

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
February 23, 2009 – REGULAR MEETING

The Board of Commissioners of Transylvania County met in regular session on Monday, February 23, 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 Curtis Potter and Clerk to the Board Trisha McLeod.

Media: *Transylvania Times* – Mark Todd

There were approximately 75 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 COMMENT

Eleanor Mockridge: Ms. Mockridge spoke in opposition to the proposed marriage amendment to the NC Constitution stating there are already laws in place defining marriage between a man and a woman and invalidating same sex marriages performed in other states. She further stated the Constitution establishes and protects the rights of individuals, whereas the proposed amendment discriminates against individuals in same sex relationships who simply ask for the same protection under the law as other citizens. As to the idea of the defense of marriage, Ms. Mockridge said she can not imagine a circumstance in which her marriage to her husband could possibly need protection from anyone else's marriage.

Geraldine Kiley: Ms. Jennifer Rouse read a prepared statement for Ms. Kiley and spoke in opposition to the proposed amendment to the NC Constitution. She is opposed to the amendment because it allows a majority of voters to limit the civil rights of a minority group of citizens and is therefore discriminatory by nature. No matter the Board's position, same sex marriage should not be treated as a social or religious issue, but rather one of civil rights and economics. Ms. Kiley and Ms. Rouse married in Massachusetts where they enjoyed the legal rights of marriage such as health benefits. This benefit saves them approximately \$8,000 a year.

Ms. Rouse further stated granting equal rights to gay and lesbian citizens in no way diminishes the rights of other citizens and it is the mandate of the government to uphold the civil rights of all citizens. She asked the Board to reconsider and not allow discrimination to be written into the Constitution.

Reverend Carter Heyward: Reverend Heyward, an Episcopal Minister and a teacher of the Christian religion, said one of her most treasured memories was officiating the marriage of Ms. Kiley and Ms. Rouse in Massachusetts in 2004. She said it would be a sin against God to deny these women the rights and privileges that accompany the civil institution of marriage. Reverend Heyward urged Commissioners to respect the basic civil rights of all people which should include the right of one loving adult of either gender to marry another loving adult of either gender and the rights of such a couple to receive all the privileges and responsibilities that accompany the institution of marriage in this society.

Nate Lyles: Mr. Lyles is a Brevard College student and a member of Club Diversity which represents everyone who believes human rights should be afforded to everyone regardless of sexual orientation. Mr. Lyles announced he is an openly gay male and grew up in a small town where he and many others like him were not accepted. Despite his young age, Mr. Lyles said he has a right to be heard and is proud to be attending this meeting on behalf of Club Diversity.

Kody Kinsley: Mr. Kinsley said the proposed resolution is an attempt to put fear into this society and to further prevent a person who happens to be homosexual from accessing equal rights. He said he will not stand by idly while others attempt to squash the votes of the already marginalized lesbian, gay, bisexual and transgender community. Mr. Kinsley commented that not too many years ago, slavery was justified through religion, supported by the majority and realized by the government and this resolution is another attempt to legalize discrimination. He encouraged Commissioners to propose a new resolution in which they would encourage that marriage and religious covenants shall not be regulated by the State and equal rights shall be granted to all individuals based not upon sexual orientation.

AGENDA MODIFICATIONS

The Manager reported on the Agenda modifications. He requested to remove item VIII-C North Carolina Education Lottery Public School Building Capital Fund under New Business.

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

CONSENT AGENDA

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

The following items were approved:

MINUTES

The Minutes of the January 12, 2009 regular meeting and sealed closed sessions were approved.

FACILITIES REQUESTS

The use of the Courthouse Gazebo by the Children's Center for their annual diaper drive on April 29, 2009 from 8:00 a.m. to 7:00 p.m. was approved.

DISCOVERY AND RELEASE REPORT

The January 2009 Discovery and Release Report was approved.

APPOINTMENTS

RESOLUTION RECOMMENDING THE APPOINTMENT OF CITY STAFF TO SERVE AS REVIEW OFFICER FOR THE CITY OF BREVARD AND RESOLUTION APPOINTING CITY STAFF TO THE TRANSYLVANIA COUNTY TRANSPORTATION ADVISORY COMMITTEE

The Manager reported the City of Brevard requests the removal of Jacob Wiggins as the Review Officer for Transylvania County and as a City appointee to the Transylvania County Transportation Advisory Committee since he is no longer employed with the City of Brevard. The City has asked the County to appoint Daniel Patrick Cobb for both these positions.

Commissioner Bullock moved to approve Resolution 12-09 and Resolution 13-09, seconded by Commissioner Phillips and unanimously approved.

