

**MINUTES & GENERAL ACCOUNT OF CLOSED SESSION
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
August 11, 2008 – REGULAR MEETING**

The Board of Commissioners of Transylvania County met in regular session on Monday, August 11, 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 Attorney Curtis Potter and Clerk to the Board Trisha McLeod.

Media: *Transylvania Times*: Mark Todd

There were approximately 180 in the audience.

CALL TO ORDER

Chairman Jason Chappell presiding called the meeting to order at 7:15 p.m.

WELCOME

Chairman Chappell welcomed everyone to the meeting and thanked the members of the audience for participating in their County government.

PUBLIC HEARING

EROSION CONTROL AMENDMENTS TO SUBDIVISION AND BUILDING REGULATIONS

The Planning Board has proposed amendments to the Subdivision Control Ordinance and the Building Permits and Inspections Ordinance that will allow the County to enforce erosion control regulations for land disturbances between 2,000 square feet up to one acre. County Planner Mike Thomas reviewed the proposed key changes to the Ordinances.

He explained that the intent is to address disturbances of land primarily for the clearing of home sites and for subdivision activity and does not apply to any other type of land disturbances, such as gardening, etc., that do not require building permits. The requirements for obtaining a permit would include a sketch plan indicating the areas to be disturbed and then put measures in place that would be necessary to control sediment on the site. Mr. Thomas noted the requirements are typically basic and include measures such as silt fencing, graveling of driveways and stabilization of the disturbed soil by using some means such as mulch. The Planning Board has worked on these amendments for approximately six months. They received input from contractors and home builders. There has been a general concern for regulation in general, although most agree the objective is to do this in a way that does not add a burden onto the property owners. Mr.

Thomas noted that many of those that do this type of clearing already institute some type of measures, but everyone does not. He said his office has received a number of calls and complaints over a period of time because of someone not taking these kinds of measures. He noted that the Soil and Water District Board and the Transylvania Natural Resources Council support these amendments. The costs to implement erosion control measures could range from \$1,000 to \$3,000.

Chairman Chappell declared the Public Hearing open at 7:20 p.m.

Steve Owen: Mr. Owen spoke in opposition to the proposed amendments. He said the proposed amendments impose additional taxes and restrictions on what people can and can not do on their own property. He requested answers to the following questions:

1. What are the justifications and needs for the changes to the Ordinances? Does the State not already have laws in place to prevent stream contamination and soil erosion?
2. Why should every builder/property owner be required to pay the additional fees when most of them already institute these measures?
3. How much will the permit fee cost?

Mr. Owen said these measures will make it more difficult for the average property owner to do what he sees fit with his own property. He said there are already enough taxes and restrictions placed upon people. He urged Commissioners to reconsider the proposals and explore other options. He also asked Commissioners to specify their intentions, such as whether they are attempting to control developers who are building larger subdivisions, because these proposals will affect everyone in the County.

Wayne Thomas: Mr. Thomas spoke in favor of the proposed amendments. Mr. Thomas stated that he is a certified erosion control specialist and he helps homeowners and developers understand the measures that have been stipulated by the State and the Environmental Protection Agency. He agreed that most property owners and developers do take the necessary steps to prevent soil erosion noting the ones that do not are making the biggest mess and can affect up to five other states (North Carolina, Tennessee, Arkansas, Mississippi, and Louisiana). He asked what the maintenance requirements will be for those that are following the guidelines.

Chuck Kantor: Mr. Kantor spoke in opposition to the proposed amendments. He said he is a developer and he deals with NCDENR on a regular basis. The restrictions imposed on him by the State are expensive, demanding and strict and apply to any disturbance in excess of an acre. He said the proposed amendments are unnecessary and will cost property owners thousands of dollars. Mr. Kantor said there are too many regulations in this Country and Commissioners should not further burden the taxpayers of Transylvania County with unnecessary fees and regulations.

John Dillon: Mr. Dillon said housing in the County is very expensive and young people can not afford to live in the County that they grew up in. He urged Commissioners to

vote against these amendments that are meant to do nothing more than add to the cost of a home.

John McCall: Mr. McCall said he has had to travel from Balsam Grove to obtain permits just to get a mobile home set up on his property and the costs are adding up significantly. He said the young people in this County do not have a chance because wages are low, costs are high, and the price of land is outrageous. Mr. McCall urged Commissioners to vote against the proposed measures and stop taking more money from those in the County that are trying to make a living.

David Cantrell: Mr. Cantrell said he is opposed to the proposed amendments to these Ordinances as they are written. He said the Ordinance reads that the erosion control measures refers to land disturbances for any purpose, although the Planning Office has explained that it only refers to home sites and subdivisions. Mr. Cantrell said the Ordinance needs to be more specific and should clearly state the exemptions. He also stated that the Ordinance is not clear about what the acceptable measures for compliance will be. Mr. Cantrell said he believes these measures are going to cost between \$5,000 and \$12,000 for each homeowner to implement. He requested that the Planning Board revise the amendments to make them clearer.

