

**MINUTES OF A
REGULAR MEETING
OF THE JACKSON COUNTY
BOARD OF COMMISSIONERS
HELD ON
AUGUST 06, 2015**

The Jackson County Board of Commissioners met in a Regular Session on August 06, 2015, 6:00 pm, Justice & Administration Building, Room A201, 401 Grindstaff Cove Road, Sylva, North Carolina.

Present: Brian McMahan, Chairman
Mark Jones, Vice Chair
Charles Elders, Commissioner
Vicki Greene, Commissioner
Boyce Deitz, Commissioner

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

Chairman McMahan called the meeting to order.

(1) **PROCLAMATION:** Chairman McMahan read a Proclamation that observed July 26, 2015, as Americans with Disabilities Act Awareness Day. Commissioner Elders moved to approve the Proclamation. Commissioner Greene seconded the Motion. Motion carried.

(2) **AGENDA:** Commissioner Greene moved to approve the Agenda. Commissioner Jones seconded the Motion. Motion carried.

(3) **MINUTES:** Commissioner Greene moved to approve the minutes of a Cell Tower Ordinance Public Hearing of July 09, 2015, a Revolving Loan Fund Procedure Public Hearing of July 09, 2015 and a Regular Meeting of July 09, 2015. Commissioner Elders seconded the Motion. Motion carried.

(4) **COMMISSIONER REPORTS:**

(a) Commissioner Elders congratulated local band, Mountain Faith for their continued success on the TV Show America's Got Talent. Also, he wanted to wish all the football players much success this year in the county.

(b) Commissioner Jones stated that Mountain Faith will be playing at the Bridge Park Pavilion on August 14th. He encouraged everyone to come out and show their support.

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

(a) **June 2015 Unemployment Rate:** The June unemployment rate was 6.2%, which increased over the 6.0% rate for May. The June 2014 rate was 6.3%. The lowest rate of 4.5% was in Buncombe County and the highest rate of 12.2% was in Graham, while the overall state rate was 6.1%.

(b) **Building Permits:** 62 building permits for new residential construction were issued during the first 6 months of the year and this compares with 63 permits for the same time in 2014. During the month of July, 27 new residential building permits were issued. Traditionally, the third quarter is the most active quarter for building permits.

(c) **SCC Building Evaluation:** He recently attended a meeting involving representatives from DeVere Construction, NCDOT, and SCC. The purpose of the meeting was to review the structural issues that were discovered in early 2015 during the installation of the large drainage culvert in the parking lot of the Balsam Building. There are a number of cracks in concrete slabs and concrete block walls, separations of walkways from buildings, and sticking doors that have occurred over the past six months. DeVere has promised to provide NCDOT with a report of findings within the next 4 to 6 weeks. At that point, he believed they would need to decide whether they believed the report covers any concerns they might have or consider engaging an independent team of experts to monitor and measure the building for continuing movement and settlement. At that point, he thought it was fair to say that damages are cosmetic in nature and can be repaired; however, their concern should be long term as continuing settlement and movement could result in more extensive damages. Since the community college relies on local counties for capital funds SCC would very likely look to the county for funding to repair these damages. This will be a situation that they must monitor to make sure SCC and the county have some type of assurances related to current and potential future damages. He believed it fair to say these current damages are directly associated to the R-5000 road project, even though no one has admitted to responsibility at this point.

(d) **Golden Leaf Community Based Grantsmaking Initiative:** He attended a meeting on August 5th at Blue Ridge Community College concerning this program. Each county may submit up to 3 projects totaling \$1.5 million. Letters of Inquiry for the three projects are due on October 1st and Golden Leaf officials will complete the initial review and provide feedback by October 23rd. The Golden Leaf Board of Directors will select the projects for a full grant proposal at their meeting on December 3rd. Full grant proposals are due on January 22, 2016 and the final awards would be made on April 7, 2016. He would facilitate a meeting in the next couple of weeks with the agencies and entities that may be submitting proposal for consideration. The county manager in each county is responsible for identifying the three projects that would be submitted for consideration. Obviously, he would welcome comments and advice from the Commissioners.

(e) **Legislative Update:** Senator Davis has advised that funding would be provided for the sidewalk project on Hwy 441 that was requested by both the Commissioners and the Tribal Council. He understood the funds were coming from the Senate and NCDOT. The sales tax redistribution plan continues to have a lot of discussion. The NCACC advises that a new proposal will be forthcoming. Obviously, the NCACC is in a very tenuous position since they represent all 100 counties and this legislation will produce winners and losers. The House voted to reject the Senate proposal to introduce a 5 year ban on school boards suing county commissioners. This was one of the top priorities of the NCACC; however, it appears the two houses cannot reach consensus on a bill. Builders Inventory – this bill would exempt improvement and construction in progress for up to three years from the start of the project. Heretofore, we have taxed the value of improvements as of December 31. Statewide, cities and counties will lose between \$50 and \$60 million in new taxes each year.

