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Time Posted: _____
Posted By: Evelyn Baker
Witnessed By: _____

**MINUTES OF THE REGULAR MEETING
OF THE JACKSON COUNTY
BOARD OF COMMISSIONERS
HELD ON
MARCH 17, 2008**

The Jackson County Board of Commissioners met in Regular Meeting on March 17, 2008 at 6:00 p.m., 401 Grindstaff Cove Road, Room A201, Sylva, North Carolina.

Present: Brian T. McMahan, Chairman
Joe Cowan, Vice Chair
Tom Massie, Commissioner
William Shelton, Commissioner
Mark Jones, Commissioner
Kenneth L. Westmoreland, County Manager
W. Paul Holt, Jr., County Attorney
Evelyn B. Baker, Clerk to the Board

Chairman McMahan called the meeting to order.

AGENDA: Chairman McMahan amended the Agenda by adding Foster Care Social Worker for the Cherokee Indian Reservation and Commissioner Massie added Airport Lawsuit. Commissioner Jones moved to approve the amended Agenda. Commissioner Massie seconded the Motion. Motion carried.

MINUTES: Commissioner Cowan moved to approve the Minutes of the Regular Meeting of March 3, 2008, Special Meeting of March 10, 2008, and Work Session of March 13, 2008. Commissioner Jones seconded the Motion. Motion carried.

INFORMAL COMMENTS BY THE PUBLIC:

(a) Molly McIntosh, Attorney for Duke Energy, read a prepared statement dated March 17, 2008 which is attached hereto as Exhibit "A".

(b) Wayne Cobb of Tuckaseegee stated he was concerned that the five sections of the Legasus Development, a huge project with 850+ home sites and at least 3 golf courses, may not be regulated by all county Ordinances; there is no infrastructure on top of the mountain. Further, if the old copper mine located on the property is disturbed it will devastate Mine Creek and the Tuckaseegee River. The Army Corps of Engineers has given adjoining property owners until March 24, 2008 to provide a technical analysis concerning impacts to streams. He also submitted a letter from Cherrie' Ann Moses addressing impacts to the streams in the area.

(c) Jeanette Cabanis stated the Legasus Development is within one-half mile of her residence. If Legasus is allowed to group all of its developments then it will be grandfathered out of the Subdivision Ordinance; however, Legasus should be required to group all of them for environmental impact review. The issue of well-recharge wells around Cullowhee Mountain should be addressed. A view-shed study has not been done and if homes are built as planned, they can be seen from the Blue Ridge Parkway. She is a beekeeper and has been informed that golf course chemicals would be detrimental to her bees. She has been in contact with American Farmland Preservation Trust and Appalachian Homestead and suggested Legasus sell development rights for the Moody Farm so it can be preserved as a working farm. She stated the county needs a farmland preservation ordinance.

(1) CHAIRMAN'S REPORT: Chairman McMahan reported the following:

- (a) He attended the NACO Conference in Washington, D.C. in early March and distributed a brochure outlining Congressional and N.C. Legislative Issues for 2008. One seminar addressed affordable housing which is a problem throughout the nation.
- (b) He has announced his candidacy for Second Vice President on the NCACC Executive Board.
- (c) The Rural Planning Organization meeting is March 24 at the Cherokee Holiday Inn and one of the issues for consideration is the removal of a section from Hwy 107 to Hwy 441 from the proposed Southern Loop Bypass plan. Region A will meet at 6:30 p.m. on March 24.
- (d) SCC "Early College Program" presentation is scheduled on March 25, 6:00 p.m.
- (e) Jackson County and Buncombe County have been awarded the "Government Conservation Partner of the Year" award from the Conservation Trust for North Carolina. A dinner and awards ceremony is scheduled on March 26 at the Montreat Conference Center in Black Mountain.
- (f) NCACC District Meeting is scheduled on April 10 in Haywood County.
- (g) April 21 Commissioners Meetings: 441 Corridor Study Report at 4:00 p.m., DOT Secondary Roads Public Hearing at 5:00 p.m., Regular Meeting at 6:00 p.m.

ROAD SIGNS: As to a follow up to a request from J. D. McRorie that the county consider some type of regulation regarding vandalism of road signs, Chairman McMahan stated he was informed by Sheriff Ashe that laws are already in place to handle the problem and deputies have recently apprehended individuals for stealing signs.