Keith Chappell: Mr. Chappell spoke in opposition to the proposed amendments. He said these measures add an undue burden to the taxpayers who are already overregulated.

Glen Woody: Mr. Woody spoke in opposition to the proposed amendments. He said the County should enforce what is in place now.

John Dillon: Mr. Dillon commented that the Planning Board should consist of people that understand the needs of the County.

Travis Owen: Mr. Owen stated that it is clear to him in what direction the County is heading.

Jeremiah McCall: Mr. McCall said he is having trouble putting a mobile home on his uncle's property due to the cost of the permits and other regulations. The cost of living is high enough in this County without additional regulations.

Chris McCall: Mr. McCall said it is too expensive to live in Transylvania County and housing is not affordable. He agreed that there should be some type of regulation in place but he does not understand how people are going to continue to afford additional fees.

There being no further comments, **Chairman Chappell declared the Public Hearing closed at 7:45 p.m.**

PUBLIC COMMENT

Terry Rice: Mr. Rice spoke in opposition to the new Noise Ordinance. He said in the past two Board meetings, the County Commissioners have ignored the voices of the people that are in opposition to the Noise Ordinance. He submitted a petition consisting of 4,482 names all in opposition to the Noise Ordinance. Mr. Rice requested that Commissioners reconsider and rescind the Noise Ordinance and to respect the will and the voice of the people.

Mr. Rice directed a question to Mr. Guice referring to a recent article in the Transylvania Times where Commissioner Guice was quoted as calling the group opposed to the Noise Ordinance as a “vocal minority”. He concluded saying that voice of the people of Transylvania County will be heard this November.

Roger Eades: Mr. Eades said it appears that the Noise Ordinance is being directed toward one person. He said Mr. Baxley followed all the legal procedures to open his bike track and to pass a Noise Ordinance after that fact can be construed as a personal attack on Mr. Baxley. He asked if the Noise Ordinance was passed to benefit those that are proposing to build a new development in that community.

Henry Roess: Mr. Roess said citizens in the County are not supposed to be subjected to City regulations. He said the Noise Ordinance is open to interpretation by the officer responding to the noise complaint. He feels there should be no Noise Ordinance in the County; however, if there must be one, it should be clear and not left open to interpretation.

John McCall: Mr. McCall had asked Commissioners at a previous meeting to delay making a decision about the Noise Ordinance because of the problems it would cause in the County. Mr. McCall said the citizens in the Cherryfield community should have taken Mr. Baxley to court themselves instead of Commissioners passing an Ordinance that affects everyone in the County. He asked Mr. Commissioners to reconsider and rescind the Noise Ordinance because it has caused a terrible uproar in the County. He noted that many people in the County do not know that a Noise Ordinance even exists.

Commissioner Hogsed pointed out that the County has had a Noise Ordinance since 1983.

Glen Woody: Mr. Woody asked Commissioners why the Noise Ordinance needed to be revised. He said Mr. Baxley created work for several people when construction began on the bike track and furthermore he is helping kids in the County.

Commissioner Hogsed further pointed out that the bike track in Cherryfield was in violation of the previous Noise Ordinance and there are criminal proceedings pending. County Attorney Curtis Potter said whether or not it was a violation will be determined in criminal court. Part of the reason for the most reason amendments was because there was no provision for civil remedies. There was only a criminal provision available. Also,

people working in the criminal justice field have expressed some frustrations in enforcing the Noise Ordinance.

AGENDA MODIFICATIONS

The Manager reported on the Agenda modifications. He requested to move Proclamation 32-08 Declaring August 19, 2008 as Transylvania County Library Staff Appreciation Day from under New Business to Item A under Presentations/Recognitions, and move Planning Board Report and Input Meetings to Item B. He also requested to remove Landfill Fees under New Business from the Agenda.

Commissioner Hogsed moved to approve the Agenda, seconded by Commissioner Guice and unanimously approved.

CONSENT AGENDA

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

The following items were approved:

MINUTES

The Minutes of the July 14, 2008 Regular Meeting and Closed Session were approved.

FACILITIES USE REQUESTS

The use of the Courthouse Gazebo by the Brevard Jaycees on Saturday, September 27, 2008 from 11:00 a.m. to 4:00 p.m. for the Transylvania County Toy Run was approved.

The use of the Parks and Recreation Activity Room by International BioCare for a seminar on Tuesday, October 21, 2008 from 6:00 p.m. to 9:00 p.m. was approved.

The use of the Courthouse Gazebo by Salon Allure on Saturday, October 5, 2008 from 8:00 a.m. to 6:00 p.m. for a fundraiser for Cystic Fibrosis was approved.