(f) **Charters of Freedom:** He recently had a meeting with Charters of Freedom and they will be having a luncheon with key individuals to kick off the project with some fund-raising events in the future as Jackson County is next on their list. They have placed monuments in Buncombe County since they were last here and have received additional inquiries from 200 counties across the United States. They have now added another staff member and they are adding another education director to develop curriculum for 4th and 5th graders to incorporate this into the school system.

(g) **Animal Control Task Force:** Paula Carden, Health Director, informed him that the Animal Control Task Force has meet a couple of times and are having a good conversation about the needs in the county. They seem to be on target to make a report to Commissioners early 2016.

(h) Upcoming Meetings:

August 18th – Work session at 12:30 pm and regular meeting at 6:00 pm
August 19th – Secretary of Insurance, Wayne Goodwin, at Department on Aging
August 20-23 – NCACC Annual Meeting
September 3rd – Mountain Projects 50th Anniversary
September 3rd – Regular meeting at 6:00 pm (possible reschedule – September 1st?)
September 7th – Labor Day (Offices Closed)
September 8th – First Day of Single Point of Entry into Justice Center
September 15th – Work session
September 17th – Regular Meeting

(6) PLANNING BOARD REPORT: Sarah Thompson, Chairperson, requested guidance from the Commissioners regarding the Industrial Development Ordinance (IDO). The Planning Board was initially asked to review the IDO in order to add language to address fracking. They researched other areas and found a section to place the fracking language in the IDO.

In reviewing the IDO a lot of questions were brought up and they have discovered, primarily from county staff that industries in the county are not in compliance with the IDO. This does not include major issues but, for example, screening requirements are not being enforced, etc. She understood that the IDO was adopted some years back as a reaction to an industry that was looking to come into the county. It was put together fairly quickly, but that industry did not come to the county.

The Planning Board believes there are a lot of ways they can now clarify and strengthen the IDO, if that is the intent of the Commissioners. Do they want part of that process be to have current industries start coming into compliance with the IDO? It is not the Planning Board's intent to be overly hard on businesses. They want places to be able to stay in business and not be burdened by these requirements, but, is it time for the county to start enforcing the IDO. They have discussed a compliance schedule, if the county does adopt a revised ordinance, such as the county would have 6 months to issue a notice of non-compliance. The industry would then have 6 months from the notice to submit a plan, with help from county staff, and then have 12 months from time of submitting plan to come into compliance. But before the Planning Board can go any further they would like guidance and feedback from Commissioners.

Commissioner Greene asked if the Planning Department had a list of industries that were out of compliance.

John Jeleniewski, Planning Department, stated they do have several junkyards they get calls on and there are issues within the IDO about distances, screening, etc. but some of the language in the ordinance make it difficult to enforce. He believed there was a 5 year sunset law on the ordinance that was not enforced originally. They do have an ongoing list of junkyards that they track.

Chairman McMahan stated he wanted to be quick to say there are not a lot of those industries in the county that would be covered by this ordinance, so they are not talking about regulating the average everyday business. This ordinance was developed to regulate mining, junkyards, asphalt plants, and those types of heavy polluting industries because they don't want them to be located next to a school or to a trout stream. That is why they created the ordinance and he was very much in favor of keeping it and enhancing it to make sure they have the proper language that protects people and the natural environment resources in the county. That is what he envisioned with the whole process of reviewing the ordinance.

When Mr. Green was planning director, he had conversations with him that there needed to be several changes to the junkyard section of the ordinance itself. He thought that was a start to redefine what needed to be addressed and to look at the other components to see what needed to be changed. Then, as a side note, they would re-address the mining issue. When the original ordinance was adopted, the only type of drilling was vertical and now we have the opportunity to do horizontal drilling. The current IDO does not take into account the type of technology that has come in to play since then.

Through conversations with The Natural Resource Defense Council (NRDC), they have offered themselves as a resource tool. When they get to the point where they want to allow them to review what they have worked on, NRDC is willing to offer subjective comments and even some suggestive language in other places they are looking at. He thought they needed to state that they are not, in any way, attempting to not allow fracking. The state has paved the way for fracking, gas and oil exploration companies to do hydraulic fracturing and what the county can do is make sure they file the proper permits and perform proper environmental reviews, etc. from a local level so that they can ensure water quality and safety. He wanted to continue working on this matter and was willing to provide any additional guidance.