(Resolutions 12-09 and 13-09 are hereby incorporated by reference and made a part of these Minutes.)

GATEWAYS, CORRIDORS, AND DOWNTOWN ADVISORY COMMITTEE

Commissioner Hogsed nominated and moved to appoint Sammy Kicklighter, seconded by Commissioner Phillips and unanimously approved.

OLD BUSINESS

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

The Transylvania County Planning Board has reviewed the comments made during the Public Hearing on Proposed Erosion and Sedimentation Amendments to the subdivision and Building regulations and is recommending changes to the previous document. The changes include: clarified the definition of land disturbance for purposes of the owner; Building and Subdivision Regulations to exclude agriculture, forestry and any other disturbances not associated with a building or subdivision permit; changed the minimum square footage regulated from 2,000 to 4,000 square feet; removed the Planning

Department's approval of control measures selected by the owner; and emphasized that the owner is responsible for selecting control measures from the Best Management Practices in the NC Erosion and Sediment Control Planning and Design Manual. The Planning Department also recommends there be no fee charged for the submittal of the Sedimentation and Erosion Control Plan which would become part of the normal permitting process. If approved, these measures would become effective May 1, 2009. This would allow time to provide training to the Building Department and contractors.

Commissioner Bullock requested more time to study this issue and address the concerns he has.

Commissioner Bullock moved to table this item until the second meeting in April, seconded by Commissioner Phillips. Commissioner Hawkins asked if delaying this item will affect any training sessions that have been scheduled. County Extension Director Eric Caldwell said the delay will not affect the training sessions. **The vote was unanimously approved.**

NEW BUSINESS

PROPOSAL TO MAKE THE COMMUNITY SERVICES BUILDING AND HUMAN SERVICES BUILDINGS TOBACCO FREE AND EXCLUDE TOBACCO PRODUCTS WITHIN 50 FEET FROM THE COMMUNITY SERVICES BUILDING AND HUMAN SERVICES BUILDING

The Manager reported part of the North Carolina Local Health Department accreditation standard (Activity 30.9) requires the "local health department shall prohibit the use of tobacco in its facility and (Activity 30.10) the local health department shall make efforts to prohibit the use of tobacco in all areas and grounds within fifty (50) feet of the health department facility". The Board of Health requests that the Board of Commissioners designate the Community Services and Human Services Buildings as "smoke free and tobacco free buildings". In addition the Board of Health requests that the Board of Commissioners support compliance with activity 30.10 and consider a tobacco use exclusion perimeter of 50 feet from the Community Services Building and Human Services Building.

Health Director Steve Smith informed Commissioners they have two distinct decisions to make. The first is the exclusion of tobacco use inside both buildings. The second is a little more problematic in that it means prohibition of tobacco products up to 50 feet from the exterior of the buildings. NCGS gives Commissioners authority to exclude smoking within 50 feet of the buildings. Mr. Smith said he realizes there are some practical barriers with this measure.

Chairman Chappell asked where ashtrays would be placed if smoking was prohibited within 50 feet from the building. Mr. Smith said he would not advocate for changing the location of the ashtrays. If something is not placed there, people will be more likely to litter.

The Manager noted that some County employees smoke and this would prohibit them from smoking at the entrances to these buildings. Staff would determine a designated smoking area for them. Mr. Smith said he would advocate for a tobacco use free area within both buildings and a smoke free perimeter within 15 feet of the building to prevent the secondhand smoke from coming into the building.

Commissioner Phillips noted the accreditation standards indicate the County shall make efforts to prohibit the use of tobacco in all areas and grounds within 50 feet of the Health Department. He asked if other counties are taking these same measures. Mr. Smith said over 30 health departments that have gone through accreditation at this point and about half have adopted some type of policy related to tobacco use.

Commissioner Hawkins asked if, from a practical matter, it would be simpler to prohibit smoking on the property with the property line being the boundary line. Mr. Smith said he is hesitant to recommend that because staff who smoke would have to leave County property and that could be problematic in terms of acknowledging a break and could be a safety issue.

Commissioner Hawkins move to approve the first recommendation in terms of making the buildings tobacco free and the second recommendation with a 15 foot perimeter around the buildings, seconded by Chairman Chappell. The motion passed by a vote of 4 to 1, with Commissioner Hogsed voting against.

EMERGENCY FUNDS FOR DEPARTMENT OF SOCIAL SERVICES

The Manager reported that \$5,000 is all that remains in emergency funds for the Department of Social Services. The Manager asked the Board to consider granting the Department of Social Services \$5,000 in emergency services to assist citizens in need.

