

MINUTES

Cherokee County Board of Commissioners

May 15, 2012 REGULAR MEETING CHEROKEE HALL 6:00 P.M.

INVOCATION

Reverend Lynn Eynon with Woodstock Christian Church gave the invocation.

Chairman Ahrens called for a motion to ratify the adjournment of Executive Session at 5:37 p.m. Commissioner Hubbard made a motion to approve; Commissioner Johnston seconded there was unanimous approval.

CALL TO ORDER

CHAIRMAN AHRENS

Chairman Ahrens called the regular meeting to order at 6:04 p.m. Those present include Commissioner Harry B. Johnston; Commissioner Jim Hubbard; Commissioner Jason Nelms; County Manager Jerry Cooper; County Attorney Angie Davis; County Clerk Christy Black. Also present were Agency Directors/Department Heads; the media; and the public. Vice Chair/Commissioner Karen Bosch was absent.

PLEDGE OF ALLEGIANCE

"Veterans of U.S. military service may proudly salute the flag while not in uniform based on a change in the governing law on 25 July 2007"

Commissioner Johnston led the Pledge of Allegiance.

AMENDMENTS TO AGENDA

1. Add under Chairman's portion: Item B - Review of RRDA bond issuance.
2. Add under proclamations: 2. - Recognizing National Building Safety Week.
3. Add under County Attorney's portion: 3.2 - Resolution to Designate County Clerk as Open Records Officer.
4. Add under Consent Agenda: 1.1 – Mileage reimbursement for Commissioner Bosch.
5. Add approval of Executive Session Minutes from May 1, 2012.
6. Move public comment behind to follow the county attorney portion.

Commissioner Johnston made a motion to approve; Commissioner Hubbard seconded and there was unanimous approval.

PRESENTATIONS

None scheduled.

ANNOUNCEMENTS

APPROVAL OF EXECUTIVE SESSION MINUTES FROM MAY 1, 2012.

Commissioner Nelms made a motion to approve; Commissioner Johnston seconded and there was unanimous approval.

APPROVAL OF WORK SESSION MINUTES FROM MAY 1, 2012.

Commissioner Hubbard made a motion to approve; Commissioner Johnston seconded and there was unanimous approval.

APPROVAL OF REGULAR MEETING MINUTES FROM MAY 1, 2012.

Commissioner Johnston made a motion to approve; Commissioner Nelms seconded and there was unanimous approval.

PROCLAMATIONS

1. Recognizing the Rotary Club of Canton's 75th Anniversary.

Chairman Ahrens read the proclamation and Barbara Jacoby, President of Canton Rotary, was present to accept the award. She thanked the Board for their support of Rotary and invited them to join the time capsule event next Tuesday.

2. Recognizing National Building Safety Month.

Chairman Ahrens read the proclamation. Ana Silbernagel and Jeff Watkins spoke about the purpose of Building Safety Month and invited the Board to drop by on May 24 during the building and safety event where developers, vendors and DSC staff will be on-hand for questions etc. to help promote the importance of obtaining building permits.

Jeff Watkins spoke about the event on May 24, saying that the presentation was scheduled for around noon.

PUBLIC HEARING

None Scheduled.

PUBLIC COMMENT

Amended: Moved to end of agenda, following the County Attorney portion.

ZONING CASES

CASE NUMBER	: 12-03-003
APPLICANT	: House 81 Eleven, LLC
ZONING CHANGE	: AG to OI
LOCATION	: 8111 Bells Ferry Road
MAP & PARCEL NUMBER	: 15N02, Parcels 27 and 28
ACRES	: 3.28
PROPOSED DEVELOPMENT	: Professional Offices
COMMISSION DISTRICT	: 3
FUTURE DEVELOPMENT MAP	: Transitional Corridor over Suburban Living

PLANNING COMMISSION RECOMMENDATION : Approval with the conditions

The applicant is to work with Cherokee County Engineering Department on a traffic study to determine what will be needed for roadway improvements and with the understanding that the existing driveway and parking would need to comply with the Development Standards.

Post Commissioner Bosch asked for this case to be postponed due to her absence this evening.

Commissioner Johnston made a motion to approve the postponement to the June 5 meeting; Commissioner Nelms seconded and there was unanimous approval.

