

**MINUTES OF A  
REGULAR MEETING  
OF THE JACKSON COUNTY  
BOARD OF COMMISSIONERS  
HELD ON  
OCTOBER 06, 2014**

The Jackson County Board of Commissioners met in a Regular Session on October 06, 2014, 2:00 pm, Justice & Administration Building, Room A201, 401 Grindstaff Cove Road, Sylva, North Carolina.

Present: Jack Debnam, Chairman  
Doug Cody, Vice Chair  
Charles Elders, Commissioner  
Mark Jones, Commissioner  
Vicki Greene, Commissioner

Chuck Wooten, County Manager  
Angela M. Winchester, Clerk to Board  
J. K. Coward, Jr., County Attorney

Chairman Debnam called the meeting to order.

**AGENDA:** Chairman Debnam amended the Agenda by adding Bids for Transit Proposal Paving and Drainage. Commissioner Elders moved to approve the Agenda. Commissioner Cody seconded the Motion. Motion carried.

**MINUTES:** Commissioner Jones moved to approve the minutes of a Work Session and Regular Meeting of September 15, 2014. Commissioner Elders seconded the Motion. Motion carried.

**(1) COUNTY MANAGER REPORT:** Mr. Wooten reported:

**(a) August 2014 Unemployment Report:** The County's unemployment rate in August 2014 declined to 5.9% from 6.0% in July. The August 2014 rate is 0.8% less than August 2013. The lowest unemployment rate was Currituck County and the highest rate was Graham County. Jackson County's rate was the 12<sup>th</sup> lowest in the state. Overall, unemployment rates increased in 74 counties during August.

**(b) Possible Eligibility for PARTF Grant:** Representatives from NC Parks visited the County this week and toured the Dillsboro river property. They believe this project would qualify for a PARTF grant and could possibly qualify for a grant that would reimburse the County for the purchase price of the property. Under normal circumstances, no expenditures made prior to the grant award can be counted as matching funds; however, they did provide information about requesting "waiver of retroactivity" that would qualify this project for reimbursement. The intention is to submit the request for a waiver and if approved, then decide if it is appropriate to make application for a grant later this year.

**(c) Capital Projects:** The EOC is working toward completion and it is expected that the general contractor, Western Builders, will complete the project within the 150 day construction period. Furniture and consoles will be ordered in the next couple of weeks. The last walk through at SMHS will take place next Friday and this project should be officially closed soon thereafter. All outstanding punch list items have been or will be completed by end of next week.

**(d) Justice Center Security Update:** Representatives from the NC Sheriff's Association were on site October 1<sup>st</sup> and 2<sup>nd</sup> to complete their assessment. A meeting was held with Judge Letts and others on the morning of October 3<sup>rd</sup> to discuss current security measures and to receive comments on observations. The official report should be available by mid-November.

(e) **School Board Capital Needs Assessment:** A copy of the report has been received that was prepared for the School Board that addresses their most critical facility needs. Dr. Murray has indicated that he and Mr. Henke would like John Cort to review this report with the Commissioners in the next two to three months. Possibly this would be a good topic of conversation for the annual planning meeting that has been held in January for the past two years.

(f) **ABC Sales for September:** The monthly sales for September totaled \$330,684.50, which was \$98,241.92 greater than the same month last year. As expected, the Cashiers store is impacting the total sales for the Sylva store as that store saw a decline of \$33,323.63 as compared to September 2013.

(g) **Veteran's Administrator:** Brenda Debose, Veteran's Administrator has submitted her resignation. She has accepted a position, which is a promotional opportunity, with a Veteran's Office with the State and will be relocating to Goldsboro. She has been with the County for seven years and has done an outstanding job with County Veterans. The process will begin in the near future of identifying a replacement. A couple of Veteran's will be invited to join the search committee and the job announcement will prefer a Veteran.

(h) **Tax Collector:** Brandi Henson has accepted the offer to become the County Tax Collector and will begin October 20<sup>th</sup>. She is a graduate of WCU with a degree in Accounting and Finance and has worked for the Town of Sylva for approximately eight years. She is also a NC Certified Tax Collector. She will be invited to attend to the meeting on the 20<sup>th</sup> to be sworn in.

