

**MINUTES OF BUNCOMBE COUNTY BOARD OF COMMISSIONERS'  
REGULAR MEETING OF NOVEMBER 17, 2009 AT 4:30 P.M.**

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**BE IT REMEMBERED:** That the Board of Commissioners met in regular session on November 17, 2009, in the Commissioner Chambers, 30 Valley Street in downtown Asheville, North Carolina at 4:30 p.m. where and when the following business was transacted:

The Chairman called the meeting to order with the following members present:

David Gantt, Chairman  
Bill Stanley, Vice Chairman  
K. Ray Bailey, Commissioner  
Holly Jones, Commissioner  
Carol Peterson, Commissioner

Staff present were: Wanda Greene, County Manager; Jon Creighton, Assistant County Manager Planning Director; Mandy Stone, Assistant County Manager/ DSS Director; Donna Clark, Finance Director; Kathy Hughes, Clerk to the Board; Mike Frue, County Attorney.

### **CALL TO ORDER**

### **PLEDGE OF ALLEGIANCE**

### **INVOCATION**

Chairman Gantt gave the invocation.

### **DISCUSSION/ADJUSTMENT/APPROVAL TO FOLLOW AGENDA**

*The Chairman reminded the Board that in accordance with the State Government Ethics Act, it is the duty of every Board member to avoid both conflicts of interest and appearances of conflict. He asked if any Board member had any known conflict of interest or appearance of conflict with respect to any matter coming before the Board. None were stated.*

Commissioner Peterson moved to approve the consent agenda as presented.

- **Approval of Minutes of November 3 , 2009 Regular Meeting**
- **Release Report**
- **Resolution Authorizing Donation of Surplus Vehicle to Town of Black Mountain**
- **Solid Waste Capital Projects Ordinance**
- **Western Highlands Quarterly Report**
- **Resolution Setting public Hearing to Consider Closing of Unopened Alleyway in Buncombe County**

Vice Chairman Stanley seconded and the motion passed 5-0.

### **GOOD NEWS**

- **Erwin Middle School Football Team**

The Commissioners congratulated the team and coaches on their undefeated season and for how they presented themselves with good sportsmanship. Coach Thompson accepted the certificates and thanked the Board.

### **PUBLIC HEARING**

- **Additional Funding Under the 2007 Community Development Block Grant**

The Chairman called the meeting to order at 4:40 p.m. Cynthia Barcklow, County Planner,

said that the County had received additional block grant funding and would be working with Mountain Housing Opportunities to repair houses in need of rehabilitation.

Eric Gorney from Swannanoa asked if the County would have any recurring costs as a result of this grant.

Jerry Rice asked if this grant was in conjunction with the City.

The Chairman closed the hearing at 4:45 p.m.

Ms. Barcklow said that there were no recurring costs in this grant and the City applied for and received their own block grant funds. None of these funds would be spent inside the City.

Commissioner Bailey moved to approve the **Resolution Authorizing the Acceptance of Additional Funds and Execution of Documents Related to the Community Development Block Grant**. Commissioner Jones seconded the motion and it passed 5-0.

- **Proposed Amendment to County Zoning Ordinance Chapter 78 of County Code**

Jon Creighton, County Planning Director/Assistant County Manager, reviewed the process that the County had taken to consider the zoning amendment. He reviewed the fact that the County's land use regulations in Limestone and Beaverdam townships were adopted in 1981 and county wide zoning was adopted in 2007. The Court of Appeals overturned the 2007 Zoning Ordinance in March of 2009; however Beaverdam and Limestone were not affected by the ruling and continued to have zoning. On August 18, 2009 the text and maps of the proposed amendment were referred to Limestone and Beaverdam Planning Council and to the Planning Board for their recommendations. On October 6, 2009 the Board received recommendations from these groups that are attached to the minutes. The amendment being considered today was found to be consistent with the Land Use Plan and all three Boards recommended adoption of the amendment.

Commissioner Peterson moved to make the recommendations of the Limestone Council, Beaverdam Council and County Planning Board a part of the minutes of the November 17, 2009 meeting. Commissioner Stanley seconded and the motion passed 5-0.

