

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

BE IT REMEMBERED: That the Board of Commissioners met in regular session on August 4, 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: Jon Creighton, Planning Director/Assistant County Manager; Mandy Stone, DSS Director/Assistant County Manager; Donna Clark, Finance Director; Kathy Hughes, Clerk to the Board; Mike Frue, Assistant County Attorney; Joe Connolly, County Attorney.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

INVOCATION

Pastor Jerry Young, Trinity Baptist Church, 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 Bailey moved to approve the consent agenda as presented.

- Approval of the Minutes of June 16 and 23, 2009 Regular and Continued Meetings
- Resolution Amending Resolution 05-06-08 Appointing Plat Review Officers
- Resolution Authorizing the Chairman to Execute an Application for Climate Showcase Communities Federal Grant Funding, Enter into an Agreement with the US Environmental Protection Agency and Provide the Necessary Assurances
- Resolution Approving a Report From the County Purchasing Agent on the Sale and Disposal of Surplus Property
- Release Report
- Budget Amendments
 - Fund 10 (\$85,252)
 - Fund 64 (\$615,754)
- Special Revenue Capital Projects Ordinance
- Special Capital Commission Fund Project Ordinance
- Parking Deck Capital Project Ordinance
- Resolution of Intent to Close an Easement and Setting a Public Hearing
- Road Petitions: Rose of Sharon Way and Thrash Drive
- Resolution Authorizing the Submittal of Information Related to the Juvenile Crime Prevention Council Program

Commissioner Peterson seconded and the motion passed 5-0.

PROCLAMATION

- **Asheville Kennel Club's 75th Anniversary**

The Chairman presented the plaque to Jean Sheely with the Asheville Kennel Club. He congratulated the club for their 75 years of service and moved for the approval of the proclamation. Vice Chairman Stanley seconded and the motion passed 5-0. Ms. Sheeley thanked the Board and presented the Chairman with a gift for the recognition and invited the Board to the show next year.

PUBLIC HEARINGS

- **Limestone Zoning Ordinance Amendment**

The Chairman opened the public hearing at 4:37 p.m.

Jon Creighton, Assistant County Manager, said that since this ordinance was enacted in 1981 the statutes have changed and the County Attorney feels that the ordinance needs to be changed to mesh with the state statutes. He said that Limestone Council had meet in June and held a public hearing on this amendment and passed it unanimously.

Alan Ditmore from Leicester was opposed to the amendments and zoning because it leads to environmental destruction. He said that zoning does not help the environment and causes pollution.

Don Yelton said that he was opposed to zoning because it limits small business.

Jerry Rice asked if this amendment was due to the court rulings.

Bob Davis asked for email notification on any amendments to the limestone ordinance in the future.

Eric Gorney said that he did not want any zoning in limestone and that it should be repealed.

The hearing was closed at 4:48 p.m.

Mike Frue, Assistant County Attorney said that the amendment was not a result of the court of appeals ruling and is only a correction to bring into compliance the ordinance with state law. He explained that residents could sign up with the County Planning Department for email notification of changes but it would not count as a legal notification only for information.

Commissioner Peterson moved to approve the resolution as recommended. Commissioner Jones seconded and the motion passed 5-0.

- **Use of FY 2010 Rural Operating Assistance Program Funds**

Lori Hembree with Mountain Mobility, explained the Rural Operation Assistance Program as outlined in the information attached to the minutes. She asked for citizens at the meeting to fill out public involvement forms and that the Board approves the grant application as requested.

The Chairman opened the public hearing at 4:56 p.m.

No comments were made and the public hearing was closed at 4:57 p.m.

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

- **Authorize Execution of an Agreement for Lease and Option to Purchase Commercial Real Property Between Buncombe County and the Western North Carolina Community Health Services Inc, a NC Non-Profit Corporation**

Mandy Stone, Assistant County Manager, said that this Board began action in November to expand health care, realign health services and draw federal money for expanded access to meet the increasing demand. She said that the County is working with Western North Carolina Community Health Services (WNCCHS) to contract toward integrated care. The property at 257 Biltmore Avenue would be leased to WNCCHS to be renovated and begin housing the adult primary care services now at the County Health Center in December. Expanded care including dental and mental health services will also be available on site. This model aligns with federal requirements which allow the county to be eligible for federal money.