(i) **TDA Employee:** He and Rich Price met with Robert Jumper and Clifford Meads regarding an employee the TDA is considering. He wanted to clarify that contrary to a report in the local press, he did not have a position on whether the TDA should have an employee or not. He believes that if a position is established, based on the way the funds are accounted for through the County, it would be a County employee and should report to the Commissioners and the Manager, since they are responsible for carrying out the personnel policy and the fringe benefits program of the County.

**(2) TOURISM DEVELOPMENT AUTHORITY (TDA):** Robert Jumper, Chairman, presented:

**(a) Social Media:**

- County's social media channel lineup includes:
  - Facebook
  - Instagram
  - Twitter
  - Pinterest
  - YouTube
  - Google Plus
  - LinkedIn
- Goal for social media is to create a desire to visit by using inspirational images and other content that will generate conversations, shares, website visits and build loyalty.
- Content focuses on outdoor adventures and relaxation.
- Scenic and waterfall photos are receiving the highest engagement rates.
- Facebook statistics:
  - 27,000 fans
  - Ad campaign targets the ideal traveler by location, age and interests.
    - Demographic is aligned with that of the Brandon Agency's advertising initiatives.
  - Posts reach an average of over 8,000 followers daily.
  - Our average Facebook follower is female, lives within an 8 hour drive of the County and has interests of the Smoky Mountains, hiking, fishing, family, waterfalls and the Blue Ridge Mountains and tends to be on Facebook during the hours of 8-9 pm.
- Other social media channels:
  - Strong interaction on Twitter with the NC Tourism Division and Southeast Tourism Society, along with a weather reporter from Raleigh/Durham.

- Our presence on Instagram has the highest interaction rates. Although there are only have 200 followers, this is the youngest demographic with interests in outdoor adventures.
- Building a photo library online through Flickr.com. This allows sharing of the mountain landscapes, waterfalls, outdoor activities and “best kept secrets” in a visual format for the media and visitors.
- We have 12 videos on YouTube covering topics such as fishing, dining, golfing, kayaking and waterfalls. Six of these videos are from the WLOS Road Trippin’ series.

**(b) Notable Mentions:**

- Travel and Leisure names the area of the Carolinas as one of the top adventure travel destinations in the world.
- Western Carolina University in Cullowhee, NC has been announced as the No. 1 college for outdoor adventure in the Southeast and Mid-Atlantic by Blue Ridge Outdoors Magazine.
- The 10<sup>th</sup> Annual Western North Carolina Pottery Festival in Dillsboro on November 1, 2014 has been named a “Top 20 Events” winner by the Southeast Tourism Society.
- OpenTable Diners’ awarded the County’s Canyon Kitchen at Lonesome Valley a 2014 Diners’ Choice Award for Top 100 Scenic View Restaurants in America. This award reflects the combined opinions of more than 5 million restaurant reviews for more than 19,000 restaurants in all 50 states.
- Cherokee, NC is named by USA Today as one of the “10 Best: Can’t-miss Blue Ridge Parkway towns”.

**(c) Paid Media Strategy:**

- Reach travelers as they are researching destinations for their vacations or get-away plans.
- Primary goal for paid media is to generate leads to pursue in re-marketing efforts.
- Secondarily, maintain a branded presence alongside complimentary editorial in drive market print publications. A branded presence will also be maintained alongside the marketing efforts of the state.
- For lead generation, print and interactive are the best opportunities. These are the media that travelers use when actively researching vacation destinations. This provides the ability to call the consumer to act on an email address for further information.

**(d) Paid Media – Results:**

- The overall cost per lead decreased 48.35% from March to June 2014, from \$50.84 to \$26.26.
- The print and digital media campaigns delivered a total of 3,191 leads from March to June 2014.
- In June, the digital display banners exceeded industry standard click through rate by more than 50% with a .215% CTR.
- The overall email open rate for all emails sent from March to June was 13.40% far exceeding the industry benchmark of 10.7% for the travel industry.