Social Services Carson Griffin said there has been a great deal of concern about the amount of funding available to assist citizens through the winter months, specifically with the economic situation people are facing in this County. The County was allocated \$246,000 by the State and, as of this date, \$243,000 has been spent. Ms. Griffin reported that \$2,300 of the remaining funds must be used for situations including domestic violence and there are very little funds remaining to use for other crises that may arise. The Department of Social Services has served over 1,000 people with the funds allocated by the State. Any monies allocated by the Board will go to serve the elderly and families with young children and to help those who are out of gas or oil, or have cut off notices for utilities. Ms. Griffin indicated the limit per person or family is \$300.

After comments by the Board, **Commissioner Hogsed moved to approve the funds to the Department of Social Services to be used to meet emergency needs for our citizens, seconded by Commissioner Bullock and unanimously approved.**

DUKE ENERGY RELICENSING KEOWEE-TOXAWAY PROJECT

The Manager reported that Duke Energy has begun the relicensing project of its Keowee-Toxaway Hydroelectric Project. He, Chairman Chappell, and Planning and Economic

Development Director Mark Burrows recently met with representatives from Duke Energy to review the licensing renewal process. Duke Energy included Transylvania County in this process since it is a bordering county. The County can elect to be an active participant in this process or elect to just receive information throughout the process. The Manager reported that being an active participant requires a five year commitment by the County. He suggested the County elect to receive information throughout the process and he would be the contact person.

Commissioner Bullock inquired about the advantage of being a stakeholder in this process. The Manager said being a stakeholder requires a lot of time and a major commitment by the County. He does not see an advantage for the County in acting as a stakeholder.

Commissioner Hawkins moved to authorize Transylvania County to be an agency contact during the process with the County Manager being the contact person, seconded by Commissioner Phillips. Chairman Chappell noted Commissioners can submit comments throughout this process. **The motion was unanimously approved.**

SOLID WASTE ACCOUNTS RECEIVABLE WRITE-OFFS

The Manager reported for some time the County has been carrying six Solid Waste Receivables on its books for businesses that have gone out of business. Numerous attempts have been made to collect the fees without success. The total amount of the proposed write off is \$4,833.20 which consists of \$2,576.92 in fees and \$2,256.28 in interest due. He noted staff has exhausted all efforts in trying to collect the monies.

Commissioner Phillips moved to approve the write-off of Solid Waste fees and interest in the amount of \$4,833.20, seconded by Commissioner Hawkins.

Commissioner Phillips noted the actual loss to the County is \$2,576.92; the remaining amount is interest that has accrued. **The motion was unanimously approved.**

The Manager noted staff is trying not to let any account get over 60 days past due. Any past due accounts are being placed on a cash only basis.

MARRIAGE AMENDMENT TO THE NC CONSTITUTION

Chairman Chappell reported Transylvania County has been asked to support a bill allowing the citizens of North Carolina to vote on a marriage amendment to the North Carolina Constitution defining marriage as between one man and one woman. The Board of Commissioners has previously passed a resolution of this nature.

Chairman Chappell said he asked for this item to be placed on the agenda and previously in 2007. He cited the general statutes stating marriage can only be between a man and a woman and noted that 30 others states have passed marriage protection amendments to their Constitutions. Chairman Chappell asked for the Board's unanimous support.

Commissioner Hogsed moved to suspend the rules and allow the public to speak on this matter, seconded by Commissioner Bullock. Commissioner Hogsed said the same rules apply as in the Public Comment period. **The motion was unanimously approved.**

Resa Chandler: Ms. Chandler said she is married to her partner of the same sex, which is not recognized by any laws. She spoke about the humanitarian, constitutional and personal ramifications of passing the amendment. She said the Constitution was not meant to grant rights to some and not to others. Ms. Chandler said, while living in Washington, her partner contracted breast cancer. Under Washington law they were granted same sex benefits, whereas had they lived in North Carolina they would not have been granted these benefits. Ms. Chandler further stated this amendment paves the way to separatism and furthermore affects her family which is personal to her; however if such an amendment is passed by the North Carolina General Assembly, it would not change her life or the lives of her family.

Karla Morr: Ms. Morr said equal rights should never be subject to a popular vote. Doing so signifies it is ethical to discriminate as long as the majority of people agree. If the Board sees a need to support this amendment because of religious beliefs, she asked the Board to remember they were elected to represent the citizens of this County, not to serve as their pastor. She urged the Board to vote against the resolution.