Curtis Venable, Chairman of WNCCHS, said that this lease would continue the use of the Biltmore properties, previously housing mental health, for mental and physical health of the community

The Chairman opened the public hearing at 5:07 p.m.

Jerry Rice said that these buildings housed the Blue Ridge Mental Health Center and he felt they should revert to the County if they were not used for health services. He felt that WNCCHS would be bigger than the Health Center and he was concerned about using the buildings for purposes other than mental health.

Don Yelton felt the buildings should revert back to the citizens and not be purchased by WNCCHS. He asked how many people served at the health center were illegal aliens and that WNCCHS be required to show their books to the public.

The public hearing was closed at 5:12 p.m.

Mandy Stone said that for the same amount of county investment more citizens will be served. She said that the Health Center is restricted and can't ask clients about their citizenship but WNCCHS will be required to serve legal citizens as it is supported by tax dollars. She said that the County is under an ordinance requiring open books for non profits and the property will revert to the County if not used for health services. A of the sale of the property will come back for formal Board approval. She said that these buildings were paid for with the funds reinvested into the mental health trust fund.

Commissioner Peterson moved to authorize the execution of an agreement for the Lease and Option to Purchase as presented. Vice Chairman Stanley seconded the motion and it passed 5-0.

NEW BUSINESS

- **Annual Tax Settlement Report and Order to Collect Taxes**

Gary Roberts, Tax Director, gave his tax collection report which is attached to the minutes. He asked the Board to approve an order to collect taxes for the 2009 levy and to relieve his office of the insolvent tax bills. He reported that this year the tax office implemented a different mode of collection that included additional payment agreement options.

Commission Peterson moved to approve the settlement report and order to collect taxes as submitted. Vice Chairman Stanley seconded the motion and it passed 5-0.

Mr. Roberts asked the Board to approve the insolvent report removing from the tax collection levy the bills deemed uncollectable.

Commissioner Bailey moved to approve the list as submitted. Commissioner Peterson seconded and the motion passed 5-0.

- **Southern Appalachian Highland Conservancy Conservation Easement Request – Namkoong Property on Early Mountain in Sandy mush**

Michelle Pugliese with Southern Highland Conservancy (SHC) presented a 42 acre conservation easement in Sandy Mush that the SHC and the Land Conservation Advisory Board recommended for approval. She said that they were asking for \$18,000 for the transaction costs for the easement and that the owner was donating the cost of the easement. The conservation value of the donation is \$182,000.

Vice Chairman Stanley moved to approve the request for \$18,000 in transaction costs for this easement. Commissioner Peterson seconded the motion.

(At the request of Commission Jones, public comment was held on this item)

Alan Ditmore said that this is property was too near the city and would increase pollution of the County. He did not want the County to spend money on this.

Harry Maroni asked about the off set of the taxes for this property.

Eric Gorney asked if the land donated to the conservancy was open to the public or just for a view shed.

Kathy Rhodarmer suggested that taxes be taken off of undeveloped land.

Ms. Pugliese said that the property taxes will continue to be paid by the owner and there will be no public access. She said that this easement is a promise not to develop the land, not a sale of the property.

The motion passed 5-0.

- **Carolina Mountain Land Conservancy Easement Request – Spicer Property on Garren Creek in Fairview**

Tom Fonslow with Carolina Mountain Land Conservancy introduced the family of Ms. Spicer and said that this conservation easement was in the Garren Creek Community in Fairview and included 241 acres with a conservation easement on 170 acres. He outlined the worth of the property and the way that the owners had decided to develop portions and conserve other portions for the community.

Commissioner Peterson said that she had hiked this wonderful property and was in full support of the conservation. She moved to approve the easement. Vice Chairman Stanley seconded.

The Chairman thanked the Spicers and Bleekers for their donation to the County's future.

(At the request of Commissioner Jones, public comment was held on this item)

Don Yelton said that he was happy that the board identified the beauty of the property. He wanted the county to adopt incentive based taxation. He wanted property managed based on what is there and a tax program county wide for reduction in property taxes.

