

**MINUTES OF BUNCOMBE COUNTY BOARD OF COMMISSIONERS'
REGULAR MEETING OF JANUARY 5, 2010 AT 4:30 P.M.**

BE IT REMEMBERED: That the Board of Commissioners met in regular session on January 5, 2010, 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. Ralph Sexton, 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 Stanley moved to approve the consent agenda as presented.

- **Approval of Minutes of December 1, 2009 Regular Meeting**
- **Release Report**
- **Declaration of State of Emergency**
- **Resolution Approving Donation of Surplus Computers to Western NC Community Health Services, Inc.**
- **Resolution Rescinding Resolution 09-11-03 and Declaring Intent to Convey Property by Non-Warranty Deed and Advertise for Upset Bids**
- **Resolution Awarding Service Firearm to Retiring Deputy Sheriff**
- **Grant Project Ordinance**
- **Capital Projects Ordinance**
- **Solid Waste Capital Projects Ordinance**
- **Budget Amendments: Fund 10 – Social Services (\$278,524); Youth Services (\$14,377); Soil Conservation (\$161,00)**

Commissioner Peterson seconded and the motion passed 5-0.

PROCLAMATIONS

- **Botanical Gardens of Asheville Year**

The Chairman read the proclamation declaring 2010 the Year of the Botanical Gardens of Asheville in honor of their 50th anniversary and moved for its approval. Commissioner Peterson seconded the motion and it passed 5-0. The Chairman presented Marianne Cote, President of the Gardens with the proclamation.

PUBLIC HEARING

- **Closing of Unopened Alleyway in Swannanoa**

The Chairman opened the public hearing at 4:44 p.m. Mike Frue, County Attorney, said that the County had received a petition from residents in Swannanoa to close an unopened right of way. All affected parties have been notified and affidavits of publication and posting have been filed with the minutes. He recommended that the Board approve the closing of this alleyway.

No comments were taken and the hearing was closed at 4:45 p.m.

Commissioner Bailey moved to approve the Ordinance Closing the Unopened Alleyway in Swannanoa as attached to the minutes. Commissioner Jones seconded the motion and it passed 5-0.

NEW BUSINESS

- **Stream Cleanup Status Report**

Jerry VeHaun, EMS Director, gave a report on the stream cleanup program made possible with the help of Representative Goforth who helped the County secure State grant funds of over \$1 million. The funds enabled the County to contract for cleanup of 100 miles of streams including Swannanoa River, Broad River, Ivy River, Cane Creek, Flat Creek, Hominy Creek, North/South Hominy Creek and many more. Mr. VeHaun said that as a result of the cleanup, the November flooding damage was minor in the County.

- **Soil and Water Conservation Easement Report**

Gary Higgins, Soil and Water Conservation Director, gave an update on the transactions of the Sycamore Valley easement. The County's share of the easement (\$169,000) had already been approved and additional grant funds from state and federal agencies had been acquired. No additional funds would be required to complete this easement.

- **Conservation Easement for Kirstein Farm in Broad River**

Maria Wise, Cooperative Extension Agent with Buncombe County, requested funding to acquire the Kirstein working lands conservation 307 acre easement in Broad River. The land had been in the family since the 1700's. The Kirsteins wanted to keep the farm intact and protect it from development and available for farming in the future. They have donated the development rights and the County would need to fund the \$40,000 in transaction costs to acquire the easement.

Commissioner Peterson moved to accept this recommendation and pay the transaction costs as recommended. Vice Chairman Stanley seconded the motion and it passed 5-0.

- **Special Revenue Capital Project Ordinance**

Donna Clark, Finance Director, said that this revenue ordinance would cover easement payments for the Kirstein easement as well as others. Commissioner Peterson moved to approve the ordinance. Vice Chairman Stanley seconded and the motion passed 5-0.

- **Resolution Authorizing Finance Director to Apply for Excess Recovery Zone Facility Bond Allocation**

Mike Frue, County Attorney, said that this resolution would cover the application for an additional allocation of available recovery zone funds for Ingles Markets. He recommended approval of the application as requested.

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

BOARD APPOINTMENTS

Commissioner Bailey moved to appoint **Ben Wax** to the **Nursing Home Community Advisory Committee**. The motion passed 5-0.

Vice Chairman Stanley moved to appoint **William Wood** to the **Historic Resources Commission**. The motion passed 5-0.

Commissioner Peterson moved to appoint **John Carter, Jr.** to the **Parks Greenways and Recreation Advisory Board**. The motion passed 5-0.

ANNOUNCEMENTS

The Chairman announced that the next regular meeting of the Board would be February 2, 2010 at 4:30 p.m.

PUBLIC COMMENT

Hope Herrick read a statement regarding the Board 's decision regarding prayer. She wants prayer to continue at the meetings.

Don Yelton said that he called the Attorney General's office for NC requesting an opinion on the definition of attorney client privilege in the statutes. He says that the privilege has been abused and he wants the Attorney General to give a opinion on talking about prayer in closed session. He wants an apology from the Board.

Gail Harding gave a copy of her remarks to the record.

Alex Currey, Chairman of the local chapter of the American Civil Liberties Union, commended the Board for considering changing to a moment of silence instead of prayer at the start of the meetings. She said that the only constitutional way to pray in government setting is to pray to no one or under no domination.

Eric Penland said that the Board should not remove prayer from their meetings and he did not understand why the Board would even consider the question. He said that the video of the November 17 meting on television had been edited regarding statements about CTS.

Allen Robinson said there are two sides to the prayer discussion and he was in favor of the moment of silence. He said he was a Quaker and he worships in silence. He felt the Board should hold business meetings that are appropriate and prayer is not appropriate.

Patricia Pinner spoke regarding the CTS problem asking for the Boards help in getting Asheville water to the homes on Chapel Hill Church Road and Gilmore Drive. The Chairman said that her comments would be shared with state and federal agencies.

Aaron Penland said that he lives in the Arden area and is a neighbor of the Pinner's. He said that the CTS problem is serious and the contamination continues to spread. He feels there is still a threat and something should be done.

Jim Cavenor said that he had a divinity degree he wanted everyone to know that there was a legal issue with opening with sectarian prayer. He felt that the practice illegal and had been established by the courts.

Rev Wendell Runion said that no where was it stated that anyone in government is to be separate from religious activity. Prayer should not be prohibited if the governing body wishes prayer. He said that the constitution does not prohibit prayer before a meeting.

Jerry Rice encouraged the Board to continue prayer at the meetings. He said that the Board had allowed all faiths to lead prayer and should protest in favor of prayer or call for a referendum on this issue.

The County Attorney said that the Board would need a closed session pursuant to NCGS 143-318.11a (3) an attorney client matter and (5) for a property acquisition. He said that there could be some action taken after meeting.

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

CLOSED SESSION

The Board heard from County staff regarding the possible purchase of a tower site to improve radio/emergency communication in the south Buncombe area. The Board gave consensus for the staff to continue negotiations to purchase the site.

The Board heard recommendations from their Attorney regarding the release of attorney client information regarding the Blue Ridge Concrete vs. Buncombe County lawsuit. The Board agreed to take necessary action in open session.

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

Vice Chairman Stanley moved to release the attorney client memorandums regarding the Blue Ridge Concrete plant issue. 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 6 p.m.

KATHY HUGHES, CLERK TO THE
BOARD OF COMMISSIONERS

DAVID GANTT, CHAIRMAN
BOARD OF COMMISSIONERS