

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
February 9, 2009 – REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Monday, February 9, 2009 at 7:00 p.m. in the large courtroom of the Transylvania County Courthouse.

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

Chairman Jason Chappell presiding called the meeting to order at 7:03 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

PROPOSED EROSION AND SEDIMENTATION CONTROL AMENDMENTS TO THE SUBDIVISION AND BUILDING REGULATIONS

Chairman Chappell declared the Public Hearing open at 7:05 p.m. The Transylvania County Planning Board has reviewed the comments made from the first Public Hearing on the proposed Erosion and Sedimentation Control Amendments to the Subdivision and Building Regulations and is recommending changes to the previous document. County Planner Mike Thomas showed a Power Point presentation highlighting the changes and the purpose for the amendments.

The purpose of the amendments is to protect water-bodies and adjoining properties from the affects of accelerated sedimentation, as opposed to natural sedimentation which all streams experience. The Planning Board wishes to address disturbances of land under one acre. These disturbances do create problems; however they are not regulated routinely and systematically by the State. The key distinction in the proposed amendments is that they are related only to disturbances involving building or subdivision permits. The sediment creates problems, particularly in the streams, disturbing spawning areas, covering up habitats, and carrying substances into the streams that do not belong. Most of the sediment ends up in the French Broad River.

North Carolina State University conducted a study on how much material can be moved on an acre of bare disturbed area with a slope of 2:1 consisting of sandy clay loam material and with 2.6" of rain in an eight hour period. These factors are not uncommon in Transylvania County. Their study found that 19 tons of sediment could be washed off the site.

Mr. Thomas showed several photographs of problems the Planning Department has dealt with over the last couple of years. Many showed home sites with no measures in place to control sediment, severe sedimentation and clogged ditches. Basic protections could have prevented these types of problems from occurring.

The Planning Board considered a full erosion control program but found that it requires an extensive effort and additional staffing. They felt the State adequately monitored disturbances on sites over one acre. Their goal is to address small disturbances with a limited local program. The amendments include the following:

- Clarified the meaning of disturbances;
- Increased the minimum square feet from 2,000 to 4,000;
- Removed the Planning Department's approval of the owner selected control measures;
- No additional permit fee; erosion control filing would be included in the building or subdivision fee permit process.

Mr. Thomas said he does not anticipate a real failure to comply with these measures. If in a rare occasion someone fails to comply, a stop work order would be issued until corrective action is taken. The final approval does depend on the area being stabilized with the final ground cover or final seeding. The Planning Board requests approval of these amendments by the Board of Commissioners.

Bill Thomas: Mr. Thomas said many of these problems occur out of ignorance or lack of planning and he believes these amendments will help alleviate those problems, specifically with those contractors who cut corners to save costs. He urged the Board to approve the amendments.

James Keenan: Mr. Keenan spoke in favor of the proposed amendments. He said requiring people not to pollute their neighbors' lots, streets, or streams is reasonable and not an onerous burden. Mr. Keenan said he would be very upset if the Board reversed the unanimous recommendations of the County's Planning Board. The Board would be repudiating the findings of a body it appointed. He stressed that the Board has a responsibility to preserve the health, safety and welfare of the people of Transylvania County and urged the Board to act in that manner.

Mark Willis: Mr. Willis said he is a grading contractor and a certified erosion control inspector. He expressed opposition to the amendments because of the additional costs to homeowners and contractors. He commented that the County owns property on which it

is not complying with the State's erosion control standards. He further commented that these amendments affect only the construction industry.

Roger Eades: Mr. Eades spoke in favor of the amendments to the ordinance. He said he recently experienced pollution of a stream behind his property in which the developer of a nearby property did not take proper measures to control the sediment. The lot was subsequently destroyed and the homeowner had to spend a great deal of money to repair the lot. Mr. Eades also recommended stiffer penalties for noncompliance.

Wayne Thomas: Mr. Thomas encouraged the Board to approve the ordinance and noted that the County would be in violation of federal law if it did not take action. Mr. Thomas said he is also a certified erosion control inspector.