**(e) Public Relations Goal:**

- Pineapple Public Relations worked with the TDA to develop an earned media plan to increase awareness and excitement for the County as a premier tourism destination.
- The plan energized the County story with new media materials and new signature, “only in Jackson County” story angles for media pitching and development of new press releases to make the area stand out among the competition and garner media attention.
- Media Materials:
  - Created engaging and timely story ideas is key to entice journalists and their readers.
  - Developed 2014 Story Ideas.
  - Developed a press release campaign highlighting unique experiences and aspects of the County, including:
    - Natural Appeal

- Outdoor Recreation
- Festivals
- Fly Fishing Trail
- Special attractions and promotions
- Unique accommodations
- Easy drive-time location

**(f) Mountainloversnc.com:**

- Goal of the new website is to create a portal site for the JCTDA, which distributes visitors across the County to its many physical and cultural assets. The site is constructed on the goal of building an effective online presence for the JCTDA, driving qualified traffic to the site and providing actionable data to the County and its constituents.
- The site will be supported by Search Engine Marketing tools that focus on building traffic to the site and conversion to tourism partners across the County.
- Ongoing analytics will be the foundation of ongoing efforts to measure and optimize ensuring that the site delivers maximum performance over the long term.
- Projected launch date is mid-November.
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**(3) THE GATHERING TABLE:** Judy Henson stated that the County granted a \$2,000 credit to The Gathering Table with Manna Food Bank. The request from The Gathering Table was that the \$2,000 be in the form of a check to be used for operating expenses such as supplies, salaries and rent. 50-70 people are served per week from the donations they receive from Walmart. Once a week the Walmart donations are picked up and fresh boxes of food are distributed to 15-20 families. Meals from these foods are prepared as well. The Gathering Table's position is that meals are a greater need than the food boxes.

**(4) HEALTH DEPARTMENT DESIGN CONTRACT UPDATE:** Mr. Wooten presented a proposal to amend a letter agreement dated May 14, 2014 for planning work related to the Health Department. The scope of work and tasks associated with scope have increased to include evaluating the relocation of the other County Departments and the remodel of the entire Community Services Building. In order to adequately study the new phasing strategies and prepare estimates of potential costs for the components of them, more time is needed than originally estimated for the initial work that included just the mail floor Health Department remodel. The new work has been broken into the following tasks and associated maximum time (fee) estimates:

- (a) Measure and document the remainder of the entire Community Services Building – 8 hours
- (b) Revisit program and layout with Cooperative Extension regarding move to SSC Building - 4 hours
- (c) Revisit program and layout with Soil and Water regarding move to SSC Building – 4 hours
- (d) Interview, program and space plan for Environmental Health relocation – 12 hours
- (e) Prepare phasing strategy for department moves and structural remodels – 16 hours
- (f) Prepare cost estimates for all phased components – 8 hours
- (g) Prepare presentation graphics and present to Commissioners – 8 hours

The above tasks could take up to 60 hours. To date, \$3,950 has been billed for work that has been done on the Health Department feasibility study, which was estimated not to exceed \$6,400. There will be an additional bill for September, which will bring the total to \$4,150.00. The original agreement could be amended or a new agreement could be created to reflect an amended fee not to exceed \$10,150. Upon acceptance, Mr. Thompson would outline how he and consulting engineers would propose to provide the architectural and engineering services for each phase. The construction work of certain phases will need to be put out for bid and some will not. This will affect the nature of the A/E Services for each phase.

**Motion:** *Commissioner Jones moved to amend the existing agreement. Commissioner Greene seconded the Motion. Motion carried by unanimous vote.*

**(5) TRANSIT R.O.A.P APPLICATION:** A public hearing was held on October 6, 2014 at 1:45 p.m. and no public comments or objections were made. The Board was requested to approve a Certified Statement for the FY2014-15 Rural Operation & Assistance Program (ROAP) grant application.

