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

**RECONVENED REGULAR MEETING MINUTES
OF THE JACKSON COUNTY
BOARD OF COMMISSIONERS
HELD ON
JUNE 8, 2009**

The Jackson County Board of Commissioners met in a Reconvened Session on June 8, 2009, at 4:00 am in Room A201, Justice & Administration Building, 401 Grindstaff Cove Road, Sylva, North Carolina.

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

Chairman McMahan called the reconvened meeting to order.

Chairman McMahan amended the Agenda by adding Scattered Site Housing Grant Application and Commissioner Shelton added Qualla SRC Paving. Commissioner Jones moved to approve the amended Agenda. Commissioner Cowan seconded the Motion. Motion carried.

(1) **SCATTERED SITE HOUSING PROGRAM**: Joan Stillwell, Community Development Director, stated the county is eligible to apply for a Recovery Act of 2009 CDBG-R Scattered Site Housing Grant in the amount of \$500,000; however, the application must be submitted by June 12. The grant will not require a local match.

Motion: *Commissioner Jones moved to authorize submission of an application. Commissioner Cowan seconded the Motion. Motion carried by unanimous vote.*

(2) **QUALLA SRC**: Commissioner Shelton requested that the connecting area between the Qualla Fire Dept. and SRC be added to the paving contract. Mr. Westmoreland stated there is a fixed contract and received a quote for a change order to cover the additional paving in the amount of \$8,000 which would be paid from the remaining funds in the solid waste paving account.

Motion: *Commissioner Shelton moved to approve the change order. Commissioner Cowan seconded the Motion. Motion carried by unanimous vote.*

CLOSED SESSION:

Chairman McMahan stated there was a need for a closed session pursuant to G. S. 143-318.11(a)(3) Legal (Duke/FERC).

Motion: *Commissioner Cowan- moved that the Board go into closed session. Commissioner Jones seconded the Motion. Motion carried.*

Chairman McMahan called the meeting back to order and stated no action was taken in closed session other than a conference call with Attorney Paul Nolan in Washington, D. C. concerning the Duke/FERC relicensing mediation and counsel with the county's local attorney.

(3) DUKE ENERGY/ FERC/DILLSBORO DAM:

A. Chairman McMahan stated that at the last meeting the county was informed that as part of mediation, Duke Energy would be presenting a proposal the next day. The proposal was received on June 2.

Motion: Commissioner Cowan moved to reject the proposal. Commissioner Jones seconded the Motion.

Commissioner Massie stated he had been involved with this issue for five plus years while sitting on the Soil & Water Board and did not think the settlement agreement was fair then and does not think it is fair now; however, it is time to put emotion aside and make prudent, cold and calculating business decisions as to what is best for the citizens of Jackson County and the taxpayers. FERC, who is charge of this situation, has issued an order that the dam be removed. Even though the offer is not what he had hoped for, Duke has finally made some movement in the county's direction. The county will be better off accepting the offer now, cutting its losses, using the money that will be spent for a new case to pay for the two on-going cases, or for other more important projects in the county. He urged the Board to accept the offer.

Motion carried by a vote of 4 to 1 with Commissioner Massie voting "no".

B. Chairman McMahan stated that last month a conceptual design for Dillsboro Heritage Park was presented to the Board.

Motion: Commissioner Jones moved that the county adopt the major concept for Dillsboro Heritage Park Master Plan as presented at the May 18 meeting. Commissioner Cowan seconded the Motion.

Commissioner Massie recommended that while he supports the concept, the county needs to build it into a long-term capital improvements plan.

Commissioner Shelton stated that the park can be done incrementally and would be a long-term investment for the county and an economic boost for Dillsboro.

Motion carried by unanimous vote.

C. Chairman McMahan stated that a vote has been taken to reject the proposal as presented by Duke Energy. Further, in 2005, the county adopted a Recreation Master Plan that called for the creation of a recreation park along the Tuckasegee River somewhere between Dillsboro and Whittier.

Motion: Chairman McMahan moved that Jackson County institute eminent domain proceedings under Chapter 40A of the North Carolina General Statutes to acquire title to the following properties as authorized by N.C.G.S. 40A-3(b)(3) for the public purpose of establishing a water front park and recreational facility along the Tuckasegee River and preserving the Dillsboro Reservoir:

1. Tax parcel 7631-35-5169;
2. Tax parcel 7631-44-2809;
3. Tax parcel 7631-44-2597;
4. Tax parcel 7631-44-3352;
5. The Dillsboro Dam and its appurtenances connecting that portion of tax parcel 7631-35-5169 on one side of the Tuckasegee River to that portion of said tax parcel located on the other side of the Tuckasegee River;
6. The powerhouse located upon tax parcel 7631-35-5169;

7. All of the right, title and interest of the owner of the aforesaid tax parcels in and to the riverbed, if any, located between the above described tax parcels;

