

**MINUTES**  
**TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS**  
**January 11, 2010 – REGULAR MEETING**

The Board of Commissioners of Transylvania County met in regular session on Monday, January 11, 2010 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 Hogan.

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 7:05 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**

Steve Owen: Mr. Owen commented about the proposed draft Pisgah Forest Zoning Ordinance. He expressed concerned about the 50' height limitations for Planned Unit Developments (PUDs) saying the limitations should be lowered to keep with the existing structures in the community. He said although the majority of people in the County are against zoning, Pisgah Forest is in a unique situation because of the potential expansion of the City's ETJ. He said those residents would prefer to be regulated by the County. Mr. Owen said the overall proposal from the Planning Board is good and urged Commissioners to move forward with the process. He also agreed with the proposed zoning map because it gives the Pisgah Forest area a sense of community and anything different would involve citizens that were not going to be taken into the ETJ to begin with.

Vicki Walker: Ms. Walker questioned the County as to why it is not providing the necessary vaccinations to animals in its shelter and why there are no monies available in the animal control budget for these vaccinations. She explained that a local animal rescue organization has been covering the cost of vaccinations.

Ms. Walker also offered some suggestions for selecting a site for a new animal shelter. She said the site should be centrally located to the populous of Transylvania County, border road frontage, and be close to Brevard but convenient for everyone. Ms. Walker wants the shelter to be a place the County is proud of and one where animals can be well taken care of until they find their permanent homes.

Judith West: Ms. West spoke about the Board's recent decision to fund a new Career and Technical Education (CTE) building at Rosman High School. She agreed that the students in Rosman deserve an adequate facility for technical education, but she questioned the Board's

decision to enter into debt in the current economy. Ms. West said she wonders if the County can continue to support two high schools and that Commissioners need to seriously begin to ask themselves this question. Furthermore, the Board should explore the economical, educational, and community impacts of consolidating the two high schools. Ms. West also noted the CTE building is 50 years old and said if the County starts replacing every 50 year old building; it will be replacing a lot of buildings. She asked the Board to take a proactive approach rather than funding whatever project rises to the top of the list. Ms. West concluded by saying it may not be feasible to combine both high schools but it is the Board's responsibility to explore all possibilities.

### **AGENDA MODIFICATIONS**

The Manager reported on the Agenda modifications. He requested to remove Item V-B Resolution 61-09 In Recognition of Edwin and Joan Morrow and M-B Industries as Manufacturer of the Year and Item V-C Resolution 03-10 In Recognition of the Soil and Water Conservation District Office under Presentations/Recognitions. (Mr. Morrow was unable to attend the meeting. The Soil and Water staff had another meeting conflict.) These items will be placed on the next Agenda. He also requested to add Item VIII-C Whether or Not to Pursue a PARTF Grant under New Business and move the Manager's Report to Item D.

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

### **CONSENT AGENDA**

**Commissioner Phillips 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 December 14, 2009 Regular Meeting were approved.

### **PRESENTATIONS/RECOGNITIONS**

#### RESOLUTION 59-09 IN RECOGNITION OF JIMMY HARRIS AND HARRIS ACE HARDWARE AS RETAILER OF THE YEAR

Commissioners recognized Jimmy Harris, owner of Harris Ace Hardware, as the recipient of the Retailer of the Year Award and presented him with a resolution.

**Commissioner Hogsed moved to approve Resolution 59-09 In Recognition of Jimmy Harris and Harris Ace Hardware as Retailer of the Year, seconded by Commissioner Bullock and unanimously approved.**

(Resolution 59-09 In Recognition of Jimmy Harris and Harris Ace Hardware is hereby incorporated by reference and made a part of these Minutes.)