Sue Null: Ms. Null said she has four children, one of which is a lesbian and the other gay. She commented that only two of her children are treated as full citizens of this Country. The other two are considered by the government to be second class citizens, undeserving of equal rights, equal benefits or fair treatment from society. Ms. Null said the NC Constitution is a document that enshrines and protects the rights of individuals and a discriminatory marriage amendment would tarnish the Constitution by explicitly denying basic individual human civil rights to a group of citizens. Furthermore, she stated marriage rights are the responsibility of the State and marriage rites are the responsibility of religions, which, in either case do not fall within the scope of the County's business. She urged the Board not to support inequality for her children.

Jim Cullipher: Mr. Cullipher said he has three children, one of which is homosexual. His son was married in Florida and lived there until his death in 1997. His son's marriage was not recognized under Florida law and upon his death his spouse's name could not be placed on any legal paperwork. Mr. Cullipher reminded Commissioners they began the meeting with the recitation of the Pledge of Allegiance which cites liberty and justice for all. He urged the Board to act in that manner.

Marshall McCallie: Mr. McCallie said this resolution would eliminate any possibility of compromise between the two sides. It says marriage between a man and a woman is the only domestic legal union that shall be valid or recognized in the State. Mr. McCallie said this is a cruel statement and it eliminates any possibility for people to sit down and work this out together. He urged Commissioners to vote no, but if not, he urged the Board to bury the resolution which is divisive and hurtful to this community.

Dan Carter: Mr. Carter said this amendment does not protect his marriage and he does not understand how allowing others to make a loving commitment to each other could somehow diminish his marriage. He said in these economic times everyone should respect and honor each other and work together to face these challenges.

Robin Funsten: Ms. Funsten, a Brevard College student, expressed opposition to the marriage amendment resolution so that later generations will not have to fight to promote equal rights. She further stated this amendment means nothing more than segregation to her and she urged the Board to be more like Dr. King.

Kathryn Thompson: Ms. Thompson expressed opposition to the amendment saying it denies civil liberties to some citizens. She said the Board should be addressing the economic crisis facing the County. She further stated this amendment is an attempt to impose governmental control over matters which American democracy has long held to be private and free of government interference. Ms. Thompson urged the Board to turn their attention to the real and serious issues that confront the County.

Mike Rogers: Mr. Rogers, an ordained pastor, stated that this issue of marriage is not only man's law but God's law as well. He read scripture from the Bible within the context of the subject. He encouraged the Board to pass a resolution in support of limiting marriage between one man and one woman at one time.

Evelyn Erb: Ms. Erb said she agreed with the comments made by Ms. Thompson.

Carol Elliott: Ms. Elliott said the Board's role is to act in a civil capacity, not to make judgment of one's religious beliefs and deny the civil rights of others. She further stated this amendment does not protect her marriage and yet does not harm another's marriage. Ms. Elliott reported that Transylvania County was the first county to integrate schools. She urged the Board to be the first county to vote against this kind of segregation, divisiveness, and hatred.

Mary Kay White: Ms. White urged the Board to protect the Constitution and not support hatred, discrimination and bigotry in the Constitution. State law already limits marriage to heterosexual couples. The amendment would send a message of intolerance against people with different religious persuasions and sexual orientations and is a mean spirited attempt to attack a minority that is already excluded from the privileges and protections of legal marriage in this State. Ms. White said the County should be dealing with other pressing issues that its citizens are facing. She reminded Commissioners that this Country used to prevent interracial marriage and the Bible was used to justify it. In 1967 the Supreme Court stepped in and said the freedom to marry belongs to all Americans. She referred to other historical injustices pertaining to minorities in this Country and urged the Board to not support any amendment that denies freedoms to others.

Ken Chepenik: Mr. Chepenik said the license to marry is a secular contract, not a religious contract, between the State and two individuals. That contract awards certain rights and privileges that no other contract awards, such as health benefits, inheritance,

hospital visitation, etc. He said he does not know of a single instance where a Constitution in these United States has been amended to deny people a right. Mr. Chepenik disagreed with Chairman Chappell's point that 30 other states have passed such amendments, reminding Commissioners that Europe once had similar legislation that denied rights to Jews. He strongly urged the Board to vote against this amendment, which he said is nothing more than an expression of bigotry and prejudice.

Barbara Wright: Ms. Wright said she is concerned about the focus and the priority of the County Commissioners. She said the County is faced with increasing unemployment, struggling businesses, foreclosures, and a reduction in County services. Ms. Wright urged the Board to deal with the issues facing this County rather than on restricting the rights of a handful of people.