PRESENTATIONS/RECOGNITIONS

PROCLAMATION 32-08 DECLARING AUGUST 19, 2008 AS TRANSYLVANIA COUNTY LIBRARY STAFF APPRECIATION DAY

The Friends of the Library recently approved a resolution proclaiming the third Tuesday of August as the Annual Transylvania County Library Staff Appreciation Day. In recognition of the many services provided by the Library staff to the citizens of Transylvania County, the Manager asked Commissioners to approve Proclamation 32-08 Declaring August 19, 2008 as Transylvania County Library Staff Appreciation Day.

Ms. Betsy Little, the current President of the Friends of the Library, stated the Friends of the Library Board of Directors wanted to find a way to show their appreciation for the

wonderful work the library staff do. The Friends of the Library expects to do this annually. Library Director Anna Yount said Library Staff is honored that the Friends of the Library wants to do this for them and she is honored to serve the citizens of Transylvania County.

Chairman Chappell read Proclamation 32-08.

Commissioner Hogsed moved to approve Proclamation 32-08 Declaring August 19, 2008 as Transylvania County Library Staff Appreciation Day, seconded by Commissioner Bullock and unanimously approved.

Chairman Chappell presented Proclamation 32-08 to Ms. Yount.

(Proclamation 32-08 Declaring August 19, 2008 as Transylvania County Library Staff Appreciation Day is hereby incorporated by reference and made a part of these Minutes.)

PLANNING BOARD ANNUAL REPORT AND INPUT MEETINGS

County Planner Mike Thomas presented the Annual Planning Board Report for July 2007 – May 2008. He highlighted a few of the items. The Planning Board does work in the area of land use and the comprehensive plan at the direction of the Commissioners. During the past year, the Planning Board has mostly worked on subdivisions. There have been 275 lots approved in 15 different subdivisions, most of which came from the first six months of the year. Amendments to the Subdivision Ordinance were drafted for the Board's consideration and were subsequently approved, primarily dealing with safety and emergency vehicle access. The Planning Board did some research on zoning at the request of the Commissioners. There is activity going on now which the Planning Board is participating in. The Planning Board was also involved in drafting the erosion control amendments. Their most recent work involves public input meetings which began a week ago in Balsam Grove and will continue tomorrow at Lake Toxaway Community Center. The Planning Board is going to various community centers around the County holding eight public meetings to gain input from around the community in order to set their priorities for the future.

Commissioner Guice asked for clarification on the erosion control measures. He said the State already requires erosion control measures. Mr. Thomas explained that the Sedimentation and Erosion Control Act of 1973 does require erosion control; however the Department of Environment and Natural Resources (DENR), the enforcement agency, only enforces those land disturbances above one acre. For point of clarification, Commissioner Guice again stated that the State already requires erosion control measures for land less than one acre but they are not enforcing it at this time.

Commissioner Guice said Mr. Cantrell made several good points about clarification of the amendments and he asked Planning Staff to review those areas of concern. He asked if the Planning Board discussed the cost of a permit fee. Mr. Thomas said the Planning Board discussed a fee and recommended a nominal fee of \$25 which is similar to what the County charges for small subdivisions.

Chairman Chappell commented that the fee is just for the permit not the cost of implementing the measures. Mr. Thomas replied yes noting that some of the speakers mentioned that all the measures are not needed in all situations.

Commissioner Guice said Mr. Thomas also indicated that these amendments apply to disturbances resulting from building and subdivision activity and does not apply to agriculture, gardening, septic tank repairs and other activities that are not part of building permitting or subdivision permitting. He asked the Planning Staff to make that clear in the Ordinance in order to address citizens' concerns.

Chairman Chappell addressed members of the audience who had questions about the erosion control amendments.

Mr. John McCall asked how many additional employees the County would have to hire in order to implement these measures. Mr. Thomas said no additional employees would need to be hired.

Chairman Chappell asked Mr. Thomas to explain the process for obtaining a permit. Mr. Thomas explained that after a building permit is sought, Building Permitting staff would then refer the person to the Planning Department. The Planning Department would review their building plan and erosion control measures. He further explained that the intent is not to inspect every site but rather to respond to complaints and issues identified by building inspectors.

Commissioner Bullock said he has spoken to many contractors about this issue and they wonder why a plan is needed on an area less than an acre. He asked if the building inspector can make recommendations to the property owner about controlling sediment and erosion.

Commissioner Guice asked if the Planning Board meetings are open to the public. Mr. Thomas responded yes and they are advertised in the newspaper. Commissioner Guice further asked if there has been much public participation in those meetings. Mr. Thomas said there has not been a lot of participation. Commissioner Guice asked how many members were on the Planning Board. Mr. Thomas responded there are seven members on the Planning Board. Commissioner Guice said someone from the audience commented that the Planning Board should consist of local people. Mr. Thomas said at least three of them were born and raised in this County.

A member of the audience commented that if a building inspector comes out to a property and sees an issue and makes the recommendation to fix the problem it would be pointless for the property owner to have to get a permit. Mr. Thomas said there is nothing in the permitting regulations that authorize the inspectors to make any recommendations in relation to erosion control.