Ms. Thompson stated she believes that fracking is one issue and that they can take care of that. The other issue is about regulating junkyards. If the county adopts a revised ordinance, there will be compliance issues to work on.

Chairman McMahan stated he thought junkyards were necessary and important, but they need to be compliant with environmental laws, screening, etc. He believes what is being asked of those industries is not barriers to prevent them from being in business. And he realizes that a lot of them are compliant now.

Commissioner Elders stated that a junkyard is a proper place for storage of old cars. He was concerned about old abandoned mobile homes and buses in various locations that has created a health problem. He thought they need to take a look at removing those to junkyards.

Ms. Thompson stated that the ordinance is for commercial junkyards and that the ordinance does not address other areas that are not for commercial use. They have made an effort to delineate between commercial and non-commercial areas.

A recommendation that the Planning Board asked her to bring before Commissioners, was from wording in the IDO regarding who is responsible for enforcement of the ordinance. It states that “the manager or his designee is responsible for enforcement”. The Planning Board asked the Commissioners to consider including language in all ordinances to state it is the responsibility of the manager or his designee. Then as part of the annual budget process, provide a list of the ordinances and state who the designee for each would be to make sure that enforcement question is being reviewed on an annual basis.

Consensus: *Move forward with revising the Industrial Development Ordinance.*

(7) INFORMAL COMMENTS BY PUBLIC:

(a) Carl Iobst of Cullowhee, stated would like to see AED Devices placed at the Library along with the other sites that are listed on the agenda.

(b) Henry Campen of Raleigh stated he was the attorney for Crown Castle, who had an application pending for a cell tower, but withdrew it a month or so ago. He commended the planning department and county attorney for their work on revising the cell tower ordinance. There were legal deficiencies in the prior ordinance that now have been cured. He believes this was now a balanced, fair ordinance. He practiced land-use, zoning law for more than 25 years all across the state. He had seen many ordinances, many cell tower ordinances and he thought this is a solid ordinance that protects the public and the public interest. He commend staff for a job well done and taking into account considerations of a variety of the members of the community.

(c) Carl Lang of Yellow Mountain stated he had owned his property for 32 years. There is now a high level of noise pollution in the area due to a near-by skeet shooting range. He was also concerned about the high powered bullets being used. He asked Commissioners to consider passing an ordinance to address the issue as this affects property values and the safety and well-being of the citizens.

(8) AED DEVICES: Chairman McMahan stated it had been requested that the county consider purchasing AED devices for the Fairview Youth Complex as well as Ralph Andrews Park. A request has been made there tonight for two devices to be placed at the Old Courthouse Library Complex and one at the Albert Carlton Library.

Motion: *Commissioner Jones moved to approve an appropriation of funds, for five AED devices for the requested locations, at a cost of \$1,055.00 each. Commissioner Elders seconded the Motion. Motion carried by unanimous vote.*

Commissioners requested that the county manager make a determination as to whether any additional devices are needed in any other locations throughout the county and report back. Also, they asked him to inquire about any training that would be needed at the locations where the devices will be installed.

(9) MOUNTAIN HILLSIDE DEVELOPMENT ORDINANCE (MHDO)

AMENDMENTS: John Jeleniewski, Planning Department and Sarah Thompson, Planning Board Chairperson, stated the revisions to the MHDO were discussed during the June work session. He noted that the amendments are not designed to strengthen or weaken the ordinance, but to clarify. Some revisions discussed were regarding the calculation method for the average slope of properties. This would take the human element out of the calculations and use technology and information currently available to provide a 3-D model of a parcel to be analyzed.

An additional requested revision was to move the threshold from 30% to 35% because of the accuracy they can now utilize. This method would be fairer to the development of the property instead of holding low at 30% to raise it to 35%. This would be more of a graduated scale. Before, they only had 4 tiers, which was a minimum of 2 acres to over a minimum of 10 acres, depending on the slope of the property. They recommend a graduating scale starting at 35% going up to 50% with each percent the minimum lot size grows more.

Additionally, clarification was made as to the enforcing authority of the ordinance. The proper board for appeals or approvals, which would be the Board of Commissioners, The Planning Board or Planning Department for going through the processes, including variances and appeals.

The GIS Department is developing a new map that would show the new 35% slope. All changes are the ones discussed at the work session in June as recommended by the Planning Board for consideration by the Commissioners.

