

**MINUTES OF BUNCOMBE COUNTY BOARD OF COMMISSIONERS'
REGULAR MEETING OF AUGUST 4, 2015 AT 4:30 A.M.**

BE IT REMEMBERED: That the Board of Commissioners met in regular session on August 4, 2015, in the Commissioner Chambers, 200 College Street, Room 326 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
Joe Belcher, Vice Chair
Ellen Frost, Commissioner
Mike Fryar, Commissioner
Miranda DeBruhl, Commissioner
Brownie Newman, Commissioner

Holly Jones, Commissioner, was out of town.

Staff present was: Wanda Greene, County Manager; Mandy Stone, Assistant County Manager/HHS Director; Jon Creighton, Assistant County Manager/Planning Director; Tim Flora, Finance Director; Bob Deutsch, County Attorney; Kathy Hughes, Clerk to the Board.

PLEDGE OF ALLEGIANCE

INVOCATION

In accordance with the Code of Ethics adopted by the Board, all County Commissioners have a duty to obey all applicable laws regarding official actions; to uphold the integrity and independence of the office; to avoid impropriety in the exercise of official duties; to faithfully perform the duties of the office; and to conduct the affairs of the governing board in an open and public manner. Is there any item on the agenda the outcome of which will have a direct, substantial, and readily identifiable financial impact for any Board member? Also, does any Board member have a financial interest in any public contract coming before this Board today?

**Commissioner DeBruhl said that she had a potential conflict of interest regarding the Rezoning Request from Ricky and Harry Coates and planned not to vote on that issue. The Board agreed.*

PUBLIC COMMENT

Laura Cruiser encouraged the Board to notify property owners when a subdivision or development comes to a community. She asked that the proper ordinance be revised asking that all adjoining property owners be notified by mail if any change is happening to an approved development. She also suggested that the zoning ordinance be posted on the County's website.

Charles Wykle spoke about his concerns over environmental issues involving the Coggins farm development. He felt that an environmental impact study should have been done before the development was complete.

Don Yelton commented on the zoning resolutions and settlement summary that was attached to the agenda.

Scott Welch, President of Consolidated Waste Services, said that the problems Wastepro was having were issues that were caused by asking a hauling company to pick up on a subscription basis. He suggested that an assessment be added to the County tax bill to cover garbage pickup.

Jerry Rice asked that the schools fund special education.

Betty Jackson asked that more detail be given to consent agenda issues.

DISCUSSION/ADJUSTMENT/APPROVAL TO FOLLOW AGENDA

Commissioner Frost moved to approve the consent agenda as presented. Commissioner Fryar seconded the motion and it passed 6-0.

- **Approval of the Minutes of the June 16, 2015 Regular Meeting**
- **Resolution Granting Waterline Easement to the City of Asheville for Isaac Dickson**
- **Resolution Authorizing Assignment of Bid**
- **Resolution Awarding a Service Firearm to Retiring Deputy**
- **Acceptance of Settlement Report; Insolvency Report and Order to Collect from County Tax Administrator**
- **Resolution Accepting and Approving A Report from the County Purchasing Agenda Concerning the Sale an Disposal of Surplus County Property**
- **Approval of Legal Settlements**
- **Resolution Approving Pyrotechnic Experts for Firework Displays (Biltmore Estate)**
- **Resolution of Intent to Convey and Advertise for Upset Bids**
- **Release Report**
- **Resolution Authorizing an Update to the Buncombe County Community Transportation Services Plan for Mountain Mobility**

- **Approve Position Classification of General Services Manager – Grade 76 and Election Preparation Specialist Grade 64 (No money requested)**
- **Budget Amendments: Fund 69; Fund 10 and Fund 80**
- **Special Projects Ordinance FY16**
- **School Capital Commission Fund Project Ordinance FY16**
- **Grant Projects Ordinance FY15**
- **Resolution Donating Surplus Taser X-26 Batteries/Holsters to the NC Arboretum Campus Policy**

GOOD NEWS/PROCLAMATIONS

- **Proclamation of Special Olympics Month**

Vice Chair Belcher read the proclamation and moved for its approval. The Board approved the proclamation 6-0.

PUBLIC HEARING

- **Request Refund of Overpayment of Excise Tax**

Mike Frue, Senior Staff Attorney, explained the request for refund of an overpayment of excise tax stating that a hearing was required by statute before a refund could be granted.

The Chairman opened the hearing at 6:33 p.m.