***Motion:*** *Commissioner Cody moved to approve the Certified Statement. Commissioner Greene seconded the Motion. Motion carried by unanimous vote.*

**(6) PUBLIC SAFETY ANSWERING POINT (PSAP) REGIONAL PROJECT SUMMARY:** Todd Dillard, Emergency Management Director stated that the two E-911 operational centers for Jackson and Swain Counties have proposed and been awarded funding for a joint regional project to provide expanded and enhanced operational back-up and redundancy between neighboring counties and neighboring 911 programs. Specifically, the two entities working in cooperation and conjunction with each other have been awarded a total of \$859,681 in funding to acquire, install and operate identical equipment and technology to support two new E-911 communication and new radio dispatch capabilities in each of the respective Counties. The purchase of identical 911 call center and radio dispatch systems will enable the two Counties to provide a unique redundancy of operation, provide for each respective County to assist and support operations in the neighboring County in case of phone or radio failure, and enable one center to potentially assume responsibility for operations for the other County in case the neighboring call center was evacuated, destroyed, or unable to function. With both County facilities operating on fiber from Balsam West, the redundancy would also enable either of the two facilities to potentially support other regional centers in other Western NC Counties in case of emergency needs.

With an ultimate goal of providing enhanced and improved E-911 emergency call support and radio dispatch capabilities to the residents of Swain and Jackson County, the project also has the timely benefit of providing improved regional cooperation between adjacent counties, the establishment of redundant backup capacity and capability in two low income, rural counties, the capacity for emergency support for neighboring communities in times of emergency and the creation of a replicable model of cooperation, redundancy, and regional service delivery that is capable of being replicated in other areas of the state.

Recognizing the need for close cooperation in this initiative, the two participating PSAP's have executed a Memorandum of Understanding for this project and have established agreements to conduct regular meetings to discuss interfaces, potential support mechanisms, and to work cooperatively to improve the delivery of E-911 services within the region. In addition, Swain County PSAP has agreed to serve as host applicant for this regional enhancement project and will serve as the fiscal agent for the project and will be responsible for all grant requirements such as reports, control and accounting for funds and distribution and control of products purchased with the grant award.

**(7) SOLID WASTE TRANSPORTATION CONTRACT BIDS:** Chad Parker, Public Works/Solid Waste Director reported that the County Public Works Department received bids for the hauling of solid waste and recyclables on September 25, 2014 at 4:00 p.m. The overall apparent low bidder for hauling solid waste and recyclables is WNC White Corporation at \$450 per load for solid waste and \$380 for recyclables. Combining both solid waste and recyclables at current fuel pricing, an estimated yearly difference between the next lowest bidder would be \$52,500. If fuel increases an additional \$0.25, the estimated yearly difference would be \$23,500.

***Motion:*** *Commissioner Jones moved to award the bid to WNC White Corporation Commissioner Greene seconded the Motion. Motion carried by unanimous vote.*

**(8) INDUSTRIAL DEVELOPMENT ORDINANCE OVERVIEW:** Gerald Green, Planning Director presented the Industrial Development Ordinance was adopted in May 2002 to establish basic standards for the operation of “noxious industries that, by their very nature produce objectionable levels of noise, odors, vibrations, fumes, light, or smoke, may or may not have hazardous effects”. The County adopted the Ordinance under the authority and provision of G.S. Chapter 153A-121, which granted authority to counties referred to as police powers. The Industrial Development Ordinance identifies and defines “noxious industries”, establishes basic standards for their operation, and requires a permit for the identified industries. Among the activities identified as a “noxious industry” and regulated by the Ordinance are mining operations. The Ordinance provides a broad definition of mining operations: Mining Industry. The mining sector comprises establishments that extract naturally occurring mineral solids such as coal and ores, liquid minerals such as crude petroleum, and gases such as natural gas. The term mining is used in the broad sense to include quarrying, well operations, beneficiating (e.g., crushing, screening, washing, and flotation), and other preparation customarily performed at the mine site, or as a part of mining activity.

The mining sector distinguishes two basic activities: mine operation and mining support activities. Mine operation includes establishments operating mines, quarries, or oil and gas wells on their own account or for others on a contract or fee basis. Mining support activities include establishments that perform exploration (except geophysical surveying) and/or other mining services on a contract or fee basis. Given this definition, the provisions of the Industrial Development Ordinance would apply to all oil and gas mining operations, including fracking. The provisions that would appear to apply to gas mining operations are those addressing the location of the operation, road construction, and accumulation of materials. The standards established by the Ordinance for mining operations are:

Mining Industries (including on-site sale of products):

(a) The location of the closest point of property line of the lot on which a mine or quarry is located shall not be less than one thousand three hundred twenty (1,320) linear feet from the closest point of a property line of a lot on which a commercial use, school, child care home, child care institution, day care center, church, hospital, nursing care home, or nursing care institution is located; any property line of publicly-owned property excluding road rights-of-way; or from the closest exterior wall of a residential structure.