Mr. Wooten stated that to date, the map is not available. It must be posted when notice is given. It is required that the notice be given for two consecutive weeks prior to a public hearing. A public hearing had been set for August 18th, but that will not allow enough time for proper notice.

Chairman McMahan stated that since more time is needed for adding the new maps to the Planning Department website and to allow for proper notice, he directed the Clerk to remove the notice of a public hearing on August 18th.

(10) NON-PROFIT ALLOCATIONS: Chairman McMahan stated that Commissioners had received requests during the regular budget process from around 50 non-profits. They chose not to move forward with some of those requests at that time because they were contingent upon them securing a grant for additional funds from other organizations. Among those non-profits were CuRvE and Christmas Connection. They have now successfully secured grants and are now requesting the county provide matching funds.

Also, the Genealogical Society, Historical Society and Arts Council, all lease space from the county in the old courthouse portion of the Library Complex. Those three institutions have provided a valuable service to the citizens of the county. Those organizations are struggling financially and they are paying rent to the county. This appropriation would be to help offset some of their operating expenses.

Mr. Wooten stated there was \$25,000 set aside in the Commissioners' budget for additional potential appropriations that they could choose to make throughout the year.

Commissioner Greene stated she had been in both the Genealogical Society and Historical Society offices on more than one occasion. Those non-profits are a lot of people's first impression of the county and the people in it. Anything that the county can do to help them continue operating and providing these services to the citizens and visitors, she certainly supported it.

Motion: *Commissioner Jones moved to approve five additional non-profit appropriations from contingency as follows:*

CuRvE in the amount of \$3,700.00 in matching funds;

Christmas Connection in the amount of \$5,000.00 in matching funds;

Genealogical Society \$5,000.00 in operating costs;

Historical Society \$5,000.00 in operating costs; and

Arts Council \$3,000.00 in operating costs.

Commissioner Greene seconded the Motion. Motion carried by unanimous vote.

(11) COUNTY ATTORNEY: Chairman McMahan stated that for some time they had discussed hiring a county attorney. They had asked Mr. Coward to continue as the contract attorney until they had made a final decision, which he graciously agreed to do. After much deliberations and discussions the Board decided to move forward with a full-time county attorney and have included that position in the county budget, which was approved and that position was available to be filled. They went through the interview process and have a candidate that we have offered the position to and that individual has accepted the position.

Motion: *Commissioner Greene moved to hire Heather Baker as its first full-time county attorney. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.*

Chairman McMahan stated Ms. Baker will be available part-time on September 15th and full time October 1st, with a starting salary of \$86,180.63, Grade 34, Step 16. In the meantime, Mr. Coward has agreed to continue services to assist Ms. Baker with the transition.

Mr. Coward stated he would be pleased to help Ms. Baker in transition. He stated he understood their decision and he wanted to do everything he could to make sure the decision is implemented as flawlessly and seamlessly as possible. He appreciated the opportunity to serve and he looked forward to helping Ms. Baker.

(12) NCACC 108TH ANNUAL CONFERENCE VOTING DELEGATE:

Motion: *Commissioner Elders moved to appoint Chairman McMahan as the Voting Delegate to the NCACC Annual Conference August 20-23, to be held in Pitt County. Commissioner Greene seconded the Motion. Motion carried by unanimous vote.*

(13) LOCUST CREEK PEDESTRIAN BRIDGE: Mr. Wooten stated that last August, he came before Commissioners concerning problems that were discovered when the soil test was done on the site. They recognized that the originally anticipated cost of the bridge was going to be much greater. Now the bids have been solicited for the project and the price has gone even higher. Four contractors responded and Phillips & Jordan, Inc. were the low bidder at \$1,352,500. Since that was greater than the budget, they began negotiating with the lower bidder and value engineering the project. They have been able to make progress to get the price back down to a more reasonable amount to \$1,119,700, for the installation of the bridge.

Also present at the meeting are Victor Lofquist, Engineer of the project; Rusty Ellis, Recreation and Parks Director; and Jennifer Bennett, Outdoor Recreation Manager. Ms. Bennett has been tracking the participation on the Greenway. In the month of July there were over 1,300 people on the Greenway. Mr. Wooten believed that number would double or triple once the bridge was in place.

