

**MINUTES OF BUNCOMBE COUNTY BOARD OF COMMISSIONERS'
REGULAR MEETING OF NOVEMBER 3, 2009 AT 4:30 P.M.**

BE IT REMEMBERED: That the Board of Commissioners met in regular session on November 3, 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

Rev. Wes Austin, Oak Hill Methodist 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 Peterson moved to approve the consent agenda as presented.

- **Approval of Minutes of October 6 , 2009 Regular Meeting**
- **Release Report**
- **Resolution of Intent to Convey and Advertise for Upset Bids (Moody Road)**
- **Resolution to Convey Property to Blue Ridge Area Foundation, Inc.**
- **Resolution Approving Pyrotechnic Experts for Firework Displays**
- **Resolution Amending Resolution 09-08-06 Appointing Replacement Review Officers to Review Plats on Behalf of Buncombe County**
- **Approval of County Vehicle Policy**
- **Budget Amendment – Fund 22 – WIA \$220,000; fund 10 – Health Center H1N1 Funding; Social Services Child Care Subsidy \$1,457,329**
- **Special Revenue Capital Projects Ordinance**
- **Capital Projects Ordinance**
- **Resolution Supporting an Alternative Method of Recognition for Veterans Status to Merchant Marine Seamen of WWII**
- **Road Petition: Scenic View Drive**

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

- **Presentation of Appreciation to Weaverville Mayor Bett Stroud**

The Chairman presented Ms. Stroud with a gift in honor of her 20 years as Mayor and 4 years as Council woman in Weaverville. He said that she had preserved the small town character of Weaverville. The Board thanked Ms. Stroud for her years of service.

The County Attorney said that the Board would need to go into closed session pursuant to General Statute 143-318.11a3 to consider four legal matters including the CTS matter; concrete plant lawsuit (Buncombe County file #09cvs2904); Black Dog Realty versus Pack heirs (Buncombe County file #07cvs4887 and Court of Appeals # 08-1561); an accident claim; and 2 economic development matters. He said there could be some action taken in open session.

Vice Chairman Stanley moved to go into closed session for the reasons cited by the County Attorney. Commissioner Peterson seconded and the motion passed 5-0.

CLOSED SESSION

The Board discussed a possible legal action in the CTS matter and heard from their attorney regarding this issue. No action was taken.

The Board heard from the County Attorney regarding the recent lawsuit involving the Blue Ridge Concrete Plant and their desire to dismiss any suit against the County if their permit to construct is issued. The Board agreed by consensus that the County should not appeal the verdict.

Jon Creighton, Assistant County Manager, asked the Board for consensus to offer an economic incentive to an existing company that would add 134 jobs. The possible incentive would be a match to a state grant in the amount of \$268,000. The Board gave consensus to make this offer.

The County Manager discussed the possibility of a new pharmacy school at UNCA and asked for approval to offer an economic incentive to bring the school here. The Board gave consensus for this negotiation.

The County Attorney asked the Board for consensus to settle an accident claim against the County involving a deputy sheriff. The Board gave consensus to negotiate this claim.

The County Attorney reported that the Court of Appeals had ruled against the Pack heirs and had overturned the ruling against Black Dog Realty in a 3-0 ruling. No action was taken.

Commissioner Stanley moved to return to open session. Commissioner Bailey seconded the motion and it passed 4-0 (Commissioner Peterson returned to the room after this vote.)

PROCLAMATIONS

- **Presentation of Honor and Remember Flag**

Jan Banks, Aunt of former County employee Staff Sgt. Joe Ray who was killed in action in Iraq, introduced Josh O'Connor a County employee who explained the honor and remember flag that was being presented in honor of Staff Sgt. Ray. Sgt. Wayne Craig presented Randy Ray, father of Staff Sgt. Joe Ray, with the flag in memory of his son. Mr. Ray thanked the Board for the flag and recognition of his son's work.

- **Adoption Awareness Month**

Commissioner Peterson read the proclamation and moved for its adoption. Commissioner Stanley seconded the motion and it passed 5-0. Alisha Davis with Buncombe County accepted the proclamation. She said that there were 25 children in the County who were in need of adoptive families.

PUBLIC HEARING

- **Ordinance Closing an Unopened Road in Buncombe County**

The Chairman opened the public hearing at 6 p.m.