(b) Permanent roads used continuously (for vehicular traffic once per any seventy-two (72) hour period of time excluding Saturdays, Sundays, or holidays) in excess of six months within the property site shall be surfaced with a dust free material (i.e., soil cement, Portland cement, bituminous concrete).

(c) Material piles and other accumulations of byproducts shall not exceed thirty-five (35) feet above the original contour and shall be graded so the slope shall not exceed a 45 degree angle.

(d) The operation of this type industry shall not violate the Jackson County Noise Ordinance.

In addition to these standards addressing the location and operation of the mining operation, the Ordinance also establishes an application fee for the initial application and an annual fee for their operation: All facilities or operations shall be subject to an annual permit fee of fifty dollars (\$50.00). The application fee for a new or expanded facility or operation shall be two hundred fifty dollars (\$250.00). Application fees are non-refundable. If an application is returned to the applicant for additional information, the applicant shall have ninety (90) days to comply with the request, otherwise the application shall be considered null and void and withdrawn.

The Jackson County Industrial Development Ordinance is similar to the Ashe County Polluting Industries Ordinance cited in the Blue Ridge Environmental Defense League memo entitled “Local Ordinances: What North Carolina Counties Can Do to Protect Residents from Polluting Industries”. While the Energy Modernization Act (SL 20140-4) invalidates local ordinances that have the effect of “prohibiting oil and gas exploration, development, and production activities”, it does allow local ordinances that provide for the public health and safety. SL 2014-4 states that “a local zoning or land use ordinance is presumed to be valid and enforceable to the extent the... ordinance imposes requirements... generally applicable to development”. Based upon the language in the statute, it appears that the County’s Industrial Development Ordinance would apply to gas and oil exploration, including fracking, and the provisions of this Ordinance would be applicable to that activity.

Commissioner Jones asked Mr. Green about the 1,320 foot buffer area that is required from any building. In some research, he found that underground, horizontal well fracking movement can go as far as 7,600 feet from the cap on the ground. He asked if there are regulations preventing industries in the fracking of oil and gas business from going that distance in Jackson County from a neighboring County, if that area met the threshold of the 2002 Industrial Development Ordinance? Also, is there an ability or technology to make repairs that distance underground, particularly in the mountain counties? The upcoming Resolution does a good, broad job of covering natural resources, but not these two areas: the buffer area and technology.

Mr. Green replied that regarding the buffer area of 1,320 feet, it is unclear where it is measured from. Would it be from the point of penetration of the initial well itself or from the points to which the well extends? He said that he did not know the answer. While he was at a continuing education seminar last week, the issue came up, with no good answer. There was also discussion of the Energy Modernization Act and how it does allow for local ordinances to regulate as long as they don't prohibit the activity. With regards to the second question about technology and its impacts, these are unknown. It is hoped that the buffer requirements and measures taken would at least mitigate it.

Mr. Coward stated that he wanted to provide legislative history on the matter. In 2002, a committee was formed to travel around the County to conduct hearings regarding two issues that were occurring in the County at the time. One was an asphalt plant in Qualla and the other was a mine in Tuckasegee. Mr. Coward said that he was on the committee and thought there were four different meetings. The committee realized that to single out either one of those particular issues would be an unconstitutional bill of attainder, which is a legislative act that singles out an individual or group for punishment without a trial. At that time, the committee decided to make the Ordinance broad enough so that it would cover almost anything that could be considered obnoxious to the general public. There were three areas specifically mentioned: asphalt plants, mines and the polluting industry. This was before fracking was an issue. So at the time, the Ordinance was not designed to address fracking. The Ordinance was done twelve years ago and now the fracking issue that has arisen may or may not be covered by this particular Ordinance.