Mason Sexton: Mr. Sexton said he is also a certified erosion control inspector. He stated that the Planning Board put forth these amendments in an effort to protect the County's resources. Mr. Sexton explained how sediment affects the economic development of the County due to accelerated erosion problems, affecting fishing, canoeing, and rafting and other recreation activities. He also said accelerated erosion causes loss of habitat. He encouraged the Board to approve the amendments.

Bob Twomey: Mr. Twomey said Transylvania County has some one of the cleanest and most pristine environments in Western North Carolina. Although most people will take measures to control erosion, there are contractors and builders who do not in order to cut costs. He commented that although the State has taken tremendous steps to control erosion and sedimentation on larger lots, the smaller lots are causing problems for the County. He encouraged the Board to approve the amendments.

Eric Caldwell: Mr. Caldwell said most of the surrounding counties have provisions in place to control erosion. He pointed out that sediment is the number one pollutant in North Carolina and in Transylvania County. Mr. Caldwell said the proposed amendments raises awareness, ensures a basic plan to prevent erosion, should not involve any additional cost other than what a reasonable contractor would do on a site to prevent erosion, and protects homeowners from additional costs in repairing and stabilizing sites. He encouraged the Board to approve the proposed amendments.

Bob Hoxit: Mr. Hoxit expressed opposition to the proposed amendments because of the added expense to contractors and homeowners.

Chairman Chappell called for comments from Commissioners.

Commissioner Bullock expressed concern about the definition of land disturbances in the proposed amendments and said he has some reservation about allowing other disturbances that are not associated with building.

There being no further comments, **Chairman Chappell declared the Public Hearing closed at 7:50 p.m.**

PUBLIC COMMENT

Bill Thomas: Mr. Thomas spoke in favor of the reclassification of Horse Pasture River. The proposal is to designate the River as an Outstanding Resource Waters (ORW) which would put management restrictions on the amount of discharges into the River. He encouraged Commissioners to support the first option offered by the Division of Water Quality which would disallow the expansion of existing facilities and caps the amount of discharges into the River.

James Keenan: Mr. Keenan inquired about the status of the Noise Ordinance and the legal action between the County and the bike track owner. The Manager responded that the County has a court order requiring a mediation session before June 1 between both parties. A tentative trial date has been set for August 3. The Manager said since the temporary injunction, there has been two citations issued for violating the Noise Ordinance. Staff is in the process of scheduling a hearing before a judge. The Noise Ordinance remains in effect.

AGENDA MODIFICATIONS

The Manager reported on the Agenda modifications. He requested to add Item IX-A Easement for Comporium, moving all other items down in succession, and Item IX-F Input on Transportation Reform under New Business, and moving the Manager's Report to Item IX-G.

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

CONSENT AGENDA

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

The following items were approved:

MINUTES

The Minutes of the January 26, 2009 Regular Meeting were approved.

FACILITIES USE REQUESTS

The use of the Courthouse Gazebo by the Brevard High School Leadership Class for a Shoe Drive on February 21, 2009 from 2:00 p.m. to 4:00 p.m. was approved.

The use of the Courthouse Gazebo by Neighbors in Ministry for a "Shoe the World" Drive on April 25, 2009 from 8:00 a.m. to 2:00 p.m. was approved.

The use of Silvermont by Rise and Shine Freedom School for their Annual Spring Fling on May 22, 2009 from 5:00 p.m. to 10:00 p.m. was approved.

The use of Silvermont by Relay for Life for a benefit fundraiser on May 30, 2009 from 8:00 a.m. to 8:00 p.m. was approved. The fees were waived.