No comments were made.

The Chairman closed the hearing at 6:36 p.m.

Commissioner Fryar moved to approve the refund as outlined by the attorney. Commissioner Newman seconded and the motion passed 6-0.

- **Rezoning Request – John & Brenda Landgrover – R-1 to R-2**

Debbie Truempy, Zoning Administrator, explained that this issued had appeared on the agenda at the June 16 meeting and it was held until this meeting. The Landgrovers had applied to rezone their property located on Dogwood Drive in the Weaverville area. The property is currently undeveloped. The Planning Board held a public hearing to rezone the property to R-2 from R-1. Neighbors want the property to remain R-1. The Planning Board voted to deny the Landgrover's request. Ms. Truempy explained the procedural error in the rezoning stating that the applicants did not certify that the Landgrovers were notified. The Planning Department will provide a group rezoning to cover the error. There were 215 separate parcels that were rezoned from R-2 to R-1. The Landgrovers property was one of the 215 properties. The notice mailed to them was returned to the Planning Department.

The Chairman opened the public hearing at 5:12 p.m.

Fred Flaxman spoke in opposition to the rezoning from R-1 to R-2. He said that the property borders the property that he owns and is surrounded by single family homes.

Debbie Goodwin's property borders the Landgrover property and she spoke in opposition to having the property rezoned R-2 as she was afraid of future development.

Linda Kraft's property also borders the Landgrover property. She was opposed to the rezoning of the property.

Lynn Moss said she moved here in 2014 and was in support of the R-1 zoning.

Richard Breneir said that he felt the Landgrovers had the right to have their property zoned as they wished.

Josh Pierce felt that the property should remain R-1 because of the traffic and speeding on Dogwood Road.

Leslie Osborn, member of the Weaverville Planning and Zoning Board, said that the traffic was terrible in the area of the property and she felt it was the Commissioners duty protect the neighborhood.

DeeDee Styles said that the Planning Board did not have the legal right to deny a rezoning request based on traffic safety. She was in support of the Mr. Landgrover's desire to have his property zoned as he wished.

William Hunt spoke in favor of having the property remain R-1 and not be rezoned as requested.

Keith Cook felt that the Landgrover's should have known about the hearing and was opposed to any development on this property. He felt zoning was their only protection.

Don Yelton spoke about the traffic in Weaverville. He was in support of Mr. Landgrover's desire to have his property zoned R-2.

Betty Jo Leads read a statement in favor of having the property remain R-1.

Richard LeBeno spoke against rezoning the property.

Butch Gudger said that the property should remain R-1 for safety issues.

Ann Bolinger wanted the property to remain R-1 for safety issues and density. She felt that every property owner had the right to be concerned about their community.

Fred Smith asked that the Board visit the property and see for themselves.

Joel Moezelious was opposed to the county's comprehensive land use plan and its inability to address issues and felt it should be revisited. He was opposed to the rezoning of the property to R-2.

Connie Calback was opposed to the rezoning of the property.

Brenda Landgrover said that she had owned the property for many years and was upset with the rezoning of her property without her approval or knowledge. She said that she was not notified. If she had been notified she said she would have attended the meeting.

Ted Glenn spoke in opposition to the rezoning and wanted it to remain R-1.

Jerry Rice spoke in favor of allowing Mr. Landgrover to have his property remain R-2 if that is what they want.

John Landgrover said that he lived there for 37 years and it was zoned R-2. He did not receive notice and wants his zoning returned to R-2. He said that he has never put his property up for sale. He felt it was adjacent to R-2 districts.

Dennis Oakley spoke in favor of keeping the property at R-1 so that it is in keeping with what the community desires.

Gary Colback spoke in favor of keeping the property R-1 to preserve the area. He felt that the current zoning for anything that could be built there is enough.

The Chairman closed the hearing at 6:12 p.m.

Commissioner Fryar questioned the cost of the rezoning and Ms. Truempy said that mailing the notices and advertising costs were \$8,000. The amount of fees waived during the ETJ rezonings totaled \$52,052.