Commissioner Greene stated that she has received several emails about fracking, which included various resolutions that the County should consider, in addition to the Ordinance that was passed in 2002. One resolution in particular talks about protection against "forced pooling" in the Energy Modernization Act. She asked Mr. Coward to explain this and why this is something that should be considered by the County?

Mr. Coward stated his general concept of "pooling" is when someone can legally trespass underground. There may be a piece of property that is a half mile away, for example, and the drill horizontally gets to and extracts from that property. The idea of "pooling" is that is an ok practice. He stated that he has come to the conclusion that there are several constitutional problems with the entire Energy Modernization Act.

Mr. Wooten stated that he ask Mr. Green to provide this overview following the presentation that the Commissioners had at their last meeting. He was pleased to see that the County did have in place an Ordinance similar to Ashe County, as was suggested. He thinks Jackson County was ahead of the curve. He agreed with Mr. Coward that he did not think anyone anticipated fracking at the time the Ordinance was put together. But, he thinks the Ordinance is applicable in this particular case. He stated that he does believe the County has some protection in place that can certainly be used going forward. That was the purpose of Mr. Green's presentation.

**(9) PROPERTY PURCHASE FROM THE TOWN OF DILLSBORO:** Mr. Wooten stated that in the last closed session meeting under real estate, the Commissioners authorized him to extend an offer to the Town of Dillsboro for purchase of 17.46 acres that is river property in Dillsboro. The property is on either side of the river where the dam was once located. A number of years ago, the County identified this a recreational property that it would like to acquire. At that time, the County engaged a company named Equinox to do a study. They came up with a proposal for a park on the south side of the river as well as the north side of the river. Since that time, Duke Energy acquired the property and they have constructed a river access point on the north side of the river, which was named the CJ Harris Access Point. It also has a vaulted toilet facility. It was anticipated that the County would acquire the south side of the river. Some sand and soil were removed in the original grading of the property when the dam was removed according to the plan that Equinox prepared.

When Duke Energy transferred the property to the Town of Dillsboro, the Dillsboro Mayor advised him that they were willing to sell the property to the County at market value. An appraisal was done by Rick Robson of North Carolina Appraisal Company and the appraised value of the property came to be \$350,000. It was appraised under the idea it would be used for recreation. An offer was presented to the Town of Dillsboro. They called a special meeting last Friday and voted to accept the offer. Mr. Coward prepared a deed and is are ready to proceed towards closing as soon as possible. Funds for this purchase will come from the balance of funds left from the Cashiers Recreation project. These are funds that the Commissioners had already set aside for recreational purposes. No additional funds are need from the general fund for this transaction.

***Motion:*** *Commissioner Cody moved to approve the Offer to Purchase and Contract. Commissioner Greene seconded the Motion. Motion carried by unanimous vote.*

**(10) COMMUNITY ADVISORY COMMITEEE FOR LONG TERM CARE:** Mr. Wooten clarified that in a Regular Meeting on September 2, Larry Reeves, Long Term Care Ombudsman, Region A Southwestern Commission, recommended that Angeline Fisher be reappointed to serve a three year term that will expire on October, 2017 instead of October, 2014.

***Motion:*** *Commissioner Greene moved to reappoint Angeline Fisher to a three year term on the Community Advisory Committee for Long Term Care. Commissioner Elders seconded the Motion. Motion carried by unanimous vote.*

**(11) SURPLUS EQUIPMENT RESOLUTION (R14-16):** Darlene Fox, Finance Director, presented a Resolution with one vehicle listed and requested the Board to declare the same surplus and authorized to sale.

***Motion:*** *Commissioner Elders moved to adopt the Resolution and declare the vehicle surplus and post it for sale. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.*

**(12) GOVERNOR’S HIGHWAY SAFETY PROGRAM RESOLUTION (R14-17):** Major Shannon Queen presented the Resolution is an annual application through the Governor’s Highway Safety Program for federal funding in the amount of \$20,000 and does not require a local match.