Commissioner Jones thanked the families for their efforts in managing and visioning for this property.

The motion passed 5-0.

Keith Gibbons with the Pleasant Grove Baptist Church thanked the Spicers for the donation.

- **Comprehensive Land Use Plan Update Amendment**

Mike Frue, Assistant County Attorney said that this amendment would recommend that Beaverdam remain its own district and confirms the language from the plan of 1998.

Vice Chairman Stanley moved to approve the amendment as presented. Commissioner Peterson seconded the motion.

(At the request of Commissioner Jones, public comment was held on this item)

Don Yelton said that the Beaverdam Ordinance had a restriction on cell towers that is illegal and a violation of the FCC rules.

The motion passed 5-0.

- **Discussion of Bids on Park Library Renovation**

Ed Sheary, Library Director, outlined the renovations of the 31 year old Pack Library located on Haywood Street. He said that these renovations will give another 20 years of life to this building. The project will renovate the building floor by floor including the construction of a tower for fire escape and rest rooms. The renovation will double the size of the children's room and construct a new room to house the Sondley collection. The building will stay open during the first phase but will close in the final phase with resources shifting to other branch libraries close to the city. Mr. Sheary said that 15 bids were received on the project--six were within \$100,000 of each other. After review of the lowest three bids, he said that staff found no reason to disqualify the low bidder.

Joe Connolly, County Attorney, said that the low bidder was Gleeson Snyder at \$3,100,000. He said that the statutes say that the County is required to hold public bidding process and determination is outlined by the statutes. The county can reject any and all bids but the contract must be awarded to the lowest responsible bidder. He said that his office has reviewed the bids to determine the responsible bidder being sensitive to the fact that the low bidder was not from the county and the next two were local companies. He said that the statutes require this board to accept the lowest responsible bidder and the staff is recommending the lowest bidder.

Chairman Gantt asked about exceptions within the law for local businesses. The County Attorney said he can find no basis in the law to award on those grounds.

(At the request of Commissioner Jones, public comment was held on this item.)

Alan Ditmore asked how the cost of renovations compared to the proceeds of selling the building and building another one.

Eric Gorney asked about guarantees in the contracts that the work would be given to legal citizens. He said that it is hard to compete with those that hire illegals for projects and he needs the work.

Roberts Edwards, candidate for the Mayor of Asheville, said that this should not be done at this time and should be held for another 10 years when the County has better economic times.

Harry Maroni said that Bruce Goforth is his neighbor and it should be a conflict of interest for him to be getting this job

Chuck Radford with Goforth Builders said that he is the second lowest bidder just 1/10 of one percent higher and he felt that the money should stay here in the county. He said that it is a shame that it can't stay within the county and the County should consider minority forms.

Don Yelton said that some County bids don't go to the lowest bidder. He asked if there should be a new building instead of remodeling this old building.

Ed Sheary said that there was a lot of thought to renovating or a new construction. He said that Pack Library sets on a great piece of real estate in the city near a parking garage. It is 52,000 square feet and would cost around \$10 to 12 million to replace.

Keith Hargrove, Architect on the project, said that all minority forms are in order for all bidders.

The County Attorney said that there was no conflict of interest with Goforth Builders but he was not the low bidder on the project. He explained that the County could be legally challenged by the lowest responsible bidder if they were not chosen. They could seek recovery of damages.

Commissioner Jones said that this is a great project and will help old and young and everyone who uses the library. She said it was important to stay in this location and moved to approve the lowest possible bidder as recommended.

Commissioner Bailey seconded the motion stating that after looking at all aspects of the bids, he would agree with the library's recommendation. He said that he had worked with all the local bidders and all were excellent and it was a shame that the work could not go to a local bidder.

Commissioner Peterson said that she would rather go with local bidders but must go with recommendation of the attorney. Commissioner Stanley said he would only vote for a local contractor as he has for 20 years.

The motion passed 4-1 as follows:

AYES: Chairman Gantt; Commissioners Bailey, Jones and Peterson

NOES: Vice Chairman Stanley

- **Ordinance Banning Smoking in All County Facilities and on All County Property**

Gibbie Harris, Health Center Director, said that the Board of Health voted unanimously to request that the Commissioners adopt the Ordinance Banning Smoking in All County Facilities and on All County Property. She said that second hand smoke is the leading cause of death in the United States. The new bill from the legislature allows the county to expand what the county can do to stop exposure to second hand smoke.