### **APPOINTMENTS**

#### BLUE RIDGE COMMUNITY COLLEGE BOARD OF TRUSTEES

**Commissioner Bullock moved to appoint Scott Elliott to fill the unexpired term of Jeff McDaris, seconded by Commissioner Phillips and unanimously approved.**

BREVARD BOARD OF ADJUSTMENT AND APPEAL

**Commissioner Hogsed moved to waive the term limits and reappoint Rick Lasater, seconded by Commissioner Phillips and unanimously approved.**

RECREATION ADVISORY BOARD

**Commissioner Hawkins moved to appoint Gordon Murray to fill the vacant position, seconded by Commissioner Hogsed and unanimously approved.**

BOARD OF HEALTH

**Commissioner Bullock moved to reappoint Wiley "Sim" Cozart to serve a third term, Karen Stark, and Commissioner Phillips, seconded by Commissioner Hawkins and unanimously approved.**

**OLD BUSINESS**

ADOPTION OF RESOLUTIONS AND POLICIES REQUIRED FOR COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FOR GAIA HERBS

The Board of Commissioners has held two public hearings on the Community Development Block Grant (CDBG) for GAIA Herbs. The Board is required to approve two resolutions and an Anti-Displacement and Relocation Plan which will be submitted with the grant application. Commissioners approved the submittal of a grant application at their meeting on December 14, 2009.

The first resolution authorizes the County to pursue a formal application for CDBG funding in the amount of \$100,000 to benefit GAIA Herbs. The second resolution updates the Transylvania County Analysis of Impediments to Fair Housing for CDBG programs. Finally, Commissioners must adopt the Anti-Displacement and Relocation Plan even though GAIA Herbs will not displace any low to moderate income dwellings. The Manager reported the County Attorney is reviewing a lien agreement between the County and GAIA Herbs. Once Commissioners approve these resolutions, staff can submit the grant application packet.

**Commissioner Hawkins moved to approve Resolution 01-10, Resolution 02-10 and the Anti-Displacement and Relocation Plan. The motion was seconded by Commissioner Bullock and unanimously approved.**

(Resolution 01-10 Resolution for the County of Transylvania Application for Community Development Block Grant Funding for the GAIA Herbs Warehouse Project and Resolution 02-10 Resolution to Update Transylvania County Analysis of Impediments to Fair Housing for Community Development Block Grant Programs are hereby incorporated by reference and made a part of these Minutes.)

TRANSYLVANIA COUNTY PLANNING BOARD'S RECOMMENDATION OF ZONING FOR A SPECIFIC AREA IN PISGAH FOREST

For approximately one year the Transylvania County Planning Board has been working on developing ways to protect the corridors along NC 280 and US 64 East. The Board of Commissioners held a joint meeting with the Planning Board on December 15, 2009 to discuss the draft Pisgah Forest Community Zoning Ordinance. As a result of the meeting, Commissioners instructed the Planning Board to review the proposed zoning maps and make

changes they thought were appropriate based upon the discussion. The Planning Board met in December and addressed steep slopes which they have incorporated into their recommendation. They also reviewed the proposed map and unanimously recommended that the zoned area be extended to the full extent of the City's ETJ from the Pisgah National Forest back to US 64 via Hudlin Hap Road. There were also a number of minor changes to words and definitions.

County Planner Mike Thomas reviewed the proposal and the changes made to the proposal since the joint meeting with Commissioners. He said the regulations for steep slopes were made based on the examples from other jurisdictions, steep slope and hillside development standards, and providing the basic type protections. The proposal includes limitations on the amount of area that can be cleared. The land that does not need to be disturbed for the development is recommended to be left in its natural state. Mr. Thomas said natural vegetation will help ensure better stability of the hillside area. There are also limitations for impervious surfaces which creates runoff. The proposal includes density requirements to prevent homes from being stacked on top of and above one another in steeper areas; however there is exclusion for single family homes on preexisting lots. These density regulations apply when subdividing lots.

Chairman Chappell inquired about the engineering costs to certify stability of a lot. Planning Board Chairman Mason Sexton said he recently had to certify 10,000 square feet for a retaining wall consisting of a 1:1 slope. The engineering cost was \$1,500. He noted, for point of reference, that jailhouse hill has a 14% slope; therefore the slope would have to be almost twice as much for these regulations to apply. Mr. Thomas noted these regulations only apply to the corridor mixed use zoning areas and only affects a few properties.

