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Posted By: Evelyn Baker
Witnessed By: _____

**MINUTES OF A REGULAR MEETING
OF THE JACKSON COUNTY
BOARD OF COMMISSIONERS
HELD ON
JANUARY 20, 2009**

The Jackson County Board of Commissioners met in a Regular Meeting on January 20, 2009 at 6:00 p.m., 401 Grindstaff Cove Road, Room A201, Sylva, North Carolina.

Present: Brian T. McMahan, Chairman
Tom Massie, Vice Chair
Joe Cowan, Commissioner
William Shelton, Commissioner
Mark Jones, Commissioner

Ken L. Westmoreland, County Manager
W. Paul Holt, Jr., County Attorney
Evelyn B. Baker, Clerk to Board

Chairman McMahan called the meeting to order.

AGENDA: Commissioner Shelton moved to approve the Agenda. Commissioner Jones seconded the Motion. Motion carried.

MINUTES: Commissioner Massie moved to approve the Minutes of the Public Hearing of January 5, 2009 and Regular Meeting of January 5, 2009. Commissioner Shelton seconded the Motion. Motion carried.

INFORMAL COMMENTS BY THE PUBLIC:

(a) Marie Leatherwood of Sylva stated the issue of "missing" EDC/JDC records should be investigated.

(b) Ann McKee Austin of Cashiers, Chairman of the new Village Council Board, A voluntary organization to work on Cashiers planning issues, thanked the Commissioners for county activities in the Cashiers community.

(1) CHAIRMAN'S REPORT: Chairman McMahan reported that he attended the NCACC Legislative Goals Conference last week during which the delegates selected seeking legislation urging the state to protect all revenue counties are currently receiving as the priority goal.

(2) COMMISSIONERS REPORTS: Commissioner Massie reported that the drought task force had a very informative meeting on January 19. The next meeting is scheduled on January 29. The School of Government has scheduled a two-day session concerning strategic planning and capital budgeting next week. He urged Board members to attend the capital budgeting session.

(3) COUNTY MANAGER'S REPORT: Mr. Westmoreland reported that he would like to identify 3% of the general fund budget that could be unspent if the need arises. Thus, he has requested all county departments to prepare a report, by January 26, identifying line items within their respective budgets where potential savings might be found or where expenditures can be deferred this year.

MOTION: *Chairman McMahan suspended the rules and Commissioner Cowan moved to amend the Agenda by adding "Requests to Fill Positions". Commissioner Jones seconded the Motion. Motion carried.*

(4) REQUESTS TO FILL POSITIONS: The following positions were requested:

(a) **Sheriff's Office:** School Resource Officer at The Hub. The position is state funded. Mr. Westmoreland stated the position is critical and recommended that the vacancy be filled.

(b) **Social Services:** (1) Child Welfare Social Worker who investigates and assessment for child abuse and neglect issues. (2) Income Maintenance Caseworker who determines eligibility for the food nutrition services program (food stamps). Both positions are state funded. Mr. Westmoreland stated the positions are critical and recommended that the two positions be filled.

(c) **Health Dept.:** (1) Accounting Specialist. The current employee is retiring and is an essential position. The department requests that the position be filled immediately for training purposes. (2) Health Promotion/Healthy Carolinian's coordinator. The position is vacant; however, a job offer was made prior to the hiring freeze. The position is grant funded. (3) Good Samaritan Clinic Nurse Case Manager. The first year is fully grant funded; however, in years two and three the county would be responsible for a percentage of the salary. (4) Foreign Language Interpreter. The department serves an array of services to many Latino people. The department needs an employee available to interpret and translate in all clinics as well as environmental health. The current employee has applied for another position. Carry over.

Motion: *Chairman McMahan moved to fill, as requested, the one position in the Sheriff's Office and two positions in the Social Services Department.*

Commissioner Cowan seconded the Motion. Motion carried by unanimous vote.

(5) RESOLUTION -YEAR OF LAND CONSERVATION 2009 (R09-03): Mercedes Heller, President of the Highlands-Cashiers Land Trust, requested that a resolution be adopted to recognize the Trust as an organization actively working to protect land resources, preserve the unique biodiversity of the area, and safeguard wildlife habitat. The Trust currently protects over 1,700 acres in 57 places.