Commissioner Peterson said that she serves on the Board of Health and is in complete support of this ordinance that will help protect citizens in the county. She moved to approve the resolution. Winnie Zeigler, Chairman of the Board of Health, said that as a nurse she has seen the impact of secondhand smoke.

Commissioner Jones asked how the county would support employees when this was enacted. Ms. Harris said that the County's Human Resources Office would make smoking cessation classes available and would make sure they were aware of the changes that would take place in January of 2010.

Commissioner Bailey said that AB Tech banned smoking two years ago and it was a very smooth transition.

Mike Frue, Assistant County Attorney, said that the ordinance will be effective January 2, 2010 and will not affect private vehicles or private homes. He said that this will be a three or four strike offense with appropriate warnings. The County will work with other municipalities to be ready for enforcement. Violation will carry \$50 fine maximum.

(At the request of Commissioner Jones, public comment was held on this item.)

Eric Gorney asked about smoking in parks and said he felt this was an infringement on his rights.

Robert Edwards, candidate for Mayor of Asheville, asked about enforcement and if the Board felt this was discrimination. He does not want a law that can't be enforced.

Pauline Dailey expressed her support for the Ordinance stating that effects of second hand smoke are under reported and can seriously impact citizens with asthma.

Lee Sorro spoke in favor of the ordinance because it decreases consumption and that is a positive.

Mike Fryer said that this is a tobacco state and should not have an ordinance like this one. He wants to be able to smoke anywhere, anytime he wants.

Jerry Rice said that he likes the ordinance but is concerned about the difficulty of enforcement and lack of education.

Commissioner Peterson restated her motion to approve the ordinance. Commissioner Jones seconded and the motion passed 5-0.

- **Designation of Buncombe County as a Recovery Zone for Purpose of Facility Bonds**

Mike Frue, Assistant County Attorney, said that this request came from the Industrial Facilities and Pollution Control Financing Authority in order to grant bonds to Ingles Markets for an expansion of their Swannanoa facility. He said that the Economic Development Coalition has offered to assist with the process.

(At the request of Commissioner Jones, public comment was held on this item.)

Jason Gilliland asked when applications would be available for bonds under this designation.

Gene Ellison, attorney for Ingles Markets, asked the Board to approve the request of the Industrial Facilities board and declare the County a recovery zone.

Jerry Rice asked about guidelines for this project.

Ray Denny said that there will be guidelines to qualify eligible companies and will be following the state statutes. The guidelines should be ready in a couple weeks along with an application.

The Assistant County Attorney said that the application and guidelines will be posted on the County's website as well as the Chamber site within 30 days.

Commissioner Peterson moved to approve the designation of Buncombe as a recovery site as requested. Vice Chairman Stanley seconded the motion and it passed 5-0.

- **Designation of Voting Delegate to the NCACC Annual Conference**

Commissioner Peterson nominated Vice Chairman Stanley to be the voting delegate at the North Carolina Association of County Commissioners Annual Conference in Catawba County in August. Commissioner Bailey seconded and the motion passed 5-0.

BOARD APPOINTMENTS

Commissioner Peterson moved to appoint **David Snelson** and **Gary J Roberts** to the **Agriculture Advisory Board**. The motion passed 5-0.

Commissioner Bailey moved to appoint **Jeff Hunter** to the **Tourism Development Authority**. The motion passed 5-0.

Commissioner Bailey moved to appoint **Joe Scotto** to the **URTV Board of Directors**. The motion passed 5-0.

Vice Chairman Stanley moved to appoint **Gary Stamey** to the **Animal Control Appeals Board** (*retroactive to July 6, 2009*). The motion passed 5-0.

Commissioner Jones moved to appoint **Karl Katter John, Susan Ladato, Mary Fraser** and **Sarah Weiss** to the **Nursing Home Community Advisory Committee**. The motion passed 5-0.

Vice Chairman Stanley moved to appoint **Marsha Safian** and **Loraine Poe** to the **Adult Care Home Community Advisory Committee**. The motion passed 5-0.