Chairman Chappell also inquired about the process for a developer who wants to replace vegetation with another type of vegetation in an area that is not to be disturbed. Mr. Thomas said the developer would have to submit a re-vegetation plan for approval.

Commissioner Hawkins asked staff to address a comment made by Steve Owen earlier in the meeting about the 50' building height limitation. Mr. Sexton said the average height of a mature tree is 50' and would protect the structures from view. The recommendation also eliminates the need for clear cutting. Mr. Thomas noted this requirement is similar to the height requirement in the City's UDO and in the corridor mixed use type districts.

Mr. Burrows showed the Board a map that further defined those parcels that would be affected by the corridor regulations and those in the open use zoning area. The area affected by steep slope regulations is minimal. He said the Planning Board recently met and again discussed the proposed zoning map. Their recommendation did not change from the previous joint meeting with the Board because the Planning Board did not want to involve other parcels or people that were not affected by the City's ETJ expansion. Still in question though is the 66 acre parcel. Staff recently met with the City Planning Director and stressed that the inclusion of the 66 acre parcel helps the County obtain the necessary minimal acreage to enforce zoning.

Chairman Chappell said the next step in this process is to meet jointly with the City of Brevard. He recommended that the Planning Board attend to answer questions and explain their recommendations.

A citizen from the audience asked staff to explain regulations that would be placed upon on Hudlin Gap Road. Mr. Thomas said the Planning Board's zoning area recommendations include what they feel is a community. They explored other zoning area options but they were not recommended since those citizens were not considered in the original discussions.

Mr. Burrows discussed the difference between corridor mixed use zoning and open use zoning. He said anything that exists in terms of use in open use zoning districts can continue. With the exception of 11 high impact uses defined in the ordinance, whatever the property owners would like to do with their property can continue. The high impact uses include industry, solid waste management facilities, mining extraction operations, concrete and asphalt plants, incinerators, junk yards/salvage yards, motor sports facilities, slaughtering plants, amusement parks, and chip mills. If property owners want to use their property for one of these high impact uses, they would have to follow a process and show how the use would minimally impact the neighbors. Mr. Burrows said three uses are prohibited in both zoning districts: adult establishments, hazardous waste disposal facilities, and radioactive waste disposal facilities. He said open use zoning is as simple and benign a plan as the Planning Board could come up with while still trying to address the intent of the study committee and the concerns posed by the City of Brevard.

Commissioner Hawkins pointed out that this Board would not have considered any zoning were it not for the citizens of Pisgah Forest asking for the Board's help. He said when most people talk about zoning they talk about infringements on personal property rights; however it should be acknowledged that when done correctly, zoning can have its benefits.

**Commissioner Hawkins moved to accept the proposal as presented and instruct the Manager to set up a joint meeting with City Council and invite the Planning Board members to attend as well, at their earliest convenience. The motion was seconded by Commissioner Bullock.** Commissioner Hogsed said it is important for the citizens to know the Board is not accepting this report, but rather accepting it from the Planning Board and that no official has been taken as far as zoning is concerned.

Chairman Chappell inquired about the setback requirements saying the original proposal included zero setbacks but has now been changed to 10'. Mr. Burrows said the original recommendation included zero setbacks because the rights of way on NC 280 and US 64 are extremely large; however in further discussions the 10' setback was recommended in order to accommodate any changes by the NC Department of Transportation and to potentially save taxpayers money if that occurred.