The text and maps have been and are still available for public review in the Planning Office, Clerks office and Commissioners' office. Notice of this meeting was published twice in the Asheville Citizen Times and approximately 13,000 property owners living outside the general circulation area of the Asheville Citizen Times were mailed a notice. Signs were posted around the county and at libraries and fire departments.

Jim Coman, Zoning Administrator, reviewed the changes made to the text prior to August 18. Debbie Truempy showed two maps that are attached to the minutes. She reviewed the open use district and the changes in the maps that were made as a result of the Court of Appeals ruling regarding spot zoning. She said that 413 lots that had been zoned at the owners request prior to March of 2009 were returned to open use designation. A total of 784 parcels out of 54,500 have a different zoning designation in this amendment than in the previous zoning designation. The Planning Department recommended that fees be waived for rezoning requests for a time after adoption of the zoning amendment. Ms. Truempy reviewed the overlay map that is attached to the minutes. She said it was the same map in effect prior to March of 2009.

The Chairman opened the public hearing at 5 p.m.

Dolph Robinson from Candler read a portion of the constitution of the United States stating that government's power was from the consent of the people. He said that the people voted against zoning in 1999 and that zoning was wrong and trampled the will of the people. He was opposed to zoning without a vote of the people.

Bart Ramsey from Fairview said that zoning was a serious issue and that there was not adequate notice to the community. The signs posted by the County were too small. He said that

zoning limits citizens' rights and suggested an ordinance that would mitigate effects of things like concrete plants. He said that zoning does not protect mountains because development can't be stopped. He was opposed to zoning.

Becky Ramsey from Fairview said that small businesses can't start under zoning. She referred to page 4 of the zoning ordinance regarding small businesses and how zoning restricts business.

Peggy Bennett from Leicester referred to comments made by the Chairman to the Planning Board. She said that zoning is turning control of private property over to the government and the citizens should be allowed to vote. She wanted other means to control development, not zoning. She asked the Board not to pass zoning.

Hope Herrick of West Asheville said that zoning is not necessary to protect the people. She was opposed to zoning and felt it was communist.

Joe Belcher resident of the County and representative of Oakwood Homes was concerned about restrictions to placement of manufactured homes under the zoning ordinance. He wanted citizens to be able to put a manufactured home on any lot in the county.

Leslie Colva from Asheville said she was opposed to zoning and that a lot of citizens were not aware of the ordinance. She said that this ordinance will increase the cost of housing and she was opposed to zoning.

Jerry Rice said that zoning was being considered to promote tourism to preserve the landscape to provide a haven for the rich and famous. He said that zoning won't hurt the rich but it will hurt the poor people. He said that there was not sufficient notice of this hearing and that the Commissioners did not represent the people.

Eric Gorney from Swannanoa said that the Board should be ashamed that they are silencing the voice of the people by not allowing them to vote on the zoning issue. He wants zoning on the next ballot in May.

Kathy Rhodarmer said that the citizens should be allowed to vote and that property rights are fundamental and the government should leave the rights of the citizens alone.

Elaine Simons from Alexander said that her property rights are being taken and she wants a chance to vote on this issue.

Brad Jones from Swannanoa spoke against zoning in the County. He said that the zoning ordinance cost him because it cut his ability to build on a slope. He is ashamed to have this Board as his elected officials.

Ken Myers from Candler spoke in favor of manufactured homes in the county and for a vote on zoning. He sells manufactured homes and he does not want zoning to prevent placement of manufactured homes anywhere in the County.

R J Del Vecchio from Raleigh said he has a vacation home in Swannanoa. He said that there is a motor cross field across from his new vacation home that was put there after the courts ruling he did not want it to be grandfathered in to the law.

Stan Robinson from the Avery's Creek community felt zoning was discriminator.

Robert Orr from Black Mountain said the zoning had affected him by not allowing the conversion of a house on I-40 into a business. He said that zoning can be counter productive and wanted more specific code approaches in the county.

Dwayne Blake wants no restrictions on manufactured housing in the county because it meets the need for affordable housing.

Marylou Davies said that she was in favor of zoning so that someone can't put a motor cross track or new high school or concrete plant next to her. She wants more security and approves of the slope designation.