ANNOUNCEMENTS

- The County's bond rating was upgraded by Standard and Poor's to AA+ and the County was awarded \$3 million in grant funds to enhance the Landfill Energy Project
- The Board will meet with the Town of Black Mountain Board of Alderman on August 10 at 6 p.m. at the Town Hall at 160 Midland Avenue in Black Mountain.
- The Board will meet with the Town of Montreat Board of Commissioners on August 13 at 7 p.m. at the Kirk Allen Building in Montreat.
- The next regular meeting of the Board of Commissioners will be August 18 at 4:30 p.m.

PUBLIC COMMENT

Richard Bernary, former board member of URTV, talked about the oath of office for URTV. He said he was removed from the Board for asking to see the books at that URTV. He said that the URTV Board is violating the rules that they are required to follow. He said he liked public access and URTV can provide that access but the current director and chairman are in violation of the law.

Don Yelton thanked Commissioner Jones for public comment on every issue. He said that he was suspended from URTV for 30 days for no reason and that no one has yet to tell him why he was suspended.

Harry Maroni complained about URTV and Pat Garlinghouse.

Tina Mathews, producer at URTV, said that her experience has been positive and Pat Garlinghouse was very supportive of her and the community.

M Nelson Salley spoke in favor of URTV as a member since 2008. He has had no problem with management.

Matt Howard said he was a member of the URTV Board appointed by Asheville City Council and has found that the vast majority have had no problems with URTV.

Jerry Rice said that URTV never stopped him from filming but the group was ignorant in representing the city and county and should be replaced. He felt that URTV should put their Board meetings on their channel. He said that zoning will bring higher prices and hurt poor people.

Mike Fryer wants to see the Board give the community an opportunity to vote on zoning. He reviewed the voting record of the last election. He wants the zoning issue on the ballot in November.

Iris Sluder said that many people in the community are opposed to zoning and that the Board members were disregarding what the people want.

Eric Gorney wants to vote on zoning.

Betty Jackson said wants the right to vote on zoning.

Hope Herrick wants to vote on zoning and does not want money spent on county wide zoning.

Kathy Rhodarmer said that she is a member of URTV and there is a problem with openness there. She felt that Don (Yelton) should not have had a suspension. She was against zoning and wanted a vote on the issue. She said that zoning would destroy affordable housing.

Keith Gibbons said he wants a zoning vote because the people should be guaranteed the right to vote.

Robert Edwards, candidate for Mayor of Asheville, questioned the unanimous voting of the Board and requested a vote on zoning.

Diana Canter said she represented the Republican Party and wanted the Board to give the citizens the right to vote on zoning.

David King said he was a lifelong resident of the County and felt that the people need to have a voice in how zoning happens. He wanted the Board to speak out for the citizens against annexation.

Nancy Waldrup wants a vote on zoning.

Kathy Lackey said that veterans have given their lives so that we can vote.

Albert Sneed said that this is not California and Commissioners should not allow us to be zoned without a vote. He said that if zoning is run through without referendum there will be angry group of people but if a referendum passes they will have to live with results.

Jerry Blankenship spoke in favor of a referendum and is against zoning.

Jesse Ledbetter said that the Board should allow the people a vote on the issue. He said that a vote would give the commissioners the proper authority to tell everyone in unincorporated areas how to plan and zone.

The County Attorney said that the Board cannot put a referendum on zoning on the ballot in November without special legislation.

Commissioner Peterson moved to go into closed session pursuant to GS 143-318A(3) to discuss a legal matter. Vice Chairman Stanley seconded and the motion passed 5-0.

CLOSED SESSION

Discussion was held regarding possible legal action regarding the siting of a concrete plant in the north section of the County and recent legislation. No action was taken.

Commissioner Bailey moved to return to open session. Commissioner Jones seconded and the motion passed 5-0.

Commissioner Bailey moved to adjourn the meeting. Vice Chairman Stanley seconded and the motion passed 5-0. The meeting was adjourned at 8:25 p.m.

KATHY HUGHES, CLERK TO THE
BOARD OF COMMISSIONERS

DAVID GANTT, CHAIRMAN
BOARD OF COMMISSIONERS