Chairman Chappell said although he is against zoning, he is willing to allow this process to move forward. He said zoning is a countywide issue. Chairman Chappell noted his decision to move forward is based on the fact that the residents came to this Board for help because this Board represents them. Commissioner Phillips echoed Chairman Chappell's comments and thanked everyone that has participated in this process. **The motion passed unanimously.**

## NEW BUSINESS

### REQUEST TO WRITE OFF OUTSTANDING DEBTS IN THE HEALTH DEPARTMENT

The Health Department has identified two categories of outstanding debts which they propose to be written off and not reinstated in the State accounting system. The first category involves 33 patient accounts totaling \$880.54 which have not been paid on in one year or more and are not eligible to send to the Tax Debt Set-off Program. The second category involves six patient accounts totaling \$535.98 and involves debts where there is no contact information or listed social security number, making these debts ineligible for the Tax Debt Set-off Program. The Manager reported that since the County is on a modified accrual system, revenue is not recorded until the funds are received. By writing off these bad debts, the Health Department's State system does not show these items as receivables. Staff also recommends that all departments

review their bad debts before the end of each fiscal year and make recommendations as to whether the bad debts should be written off.

**Commissioner Bullock moved to approve the write off of the first and second category items totaling \$1,416.52 and that all bad debts are revisited each June before the close of the fiscal year and recommendations made at that time as to whether they should or should not be written off. The motion was seconded by Commissioner Phillips and unanimously approved.**

#### BUDGET TRANSFERS AND AMENDMENTS FOR 2<sup>ND</sup> QUARTER OF FY 2010

Finance Director Gay Poor reported on the budget transfers and amendments for the 2<sup>nd</sup> quarter of FY 2010 and highlighted the following:

During the 2<sup>nd</sup> quarter of FY 09-10, the General Fund budget grew by \$343,453, bringing the total amended budget to \$40,634,033. This increase is attributable to the receipt of grants and other State and federal funding. Money for the Health Department for H1N1 planning and implementation of mass vaccination campaigns accounted for \$139,000 of this amount. As part of the stimulus package, Child Development received \$102,000 for subsidized child care. In addition, the Sheriff's Office was awarded a \$75,000 Governor's Highway Safety grant to improve traffic safety. Commissioners approved the grant application earlier in the year along with a 15% match requirement. While the majority of the new revenues are to be spent on new or expanded programs, almost \$30,000 may be used to offset previously budgeted expenditures for WIC nutrition education and client services, BT preparedness, and foster care and adoption, thus reducing the amount of local funding required. Of the additional funds received during the 2<sup>nd</sup> quarter, ARRA contributed \$106,000, which raises the total for the year from ARRA to \$133,000.

Commissioner Hawkins inquired about the sales tax and asked if the numbers were still down. Ms. Poor said the sales tax is 13-14% below this same time last year. The Manager added that the sales tax revenue is below what was budgeted and staff continues to track the figures on a monthly basis. Ms. Poor noted the County has received sales tax payments through September 2009. She also noted some distortions as well because of the changes in the tax rate and distribution rates from the State, making it difficult to predict the revenues.

**Commissioner Phillips moved to approve the budget amendments and transfers, seconded by Commissioner Bullock and unanimously approved.**

#### WHETHER OR NOT TO PURSUE A PARTF GRANT

Commissioner Hogsed asked staff to add this item to the agenda. As a result, the Manager met with Parks and Recreation Director Rick Pangle and reviewed the plans for the community park and the grant application process. Grant applications for calendar year 2010 are due February 1, 2010. The Manager noted the application process allows for the project to be phased; however the grant must be specific and must include a recreational component. The question at this point becomes what should be included in the first phase of the project. Also, the application requires the submittal of a master plan and the Manager noted a grading plan must be submitted in order to receive the no rise certificate.

Today the Manager met with staff to determine the items that should be included in the first phase. They determined that phase one should consist of a grading plan for the road, graveling the road, a grading plan for the entire site in order to save time and money in the future, erosion control measures, and storm water drainage. Phase one also includes grassing the entire area to make it usable for practice, etc. which satisfies the grant's recreation component. The estimated

cost of phase one items is approximately \$400,000. The PARTF grant requires a 50% match which would be \$200,000. The Manager said these are rough estimates and staff needs to further define these figures in order to move forward with the grant application which may require additional services from McGill Associates. He asked for direction from the Board as to whether to move forward with the grant application or continue with developing a master plan and grading plan and pursue the no rise certificate and ultimately develop a funding plan for this project. He pointed out if the Board wants to move forward with the grant application, staff will have a lot of work to complete in a short period of time.

