordinance sets forth some additional remedies that were not set forth in the current Noise Ordinance. According to the School of Government the current Ordinance may be adequate under the circumstances but citizens should have an Ordinance that is more in depth and clear in its meaning.
 - Article VIII contains legal status provisions stating when the Ordinance would take effect and clarifies if there is conflict with another law.

Mr. Potter said there are several ways to deal with a violation of the Noise Ordinance. The current statute references criminal prosecution as a Class 3 Misdemeanor. There are also civil remedies. A civil penalty can be imposed after adequate notice or warning is given at a rate of up to \$500 per day per North Carolina General Statute. Mr. Potter recommends a civil penalty of \$100 per day. An additional civil remedy would be to pursue an injunction and for the court to order the person causing the violation to cease. If the person did not comply, the County could prosecute in civil court for violation of the court order. Generally the person would be held in contempt of court. A fine would be imposed that could also include jail time.

In response to a question from Chairman Chappell, Mr. Potter noted that during an abatement process, which is the removal of an unsafe condition from the property, there is the ability to recuperate attorney fees. Nuisances generally deal with unsafe conditions on a property or obscene material. Noises can sometimes become nuisances.

The Manager pointed out that violation of the current Ordinance could result in criminal prosecution but does not cause operation of the bike track to cease. In civil court, a judge could continue to increase the penalty for contempt of court. Mr. Potter added the proposed Ordinance increases the deterrent effect whereas to prosecute criminally does not stop the person from continuing to violate the Noise Ordinance. Commissioner Hogsed suggested the proposed civil penalty be increased to the maximum of \$500. Commissioner Phillips suggested a first time penalty of \$100 in case there was any confusion on the Ordinance and then any subsequent penalties should be increased.

Commissioners asked Staff to make them aware of ongoing changes to the Noise Ordinance. Chairman Chappell asked Commissioners to forward their concerns or questions to the Manager. He also instructed the Manager to schedule a Public Hearing on May 27, 2008.

MANAGER'S REPORT

The Manager reported the following:

- Progress continues on the Public Safety Facility. If Commissioners would like to tour the site, he asked them to contact him and he will make arrangements. There will also be more change orders forthcoming but the amount is unknown.

- Progress continues on renovations to the third floor of the DSS Building. Contractors are now installing walls.
- Progress also continues on the rock wall at the Courthouse. Staff hopes the wall will be rebuilt in approximately three weeks and the re-pointing can begin.
- The County entered into an agreement with the City of Brevard to allow them to use the parking lot on Johnson Street on the weekends for festivals, etc. Staff received the signed agreement today and the \$50,000 that had been agreed upon.
- Recently Chairman Chappell, Commissioner Guice, Mayor Harris, Mayor Pro Tem Morrow, the City Manager and County Manager met and discussed the upcoming meeting on the ETJ. The joint meeting is scheduled for Thursday, May 29 at 7:00 p.m. The Manager said the meeting was constructive and the County gained some insight about what the City is actually trying to.
- Staff continues to work on the Budget.

PUBLIC COMMENTS

There were no comments from the public.

COMMISSIONERS' COMMENTS

Commissioner Bullock reminded the Board that on Tuesday the State Legislature convenes and he will make sure any pertinent information is passed on to all Commissioners.

Chairman Chappell thanked everyone for allowing him to be absent at the last meeting due to the passing of his grandfather. He also thanked everyone for all the cards, emails and phone calls.

ADJOURNMENT

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

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha D. McLeod
Clerk to the Board