Leslie Chepenik: Ms. Chepenik said Transylvania County has a heritage of tolerance. Transylvania County was the first to integrate schools in the State. Those leaders at the time were forward thinking and were on the right side of history. She said this proposal, if it goes forth, would sew the seeds of bigotry and intolerance. She urged the Board to vote in a manner that continues the County's history of tolerance.

Brian Burgess: Mr. Burgess, a college student, referred to the comments made by Mr. Rogers, and referred to particular Books of the Bible that contradicted Mr. Roger's statements. Mr. Burgess said there are larger issues facing the County such as domestic violence, child abuse, etc.

Chairman Chappell explained this resolution merely gives the citizens of North Carolina the right to vote on this issue. He said while he personally believes marriage should be between one man and one woman, this resolution allows the people to vote on the matter, which is his intent.

Commissioner Hawkins said he disagrees with the amendment. He read from an email (included below as part of these Minutes) he sent to Commissioners explaining his reasons for opposing it and the subsequent placement of the item on the Agenda.

1 -- For me, being a commissioner is about the "nuts and bolts" of providing services to the county. State and national policy debate is, for me, more appropriately handled in other arenas - unless it directly affects our ability to provide services. This topic at this time does not meet that criterion. I understand and very much respect your personal commitment to the issue, but a resolution commits the County, and that's completely different.

2 -- Even if #1 above didn't apply, I'm not convinced of the threat. If I read the resolution right, NC state statute prohibits recognition of same-sex unions. So in order for there to be a threat, state, regional and national judiciary would all have to rule in favor of an outside state's law over the host state's law. Over the past 25 years we have had conservative appointments to these judiciaries, and I think as a

whole the judiciary would find the argument unappealing, on both philosophical (primacy of state's rights) and moral (homosexuality) grounds.

3 -- Even if #1 and #2 above didn't apply, then as a practical matter I think we could find a dozen things that are more of a threat to the institution of marriage, to do a resolution on. Teen pregnancy, for example, or the cost of health care, substance abuse, poor education, lack of adult role models, mainstream media morals, declining middle class job opportunities, etc., etc. For me, same-sex unions rank on down the list.

4 -- Even if #1, #2 and #3 didn't apply, I wonder what people would think of this. What we are going to see on Tuesday night is that the County is facing a once-in-a-generation financial problem. I think we want to send the message that we are focused on that, not on peripheral (in my opinion) policy issues that we have no influence over in any event. If we do the resolution I know many people, solid Republicans, who would say, "Why are they wasting time on that." But maybe that's just me.

Commissioner Hawkins said he can not support such a resolution that imposes restrictions upon people's lives. He cited a quote from former World War II General, Omar Bradley, saying this is the wrong war at the wrong time at the wrong place and with the wrong enemy.

Chairman Chappell said he believes Commissioners should be communicating with different layers of government and furthermore that citizens should be allowed to vote on these issues. He expressed his concern over activist judges challenging NC laws.

Chairman Chappell moved to approve Resolution 14-09, seconded by Commissioner Phillips. The motion passed by a vote of 4 to 1, with Commissioner Hawkins voting against.

(Resolution 14-09 in hereby incorporated by reference and made a part of these Minutes.)

MANAGER'S REPORT

The Manager reported the following:

- Surveying of the new bridge in Pisgah Forest has begun. The County may eventually have to allow an easement to move forward.
- The LME has been discussing the possibility of taking on utilization management, giving them authority to process Medicaid claims. The major concern is the start up cost at \$700,000 and the additional 25 staff that would need to be hired. The Manager said these monies would better be served by providing mental health services. The State is already considering reducing mental health funding and there is no guarantee the LME will be able to recoup these funds in the future for ongoing staffing costs, etc.

PUBLIC COMMENT

James Keenan: Mr. Keenan inquired about the County's plans for economic stimulus monies. Chairman Chappell said staff is trying to determine what is in the bill. Staff will be meeting with representatives from Land-of-Sky Regional Council this week to discuss the bill and further to discuss County projects that may qualify for funding. The Manager added that several projects have been submitted for funding through various agencies.

Mary Kay White: Ms. White said she is disappointed with the Board's decision to approve the marriage amendment resolution. She thanked Commissioner Hawkins for his comments and his vote.

Gerry Azzata: Ms. Azzatta said she is disappointed with the Board's decision regarding the marriage amendment resolution and plans to encourage every gay person she knows not to frequent Transylvania County. She also thanked Commissioner Hawkins for his comments.

Reverend Carter Heyward: Reverend Heyward invited everyone to sing a song as they exit the meeting.

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