Commissioner Hogsed inquired about the additional work that may be required by McGill Associates. The Manager said a new site plan may be required since the school system has requested the addition of a track at the park. He said he is not sure if additional cost will be incurred, but noted their services are needed to ensure the application is accurate as possible, otherwise the County will be responsible for 100% of the costs over and above the matching requirement if the County's estimates are incorrect. He noted the application includes a 5% contingency and changes can be made to the application if necessary. Grants are awarded in May. Additional funds may be awarded in July if excess funds are available.

Commissioner Hogsed expressed concern about waiting another year to apply for grant funds because it delays work on this project and he asked the Board to consider moving forward with the grant application.

Chairman Chappell inquired about when the matching portion of the grant has to be repaid. The Manager said the County does not receive the funds up front. The County has to submit bills to the State and is reimbursed 50%.

In response to a question from Chairman Chappell, the Manager said there are no stipulations for submitting grant applications for projects on leased property other than the property must be leased for at least 25 years or more when the grant is awarded. The Board has until August 2010 to determine whether it will enter into a long term lease on the property.

Tim Petit offered some developments on the County Little League Program. He said the two leagues in the County recently united and now their membership has quadrupled to approximately 400 kids. It is his hope that these kids will be able to play in Rosman and Pisgah Forest, including participation in tournaments for the purposes of fundraising. Although he understands the costs to complete the phases, he said there are plenty of people in the community who are licensed and qualified to do the work for considerably less. He urged Commissioners to move forward with this project. Mr. Petit noted that the Rosman Little League Board has not completely dissolved and has monies available to purchase a backstop for the park in Rosman. The rest of their monies went to the Transylvania Little League.

Commissioner Bullock said the County had a master recreational plan completed for the entire County and the need for a facility in the upper end of the County was one of the top priorities. He said having the master plan makes the County eligible for grants. Commissioner Bullock suggested submitting a grant application for \$100,000, requiring a 50% match from the County.

Chairman Chappell questioned Commissioner Bullock's proposal because the figures the Manager provided for phase one are approximately \$400,000. Commissioner Bullock said he believes some of the projects can be completed for less than the estimates. The Manager responded that the grant must be specific and if the County's estimates are below the phase one costs, it will be responsible for 100% of the cost above the grant award. He also noted the park

must be ADA accessible and include a recreation component. He said it will be difficult to identify \$100,000 worth of work on the park, so it is important that the Board and staff specifically identify the items in phase one. The Manager also suggested that the erosion control measures and storm water drainage be included for the entire site. In response to a concern by Commissioner Bullock, the Manager said the Board has until August to consider extending the lease on the property.

Commissioner Hogsed again asked the Board to move forward with the grant application and for staff to offer a recommendation at the next meeting as to what items should be included in phase one. He proposed a grant application for \$100,000 with the matching funds to come from the designated funds for the renovation of the old Library.

Commissioner Hawkins said this is an important project, but pointed out that this project has not been approved by the Board of Commissioners therefore the County should not begin applying for grants at this time. He said he would prefer to take a more systematic approach and define what the County plans to do with the property before seeking grant opportunities. Commissioner Hogsed disagreed, saying the County has already spent funds to get ready for this project. He believes the County has enough documentation, etc. to move forward with the grading, grassing, and parking lot. Commissioner Bullock noted that the County leased the property for the purpose of putting ball fields, etc. on the property to create a park for the upper end of the County. Commissioner Hawkins pointed out that the County entered into a two year lease agreement, not a long term lease agreement, in order to give the County time to research the feasibility of what it could do with the property. He recommended getting more details before committing the County to the matching grant funds.

Chairman Chappell also expressed concern that there is no guarantee the County could obtain the no rise certificate and until the certificate is received, no work can begin on the property. Commissioner Hogsed pointed out the Board can reject the grant, if awarded, if the no rise certificate is not obtained.