Mr. John McCall said many building inspectors are not qualified in the area of erosion control. Mr. Thomas responded that it will be the responsibility of the property owner

and the building contractor and others working on that site to contain the sediment from moving onto another property or into the creeks and streams. Mr. McCall asked if fines would be imposed on a property owner if the problems were not dealt with within a certain timeframe. Mr. Thomas said both Ordinances have provisions relating to time but the intent is to get compliance.

Commissioner Guice noted that Commissioners will not be making a decision on this issue at this time. He thinks it is extremely important that people provide input so the Board will be able to make a decision.

Commissioner Phillips moved to accept the 2008 Annual Planning Board Report, seconded by Commissioner Bullock and unanimously approved.

(The 2008 Planning Board Annual Report is hereby incorporated by reference and made a part of these Minutes.)

APPOINTMENTS

CRIMINAL JUSTICE PARTNERSHIP PLAN

Commissioner Guice nominated and moved to appoint Roscoe Wilson to fill a vacant term, seconded by Commissioner Bullock and unanimously approved.

RECREATION ADVISORY BOARD

Commissioner Hogsed nominated and moved to appoint Brad Renegar to fill a vacant term, seconded by Commissioner Phillips and unanimously approved.

BOARD OF HEALTH

Commissioner Guice nominated and moved to appoint PJ Boatwright, Jr. to fill a vacant term, seconded by Commissioner Phillips and unanimously approved.

JUVENILE CRIME PREVENTION COUNCIL

Commissioner Bullock moved to reappoint Doug Mundy, Marty Burns, Eddie Lance, Rick Pangle, Steve Smith, Jerry Stone and Jana Jacobs, seconded by Commissioner Hogsed and unanimously approved.

TRANSYLVANIA COUNTY COUNCIL ON AGING

Commissioner Guice moved to reappoint Sue Robinson, Linda Fluck, Emily Stewart, Ruth Jones and Molly Wilmot, seconded by Commissioner Phillips and unanimously approved.

NEW BUSINESS

2007 TAX SETTLEMENT REPORT

Tax Assessor/Collector David Reid presented the 2007 Tax Settlement Report to Commissioners. Mr. Reid was charged with collecting Ad Valorem Taxes, penalties and interest in the amount of \$21,649,058.01. His office collected \$21,541,598.03, leaving a

balance of \$107,481.98 uncollected as of June 30, 2008. The tax collection rate for Transylvania County is 99.503%, the highest ever for the County. Mr. Reid noted the collection rates for the municipalities. The Tax Collector's Office also worked to collect delinquent taxes from prior years. They collected approximately \$267,000 in delinquent taxes in 2008. There still remains approximately \$620,000 in outstanding delinquent taxes.

Commissioners recognized and thanked Mr. Reid and his staff for their hard work and commitment.

Commissioner Guice moved to accept the 2007 Tax Settlement Report, seconded by Commissioner Hogsed and unanimously approved.

(The 2007 Tax Settlement Report is on file in the office of the Clerk to the Board.)

ORDER TO COLLECT TAXES

The Board of Commissioners is required by law to order the Tax Collector to collect the taxes each fiscal year using all legal means to collect those taxes.

Commissioner Hogsed moved to approve the Order to Collect the FY 2009 Taxes in Transylvania County, seconded by Commissioner Guice and unanimously approved.

(The Order to Collect Taxes is hereby incorporated by reference and made a part of these Minutes.)

SCHEDULE OF VALUES 2009 REVALUATION

Tax Assessor/Collector David Reid presented a Schedule of Values for the January 1, 2009 Revaluation process to Commissioners. He requested that Commissioners schedule a Public Hearing on the Schedule of Values for August 25, 2008. He noted that a copy of the 2009 Revaluation Schedule of Values is on file at the Tax Office, County Administration, and the Library.

Commissioners asked Staff to schedule a Public Hearing on the 2009 Revaluation Schedule of Values at the next regular meeting on August 25, 2008.

WORK FIRST PLAN

The County is on schedule to prepare a new Work First Plan. Part of the process is to determine the County's status as either being an electing or standard county. In the past, the Board of Commissioners has decided to be a standard county due to the financial risk associated with becoming an electing county. Social Services Director Carson Griffin announced that the Social Services Board recommends remaining a standard County and she asked Commissioners to approve the appointments to the Work First Planning Committee.

The proposed Work First Planning Committee consists of the following:

Carson Griffin, Chairman	Department of Social Services
Jason Chappell	County Commissioner
Ernest Gilstrap	Social Services Board
Sue Robinson	Business Community
Lynn Adams	TVS
Kim Rogers	Health Department
Steve Smith	Western Highlands Board
Jeff McDaris	Transylvania County Schools

Commissioner Phillips made a motion to appoint the persons listed to serve on the Work First Planning Committee, seconded by Commissioner Guice and unanimously approved.