Motion: *Commissioner Jones moved to adopt the resolution. Commissioner Shelton seconded the Motion. Motion carried by unanimous vote.*

(6) FINANCE & TAX COLLECTOR REPORTS FOR DECEMBER 2008:

Darlene Fox, Finance Director, gave the following highlights:

<u>General Fund Revenues Collected to Date</u>	<u>\$ 28,389,333.90</u>
<u>General Fund Expenditures to Date</u>	<u>\$ 26,290,756.00</u>
<u>Ad Valorem Tax Collected</u>	<u>\$ 20,652,568.00</u>
<u>Motor Vehicle Tax Collected</u>	<u>\$ 428,194.00</u>
<u>Sales & Use Tax for October 2008</u>	<u>\$ 925,346.33</u>
<u>Solid Waste Disposal Fees</u>	<u>\$ 1,316,193.00</u>
<u>Contingency Balance</u>	<u>\$ 93,381.64</u>

BUDGET AMENDMENTS:

<u>Transit</u>	<u>\$ 48,934.00</u>
<u>Social Services</u>	<u>\$ 90,026.00</u>

CAPITAL PROJECT ORDINANCE –AGING FACILITY:

<u>Construction</u>	<u>\$ 4,171,000.00</u>
<u>Architect/Engineering Fees</u>	<u>291,970.00</u>
<u>Contingency</u>	<u>208,550.00</u>
<u>Total</u>	<u>\$ 4,671,520.00</u>

Motion: Commissioner Shelton moved to approve the December 2008 Finance & Tax Collector's reports, Budget Amendments and Capital Project Ordinance. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.

(7) FIRE SUPPORT SERVICES JOB DESCRIPTION: Attorney Holt

suggested the following clarifications:

The employee will be an employee of Jackson County and need not be a member of the District Fire Department. If the employee should respond to fire/medical emergency calls, during those responses the employee shall not be a Jackson County employee but shall respond as a member of the District Fire Department. If the employees operate a motor vehicle belonging to the District Fire Department in any mode or manner or for any purpose, he shall do so as a volunteer fireman and at the direction of the District Fire Chief and not as an employee of Jackson County.

Carry over.

(8) GREENWAYS ADVISORY COMMITTEE: Carry over.

(9) WATERSHED REVIEW BOARD: Carry over.

(10) AIRPORT AUTHORITY BOARD: Commissioner Cowan stated that William Crawford requested that his name be withdrawn as an appointee.

Motion: Commissioner Cowan moved to withdraw his recommendation of William L. Crawford to the Airport Authority Board. Commissioner Massie seconded the Motion. Motion carried by unanimous vote.

Carry over.

(11) SYLVA FIRE DEPT.: The Town of Sylva is requesting that the county enter into an Interlocal Agreement guaranteeing payment for expansion of the Sylva Fire Station. The original estimate for expansion was \$1,891,400; however, parking requirements were not included and the estimate is now \$2,383,160. Chief Beck requested permission to proceed with the project. Mr. Westmoreland stated the present budget is based on the original estimate, thus the county would need a precise amount before the county could consider entering into an agreement. Carry over for discussion during the February 5 Budget Work Session.

(12) WEBSTER COMPLEX: Mr. Westmoreland reported the costs for installing electric and telephone utilities underground would be \$77,500. The underground utilities would serve the Aging Facility, Rescue Squad Bldg., and potential Emergency Management facility. Victor Lofquist, Engineer, stated the cost is reasonable and recommended the change order. The fund balance for the project is \$228,930. The only remaining cost items before close out is fencing, landscape and drainage items for the Shuler property and the placement of additional roof drain collection lines for the Aging Facility.

***Motion:** Commissioner Cowan moved to approve a sitework change order in the amount of \$77,500. Commissioner Shelton seconded the Motion. Motion carried by unanimous vote.*

(13) RESOLUTION ASSIGNING ADMINISTRATIVE RESPONSIBILITIES (R09-02): Various ordinances contain assignments of administrative responsibility to agencies which no longer exist or which no longer are best suited to fulfill such responsibility, i.e., Flood Damage Prevention Ordinance, Manufactured Home Park Ordinance, Scott's Creek Water Quality Protection Ordinance, and the Watershed Protection Ordinance.