PRESENTATIONS/RECOGNITION

COMMUNITY CHILD PROTECTION TEAM REPORT AND CHILD FATALITY PREVENTION TEAM REPORT

Social Services Director Carson Griffin reviewed the Community Child Protection Team (CCPT) Report. She reported that the Team meets most months to review high risk cases regarding abuse and neglect. In 2008 the Team reviewed 15 cases. They also held an education campaign at Transylvania Regional Hospital and purchased reality dolls for the Hospital to use in their birthing center. Ms. Griffin further reported the Team meets on a quarterly basis with the Child Fatality Prevention Team to review all child deaths that occur in the County.

Health Director Steve Smith reviewed the Child Fatality Prevention Team (CFPT) Report. The CFPT reviews everything outside the CCPT obligations. His report indicates two child deaths associated with SIDS. The CFPT is working on some education elements associated with overlying, where a child dies due to suffocation from sleeping with a parent, etc. He distributed a document to Commissioners which provided an overview of infant mortality rates and child deaths in Transylvania County in comparison to other counties.

Mr. Griffin also reported on serious issues the County is facing with its families, such as the lack of substance abuse and mental health services, transportation, affordable housing and jobs.

APPOINTMENTS

PARKS COMMISSION

Commissioner Hawkins nominated and moved to appoint Maryann Mickewicz, seconded by Commissioner Phillips and unanimously approved.

RECREATION ADVISORY BOARD

Chairman Chappell moved to waive the term limits of Fletcher Hobbs and reappoint him to another term, seconded by Commissioner Phillips and unanimously approved.

Commissioner Phillips moved to reappoint Heather Layton to a second term, seconded by Commissioner Bullock and unanimously approved.

Commissioner Phillips moved to reappoint Sandra Hosey as Chairman, seconded by Commissioner Hawkins and unanimously approved.

TRANSYLVANIA COUNTY COUNCIL ON AGING

Commissioner Hawkins nominated and moved to appoint Sheryl Fortune and Eric Caldwell, seconded by Commissioner Bullock and unanimously approved.

SENIOR VOLUNTEER ADVISORY COUNCIL

Commissioner Bullock moved to appoint Kathe Harris to replace Kae Parker and reappoint Sandy Griffin, seconded by Commissioner Phillips and unanimously approved.

TRANSYLVANIA NATURAL RESOURCES COUNCIL

Commissioner Bullock nominated and moved to appoint Bob Twomey, seconded by Commissioner Hogsed and unanimously approved.

OLD BUSINESS

HOUSE BILL FOR AFFORDABLE HOUSING FOR LOCAL EMPLOYEES

The Manager reported that a few months ago the Board approved Resolution 35-08 in order to be included in an effort to provide affordable housing for employees of the City of Brevard, the Town of Rosman, Transylvania County, Transylvania County School teachers, and, possibly, to Transylvania County School's professional staff. Mr. Carroll Parker has worked with local legislators to draft a bill for the Board's consideration. The Manager reported that the draft bill covers all the areas previously mentioned in the Resolution and that Mr. Parker is in support of the draft bill.

Commissioner Bullock moved to approve the draft bill, seconded by Commissioner Hawkins and unanimously approved.

RECLASSIFICATION OF HORSE PASTURE RIVER

The Manager reported that the North Carolina Department of Environment and Natural Resources (NCDENR) is proposing to reclassify a portion of the Horse Pasture River. They held a Public Hearing several months ago which County officials attended. As a result, Commissioners began to receive feedback from residents who were concerned about how the reclassification would affect industry and development in the upper end of the County. Commissioners subsequently sent a letter to NCDENR opposing the reclassification. The Manager reported that NCDENR has since offered amendments to their original proposal. Staff held a public meeting on February 2, 2009 along with representatives from NCDENR at the Sapphire Whitewater Community Center. NCDENR representatives explained the proposals and answered questions from concerned citizens. The Manager said most people in attendance were opposed to regulations but were in favor of the Outstanding Resource Waters (ORW) designation from the four mile limit downstream. They were opposed to the any management restrictions above the four mile limit. It was also the consensus of most in attendance that residents and business owners had already taken measures to improve the quality of the water.