8. All flooding rights and easements appurtenant to or associated with the Dillsboro Dam;

9. Such other property and rights as may be necessary to create the Dillsboro Heritage Park;

That the county will engage a consultant to advise the county on the fair market value of the properties and rights to be acquired, which then will be deposited with the Clerk of Superior Court as a part of the condemnation process. That the county notify the owner of said properties listed above of its intent to institute an action to condemn said properties, and that the county also provide within the notice the amount estimated for just compensation;

That the County engage Gary H. Miller, Esq. to represent Jackson County as its legal counsel in the aforesaid eminent domain proceeding; and

That the County Manager, Mr. Ken Westmoreland, take all action and engage such other attorneys, appraisers and/or consultants as he may deem necessary to acquire the properties and rights to be condemned to enable the county to establish the above described park and recreational facility upon and adjacent to the Tuckasegee River and Dillsboro Reservoir in furtherance of the Master Recreational Plan adopted by the county in 2005.

Commissioner Cowan seconded the Motion.

Commissioner Massie stated he does not understand why the county would be spending money to condemn property that was going to come to the county at no cost under the terms of the stakeholders' agreement. Condemnation is very, very risky because the county would be breaking new ground and there is no legal precedent for this type of condemnation. The county already has two legal proceedings with Duke and condemnation would be a third case against a billion dollar industry. He requested that the Motion be defeated because it is ill advised.

Commissioner Shelton stated this has been a very tough decision but has overwhelming support from his constituents to keep the dam. He prefers that Duke just leave the dam; use the money it is going to spend fighting the county and removing the dam to build the park. The dam is a viable long-term investment.

Commissioner Cowan stated that the vast majority of his constituents have requested that the dam be saved and, over the long-term, the benefits to Dillsboro and the county call for this action. Duke has requested a rate increase of 11 ½%. He stated he has never seen such a large corporation take so much from the people and now wants to take more over the next 40-50 years but give back so little. Commissioner Jones stated that recently the *Crossroads-Chronicle* did an on-line survey which revealed that 78% wanted to keep the dam and 22% stated they were concerned over taxpayer dollars. The dam would be a tremendous asset not just to the Dillsboro community, but also to Sylva, the tourism and fishing industries.

Chairman McMahan stated he had never voted for a condemnation proceeding and has always been a strong advocate of property rights and this is the one exception he has made thus far. Everything that has taken place since day one has been through a completely flawed process. The county has benefitted from the production of electric power, but the river still belongs to the people. The offer in the original settlement agreement is pennies in comparison to what Duke is making off of the river. What is it worth to protect an endangered species? What is the cost associated in protecting the eco system downstream because in the settlement agreement Duke stated it would breach the dam and just let the sediment go down the river? What is the cost to the environment? What is the cost to eco tourism if the dam is removed and just a mud flat remains? What is the cost to the county's economy? The dam has been a part of the county's history and should remain as a part of its economy and recreation

Commissioner Massie stated he hopes the majority is right and he is wrong and sincerely hopes the action taken today will encourage Duke to negotiate further towards a settlement to avoid this procedure.

Motion carried by a vote of 4 to 1 with Commissioner Massie voting “no”.

INFORMAL COMMENTS:

(a) Jim McCarthy of Greens Creek and member of a Citizen’s Action Group (JAG) stated he supports the Board’s decisions. The Dillsboro Dam not only benefits the residents of the town, but the other 37,000 people in the county in addition to those from other areas. Duke has six dams on the main artery that flows through Jackson County and hasn’t produced electricity at the Dillsboro Dam since 2004. He suggested that if Duke does not want to produce electricity, then remove the power plant, but leave the dam.

(b) Carl Iobst of Cullowhee, Secretary of JAG, stated he supports the Board’s decisions. The dam can be used as a part of the recreation park and a price cannot be placed on a historical, cultural and economic resource.

(c) Susan Leveille of Webster stated she supports the county’s position to retain the dam and is pleased with the park concept. Duke has failed to upkeep the dam and after the flood decided not to do anything about the generators. She stated she did not understand why removing the dam is so important to Duke. She has been involved in the stakeholders’ process and it was two years into the process before the word “mitigation” was uttered.

(d) John Boaze of Whittier stated he is a downstream property owner. He has been in contact with the U.S. Fish & Wildlife Service who has a program to work with the county in applying for grants to provide for fish passage at Dillsboro. The estimated cost for a fish passage is \$371,000 which includes, design, permits, and construction. The agency will also work on educational exhibits at the dam. He stated that Duke’s gross income for hydroelectric in western North Carolina was \$33.7 per year (Duke’s figures) which includes \$6.8 million from Thorpe.

There being no further business, Commissioner Cowan moved to adjourn the meeting. Commissioner Shelton seconded the Motion. Motion carried and the meeting adjourned at 5:45 p.m.

Evelyn B. Baker, Clerk

Brian Thomas McMahan, Chairman