***Motion:** Commissioner Massie moved to adopt the resolution. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.*

(14) RESOLUTION - RECREATION DEPT. GRANT APPLICATION (R09-04): The Recreation/Park Dept. is applying for a NC Clean Water Management Trust Fund Grant which requires county support. Commissioner Massie requested and was granted permission to recuse himself from voting because of a possible conflict of interest.

***Motion:** Commissioner Cowan moved to adopt the resolution. Commissioner Jones seconded the Motion. Motion carried by a vote of 4-0.*

(15) RESOLUTION - SOUTHWESTERN NC RC&D (R09-05): The resolution is in support of efforts to secure adequate federal funding to fully staff the Southwestern NC Resource Conservation & Development office.

***Motion:** Commissioner Shelton moved to adopt the resolution Commissioner Massie seconded the Motion. Motion carried by unanimous vote.*

CLOSED SESSION:

Motion: *Chairman McMahan moved that the Board go into closed session pursuant to G. S. 143-318.11(a)(3) Legal (briefing on all matters pertinent to the Duke Power relicensing lawsuit with the county). Commissioner Jones seconded the Motion. Commissioner Massie stated some of the issues should be discussed in open session so the public will know what the options are and the effects of the FERC relicensing. Motion carried by a vote of 3-2 with Commissioners Massie and Shelton voting “nay”.*

Chairman McMahan called the regular meeting back to order and stated no action was taken in closed session other than approval of minutes.

MOTION: *Chairman McMahan suspended the rules and moved to amend the Agenda by adding “FERC Update”. Commissioner Massie seconded the Motion. Motion carried.*

(16) FERC UPDATE: Attorney Paul Nolan reported that the FERC proceeding is basically now out of FERC’s hands even though there have been three attempts for it to consider some changes; however, FERC retains jurisdiction to change its Order based upon new changes in circumstances. He contends that he has discovered some information over the past couple of months that warrant a change in circumstances, i.e., the lack of a publication notice of the 2005 401-Water Quality Certificate and the fact that the Administrative Law Judge has determined that the 2007 401-Water Quality Certificate was just for license surrender, not whether the dam should be removed, despite the county attending a September 2007 hearing which was supposed to be about impacts on water quality. The FERC proceeding is now back before the Court of Appeals for the DC Circuit, the same Circuit that issued the *Tacoma* decision in which FERC was admonished that it was supposed to make sure 401-Water Quality Certificates were actually published before it takes action. The requirement of a publication notice stating its purpose is pursuant to the Clean Water Act, a federal statute. It appears the State of North Carolina is not too certain what its 401’s were for despite having been submitted affidavits. There is a requirement that he appear before the Court of Appeals and respond to FERC having advised the court that it (FERC) has now disposed of the request to consider new evidence. He anticipates the court will set a briefing schedule. Collateral to that is a decision on the 401-Water Quality Certificate proceeding from the Administrative Law Judge who will issue or recommend a decision. No date for the Administrative Law Judge’s recommended decision has been established. If the county disagrees with the decision, then it must file a brief on exceptions or recommend a decision.

Motion: *Commissioner Massie moved to withdraw the county’s court challenge to the issuance of the FERC license to Duke Energy for removal of the Dillsboro Dam. Commissioner Shelton seconded the Motion. Commissioner Massie stated that the county should issue Duke Energy a land disturbance permit to allow Duke to dredge behind the Dillsboro Dam, but he was not saying the issuance of that permit isn’t contingent upon a proper 401-Permit issuance at a later date.*

Motion failed by a vote of 2-3 with Chairman McMahan, Commissioners Jones and Cowan voting “nay”.

There being no further business, Commissioner Cowan moved to adjourn the meeting. Commissioner Jones seconded the Motion. Motion carried and the meeting adjourned at 10:00 p.m.

Attest:

Approved:

Evelyn B. Baker, Clerk to Board

Brian Thomas McMahan, Chairman