Originally they submitted application for a Parks and Recreation Trust Fund Grant and were successful in receiving it in the amount \$435,000. They also had originally planned on obtaining some funds from NCDOT for relocation of right-of-way fencing, but that was not required and that revenue source went away. In the meantime, they looked at utilizing funds from Duke Energy that they had set aside in the amount of \$425,000, as part of their rate case situation for improvements for recreation areas in the county. They propose to allocate \$212,000 of the \$425,000 for this particular project. The county's total share to fund the project and to allow the installation of the bridge to move forward is \$1,282,313. This is \$430,000 more than what has been approved to this point.

Victor Lofquist, Engineer of the project, stated there are several constraints in the design of the bridge that have impacted the cost. One of the major constraints was the designated FEMA floodway, which is the non-encroachment of the 100 year flood level. They had to stay above and outside of that area, which extends the span out so that they were more over into the DOT 107 field slope, which increases the span of the bridge and they had to deal with issues with utilities, such as TWSA and overhead lines. They had no choice but to design to those constraints, which was a major impact on the cost. The primary unknown additional cost would be regarding the poor soil conditions that would need to be stabilized. If this is worse than anticipated, it could require additional funds. They did allocate \$25,000 in contingency for this issue. But they believe they are in the range for what they needed.

Mr. Wooten stated that the Greenway had been completed and the bridge had been approved. The Bridge is being manufactured and is almost complete and ready to be delivered to the site in the next few months, if not sooner.

He proposed, in the current budget, to transfer \$500,000 from the general fund into the Conservation, Preservation and Recreation Fund. They do have funds available in the current budget to address this and it will not require any additional allocations from contingency. It would increase the county's total share of this project to \$1,282,313, which is about 67%.

Commissioner Jones stated there were many benefits to this project, including healthier lifestyles, and properties values going up along the greenway. There were many long-term benefits to this project.

Motion: *Commissioner Green moved to move forward with the installation of the bridge. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.*

(14) JUSTICE CENTER SECURITY ORDINANCE: Mr. Wooten stated this was a work in progress as they have had many discussions about security improvements in the building. At that point, they planned to implement the single-point of entry on September 8th and they felt it was necessary to adopt an ordinance. He held a meeting with all of the occupants of the building and Judge Letts, Sheriff Hall and Jay Coward spent most of the morning after the meeting going back through the ordinance and making suggested changes. Today is an introduction to the ordinance and it will be presented at the work session on August 18th for further discussion.

Also, all employees will be wearing their I.D. badges to gain access into the building. Once the building is secure everyone will be screened that comes into the building, including to the Commissioners' meetings.

Informational only, no action required.

(15) CELL TOWER ORDINANCE: Chairman McMahan stated they held a public hearing and received several comments. They decided to carry the item over at their last regular meeting to allow the county attorney and staff the opportunity to review the public comments and gather additional input. Several of those suggestions have now been incorporated in the latest version and had just been released.

Mr. Coward stated they had spent an enormous amount of time on the document and there had been a great deal of input by a number of people. They tried to make this a fair ordinance that protects private property rights, but also allows businesses to put towers in place. They endeavored to make sure it was fair and transparent. They concluded that the ordinance should include all towers from cell phone to internet. The name was changed from a Telecommunications Cellular Tower Ordinance to Wireless Communications Ordinance.

It seemed that everyone was concerned about towers on ridges. When looking at this item they did their best to identify whether or not it was sensible to ban towers that you might see from the Blue Ridge Parkway. They tried to make sure no one would see towers adjacent to the Blue Ridge Parkway that would be offensive visually. They did not impose restrictions on towers in any other locations, with the suggestion that Commissioners may want to include other areas. They also changed the structure to streamline standards and procedures. They also decided in the conditional use permit portion, decisions would be made by Commissioners after a recommendation by the Planning Director. They decided to keep the quasi-judicial authority with the Commissioners.

Chairman McMahan recommended the Commissioners review the final version that was presented to them and schedule a staff work session at 10:30 on August 18th to review the changes.

(16) COMMUNITY ADVISORY FOR LONG TERM CARE:

Motion: *Commissioner Elders moved to appoint Rev. Sara Lee Hinnant to a one year term and to appoint Diane Parker to fill the unexpired term of Peggy Revis (expiring June 7, 2016), on the Community Advisory for Long Term Care Board. Commissioner Greene seconded the Motion. Motion carried by unanimous vote.*

(17) US 441 GATEWAY DISTRICT COMMUNITY PLANNING COUNCIL:

Carry over.

(18) PRESS CONFERENCE: None

There being no further business, Commissioner Jones moved to adjourn the meeting. Commissioner Greene seconded the Motion. Motion carried and the meeting adjourned at 7:44 p.m.

Attest:

Approved:

Angela M. Winchester, Clerk to Board

Brian Thomas McMahan, Chairman