(2) COMMISSIONERS REPORTS: Commissioner Massie asked if a response to his questions posed at the last meeting had been received from Attorney Nolan. Mr. Westmoreland stated a response is expected at any time. He also asked about the status of negotiations with Balsam Mountain Preserve. Mr. Westmoreland responded that he talked with Mr. Lehman today and their attorney is drafting a specific proposal to be submitted to the Board.

Commissioners Shelton and Jones stated they have received several calls from the Tuckasee Community concerning the Legasus Development.

(3) FINANCE & TAX COLLECTOR REPORTS FOR FEBRUARY 2008:

Darlene Fox, Finance Director, presented the following highlights:

General Fund Revenues Collected to Date	\$ 35,225,247.00
General Fund Expenditures to Date	\$ 29,689,572.00
Ad Valorem Tax Collected	\$ 22,483,489.00
Motor Vehicle Tax Collected	\$ 653,709.00
Sales & Use Tax for December 2007	\$ 944,235.20
Solid Waste Disposal Fees	\$ 1,475,009.00
Contingency Balance	\$ 6,147.32

(4) BUDGET AMENDMENTS:

DSS	\$ 52,025.00
Law Enforcement Fund	\$ 11,051.00

Commissioner Massie moved to approve the Finance & Tax Collector's reports for February 2008 and the Budget Amendments. Commissioner Shelton seconded the Motion. Motion carried by unanimous vote.

(5) EQUALIZATION & REVIEW BOARD APPOINTMENT: Commissioner Shelton moved to appoint Stephen Pierson to a one-year term on the Equalization &

Review Board. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.

(6) LIBRARY BOARD APPOINTMENT: Commissioner Massie moved to appoint Commissioner Shelton to the Library Board. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.

Commissioner Jones moved to appoint Graham Somerville to the Library Board. Commissioner Cowan seconded the Motion. Motion carried by unanimous vote.

(7) PLANNING DEPT. REPORT: Linda Cable, Planning Director, reported:

(a) Legasus Development: Upon adoption of the Subdivision and Vested Rights Ordinances, developments that have a certain amount invested would be permitted to continue development. Legasus is unique because it has five separate properties, although all five interact to provide one conceptual product. Legasus expressed an interest at the very beginning of entering into a development agreement with the county; however, it will take several months to finalize an agreement, but it should be forth coming. Legasus wanted to continue working and requested vested rights in order to proceed. Legasus must comply with some of the regulations of the Mountain & Hillside Development Ordinance in addition to other regulatory ordinances. Legasus cannot deviate from the plan submitted to the Planning Office. Her office will respond to the letter from the NC Division of Water Quality concerning Legasus.

(b) The Watershed Ordinance and Floodplain Ordinance are being revised to reflect administration by the Planning Office. The Planning Board is working on lighting standards for the county.

(c) A Farmland Preservation Ordinance and Land Conservation Ordinance are complete and ready for consideration.

(d) Nine property owners, cited for erosion control violations, are still out of compliance. At present 199 erosion control applications are being inspected.

(e) As of March 10, 1,668 land development applications, inclusive of septic evaluations, installation of heat pumps and repairs, have been submitted. The Board recommended that permits for heat pumps or repairs to an existing structure should not be required. Permits are only required for land disturbing activities.

(f) 239 Vested Rights development applications have been submitted. This number does not include individual lots.

(g) A building permit breakdown for 2008 was submitted which reflects 42 new single-family permits were issued.

(8) DISPOSAL OF ASSETS: The following vehicles were requested to be declared surplus and authorized for sale:

- | | |
|--|-------------------------------|
| 10 - Ford Crown Victorias* | 1 - Dodge Van |
| 1 - Chev. Step Van | 3 - Dodge Lift Vans |
| 1 - Jeep Cherokee | 1 - Euro Motor Home (Salvage) |
| 1 - Chevrolet Truck | |
| 1*- Ford Crown Victoria (Asset #12432) transfer to Savannah Volunteer Fire Dept. | |

Commissioner Massie moved to authorize the transfer of one Ford Crown Victoria to the Savannah Volunteer Fire Dept. and the remaining vehicles are declared surplus and can be listed for sale. Commissioner Cowan seconded the Motion. The vehicles will be listed for sale on e-bay. Motion carried by unanimous vote.