Commissioner Bullock made a motion to authorize Transylvania County to remain a standard county, seconded by Commissioner Phillips and unanimously approved.

SELECTION OF SCATTERED SITE HOUSING REHABILITATION ADMINISTRATOR

The Manager reported that the County received two requests for proposal for administration of the Scattered Site Housing Rehabilitation Program. They were from Benchmark (CMR) and Land of Sky Regional Council. Based on the evaluations of both proposals, staff recommends selecting Benchmark to administer the 2008 Scattered Site Housing Rehabilitation Program with administrative funds to come out of the \$400,000 in grant funds awarded to the County.

Chairman Chappell moved to award the administration of the 2008 Scattered Site Housing Rehabilitation Program to Benchmark (CMR) for a fixed fee not to exceed \$66,000, seconded by Commissioner Phillips. Chairman Chappell noted that these grants bring a tremendous amount of monies into the community, helping also to create jobs. **The motion was unanimously approved.**

MEMORANDUM OF AGREEMENT FOR RURAL PLANNING ORGANIZATION (RPO)

The Manager reported that the North Carolina Department of Transportation has requested that all Rural Planning Organizations revise their Memorandums of Understanding (MOU's) to bring them in compliance with the Open Meetings Law. The Transportation Advisory Committee (TAC) of the Land of Sky Rural Planning Organization approved the amended MOU on June 20, 2008.

Commissioner Guice moved to approve the amended Memorandum of Understanding for Cooperative, Comprehensive and Continuing Transportation Planning and the establishment of a Rural Transportation Planning Organization for Buncombe, Haywood, Madison and Transylvania Counties. The motion was seconded by Commissioner Hogsed and unanimously approved.

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NCGS 160A-20

The Manager reported that the estimated cost of the new Public Safety Facility is \$20,354,000 and the County has funds available totaling \$17,554,000, leaving a balance of \$2,800,000 that the County must borrow. Commissioners approved the borrowing of funds in the FY 2009 Budget.

Finance Director Gay Poor stated that per the North Carolina Local Government Commission a schedule of activities must occur in order to borrow the funds, including the approval of a resolution authorizing the filing of an application for approval of a financing agreement.

Commissioner Bullock asked if this would affect the County's borrowing power if the County should decide to move forward with other projects. The Manager responded no, adding that the County's borrowing capacity is approximately \$287 million.

Commissioner Guice moved to approve Resolution 31-08 Authorizing the Filing of an Application for Approval of a Financial Agreement Authorized by NCGS 160A-20, seconded by Commissioner Bullock and unanimously approved.

(Resolution 31-08 Authorizing the Filing of an Application for Approval of a Financial Agreement Authorized by NCGS 160A-20 is hereby incorporated by reference and made a part of these Minutes.)

FISHING – COUNTY PISGAH FOREST CONVENIENCE CENTER PROPERTY

At a recent Commissioners' meeting a citizen asked about fishing the Davidson River on County property at the Pisgah Forest Convenience Center site. The Manager has spoken with North Carolina Wildlife Commission regarding this issue, as well as with Mr. Kevin Howell who leases an area of the Davidson River from Renova for fishing and access rights. The Manager asked County Attorney Curtis Potter to report his findings.

Mr. Potter stated that it is his legal opinion that the land in question under the Davidson River is owned by the County; however it is subject to some common law uses, such as the County could not impede someone from canoeing that portion of the river. The water and wildlife belong to the State. Anyone standing on the ground there would be trespassing on County property.

Mr. Kevin Howell said he thought the property in question belonged to Ecusta, not the County. He would like to work out an agreement with County for access rights.

Chairman Chappell noted that the current policy is not to allow fishing on County property because of potential safety and liability issues. Commissioner Hogsed asked if the County would be relieved of any liability if an agreement was entered into with Mr. Howell. Mr. Potter said the agreement would include an indemnification clause.

Commissioner Bullock commented that other citizens that try to fish that area now may be concerned that the County is allowing only Mr. Howell access rights. He asked if a lease would solve that issue. The Manager stated the intent is to enter into an arrangement with Mr. Howell.

Commissioner Guice moved to not allow public fishing at the Pisgah Forest Convenience Center site and further to authorize the County to enter into an agreement with Mr. Kevin Howell for fishing and access rights. The motion was seconded by Commissioner Hogsed. Commissioner Guice commented that it is clear that Mr. Howell has invested money and time into his project and he agreed that the County should move forward with an agreement with Mr. Howell for the benefit of everyone. Chairman Chappell noted that the area in question is a very small area. **The motion was passed unanimously.**

SCHEDULE A PUBLIC HEARING FOR THE CLOSE OUT OF THE BUSINESS INCUBATOR PROJECT

The Business Incubator has been finalized and a Public Hearing should be scheduled. The Manager asked Commissioners to schedule a Public Hearing for August 25, 2008.