The Manager also reported that representatives from Burlingame were concerned about the results of some sampling conducted by NCDENR and offered to pay for a resampling. He asked for direction from the Board on how to respond to NCDENR. He drafted a letter for the Board's consideration. The letter recommends Option 2 with the removal of the + designation. The + designation puts management restrictions on tributaries as well.

Commissioner Phillips said his understanding is that the residents and business owners affected by the reclassification would prefer Option 2 if they have no other choice. He commented that those same people took great care and pride in improving the conditions of the Horse Pasture River. Commissioner Phillips recommended the letter inform the State of the flawed process because County officials were last to be informed of the proposed reclassification, otherwise he is in favor of the Manager's draft letter.

Commissioner Bullock noted that NCDENR will make a decision on the proposed reclassification unless they receive 10 letters of opposition. If they receive at least 10 letters of opposition, the decision will be made by the North Carolina General Assembly. He further noted that one option allows for the expansion of treatment facilities for domestic use and the other option does not allow for expansion.

Commissioner Hawkins commented that both options cause restrictions on potential development. He asked if there were other alternatives. The Manager said there are no other options at this point. He reiterated Commissioner Bullock's comments that if NCDENR receives 10 letters or more the decision would go before the General Assembly.

Chairman Chappell expressed his frustration of the State's process. He said he does not agree with either option, but if he must choose, he believes Option 2 is the less restrictive option.

Commissioner Phillips suggested Commissioners also submit a letter to NCDENR requesting a change in the format for requesting a change in reclassification and for notifying local residents and County officials in a timely manner. Chairman Chappell agreed and encouraged Commissioners to submit personal letters of opposition to the reclassification.

After further comments, **Commissioner Hawkins moved to approve the draft letter to NCDENR, seconded by Chairman Chappell and unanimously approved.**

Commissioner Bullock reminded Commissioners and the audience that the deadline to submit comments to NCDENR is February 13, 2009.

NEW BUSINESS

EASEMENT FOR COMPORIUM

The Manager reported that Comporium has requested that the County grant them an easement at the entrance to the Public Safety Facility in order to construct a 22' x 13' building which will enable them to create a redundancy loop for the County and to supply fiber to the new Public Safety Facility. The outside of the building will match the design of the new Public Safety Facility. Upon approval by the Board, staff will work with Comporium to have the property surveyed and an easement prepared. The Manager noted that this is all conditional upon approval by the City of Brevard.

Chairman Chappell asked if the building would be constructed on an area the County will not need in the future. The Manager replied yes and commented it would be constructed as to not be intrusive to the neighbors and will include a buffer. Chairman Chappell further asked if Comporium would be responsible for additional costs incurred on the site for water retention, etc. The Manager replied yes. He said the main issue will be getting approval from the City of Brevard.

Commissioner Hawkins inquired about who will maintain the easement. The Manager said Comporium would maintain the easement.

Commissioner Phillips moved to approve an easement to Comporium for a small building to be located off the entry road leading to the new Public Safety Facility, conditional upon approval by the City of Brevard. The motion was seconded by Commissioner Bullock and unanimously approved.

ENGINEERING SERVICES FOR DESIGN OF RECREATIONAL AREA NEAR ROSMAN

The Manager reported that the County issued requests for proposal for the design of recreational facilities on the 22 acres currently being leased by the County near Rosman. The County received six proposals with the highest ranking bidder being McGill Associates. Upon approval by the Board of Commissioners, staff will negotiate with McGill Associates a price not to exceed a certain amount.

Recreation Director Rick Pangle said most of the proposals were very professional and any of them could have been chosen. McGill was the best qualified and had completed projects that are very similar to what the County may be doing. Mr. Pangle stated that McGill understood this will be an ongoing process for the County.