(9) WADE HAMPTON GOLF CLUB: Commissioner Cowan moved to allow the Wade Hampton Golf Club to display fireworks by a certified pyrotechnics expert at its facility on July 4. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.

(10) SMOKY MOUNTAIN HIGH SCHOOL “D” BUILDING RENOVATIONS:

Mr. Westmoreland reported five bids were received. He recommended that the contract be awarded to the lowest responsible bidder, Western Builders, Inc., in the amount of \$726,500.00 which includes the alternate. Commissioner Massie moved to award the bid to Western Builders, Inc. in the amount of \$726,500.00. Commissioner Jones seconded the Motion. Renovations will commence when school is released for the summer, one segment will be completed during the Thanksgiving holidays and should not interfere with school operations, and the project should be completed by Christmas. Motion carried by unanimous vote.

(11) GREEN ENERGY PARK – RAY NATIONS LEASE: Ray Nations has requested permission to lease a portion of a greenhouse located at the Green Energy Park for a period of 18-months for the sum of \$300.00 per month with an option to renew. The lease contains provisions consistent with the Green Energy Park’s theme of providing public education as well as economic development in addition to use of the landfill gas. Mr. Nations, as part of the lease, has committed to hire two fulltime employees to operate the greenhouse and to provide two horticultural seminars per year. Commissioner Cowan moved to approve the lease. Commissioner Jones seconded the Motion. Motion carried by unanimous vote.

Mr. Westmoreland stated that Smoky Mountain BioFuels did not respond in any manner to the certified letter sent to them outlining the deficiencies in the county’s lease arrangement. After the 30-day notice to cure letter, another certified letter was sent stating that the lease has been terminated and to make arrangements to remove their equipment and property. The OSHA Inspection Report states that the county has no violations pursuant to OSHA standards. All of Smoky Mountain BioFuels equipment was collateralization for a revolving loan and payments are current.

(12) GREEN ENERGY PARK – VERIFIED EMISSION REDUCTION PURCHASE AGREEMENT: Mr. Westmoreland reported that Environmental Credit Corp. has offered to purchase the carbon credits derived from the use of methane at the Green Energy Park and submitted a proposed 10-year contract. Mr. Holt will review the proposed agreement and advise the Board. Carry over.

(13) RACKING COVE ROAD WATER LINE EXTENSION RESOLUTION (R08-03): The N.C. Rural Economic Development Center has grant funds available to assist in the construction of a water line to provide clean and safe drinking water to several families on Racking Cove Rd. whose wells were contaminated by a gasoline leak. Mr. Westmoreland stated that while there is no specific monetary provision, paragraph one states that the county will arrange financing for all remaining costs of the project not covered by the grants. The actual bids for extension of the water line fall within the grants awarded from the Superfund and Rural Center, but the additional costs for engineering, design and contingency would require that the county may need to allocate \$89,164.00 to the project. Commissioner Massie moved to adopt the Resolution. Commissioner Shelton seconded the Motion. Everyone in the Racking Cove Rd. Community who has received a letter stating his or her water is unsafe to drink will have

access, after the water line is completed, to safe drinking water. The water line will also be available to the assisted living facility which houses 55 residents. A fire hydrant will also be placed in the community. Motion carried by unanimous vote.

(14) FOSTER CARE SOCIAL WORKER POSITION FOR THE CHEROKEE INDIAN RESERVATION: The Dept. of Social Services has requested an additional Foster Care Social Worker position for the Cherokee Indian Reservation. At present, caseloads exceed state caseload standards. Funds for this position would be 100% reimbursed by the state. Commissioner Shelton moved to approve the position. Commissioner Massie seconded the Motion. Motion carried by unanimous vote.

(15) AIRPORT LAWSUIT: Commissioner Massie stated that since the county has a judgment for \$56,000 or so in legal fees at this time, should the county file an appeal. Attorney Holt stated that he was not positive that it is worth the time and effort either, but requested that a decision be held in abeyance for a few days until he finalizes a couple of things which he considers important.