Commissioner Hogsed moved to schedule a Public Hearing for the close out of the Business Incubator for Monday, August 25, 2008 at 7:00 p.m. in the large courtroom of the Courthouse, seconded by Commissioner Phillips and unanimously approved.

CONTRACTOR SELECTION FOR CASTEVENS AND POWELL STREAM BANK RESTORATION PROJECT

The Transylvania County Soil and Water Conservation Board received six bids on the Castevens and Powell Stream Bank Restoration Project. The lowest responsible bidder was J.D. Galloway Grading and Excavating for \$13,640. The Soil and Water Board recommends awarding the bid to J.D. Galloway Grading and Excavating.

Commissioner Bullock moved to award the contract to J.D. Galloway Grading and Excavating for \$13,640, seconded by Commissioner Hogsed and unanimously approved.

MANAGER'S REPORT

The Manager had no further information to report.

PUBLIC COMMENT

Carl McCall: Mr. McCall thanked the Commissioners that voted against the Noise Ordinance and said the citizens will remember those that voted for the Noise Ordinance in the upcoming election. Mr. McCall believes this will burden the Sheriff's Department when they should be devoting their time to catching criminals. Mr. McCall concluded by saying that this group is not going away until the Noise Ordinance is revised.

Keith Chappell: Mr. Chappell asked if firing a rifle on his property is a violation of the Noise Ordinance. Mr. Potter responded that any noise that is not specifically exempted is a potential violation. Every situation will be taken into consideration by whoever is responding to a complaint. Mr. Potter further stated that it probably would not be a violation but it certainly could be a violation. Mr. Chappell said it appears this Ordinance is anti-gun. He referred to the petition that was submitted to Commissioners earlier in the meeting and asked if Commissioners knew how many citizens were actually for the Noise Ordinance. He said both the Noise Ordinance and proposed erosion control amendments are not clear.

Mike Baxley: Mr. Baxley owns the bike track in the Cherryfield community. He said he followed all the necessary processes to build the track, noting the County did not require any such building permits. He noted that the Manager had left messages for him with concerns about the situation. Before a recent meeting Mr. Baxley said he provided his phone number to the Manager asking him to please contact Commissioners so that may speak with him regarding this situation. He said he never received a phone call from Commissioners. Mr. Baxley noted that he informed the neighbors in the Cherryfield community of his intentions to construct a bike track and no one was opposed. After six months of working to build the track, still no one contacted him about it. Mr. Baxley further commented that he has been accused of being a bad neighbor but he followed all the rules and informed his neighbors of his intentions. He said this matter should have been resolved in a civil court setting instead of Commissioners imposing such an Ordinance on the entire County. He urged Commissioners to rescind the Noise Ordinance.

Chase Hooper: Mr. Hooper referred to the eight factors in the Noise Ordinance in which law enforcement would use in determining whether a noise is a violation. He said he received a citation recently and he was able to hold a normal conversation with the officers while the bikes were operating on the track. He said the officers apologized for issuing the citation because they thought the Noise Ordinance was a joke. He further commented that officers told him that they were instructed to issue a citation any time the bike track was in operation. Mr. Hooper said he scheduled an event at the track because events were exempted from the Noise Ordinance and yet he still received a citation. He referred a question to Commissioner Hogsed. Commissioner Hogsed commented earlier that the bike track was a violation of the old Ordinance. Mr. Hooper said motor vehicles were exempt from the old Ordinance. Commissioner Hogsed responded to him that a citation was issued because there was a clear violation of the Noise Ordinance.

Randy Owen: Mr. Owen thanked Commissioner Phillips and Chairman Chappell for voting against the Noise Ordinance. He said he has a large tract of land on which his children enjoy riding their bikes and ATV's. Mr. Owen stated that Commissioners are imposing too many controls upon the citizens and the Noise Ordinance is ridiculous.

John Chappell: Mr. Chappell stated that it appears to him the Noise Ordinance was revised in order to ban the motor bike track in Cherryfield. The citation that was issued under the old Noise Ordinance is still pending. The bike track is a violation under the

revised Ordinance which is not fair. He questioned the difference in the noise coming from exempted noises and prohibited noises. Mr. Chappell posed a question to Commissioner Guice, asking him how he knows for sure that this group is a vocal minority. He said if this issue were put to a vote of the people he would be satisfied with how the majority voted.

Jimmy Keener: Mr. Keener said he shoots target practice at his home quite frequently and he has a neighbor that files a complaint each time. He said he spoke with Commissioner Guice recently and was informed that firearms were exempt from the Noise Ordinance, although the County Attorney said earlier that shooting a firearm could be a violation. Mr. Keener said there appears to be a lot of confusion and he asked Commissioners to reconsider the Noise Ordinance and listen to people in the County. Commissioner Guice responded. He said that a Noise Ordinance has been in effect since 1983. He and others have been shooting firearms since that time and have not been cited or brought to court. Mr. Keener said the last officer that responded to his home informed him that if he fired another shot on his property he would be arrested. Commissioner Guice said he had informed Mr. Keener to call the Sheriff if he had any conflict with an officer and also to contact the Manager over concerns about the Noise Ordinance. He further commented that the Sheriff is dealing with the situation and it is the Sheriff's responsibility as it relates to the training of his staff. There is no change in the Ordinance pertaining to shooting firearms. Mr. Keener asked Commissioners to reconsider the Noise Ordinance.

