

**MINUTES  
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS  
September 14, 2009 – REGULAR MEETING**

The Board of Commissioners of Transylvania County met in regular session on Monday, September 14, 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 20 people in the audience.

**CALL TO ORDER**

Chairman Jason Chappell presiding called the meeting to order at 7:01 p.m.

**WELCOME**

Chairman Chappell welcomed everyone to the meeting and thanked the members of the audience for participating in their County government. He also thanked staff for their hard work in preparation for each Board meeting.

**PUBLIC COMMENTS**

There were no comments from the public.

**AGENDA MODIFICATIONS**

The Manager reported on the Agenda modifications. He requested to add Closed Session Item XI-A per NCGS 143-318.11 (a) (3) to consult with an attorney reference the lawsuit Transylvania County versus Michael D. Baxley and Charlotte Baxley dba Baxley Off Road Motor Track and/or Baxley's Training Facility.

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

**CONSENT AGENDA**

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

The following items were approved:

MINUTES

The Minutes of the August 24, 2009 Regular Meeting were approved.

FACILITIES USE REQUESTS

The use of Silvermont by the Transylvania County Democratic Women for a picnic on October 10, 2009 from 11:00 a.m. to 4:00 p.m. was approved.

**PRESENTATIONS/RECOGNITIONS**RESOLUTION 47-09 IN RECOGNITION OF MCCOSH'S MORE THAN FLOWERS

Sanford and Linda McCosh, owners of McCosh's More Than Flowers, which has been in operation in some form or another since 1973, have decided to close their florist business. Commissioners presented them with a resolution recognizing their contributions to Brevard and Transylvania County.

**Commissioner Bullock moved to approve Resolution 47-09 In Recognition of McCosh's More Than Flowers, seconded by Commissioner Hogsed and unanimously approved.**

(Resolution 47-09 In Recognition of McCosh's More Than Flowers is hereby incorporated by reference and made a part of these minutes.)

**APPOINTMENTS**COMMUNITY CHILD PROTECTION TEAM

**Commissioner Hawkins moved to reappoint Heather Quinn and waive the term limits and reappoint Brad Renegar and Kathie Williams. The motion was seconded by Commissioner Bullock and unanimously approved.**

JOINT HISTORIC PRESERVATION COMMISSION

**Commissioner Phillips moved to appoint Roger Eades to replace Betty Sherrill, seconded by Commissioner Bullock and unanimously approved.**

TOURISM DEVELOPMENT AUTHORITY

**Commissioner Hawkins moved to appoint Kristy Harris to fill the unexpired term of Linda Vande Weghe, seconded by Commissioner Phillips and unanimously approved.**

**OLD BUSINESS**PROPOSED FLOOD DAMAGE PREVENTION ORDINANCE

The Planning Board proposed revisions to the Flood Damage Prevention Ordinance as a result of the Flood Ordinance Comparison and Evaluation Study last year by the City and the County, the new Federal Emergency Management Agency requirements, and the new flood maps. The major changes in the proposed ordinance are:

1. Increasing the free board from a minimum of one foot to two feet
2. Increasing the non-encroachment area for streams without a Base Flood Elevation (BFE) in areas of special hazard from 20 feet to 25 feet
3. No Solid Waste disposal, hazardous waste, salvages, or chemical storage allowed in a special flood hazard area except by variance

Proposed changes #1 and #2 are consistent with the recommendations of the Flood Study Committee. Proposed change #3 is required by the State. An ordinance must be adopted in order for the County to maintain eligibility for flood insurance.

Commissioners first discussed proposed change #1 regarding increasing the freeboard. It was noted that if structures are built higher than the required freeboard level property owners would receive lower insurance premiums on their flood insurance.

**Chairman Chappell moved to leave the freeboard level at one foot. The motion was seconded by Commissioner Phillips.** Commissioner Hawkins said it makes sense from a financial standpoint to increase the level to two feet because property owners would receive a larger payback on their insurance rates; however he understood other Commissioners' questions and concerns about whether the County should require property owners to construct buildings at the higher level. Commissioner Hawkins also commented that he respects the Planning Board's recommendations and that he has received no compelling information to decide against their recommendations. Chairman Chappell and Commissioner Hogsed noted that the State requirement is only one foot and they would prefer property owner make their own decisions about whether to construct at a higher level. **The motion passed 4 to 1, with Commissioner Hawkins voting against.**

The Board next discussed increasing the non-encroachment area for streams with a Base Flood Elevation in areas of special hazard from 20 feet to 25 feet. Commissioner Bullock asked for clarification as to whether the non-encroachment area applies to all streams, creeks and branches in the County. Planning and Economic Development Director Mark Burrows explained that wherever there is a mapped area by FEMA, the non-encroachment area applies. If the stream is not located in a mapped area, the non-encroachment area does not apply. Most of the mapped areas include areas in the Pisgah National Forest and on high ridges. Mr. Burrows also pointed out that in most cases the non-encroachment area will be 25 feet because of the trout water designations throughout the County.