Craig Justice said he represented property owners along US 74 who own a 10 acre tract

and need a zoning designation of neighborhood service. He felt this was a mistake in the zoning ordinance and wanted it changed.

Mike Fryer wanted the Board to allow the people to vote. He showed zoning signs that were posted to announce the meetings that he felt were not adequate.

Ken Braine from Leicester spoke in favor of zoning to insure his biggest investment, his home.

Paul Purdue from Fairview said that he wants the citizens to keep their freedom and land rights. He wants the citizens to have the right to vote on this issue.

Judy Mattox spoke in favor of zoning and wants to protect the individual rights and community planning. She also wants steep slope regulations.

Kimberly Schroder from Black Mountain asked the Board to be patient and provide more information about zoning. She wanted more comment from citizens and a letter to all landowners regarding their zoning designation.

Betty Jackson from West Buncombe County said that the people should be allowed to vote. She asked why the Board would not allow a vote on this issue.

Keith Gibbons from Fairview read from a rule book regarding how the Country was created and asked for the Board to give citizens the right to vote.

Iris Sluder from Swannanoa asked the Chairman about quotes he made to the Mountain Express.

The Chairman closed the public comment at 6:13 p.m.

Mike Frue, County Attorney, said that on August 18 the Board referred the text and maps to the Limestone and Beaverdam Councils and to the County Planning Board. They have found them consistent with the Land Use Plan and now the Commissioners must approve the text and maps and adopt a statement of consistency to determine whether this is in keeping with the comprehensive land use plan.

Commissioner Peterson moved to approve the **Resolution Adopting a Statement of Consistency Regarding the Proposed Amendment to Chapter 78 of the County Code** Commissioner Bailey seconded the motion and it passed 5-0.

Commissioner Jones asked about parcels that may need to be changed to a different designation. Mr. Frue said that this will happen through a process for rezoning. The Planning Department is suggesting a waiver of the fee for rezoning. Commissioner Bailey suggested that this time period be 90 days.

The County Attorney said that the **Ordinance Adopting Maps and Text of the Amendment to Chapter 78 of the County Code Zoning Ordinance of Buncombe County** is presented on first reading and has been found consistent with the land use plan and has been noticed properly. There were 13,000 letters to property owners outside the circulation of the Asheville Citizen Times in the County. The statutes require a public hearing on the passage of an ordinance and that a second reading would be required on December 1.

Commissioner Peterson moved the adoption of the ordinance as presented. Commissioner Bailey seconded the motion and the motion passed as follows 4-1.

AYES: Commissioners Jones, Bailey, Peterson and Chairman Gantt

NOES: Vice Chairman Stanley

## **NEW BUSINESS**

- **Presentation of the Comprehensive Annual Financial Report**

Donna Clark, Finance Director, presented the Comprehensive Annual Financial Report, stating that the report is an effort to assure fiscal accountability. The report is attached to the minutes of this meeting. She said that the County's bond rating was upgraded to AA+ and the tax collection rate is 98.71 above the State average of 97.83. Ms. Clark thanked her staff for all their hard work during a difficult year. Thanks to County Manager and Assistant County Managers for their work and to County staff and for the Boards leadership and trust.

Danny Yelton with Guild Killian Audit Firm presented the official audit opinion for the County. He said that their opinion was of the highest designation meaning that nothing came to their attention that was out of line. Commissioner Bailey moved to approve the audit and Comprehensive Annual Financial Report as presented. Commissioner Stanley seconded and the motion passed 5-0.

- **Resolution Authorizing the Execution of an Offer to Purchase and Contract and Special Warranty Deed (Merrimon Avenue—Old Navel Reserve property)**

Jon Creighton, Assistant County Manager, said that this proposal includes the sale of the old Navel Reserve property on Merrimon Avenue owned by the County since 1905. The property is vacant and the building has been removed.

Cindy Weeks with Mountain Housing Opportunities, said that they plan to build workforce housing on this site. They plan to fit the new buildings where the old Navel Reserve building was located to assure lower impact. This would be mixed income/workforce development model rental units. They will begin in December of 2010 and have the building ready to occupy by 2012. The project will create around 100 jobs.