Mike West: Mr. West said the Noise Ordinance was passed to comfort a few citizens and at the expense of the rest of them. The government is charged with protecting citizens' property rights. He further commented that Ordinances can not make better neighbors. Mr. West said the County may have opened itself up to a lawsuit because of ex post facto conditions and for violating the citizens' property rights. He urged Commissioners to rescind all the Noise Ordinances and put the issue to a vote of the people. Mr. West concluded by saying the Noise Ordinance is a pathway to zoning in the County.

Dwayne Jones: Mr. Jones referred to the time limit imposed on the first public comment period. Chairman Chappell noted that the first public comment period is limited to 15 minutes per the Rules and Procedure. Mr. Jones stated that when the time limit was reached a couple of Commissioners began addressing some members of the audience and therefore broke Roberts Rules of Order. Chairman Chappell responded that the Board of Commissioners does follow Roberts Rules of Order unless it conflicts with the Board of Commissioners Rules and Procedure, then the Rules and Procedure supersedes. Mr. Jones said while he understands the rules, citizens should be able to respond to Commissioners' comments.

Corey McCall: Mr. McCall said the operation of some equipment is louder than bike tracks. He said he is tired of people telling him what he can and can not do. He commented that Commissioners are not listening to the public.

Terry Fisher: Mr. Fisher said he deals with the State on a regular basis with regards to erosion control. He said the major difference in the revised Noise Ordinance is the potential fine of \$500.

Leslie Keener: Ms. Keener said the Noise Ordinance is a waste of taxpayers' money. She commented that her neighbor continually calls law enforcement for ridiculous reasons. Ms. Keener said complaints about noise are silly and believes both the Noise Ordinance and erosion control amendments should be clarified.

Brent Rathbone: Mr. Rathbone said the noise issue was not brought up until Mr. Baxley opened his bike track. He said the petition opposing the Noise Ordinance was signed by 600 people just at his place of business and less than five refused to sign it. Mr. Rathbone said people should be allowed to do what they want on their own property and not be dictated by their neighbors. He asked Commissioners to reconsider the Noise Ordinance and make it apply to all.

Stacy Mathis: Mr. Mathis said the Noise Ordinance affects him in three ways: he has dogs, his stepfather is a gunsmith, and he is a hunter. He also said his nephew loves to ride his motorbike and is good enough to race professionally some day but he has to travel to another county to practice. Mr. Mathis said the Noise Ordinance needs to be revisited.

Kevin Shook: Mr. Shook said he has lived in Transylvania County his whole life but he does not work in the County because there are no jobs here. He referred to the factors that must be considered to determine if someone is in violation of the Noise Ordinance. He said the intensity of noise is determined differently by people and there are no defined criteria in the Noise Ordinance to determine a violation. He asked Commissioners to reconsider the Noise Ordinance.

David Cantrell: Mr. Cantrell said both Ordinances contain ambiguous language and the Noise Ordinance specifically will be challenged in court. Referring to the erosion control amendments, he said if the State responds to a complaint they will not inform the property owner of the remedies because of the liability, yet the County plans to tell the property owner how to fix the problem even though staff is untrained in erosion control measures. Both Ordinances have arisen from complaints from people trying to control what others do and everyone should not be penalized.

Terry Rice: Mr. Rice said 4,482 people signed the petition opposing the Noise Ordinance. He said he has been to three meetings involving the Noise Ordinance and at all three meetings the majority of the speakers have been opposed to it and yet Commissioners passed the Noise Ordinance anyway. The people of the Transylvania County are being penalized because of Mr. Baxley's bike track. Mr. Rice said he supports the bike track because Mr. Baxley has the right to use his land how he sees fit and he followed all the proper procedures. He said if there is any legal action that can be taken, it should be between Mr. Baxley and his neighbors and the rest of the citizens in the County should be left out of it.

Kathy Hooper: Ms. Hooper commented that people do live quietly. She asked Commissioners to please consider the petition and rethink the Noise Ordinance.

Sonny Bracken: Mr. Bracken said he is a gunsmith and he shoots competitively. He said his neighbors sometimes complain. Mr. Bracken said maybe the answer to this situation is that everyone should have a silencer so no one could hear anything.