Commissioner Hogsed reminded Commissioners that they have been supportive of residents in the Boyleston Creek community in their fight against the State's aim to reclassify Boyleston Creek as trout waters, therefore increasing the buffer to 25 feet, and he felt it would be hypocritical to support increasing the non-encroachment area from 20 feet to 25 feet. He also noted that the State requirement is only 20 feet.

**Commissioner Hogsed made a motion to not increase the non-encroachment area for streams without a Base Flood Elevation. The motion was seconded Commissioner Bullock and unanimously approved.**

**Commissioner Hawkins moved to approve the Flood Ordinance as presented and amended by the two previous votes, seconded by Commissioner Bullock and unanimously approved.**

#### NEW BUSINESS

##### RESOLUTION 46-09 DECLARING THE WEEK OF SEPTEMBER 17-23, 2009 AS CONSTITUTION WEEK

Thursday, September 17, 2009 begins the national celebration of Constitution Week. A resolution petitioning Congress to set aside September 17-23 annually to be dedicated for the observance of Constitution Week (submitted by the Daughters of the American Revolution) was signed into Public Law #915 on August 2, 1956 by President Dwight D. Eisenhower.

**Commissioner Bullock moved to approve Resolution 46-09 Declaring the Week of September 17-23, 2009 as Constitution Week, seconded by Commissioner Phillips and unanimously approved.**

(Resolution 46-09 Declaring the Week of September 17-23, 2009 as Constitution Week is hereby incorporated by reference and made a part of these minutes.)

**REQUEST FOR ADDITION TO STATE MAINTAINED SECONDARY ROAD SYSTEM**

The County has received a petition from citizens on Fox Hollow Road in the Fox Hollow Forest Subdivision to add approximately 2.5 miles to the State Maintained Secondary Road System. The Board of Commissioners must approve a resolution in order for those citizens to move forward with their request. The North Carolina Department of Transportation will make the final determination as to whether or not the road will be added to the State system.

**Commissioner Hogsed moved to approve Resolution 45-09 Request for Addition to State Maintained Secondary Road System, seconded by Commissioner Bullock and unanimously approved.**

(Resolution 45-09 Request for Addition to State Maintained Secondary Road System is hereby incorporated by reference and made a part of these minutes.)

**REQUEST FROM BALSAM GROVE COMMUNITY CLUB, INC.**

The Balsam Grove Community Club, Inc. submitted a request to the Board of Commissioners for a waiver of the tipping fees at the landfill for the demolition materials of their old community center. The Manager recommended against waiving the tipping fees. He suggested that the Community Club work with the County's Community Appearance Initiative Committee to share the cost of the disposal fee for an amount not to exceed \$2,500.

Chairman Chappell noted that staff received additional information today regarding a request for additional estimates on the demolition costs. He recommended the Board delay their decision until further estimates are received. He also said he is hesitant about waiving tipping fees because the County has never done so before and doing so may set the wrong precedent.

Commissioner Bullock asked Commissioners to keep in mind this request does not come from a private citizen, but rather from the whole community. Commissioner Hogsed shared Chairman Chappell's concerns but said the Balsam Grove community is trying to do something positive in their community and the Board should do what it can to encourage that in all communities. He agreed with delaying the Board's decision, but expressed his support for waiving the tipping fees.

**Commissioner Phillips moved to table the decision until further estimates are received, seconded by Commissioner Hogsed and unanimously approved.**

**JUVENILE CRIME PREVENTION COUNCIL FUNDING ALLOCATION**

The Board of Commissioners approved the Juvenile Crime Prevention Council (JCPC) County Plan for FY 2009-2010 on May 11, 2009. With the passing of the State budget, JCPC funding allocation has been reduced by 5%. New funding allocation forms must be resubmitted to the State. The following reductions have been made:

<u>Program Provider</u>	<u>Original Funding Amount</u>	<u>5% Reduction</u>
Center for Dialogue	\$27,500	\$26,125
Emergency Temporary Shelter	\$ 6,400	\$ 6,080
Project Challenge	\$23,265	\$22,102
Project Rebound	\$49,932	\$47,435
JCPC Administration	\$ 2,600	\$ 2,470

**Commissioner Hogsed moved to approve the revised funding allocation and authorize the Chairman to sign the documents, seconded by Commissioner Bullock and unanimously approved.**

#### 150<sup>TH</sup> ANNIVERSARY STEERING COMMITTEE

Transylvania County will celebrate its 150<sup>th</sup> Anniversary as a county in 2011. In order to begin the planning process, staff asked the Board of Commissioners to establish a 150<sup>th</sup> Anniversary Steering Committee to oversee a yearlong celebration of Transylvania County's historical and cultural heritage. The Steering Committee would be comprised of 20-25 individuals representing the various segments of the community.