The County Attorney said that this hearing was to consider a petition to close an opened road in west Buncombe County. The closing had been properly advertised and posted and no one had contacted the County in opposition to the closing. He said that the closing would be in the public interest; no one would be deprived of ingress or egress and he would recommend that the Commissioners approve the request to close this unopened road.

No one spoke at the hearing and it was closed at 6:02 p.m.

Commissioner Stanley moved to close the road as recommended. Commissioner Peterson seconded and the motion passed 5-0.

- **Proposed Amendment to County Flood Damage Prevention Ordinance – Chapter 32 of County Code**

The Chairman opened the public hearing at 6:09 p.m.

Cynthia Backlow, County Planner, gave a power point presentation that is a part of the minutes and reviewed the changes to the ordinance

Don Yelton said that this information should be put on the BCTV station to better inform the citizens where and what a flood way is and the location of the fringe. He said that the filling of the floodway fringe can cause flooding as it had when the new Walmart was built along the Swannanoa River.

The Chairman closed the hearing at 6:11 p.m.

Commissioner Peterson moved to adopt the Ordinance amendments as presented. Commissioner Bailey seconded and the motion passed 5-0.

- **Resolution Approving the Issuance by the Buncombe County Industrial Facilities and Pollution Control Financing Authority of its \$21,000,000 Aggregate Principal Amount of Tax-Exempt Industrial Development Revenue Bonds for the Purpose of Paying for Certain Health and Science Learning Facility in Buncombe County**

Donna Clark, Finance Director, said that this resolution was in regard to the revenue bonds for the Health Adventure's new facility. She said that this is not an obligation of the County and the County was not at risk.

The Chairman opened the public hearing at 6:14 p.m. No comments were taken and the hearing was closed at 6:15 p.m.

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

- **Resolution Approving an Installment Financing Contract to Provide for the Acquisition, Construction, Furnishings and Equipping of Certain Projects Set Forth Therein and Related Matters**

Ms. Clark said that this resolution included two schools in the County School System at Valley Springs and West Buncombe to be financed not to exceed \$36 million.

The Chairman opened the public hearing at 6:16 p.m. No comments were taken and the hearing was closed at 6:16 p.m.

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

- **Substitution of Beneficiary for the 2007 Community Development Block Grant**

Cynthia Barcklow, County Planner, said that this hearing was a requirement of the block grant program and involved a change of the beneficiary in a 2007 grant funds.

The Chairman opened the public hearing at 6:19 p.m. No comments were taken and the hearing was closed at 6:20 p.m.

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

COUNTY MANAGERS REPORT

The County Attorney said that many citizens had approached the officials about the CTS site cleanup and there had not been many satisfactory answers. He said that the County had a policy for waterlines into an area with health risks. In this area, from a public health standpoint, there is no imminent health risk. There is a health assessment at the federal level that the County is waiting to receive. The extension policy says that if there is identified a health risk by an appropriate authority the County will look at all options to all areas affected per the adopted policy. Currently the EPA has developed a plan to help on site and has paid to run lines to affected parties. There are two parties that can be held responsible for the cleanup—Mills Gap Associates and CTS. New legislation has increased the cap of exposure by the parties to \$5 million each. The County is not a responsible party in this situation and has no standing to file a legal action on behalf of the owners. The Health Director can only act if the situation is a public health nuisance. There are no wells affected where city water is not available.

Mandy Stone, Assistant County Manager, said that the County is well testing any citizen in that area quarterly. She reviewed what the County has done including:

Signage Posting from Public Health on Site:

N.C. Department of Environment & Natural Resources (DENR)

Division of Waste Management

Contact: Cathy Akroyd, NCDENR Public Information Officer

(tel) (919) 508-8438

U.S. Environmental Protection Agency Emergency Response and Removal Branch

Contact: David Dorian, On-Scene Coordinator

(tel) (404) 562-8767

Buncombe County Environmental Health Services

Contact: Marc Fowler, Environmental Health Director

(tel) (828) 250-5914

GIS System Alerts:

Buncombe County does not maintain data concerning hazardous waste sites within the county. For information on hazardous waste sites contact U.S. EPA Region 4 Superfund Division at 1-800-241-1754, www.epa.gov/enviro/index.html or the Division of Waste Management with the N.C. Department of Environmental and Natural Resources at (919) 508-8400 or <http://wastenotnc.org>