Vice Chair Belcher moved to approve the request to rezone from R-1 to R-2 finding it consistent with the land use plan. Commissioner Frost seconded the motion and it passed as follows:

AYES: Chairman Gantt, Vice Chair Belcher, Commissioners Frost, DeBruhl and Fryar

NOES: Commissioner Newman

Vice Chair Belcher moved to approve the rezoning as requested. Commissioner Frost seconded and the motion passed as follows:

AYES: Commissioner Belcher, DeBruhl, Fryar, Frost, Gantt

NOES: Commissioner Newman

- **Rezoning Request – Charles & Jeremy Arthur - RLD to R-2**

Debbie Truempy, Zoning Administrator, explained the rezoning from RLD to R-2 on four parcels of 4.9 acres located near Avery's Creek Road. The Planning Board held a public hearing and recommended approval of the request finding it consistent with the comprehensive Land Use Plan, reasonable and in the public interest. The Chairman opened the public hearing at 6:39 p.m.

DeeDee Styles spoke regarding traffic issues and the fact that the Planning Board/staff don't have the power to change or impact transportation issues.

The Chairman closed the public hearing at 6:42 p.m.

Chairman Gantt moved to find the rezoning request consistent with the Land Use Plan, reasonable and in the public interest. Commissioner DeBruhl seconded the motion and it passed 6-0.

Chairman Gantt moved to approve the rezoning as requested. Commissioner DeBruhl seconded the motion and it passed 6-0.

- **Rezoning Request – Harry & Ricky Coates – text amendment**

**Commissioner DeBruhl was excused from voting on this item due to conflict of interest.*

Debbie Truempy, Zoning Administrator, explained the request to permit travel trailers and travel trailer parks in the Commercial Service District. The Planning Department and Planning Board found the request was not consistent with the Land Use Plan, reasonable or in the public interest and the application was denied.

The Chairman opened the public hearing at 6:45 p.m.

Ricky Coates, petitioner, asked that the Board approve the text amendment for RV Parks in the CS zoned district.

Don Yelton said that RV parking is hard to find and suggested that parks be allowed for workers.

The Chairman closed the hearing at 6:53 p.m.

Vice Chair Belcher moved to approve the request finding it consistent with the Land Use Plan, reasonable and in the public interest. Commissioner Fryar seconded the motion. Commissioner Fryar said he was not completely comfortable with voting for the rezoning and would like more time to consider the request. He requested to table the matter. He withdrew his second and the motion failed.

Debbie Truempy said that this RV's are allowed in R-3 and Open Use districts in about 80 percent of the County.

Commissioner Frost moved to find the request inconsistent, unreasonable and not in the public interest. Chairman Gantt seconded and the motion passed 3-2 as follows:

AYES: Chairman Gantt, Commissioner Frost and Newman

NOES: Commissioner Fryar and Vice Chair Belcher

Commissioner Frost moved to deny the application. Commissioner Newman seconded the motion and it passed as follows:

AYES: Chairman Gantt, Commissioner Frost and Newman

NOES: Commissioner Fryar and Vice Chair Belcher

NEW BUSINESS

- **Solid Waste Franchise**

Wanda Greene, County Manager, said that the County had been meeting with WastePro and were certain that WastePro officials understand the seriousness of good customer service. WastePro had reviewed their management practices and were focusing on solutions that were measurable and time sensitive. They would be responding to emails and calls in a timely manner with a new Division Manager onsite. They would soon be fully staffed and were investing in technology to track service with new trucks to better manage smaller roads. The County would work with WastePro to increase education to the public on how to subscribe for service. The County Manager recommended that the Board allow WastePro time to implement their plan which she felt was reasonable, time sensitive and a measurable plan.

Commissioner Frost moved to follow the recommendation of the County Manager. Commissioner Fryar seconded.

Don Yelton wanted the Board to review what is happening with the recyclables. He suggested the County review composting as a viable option. He recommended that the County make it a solid waste assessment fee for countywide pickup.

Jerry Rice talked about the safety of the garbage trucks on the roads. He was in favor of working with the current company.

The motion passed 6-0.

Commissioner Newman asked for a report within 45 to 60 days as to the success of the plan.

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

Commissioner Frost moved to nominate Commissioner Newman as the delegate to the NCACC Annual Conference. Vice Chair Belcher seconded and the motion passed 6-0.

- **Resolution Endorsing Initiative to Reduce the Number of People with Mental Illness in Jail**

Mandy Stone, Assistant County Manager, introduced the resolution that was recommended for adoption by the National Association of Counties and would be used by country. She referenced the annual report that reflects about 25 percent of the jail population has mental illness. The report is attached to the minutes of this meeting.

Commissioner Frost moved to approve the resolution as presented. Commissioner Newman seconded and the motion passed 6-0.