Commissioner Hawkins noted that the County has been setting aside funds for this event for the last few years. He would like to see the yearlong celebration focus on life, heritage, play and the future of Transylvania County. He offered several examples of activities that could take place with the goal of doing so in a cost efficient manner and helping citizens understand what a great place Transylvania County is. He also stressed the importance of beginning the planning process now.

After further comments, **Chairman Chappell made a motion to approve the establishment of a 150<sup>th</sup> Anniversary Celebration Steering Committee with Commissioner Hawkins serving as Chair of the Committee. The motion was seconded by Commissioner Hogsed.**

Commissioner Hogsed asked the Board to consider commissioning a history of the County and for it to be done by local Transylvanians. **The motion was unanimously approved.**

#### MANAGER'S REPORT

The Manager reported the following:

- The Manager approved two change orders for the Public Safety Facility totaling \$12,821.00. Change orders approved to date total \$272,121.30, or 34.27% of the budget. \$522,033.70 is remaining in contingency for the project.
- Today the County received the temporary occupancy for the new Maintenance Facility. All the paving at the Public Safety Facility site should be complete this week, weather permitting. Staff is working on the final punch list. At the next meeting, the Manager hopes to have some final dates for an open house, dedication, and opening of the building.
- Reminded Commissioners of the special meeting scheduled for Tuesday at 6:30 p.m. at the Library to discuss the animal shelter and renovation of the old Sheriff's Office.

#### **PUBLIC COMMENTS**

There were no comments from the public.

#### **COMMISSIONERS' COMMENTS**

Commissioner Hawkins noted the success of the recent Farm Fair that was held downtown in conjunction with Heritage Day. He said agriculture is an area of the economy that sometimes does not get the recognition it deserves. He informed Commissioners of Farm Bureau's annual meeting on October 3 and encouraged them to attend.

Commissioner Hawkins also informed Commissioners that Transylvania County will host the Pisgah Mountain Bike Race in the Pisgah National Forest from October 15-18. Because it offers the largest cash prize purse of any off road mountain bike race in the country this year, it has

attracted bikers from all over the world. This race is an example of a non-traditional attraction in Transylvania County for which the Chamber of Commerce and Tourism Development Authority (TDA) are trying to raise awareness.

Lastly, Commissioner Hawkins reminded the Board that on Wednesday at noon, the Chamber of Commerce is sponsoring the Business and Industry Appreciation Luncheon at which several awards will be given. At 5:30 p.m. the same afternoon, the TDA is holding a presentation at Brevard College explaining its marketing plan and demonstrating its new website.

Commissioner Bullock recognized the Heritage Museum for its work in compiling many artifacts representing the history of Transylvania County. Also, he said he attended the recent Farm Fair and realized there is still a great deal of farming in the County; although much has been lost over the years. He encouraged the Board to support these efforts in the County.

**Chairman Chappell moved to enter into Closed Session per NCGS 143-318.11 (a) (3) to consult with an attorney reference the lawsuit Transylvania County versus Michael D. Baxley and Charlotte Baxley dba Baxley Off Road Motor Track and/or Baxley's Training Facility, after a 10 minute recess. The motion was seconded by Commissioner Phillips and unanimously carried.**

#### CLOSED SESSION

Pursuant to NCGS 143-318.11 (a) (3), to consult with an attorney reference the lawsuit Transylvania County versus Michael D. Baxley and Charlotte Baxley dba Baxley Off Road Motor Track and/or Baxley's Training Facility, closed session was entered into at 8:00 p.m. Present were Chairman Chappell, Commissioners Bullock, Hawkins, Hogsed and Phillips, County Attorney Curtis Potter, County Manager Artie Wilson, and Clerk to the Board Trisha McLeod.

The Attorney updated Commissioners on the status of the lawsuit. Commissioners instructed staff on how to proceed.

**Chairman Chappell moved to leave Closed Session, seconded by Commissioner Phillips and unanimously carried.**

#### OPEN SESSION

**Chairman Chappell moved to seal the minutes of the Closed Session until such time that unsealing the minutes would not frustrate the purpose of the Closed Session, seconded by Commissioner Hogsed and unanimously approved.**

Commissioner Bullock inquired about an application/public hearing process for certain businesses that may want to open and operate in Transylvania County, with the goal of giving citizens the opportunity to be aware of and offer input as to what type of businesses open up in their communities. After further comments, Chairman Chappell instructed the County Attorney to conduct research about this process, using the Communications Tower Ordinance as an example to follow.

**ADJOURNMENT**

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

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Jason R. Chappell, Chairman  
Board of County Commissioners

ATTEST:

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Trisha D. McLeod  
Clerk to the Board