Same language posted on BCHC, EMS, and Permits website

Created a Building Permit Checklist; Created an Environmental Permitting Checklist; Performed free well testing outside "1 mile"; Appointed Citizen Action Group (CAG); Appointed Health Director as liaison; Written Numerous Letters to Federal/State Officials; Ran a waterline to the Oaks (\$220,000); Adopted a policy for running waterlines, June 3, 2008 –

Ms. Stone recommended that the Board send letters to the Federal and State delegations strongly requesting they instruct responsible agencies (DENR/EPA) to provide ongoing, updated information for citizen concerns to be addressed and if they deem public water access is appropriate, explore all federal and state funding opportunities; send a letter to North Carolina Department of Public Health and cc: State Delegation strongly requesting an immediate release of the pending Public Health Assessment; and send a letter to Community Action Group clarifying their role and the expectations. All meeting notices and correspondence be routed to County Liaison, the Health Director/Designee and those individual members' personal positions be delineated from official positions formally adopted by the appointed group.

The Chairman said that the County must stay within the law and can only monitor the situation. Commissioner Stanley moved to have staff send the letters as recommended by the Assistant County Manager. Commissioner Peterson seconded and the motion passed 5-0.

The County Attorney said that in the Blue Ridge Concrete lawsuit the court had ruled against the County and as a result the County had issued the permit. He reported that the Board had given consensus in closed session to accept the settlement proposal and not file an appeal in this matter.

NEW BUSINESS

- **Sustainability Plan**

Greg Israel, Physical Facilities Director, reviewed the sustainability plan that is attached to the minutes. Commissioner Jones asked about any measurable goals that could be included. Mr. Israel said that the County can set goals but can't always meet the percentage on any given year. He said that the County was exploring alternative energy means including solar thermal and other sources that would be cost effective. He said that new construction would be LEED certified when it was practical. Commissioner Peterson said that this plan had been acknowledged on the national level. She thanked Mr. Israel and Mr. Ellington for their down to earth approach and moved the adoption of the plan. Vice Chairman seconded the motion.

Commissioner Jones suggested further study of waste reduction, farmland reservation, greenways, solar panels for county buildings and the inclusion of measurable goals. The Board agreed to review the plan again in 6 months.

Karen Cragolin, Director of Riverlink, said that this was an internal operations plan and that she would like to see the County do an external operations version.

Don Yelton suggested that the County use energy consumption per square foot of usable space.

The motion passed 5-0.

ANNOUNCEMENTS

- *The next regular meeting of the Board will be November 17 at 4:30 p.m.*
- *The County is accepting applications for the Planning Board vacancies – 1 at large and 1 from the Erwin School District.*

PUBLIC COMMENT

Gene Hampton with Citizens for Quality Government said that he was proud of the Kindness Matters campaign and the dropout prevention programs at two schools. He wants all kids to have a quality education.

Don Yelton suggested that the concrete facility plant a double row of evergreens around the plant for buffering. He requested more volume on the microphones in the meeting room. He asked if the CTS cleanup cost cap is raised to \$5 million, does that include what the responsible parties are doing now. He complained about the ordinance against in home businesses in Weaverville.

Candy Honeycutt spoke in favor of keeping the Valley Child Care Center running as it is now and not having these services transferred out to other. She wanted the Board to reconsider the closing of this center.

Mallory McDuff from Black Mountain and she had children at the Valley Child Care Center and does not want another provider to take over these services. She said that this center is unique and should not be lost.

Melissa Ward said she had two children at Valley and does not want the day care to go away.

Mandy Stone said that the County had sent out a request for proposals for providers for the Center but no final decision has been made. The unique aspects will be considered and included in the future of this center. She said that this change was not about saving money but about multiplying and serving more individuals without eroding quality. She said that she was willing to meet with anyone after they have met with Fran Thigpen who was directly responsible for the Center.

Commissioner Bailey moved to adjourn the meeting. Vice Chairman Stanley seconded and the motion passed 5-0. The meeting was adjourned at 7:25 p.m.

KATHY HUGHES, CLERK TO THE
BOARD OF COMMISSIONERS

DAVID GANTT, CHAIRMAN
BOARD OF COMMISSIONERS