***Motion:*** *Commissioner Jones moved to adopt the Resolution. Commissioner Cody seconded the Motion. Motion carried by unanimous vote.*

**(13) RESOLUTION TO PROTECT NATURAL RESOURCES (R14-18):** Mr. Wooten presented the Resolution that reaffirms the rules and regulations of the 2002 Jackson County Industrial Development Ordinance and is opposed to any national, state, or local action that might cause damage to the waters, land, economy, and quality of life.

Mr. Coward stated that he was asked to examine the Resolution in light of the 2002 Industrial Development Ordinance and Energy Modernization Act. Should someone seek to have a permit to do mining and the County stated it is a violation of the 2002 Ordinance, then that person would seek to preempt the local Ordinance. The Energy Modernization Act does not preempt all local ordinances dealing with this. It simply provides a process whereby someone could seek and obtain a preemption. If someone took it through all the logical steps in the appeals process it would take approximately 4-5 years to get an answer as to whether or not the Energy Modernization Act had preempted the local Ordinance.

Again, the local Ordinance does not out-right prohibit it. It just makes it difficult to find a piece of property that you could get started on, which has the practical effect of prohibiting it. But it doesn’t answer Commissioner Jones’ question of how do you do the measurement? Two constitutional issues are brought up:

(a) How do you disturb property rights to the extent that you could actually do horizontal drilling and go underneath someone’s property and not trespass? If you can do that, is that not an exercise of “imminent domain by the sovereign”. If so, that is compensable.

(b) Article XIV, Section 5 of the North Carolina Constitution states “It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry...”

Mr. Coward stated that he believes that there is a profound constitutional problem with the Energy Modernization Act to begin with. He foresees a point in the future where there is going to be a person who will obtain a mining permit and attempt to seek the right to begin the process of fracking. If the County holds to the 2002 Ordinance it would say that is not permitted because you do not have a large enough piece of property. The appellant process, which would probably take five years, would, in his view, end up with a constitutional question for the Supreme Court. He did not know how they would rule, but for all intents and purposes the 2002 Ordinance prohibits fracking already. He believes that the Resolution just gives it that constitutional foundation, which he think needs to be addressed because at some point in time, that person who is seeking the 2002 Ordinance needs to say this is based on the North Carolina Constitution. There is not a simple answer. These are very difficult and complicated questions and there are a lot of different ways to look at it.

***Motion:*** *Commissioner Cody moved to adopt the Resolution R14-18. Commissioner Elders seconded the Motion.*

**Discussion:**

(a) Commissioner Jones stated that he is still concerned about the horizontal fracking and the fact that you can go 7,600 feet. He knows there are businesses in Western North Carolina Counties that vertically frack for well water. He is not aware of any horizontal fracking for water. He applauds the broad brush stroke this Resolution has, but it does not carry the true merit that he think the citizens are looking for with true protection of added language of “with the exception of horizontal fracking under any other property, without compensation”. He also has concerns about “pooling” that was mentioned. Also, could there be a time in the future that the 2002 Ordinance is maybe even more weakened. These are concerns that not just he has, but what he has heard from citizens all over the County. He is aware that there is only a small area of the County that could be affected, maybe the very northern tip. The Resolution does cover the natural resources very well, but it does not cover the all of the issues that are associated with the possible damaging of the ground water, particularly the water on top of the rivers, lakes, creeks, etc.

(b) Commissioner Greene stated that she has attempted to understand the Resolutions, not just the one that was prepared for today. She says that this is an emotional issue for her as she is not just a resident of Jackson County but also Western North Carolina, North Carolina, etc. This is not a method of extracting energy that she thinks is sustainable, it causes more harm than it does good and those specific items that Commissioner Jones just mentioned about getting a better answer concerning how far horizontally you can go. Essentially, if she understood Mr. Coward correctly it is the taking of property rights to do horizontal drilling.

(c) Commissioner Cody stated that are lots of other ordinances affecting personal property rights such as the Steep Slope Ordinance. He believes that the Resolution along with the Ordinance and given the minimal likelihood of finding energy in Western North Carolina, protects the County. A Resolution will not protect the County. This Ordinance that has been in place for 12 years will protect the County. A statement issued by the Blue Ridge Environmental Group says that it would literally take an act of congress to overrule this Ordinance. He thinks it would be advisable for the Commissioners to go forward with this Resolution to reaffirm their staunch support for the 2002 Ordinance. He thinks the County is well protected and if Commissioners come up with a singular resolution, he believes it opens the door to people disputing the support for the 2002 Ordinance.