Commissioner Phillips moved to approve McGill Associates to complete a park master plan for a community park near Rosman, seconded by Commissioner Hawkins. Commissioner Hogsed inquired about the price range. The Manager said it could cost approximately \$20,000 but staff would be negotiating the price with McGill not to exceed a certain amount. Mr. Pangle added that the price would depend on the detail the County would like to see in the plan. Commissioner Hogsed expressed concern about spending that amount of money in the current economic environment and asked if

the plan could be completed in house. Commissioner Hawkins noted that Commissioners would have to approve the proposal before moving forward. Commissioner Phillips agreed with Commissioner Hogsed's concerns but said he is unsure if the plans can be completed in house. Mr. Pangle pointed out that 94% of the property is located within the floodplain. McGill has dealt with these of issues before. After a conceptual plan is complete, the County may find it can complete some of the work itself. The Manager pointed out that the County currently has a long term lease on the property with an option to terminate the contract after two years if the property was unsuitable for constructing a recreational area. He also pointed out that much of the property is located in the floodway which presents restrictions on how it can be developed. Commissioner Hogsed again expressed concern about spending money on a recreational project when the County is not offering pay increases to its employees because of the economic situation. Chairman Chappell and Commissioner Hawkins said they would like to see the proposal from McGill. After further comments, **the motion passed 4 to 1, with Commissioner Hogsed voting against.**

Chairman Chappell asked when the County could expect to see a proposal from McGill. The Manager said McGill should have a proposal for the Board in approximately four weeks.

PROJECT REQUESTS TO CONGRESSMAN SHULER FOR FY 2009-10

The Manager reported that Congressman Heath Shuler has requested information from local municipalities and counties regarding federal funding for projects. The Manager presented the following projects, in order of priority, and asked Commissioners for their approval in sending the list to Congressman Shuler:

- | | |
|----------------------------------|-----------|
| 1. Septage Pretreatment Facility | \$210,000 |
| 2. Communications Equipment | \$500,000 |
| 3. Animal Shelter | \$500,000 |

The Manager discussed each of the projects.

- Staff has submitted a grant application to cover half the cost of the septage pretreatment facility.
- Staff has decided to proceed with newer communications technology at the new Public Safety Facility which in the long term will save the County several hundred thousand dollars. Staff will bring a proposal to the Board at a future meeting.
- The County is required to meet new animal shelter regulations issued by the State Department of Agriculture.

The Manager said the County needs funding for all these projects. The deadline to submit projects to Congressman Shuler is February 16, 2009.

Commissioner Hawkins moved to approve the above listed projects, seconded by Commissioner Phillips. Commissioner Hogsed asked if these projects will be

considered earmarks in the federal budget. The Manager said these projects would be classified as earmarks according to the request from Congressman Shuler. **The motion was unanimously approved.**

BUDGET AMENDMENTS FOR THE SECOND QUARTER OF FY 2009

Finance Director Gay Poor presented the Budget Amendments for the Second Quarter of FY 2009 as follows:

During the second quarter of FY 2008-09, the General Fund budget increased by \$580,255, bringing the total amended budget to \$43,337,858.

On October 27, 2008, the Board of Commissioners approved reductions in expense budgets to offset anticipated revenue shortfalls. These reductions represented approximately 2% of the original FY 09 budget and were pulled primarily from lapsed salaries, delays in hiring staff for the new Public Safety Facility, decreases in spending for travel and supplies, lower fuel prices, a decrease in revenue-driven Register of Deeds remittances, delays in capital acquisitions, and a cut to funds available for contingencies. In the General Fund these reductions totaled \$788,604.

Other amendments, however, added \$1,368,859 to the General Fund budget.

The majority of the increase, \$1,123,000, is attributable to the upgrade of the E911 System and the purchase of new Law Enforcement software that will be compatible with this system. Most of the funds for this project, \$745,000, are specifically restricted by the NC 911 Board for E911 Systems and were transferred to the General Fund from the Emergency Telephone System Fund. Another \$238,000 came from Wireline Funds transferred to a reserve in the General Fund in FY 08 after the NC 911 Board released them for general use. To cover the remaining cost of the upgrade, \$140,000 was appropriated from the General Fund balance and will be reimbursed from the Emergency Telephone System Fund with NC 911 revenues collected in FY 09.