(16) DUKE ENERGY: Mr. Holt requested that because Fred Alexander of Duke Energy and Molly McIntosh, Duke Energy attorney, were present and apparently do not believe what he and Mr. Westmoreland have been telling Duke concerning documents, recordings and because Duke's counsel has also requested any notes the Commissioners may have made individually at the January 8, 2008 closed session when Mr. Nolan was present, that each Commissioner state whether he has any notes from the January 8, 2008 closed session meeting. Commissioner Massie stated he had no private notes whatsoever, except the communications he received when he was with the Soil & Water Conservation District as to the various filings as one of the parties to be noticed, nor can he find any emails which have not been made public. Commissioner Shelton stated he did not have any notes from the closed session meeting. Commissioner Jones stated he did not have any notes or recordings. Commissioner Cowan stated he did not have any notes.

Chairman McMahan moved that the Board go into closed session pursuant to G. S. 143-318.11(a)(5) Real Property – consideration to sell balance of former Buster Brown property and Old Canada Community Bldg and G. S. 143-318.11(a)(3) Legal – Airport Lawsuit. Commissioner Shelton seconded the Motion. Motion carried.

Chairman McMahan called the open session back to order and reported no action or votes were taken in closed session.

There being no further business, Commissioner Shelton moved to adjourn the meeting. Commissioner Cowan seconded the Motion. Motion carried and the meeting adjourned at 8:30 p.m.

Attest:

Approved:

Evelyn B. Baker, Clerk

Brian Thomas McMahan, Chairman



Molly L. McIntosh
 704.331.7547
 Fax: 704.353.3247
mmcintosh@kennedycovington.com

March 17, 2008

My name is Molly McIntosh, and I represent Duke Energy. For two months, I have attended your meetings in hopes that I would gain some insight into why you are interested in condemning Dillsboro Dam, what you believe is the legal basis for doing so, and how you plan on accomplishing this. At any rate, I wanted to address the Commissioners this evening to pose some questions and hopefully spark some serious deliberation about this issue.

First off, there is no legal basis for condemnation. Indeed, the County is mired in a Catch-22 situation. Under the Federal Power Act, the County can only condemn Dillsboro Dam if it plans to maintain and operate it as a hydro project. However, North Carolina law only allows a county to condemn for nine specific purposes, none of which include maintaining and operating a dam. In other words, the FP A reserves the right of a county to condemn for the purpose of operating a hydro project only if it has that right under state law, which Jackson County clearly does not. Even if the County did have the authority to take the dam, they would be taking it subject to the FERC surrender order, and would simply be adopting the responsibility to dismantle the dam and dredge the sediment.

Second, I want the public and the County to seriously consider the practical and policy implications of pursuing condemnation.

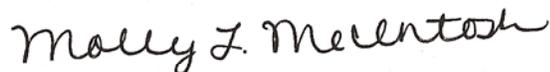
- Why does Jackson County want to get into the power generation business?
- The Dillsboro Project produced only enough electricity in an average rainfall year to power about 69 average homes. Also, both the existing hydro units were flooded out in 2004, and would require substantial refurbishment to make them fully operational again. How is it that Jackson County can make the Dillsboro Project highly profitable? Where will the money come from to repair the existing units?
- The project boundary around the Dillsboro Project is very small, encompassing only about 15 acres and there are public roads on each side of the project with businesses located all along the river. Previous FERC filings made by Jackson County or independent operators supported by Jackson County have proposed expanding the hydro project to make it more profitable. If expansion of the Dillsboro Project is part of

Jackson County's plan, then how can that expansion be completed without displacing existing business, flooding more property and/or blocking off existing roads?

- Jackson County officials have repeatedly said that to get a new license for a hydro project, the license applicant is required to "compensate the public for use of public waterways." If in fact that is the case and Jackson County acquires the Dillsboro Project or builds another hydro station there once Duke removes the Dillsboro Dam, how will Jackson County compensate the public for its use of the Tuckasegee?
- Jackson County has already spent countless dollars on environmental consultants and Washington, D.C. lawyers to fight Duke's decommissioning of the Dillsboro Project. Even if the County could acquire the Dillsboro Project through condemnation, millions of additional dollars will be spent over several years before Jackson County produces the first kwh of electricity from a hydro station at Dillsboro. Where is the public mandate coming from that would cause the Dillsboro Project to assume such a lofty position in the priorities of Jackson County?

In sum, I urge you to make the informed choice, and abandon any plans to condemn the Dillsboro dam. If not, Duke Energy has no choice but to mount the most vigorous opposition possible to the ill-conceived condemnation of the Dillsboro hydro project. Thank you for your time.

Very truly yours,



Molly L. McIntosh
For the Firm

MLM/mee