Vice Chairman Stanley moved to approve this resolution as presented. Commissioner Peterson seconded the motion and it passed 5-0.

- **Resolution Designating a Portion of the Principal Component of Installment Payments Under an Installment Financing Contract as Recovery Zone Economic Development Bonds, Approving a New Not to Exceed Aggregate Principal Component of Installment Payments Under an Installment Financing Contract and Approving the Form of a Preliminary Official Statement in Connection Therewith**

Donna Clark, Finance Director, said that the County Schools representatives were present to explain the request.

Tim Fierle, Facilities Director for County Schools, said that the amount the schools used in the initial bond resolution was not an accurate number. He said that the bids were well below the state average for school construction and met their target of \$30 million for construction -- \$15 million for each school at \$141.51 a square foot. The state average is \$149 per square foot. He said that each school will be energy efficient and have green features for air filtration and water conservation with a low impact construction process.

Commissioner Bailey asked about reducing the operating costs. Mr. Fierle said that maintenance costs should be 30 percent less.

Superintendent Baldwin thanked Donna Clark for her work on getting these funds approved. He said they expect to open in August of 2011.

Donna Clark, Finance Director, said that the federal stimulus grants used for these funds will allow the county to save \$3 million over the life of the loan using these build America bonds.

Commissioner Bailey moved to approve this resolution as presented. Commissioner Peterson seconded and the motion passed 5-0.

- **Resolution Approving the Award of Recovery Zone Facility Bond Funds in the Amount of \$14,624,000 as Recommended by the Industrial Facilities and Pollution Control Financing Authority**

Mike Frue, County Attorney, said that this was the final step in approving the recovery bonds as approved and recommended by the Industrial Facilities and Pollution Control Financing Authority. This approval will preserve the allocation for Buncombe County at \$14,624,000 and when bonds are ready to be issued a public hearing will be scheduled.

Commissioner Peterson moved to approve the resolution as presented. Vice Chairman Stanley seconded the motion and it passed 5-0.

## **ANNOUNCEMENTS**

The Chairman announced that the next regular meeting of the Board would be December 1 at 4:30 p.m. and that County offices will be closed on November 26 and 27 for the Thanksgiving Holiday.

## **PUBLIC COMMENT**

Erin Penland asked about a comment made at a previous meeting regarding the CTS site and there being no imminent threat in that area and the County's inability or unwillingness to file a legal action.

Mike Frue, County Attorney, said that the County has no standing to file an action in this matter and without the public health assessment that is pending from the State, there is no evidence of an imminent health threat. He said that all homes with wells that have tested positive have access to city water.

Mandy Stone, Assistant County Manager, said that the monthly report on actions regarding the CTS goes to federal representatives and not the county. The County was waiting on the release of the public health assessment. EPA has assured the County that there is no threat for non-detect wells in between testing.

Eric Penland also spoke about the CTS problem and requested dye in the ground to check the source of the contamination.

Tate McQueen spoke about the CTS cleanup and the Southside Village that he says was built illegally.

Mike Frue, County Attorney, repeated his comments and stated that the County will work with the responsible agencies.

Mandy Stone, Assistant County Manager, said that an informational sign is posted at the site and notices are on the County's GIS website on property impacted by the site.

Betty Jackson asked why they did not allow a vote on zoning. Commissioner Bailey moved to go into closed session per General Statute 143-31811a(4) for an economic development matter. Commissioner Peterson seconded and the motion passed 5-0.

## **CLOSED SESSION**

Jon Creighton, Assistant County Manager, reviewed a possible economic incentive for a company investing \$3.9 million and bringing 75 jobs paying \$19 per hour. The Board gave consensus to offer an incentive of \$250,000 paid over \$3 years.

Vice Chairman Stanley moved to return to open session. Commissioner Peterson seconded and the motion passed 5-0.

Vice Chairman Stanley moved to adjourn the meeting. Commissioner Peterson seconded and the motion passed 5-0. The meeting was adjourned at 7:38 p.m.

*Kathy Hughes*

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KATHY HUGHES, CLERK TO THE  
BOARD OF COMMISSIONERS

*David Gantt*

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DAVID GANTT, CHAIRMAN  
BOARD OF COMMISSIONERS