Two other appropriations were made from fund balance: \$10,000 from the Reserve for a Museum for use by the Transylvania Heritage Coalition and \$81,000 from the Reserve for Compensated Absences. Compensation and benefits for employees who left County employment totaled \$33,000 and compensation and benefits for employees who cashed out vacation in lieu of leave totaled \$48,000.

New grants and changes in State and federal funding contributed another \$340,000 to the budget, most notably \$103,000 from the Division of Water Resources for stream bank stabilization projects, \$75,000 from the NC Office of Rural Health and Community Care for transitional costs for mental health care providers, and another \$62,500 of the \$250,000 pass-through grant from One NC Funds for Excelsior Packaging Group, Inc. The budget was also adjusted upward \$55,000 in additional funding for Social Services Programs, \$20,000 for a supplemental Emergency Management Performance grant, \$18,000 in various grants for the Health Department, and several smaller grants that netted to just under \$7,000.

Other miscellaneous changes lowered the budget overall by \$186,000. In compliance with LGC recommendations, the County moved \$210,000 for Fines and Forfeitures, both the revenues and the expenditures, from the General Fund budget to a separate agency fund. Minor increases in the budget resulted from \$9,000 in insurance proceeds for property loss claims, \$4,000 in reallocation of sales taxes identified in a sales tax audit, and \$11,000 in flood plain mapping fees recently passed legislation requires the County to collect and remit to the State.

Commissioner Hawkins moved to approve the Budget Amendments, seconded by Commissioner Phillips and unanimously approved.

RECORDS RETENTION AND DISPOSITION SCHEDULE – SHERIFF’S DEPARTMENT

The North Carolina Department of Cultural Resources has revised the Records Retention and Disposition Schedule for Sheriffs’ Departments. It requires approval by the Board of Commissioners.

Chairman Chappell moved to approve the Records Retention and Disposition Schedule for the Sheriffs’ Departments, seconded by Commissioner Phillips and unanimously approved.

INPUT ON TRANSPORTATION REFORM

The Manager reported that the Department of Transportation Secretary Eugene A. Conti has requested input on how to improve the approval process for highway projects in North Carolina. He further reported that the Secretary of Transportation shall now determine which transportation projects should be funded. Currently, transportation projects are submitted through the Land-of-Sky Rural Planning Organization (RPO) and District Transportation Board meetings. The Manager’s recommendations for improvements included a central entity by which to report needed transportation projects. He said he would prefer that the RPO be that entity.

Commissioners agreed that the RPO is the best resource in which to report the County’s transportation needs.

After further comments, **Commissioner Hawkins moved to instruct the Manager to write a letter expressing the Board’s faith in the RPO system and the Board’s belief that the RPO system is the appropriate vehicle to use to communicate our needs to Raleigh and that would be our highest priority, seconded by Commissioner Phillips and unanimously approved.**

MANAGER’S REPORT

The Manager reported the following:

- The Manager reminded Commissioners about the Planning Session on Tuesday at 6:00 p.m. Dinner will be provided at 5:30 p.m.

- The Manager reminded Commissioners of the special meeting with the Sheriff to review staffing for the new Public Safety Facility on Tuesday, February 17, 2009 at 6:30 p.m. in the Rogow Room.
- Staff received notification that the State modified the scope change of the PARTF grant.
- Information for the Planning Workshop is in the Commissioners' boxes. Staff will have additional information for Commissioners at the meeting.

PUBLIC COMMENT

Keith Chappell: Mr. Chappell inquired about the reclassification of Horse Pasture River and the buffer requirement for the streams. The Manager explained there is a buffer requirement now for trout streams which is already in place. The buffer would be placed depending on the length that is designated.

Mr. Chappell also expressed opposition to the erosion control amendments because of the additional cost burden to homeowners.

COMMISSIONERS' COMMENTS

There were no comments from Commissioners.

ADJOURNMENT

There being no further business to come before the Board, **Commissioner Bullock 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