(d) Commissioner Elders stated that he agrees with some of what all three of the Commissioners have stated. He thinks that not passing the Resolution to support what has already gone into law in 2002 would show weakness on their part and would be turning their back to these natural resources. He stated that this is something that does not need to be swept under the table and just forget about. As things progress, the Commissioners need to take another look at it. He feels that this Resolution is a good start with what is known right now.

(e) Commissioner Jones stated he thought they all had right answers, there are just so many factors involved. If the Resolution included the language of not allowing horizontal fracking then that would be something he could live with. Even though his heart is with the natural resources, he does not feel like he has a positive vote without the language of protecting property owner’s rights against horizontal fracking.

*Motion carried by a vote of 3-2 with Commissioners Jones and Greene voting “nay”.*

**(14) COUNCIL ON AGING:** Eddie Wells, Department on Aging Director, recommended that Larry McDonald of Sylva, Howard Meister of Cashiers and Janet Hart of Whittier be appointed to serve three year terms.

***Motion:*** Commissioner Elders moved to appoint Larry McDonald, Howard Meister and Janet Hart to serve three year terms on the Council on Aging. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.

**(15) HISTORIC PRESERVATION COMMISSION:**

***Motion:*** Chairman Debnam moved to reappoint Jane Eastman to a three year term on the Historic Preservation Commission. Commissioner Elders seconded the Motion. Motion carried by unanimous vote.

*Carry Over:* One appointment for the Historic Preservation Commission.

**Informal Comments by Public:**

(a) Donna Dupree of Balsam stated the Resolution is to protect natural resources, but the Ordinance does not say anything about the setbacks being a certain distance from the surface waters or from public or private wells. She thinks the entire Industrial Development Ordinance needs to be amended. There’s nothing in the Ordinance that requires a mitigation fee. If you have environmental damage to the well, who will pay if casings start to deteriorate? And there is nothing about road repairs. Two of the incorporated cities and village in the County, Haywood and Swain Counties and the Cherokee Tribe have all made Resolutions.

(b) Marie Leatherwood of Sylva expressed her disapproval of County property reevaluation and use of tax money.

(c) Carl Iobst of Cullowhee stated that it is highly unlikely for fluids from the hydraulic fracturing process to migrate upwards through thousands of feet of solid rock to come in contact with drinking water supplies. He thinks the Industrial Development Ordinance is not perfect, but a good start.

(d) Jim Mueller of Glenville stated he wanted to congratulate the commissioners for the 12<sup>th</sup> lowest employment rate in the state. Most people are happy with how the County is being run.

**Press Conference:**

**CLOSED SESSION:**

***Motion:*** Chairman Debnam Jones moved that the Board go into closed session pursuant to G.S. 143-318.11(a)(3) Legal and G.S. 143-318.11(a)(5) Real Property. Commissioner Elders seconded the Motion. Motion carried.

Chairman Debnam called the regular meeting back to order and stated no action was taken in closed session except approval of the Closed Session Minutes of September 15, 2014.

**(16) BIDS FOR TRANSIT PROPOSAL PAVING AND DRAINAGE:** Mr. Wooten reported that the County Public Transit Department received bids for the paving and drainage of the Transit Department on October 2, 2014 at 2:00 p.m. The overall apparent low bidder is Graham County Land Company, LLC at a lump sum base bid of \$229,000. A difference between the next lowest bidder of \$33,063.

***Motion:*** Commissioner Jones moved to award the bid to Graham County Land Company, LLC., pending satisfactory review of references. Commissioner Cody seconded the Motion. Motion carried by unanimous vote.

There being no further business, Commissioner Jones moved to adjourn the meeting. Commissioner Cody seconded the Motion. Motion carried and the meeting adjourned at 4:46 p.m.

Attest:

\_\_\_\_\_  
Angela M. Winchester, Clerk to Board

Approved:

\_\_\_\_\_  
W. J. Debnam, Chairman