Ray Smith: Mr. Smith said he shoots his firearms regularly and his neighbors do not complain, although one neighbor complains about another neighbor frequently. Mr. Smith said he is respectful of his neighbors and he plans to keep shooting. Commissioner Guice asked him if a law enforcement officer has ever been to his residence responding to a noise complaint since the Noise Ordinance was first implemented in 1983. Mr. Smith responded no; however his neighbor continually complains about Mr. Keener for firing his firearms. Commissioner Guice pointed out that Mr. Smith is respectful of neighbors and Commissioners have said numerous times that this issue would not have come this far if the residents in the Cherryfield community would have resolved the issue themselves.

Darrell Smith: Mr. Smith asked the Board if they have considered meeting with both parties to help to mediate the situation.

COMMISSIONERS' COMMENTS

Commissioner Hogsd thanked the members of the audience for coming to the meeting and telling Commissioners what they think.

Commissioner Bullock said the reason the Noise Ordinance was revised was so that it would be suitable for all people. Nothing in the Noise Ordinance has changed as it pertains to guns or dogs. Many people have complained about both over the years and he said he does not know of any citations that have ever been issued. Commissioner Bullock commented that he is disturbed by the way Mr. Keener was treated. He further commented that it appears that some of the Sheriff's deputies have different interpretations of the Noise Ordinance and something should be done to clarify the situation. Commissioners are obligated to listen to all citizens. Commissioner Bullock said he will address the issues that have come forth since the revised Noise Ordinance came into effect.

Commissioner Guice said the Noise Ordinance has caused much confusion and many rumors. He said with any group within a community there will be people that are for or against an issue and some that are confused. Commissioner Guice noted that he did not give the Transylvania Times an interview at all. The comment that was printed in the paper was via a vocal exchange with the author of the article at a local restaurant. Commissioner Guice explained his comment, "vocal minority", which was printed in the Transylvania Times. In most situations that are hot topic issues and where people flood the Courthouse over that one issue, that normally does not represent the entire make up of the County. The Board of Commissioners represents approximately 30,000 citizens. He

said he does consider the petition important and he would like some time to review the petition closely. He would also like the opportunity to contact some of the people that signed the petition because he has been told that some people did not understand the Noise Ordinance. Commissioner Guice said he made a decision based on what was occurring throughout the County. He received calls from all over the County from citizens who were particularly concerned about the bike track in the Cherryfield community. He commented that he takes exception when comments are made that the complaints are being made by people moving into the community. The concerns are coming from life long residents in the community. He said the noise is worse when the larger bikes are on the track. These citizens have a valid concern; but the residents in the Cherryfield community and Mr. Baxley need to make an effort to work this situation out. Commissioners have encouraged both sides to compromise. The research that has been done as it relates to the Noise Ordinance with the Institute of Government, legal staff and others have indicated that this is the route to take to make the Noise Ordinance enforceable. Commissioner Guice said all this can be stopped if the neighbors come together and work out a compromise. Commissioners do not want to legislate what it means to be a good neighbor. He said he will consider the petition but the resolve will have to come from the neighbors.

Commissioner Phillips said he understands why some ordinances and regulations are needed. He said he thinks back to his ancestors and what may have happened in their time and when the need for a noise ordinance actually came to be. With a Country built upon individual rights, he asked how this Country existed without such ordinances. No ordinance can legislate being a good neighbor. Commissioner Phillips said the bike track and the Noise Ordinance are two separate issues and one can not be solved with the other. He commented that he believes the ex post facto clause still applies and was put into place to protect people. He said he has not heard any citizen ask Commissioners to implement a stronger Noise Ordinance and many people did not even know one existed. He commented that he has seen things change so much in this State and County that he wonders if he will have to move to enjoy the things he wants to. Many people feel like they are losing Transylvania County. Commissioner Phillips said Commissioners need to give some serious thought about the decisions they make and how citizens are affected by those decisions. He thanked everyone for coming to the meeting and participating.

Chairman Chappell said most people know how he feels about regulations. He said sometimes the Board can come across as not wanting to hear people speak, but they want to be fair and allow everyone an opportunity to speak.

There being no further comments, Chairman Chappell moved to enter into Closed Session per North Carolina General Statute 143-318.11 (a) (4) to discuss expansion of a business, after a 10 minute recess, seconded by Commissioner Phillips and unanimously carried.

The meeting reconvened at 10:45 p.m.

CLOSED SESSION

Pursuant to NCGS 143-318.11 (a) (4) closed session was entered into. Present were Chairman Chappell, Commissioners Bullock, Guice, Hogsed and Phillips, County Manager Artie Wilson, County Attorney Curtis Potter, Finance Director Gay Poor and Clerk to the Board Trisha McLeod.

Commissioners discussed issues relating to the expansion of a business and instructed staff on how to proceed.

Chairman Chappell moved to reenter Open Session, seconded by Commissioner Bullock and unanimously carried.

OPEN SESSION

Chairman Chappell moved to seal the Minutes of the Closed Session, seconded by Commissioner Bullock and unanimously approved.

ADJOURNMENT

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

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha D. McLeod
Clerk to the Board