Deputy Chief Glen Mayatabas presented the best practices that have been implemented in the County Detention Center population.

- **Resolution Requesting the French Broad River MPO Consider Adding the Bike/PED Projects to the Metropolitan Transportation Plan**

Josh O'Connor explained the resolution asking that bike and pedestrian projects be added to the Transportation Plan.

Commissioner Frost moved to approve the resolution as submitted. Commissioner Newman seconded and the motion passed 6-0.

BOARD APPOINTMENTS

The Board voted unanimously to appoint **Julie Hansbury** to the **Historic Resources Commission** to fill the unexpired term of Nan Chase.

Vice Chair Belcher moved to appoint **Judith DeWitt, Sarah Page** and **Richard Linsenberg** to the **Adult Care Home Community Advisory Committee**. The motion passed 6-0.

Commissioner Frost moved to appoint **Marsha Hegglund** and **Maria Hines** to the **Nursing Home Community Advisory Committee**. The motion passed 6-0.

Chairman Gantt moved to reappoint **Rick Elingburg, Paul Endry, David McClain, Richard Oliver, Susanne Swanger, Candice Thul, and Winnie Ziegler** to the **Health and Human Services Board**. The motion passed 6-0.

Commissioner Newman moved to appoint **Rick Elingburg** to the **Mountain Area Workforce Development Board** representing the State Employment Services System. The motion passed 6-0.

Commissioner Frost moved to go into closed session pursuant to GS §143-318.11(a)(3) in the matter of Wilcoxson vs. Buncombe County, Bobby Medford, et al. US District file # 13-cv-224 and in the matter of Kagonyera vs. Buncombe County, Bobby Medford, et al. US District file # 14-cv-251 as well 3 unfiled matters involving the same set of facts and defendants; and GS §143-318.11(a)(4) to discuss economic development incentives. Vice Chair Belcher seconded and the motion passed 6-0.

CLOSED SESSION

The County Manager gave a brief update on the Innocence Commission's findings and the proposed settlement in the case of Wilcoxson, Kagonyera, Williams, Mills and Isbell. The Board gave consensus to accept the settlements as presented with final action to be taken in open session.

Mandy Stone, Assistant County Manager, gave an update on the Asheville Humane evaluation and contract as a result of the Pitt Bull moratorium. No action was taken.

Jon Creighton, Assistant County Manager, presented a possible economic development incentive for an existing company that would be making a \$19 million expansion investment and bringing 100 jobs paying an average wage of \$37,856. No action was taken.

Mr. Creighton proposed incentive to an existing company that would be making a \$34 million expansion investment and bringing 60 new jobs paying an average wage of \$41,500. No action was taken.

Commissioner Frost moved to return to open session. Vice Chair Belcher seconded and the motion passed 6-0.

Wanda Greene, County Manager, explained that upon the advice of the County's attorneys and insurance carriers, the County had agreed to settle the five wrongful conviction claims of Robert Wilcoxson, Kenneth Kagonyera, Teddy Isbell, Damian Mills and Larry Williams, Jr. These cases originated during the term of Bobby Medford as Sheriff and the criminal justice system failed the men as the Innocence Commission found two innocent. The settlements were as follows:

Robert Wilcoxson - \$5,125,000; Kenneth Kagonyera - \$515,000; Teddy Isbell - \$240,000; Damian Mills - \$512,250; Larry Williams - \$750,000

The County Manager said that these funds were included in the budget amendments attached to the minutes. She commended the attorneys for working to settle the cases in a financially beneficial manner.

Commissioner Frost moved to approve the settlements as outlined by the County Manager with special thanks to our attorneys. Commissioner Newman seconded and the motion passed 6-0.

ANNOUNCEMENTS

The Chairman made the following announcements:

- *August 18 – 4:30 p.m. – The Board will meet with Asheville City Council in the First Floor Conference Room at 200 College Street*
- *August 29 – 11 a.m. – Ribbon Cutting for Lake Julian Trail Extension @ Lake Julian Par*
- *September 1 – 4:30 p.m. – The next regular meeting of the Board in Room 326 at 200 College Street in downtown Asheville*

Vice Chair Becher moved to adjourn the meeting. Commissioner DeBruhl seconded the motion and it passed 6-0. The meeting was adjourned at 8:45 p.m.

KATHY HUGHES, CLERK TO THE
BOARD OF COMMISSIONERS

DAVID GANTT, CHAIRMAN
BOARD OF COMMISSIONERS