**Commissioner Hogsed moved to direct staff to apply for the PARTF grant in the amount of \$100,000 with the matching funds to come from the money that is currently designated for the renovation of the old Library which is in excess of \$1 million. The motion was seconded by Commissioner Bullock.** Commissioner Phillips asked to defer the decision about where the matching funds would come from to a future meeting. With no objection from the Board, Commissioner Hogsed amended the motion **to direct staff to apply for the PARTF grant for \$100,000 and leave it open ended as to where the Board comes up with the match should the County be awarded the grant.** Commissioner Bullock noted the Board can reject the grant if it is determined the County can not move forward with the project. Chairman Chappell expressed concern about making application for a grant and not knowing exactly what will be included in the grant. **The motion passed 3 to 2, with Chairman Chappell and Commissioner Hawkins voting against the motion.**

#### MANAGER'S REPORT

The Manager reported the following:

- Department Heads are working diligently on their budgets.
- Staff is working on a plan for the courthouse facilities.
- There have been a number of false alarms at businesses in the community which fire departments and emergency personnel must respond to. The Manager asked for direction from the Board on how to handle repetitive false alarms. The County currently has no policy to deal with these incidents. The Manager noted that some counties impose



penalties for repetitive false alarms. Commissioner Phillips had originally brought this concern to the Manager because he was concerned about the time wasted and fuel spent by emergency services personnel on responding to these calls. He said it is the responsibility of citizens not to cause undue cost to emergency services personnel and to keep their alarm systems up to date. The Board instructed the Manager to explore this issue further and bring a recommendation back to the Board.

### **PUBLIC COMMENT**

Tim Petit: Mr. Petit thanked the Board for moving forward with the PARTF grant application for the community park in Rosman. He said much of the cost can be reduced with volunteer labor and he does not understand what else is needed in order to move forward.

### **COMMISSIONERS' COMMENTS**

Commissioner Hawkins responded to Mr. Petit's comments. He said the issue is that the County has a drawing for the community park, but it is not the final drawing. If the track for the school system gets incorporated into the plan, the drawing will have to be modified. The County must have a final plan in place before it can receive the no rise certificate. The Manager stressed the importance of dealing with the elevation and storm water drainage on the site because it is located in the flood plain.

**Chairman Chappell moved to enter into Closed Session per NCGS 143-318.11 (a) (3) to consult with an attorney reference Transylvania County versus Michael and Charlotte Baxley, after a 10 minute recess, seconded by Commissioner Bullock and unanimously carried.**

### **CLOSED SESSION**

Pursuant to NCGS 143-318.11 (a) (3) to consult with an attorney reference Transylvania County versus Michael and Charlotte Baxley, closed session was entered into at 9:23 p.m. Present were Chairman Chappell, Commissioners Bullock, Hawkins, Hogsed and Phillips, County Manager Artie Wilson, County Attorney Curtis Potter, Attorney Sean Perrin, and Clerk to the Board Trisha Hogan.

The Manager, County Attorney Curtis Potter, and Attorney Sean Perrin updated Commissioners on the status of the lawsuit. The Board instructed staff on how to proceed.

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

### **OPEN SESSION**

**Chairman Chappell moved to enter into Closed Session per NCGS 143-318.11 (a) (5) to instruct staff on negotiating the price or terms for the acquisition of real property, seconded by Commissioner Hogsed and unanimously carried.**

Pursuant to NCGS 143-318.11 (a) (5) to instruct staff on negotiating the price or terms for the acquisition of real property closed session was entered into at 9:50 p.m. Present were Chairman Chappell, Commissioners Bullock, Hawkins, Hogsed and Phillips, County Manager Artie

Wilson, County Attorney Curtis Potter, Project Manager Larry Reece, County Operations Director David McNeill, and Clerk to the Board Trisha Hogan.

Commissioners discussed the terms and conditions for the potential acquisition of real property and 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 both closed sessions until such time that opening the Minutes would not frustrate the purpose of the closed sessions. The motion was seconded by Commissioner Bullock and unanimously approved.**

#### ADJOURNMENT

There being no further business to come before the Board, **Chairman Chappell moved to adjourn, 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 M. Hogan  
Clerk to the Board