CASE NUMBER	: 12-05-004
APPLICANT	: Chris Moore
ZONING CHANGE	: AG to GC
LOCATION	: 180 Willie West Road
MAP & PARCEL NUMBER	: 22N12, Parcels 115A, 115B, and 120
ACRES	: 7.3
PROPOSED DEVELOPMENT	: RV/Boat Storage
COMMISSION DISTRICT	: 1
FUTURE DEVELOPMENT MAP	: Rural Places/Scenic Corridor

PLANNING COMMISSION RECOMMENDATION : Denial

****APPLICANT HAS REQUESTED TO WITHDRAWAL THIS APPLICATION****

Commissioner Johnston made a motion to accept the withdrawal without prejudice; Commissioner Nelms seconded and there was unanimous approval.

COMMISSION BUSINESS

CHAIRMAN

L. B. AHRENS

A. Consider appointment to the Sequoyah Regional Library System Board of Trustees.

Chairman Ahrens went over a letter from the Library Board recommending Janice Kane for the vacant position for a term of July 1, 2012 to June 30, 2015. Commissioner Johnston asked could the appointment wait until a future meeting to allow the opportunity to consider more candidates. The Chairman said that anyone who was interested in the vacancy to contact Christy Black or any of the Commissioners.

Commissioner Johnston made the motion to postpone the appointment to the Library Board; Commissioner Hubbard seconded and there was unanimous approval.

Chairman Ahrens said that he was made aware of a vacancy also on the Airport Authority Board due to the resignation of Mike Nixon. He again asked that anyone interested in the vacancy to contact Christy Black or any of the Commissioners.

Chairman Ahrens then announced that ARC is hosting a different type of outreach to the public regarding the transportation referendum, called 'wireside' chats where citizens can register at www.wiresidechats.com and leave a phone number. During the sessions, phone calls will be made to allow callers the opportunity for dialogue with others participating in the discussion. June 4 to June 14 is when these are taking place and all sessions can be registered for, but Cherokee County's date is June 13 at 6:15 p.m. Mayor Henriques has been selected by ARC as the Cherokee County mayoral appointee and will join the during that time period to address callers.

B. Review of RRDA bond issuance

Chairman Ahrens referenced a press release from the Review and Recommendation Committee to Assist County Government on May 3, 2012. He said he wanted to read a sentence from the letter for the record and address it subsequently. He said the sentence reads.....*'The shocking facts reveal that the Cherokee County Board of Commissioners did not make a mistake; the Bobo Boondoggle was not a case of poor judgment. It was a backroom illegal deal conducted with full knowledge that it was a flagrant violation of the law.'* The Chairman said he would address that in a few minutes,

but first he wanted to address a handful of the 12 bullet point items included in the press release.

- One was that it was *'done in defiance of the two County Development Authorities who were unwilling to give their support'*. The Chairman said that only the Development Authority of Cherokee County can provide that type of inducement; the second one, Cherokee County Development Authority mentioned can has no voice in that type of a facility.
- A second remark that the Chairman wanted to clarify was *'the County paid for the clean-up costs at Bob's former business site at \$750,000....Taxpayers are paying for EPS monitoring at the site which will be in excess of \$4M when the 30-year monitoring period is complete...'* He said the clean-up was of Cherokee County property that had had several tenants in the past. He also stated that the reference to EPD monitoring at the site was actually for methane monitoring of a Municipal Landfill located across the street that had closed down ten years ago and the two have nothing to do with one another at all. He added that as a consequence of the soccer complex clean-up, we were able to add an additional three soccer fields.
- The next remark that he addressed was *'The county paid fees in nearly \$3 Million to complete the Bobo bond deal....'* He said this amount is pretty standard in bond financing / bond closures and that some of the amount they included as costs, comprised of a reserved amount of \$610,000 which is not a cost, it is the County's money and sitting in a bank. He said the \$1.764 capitalized interest is not a cost and that it was money held up front and was used to make several monthly payments. Commissioner Johnston agreed the capitalized interest should not be considered a fee, nor would the deposit. The Chairman said this made up 60% of the total amount.
- The Chairman briefly went through a few more of the bulleted items such as the bond insurance premium, cost of issuance, underwriting discount etc. Again, he said all of these fees were standard and he compared these fees to the park bond transaction fees.

The Chairman then asked County Attorney Angie Davis to address some of the issues for the record. Mrs. Davis said that Earle Taylor, who was the bond lawyer for the bond transaction and had constructed the deal and provided the initial legal opinions and subsequent opinions when the legality of the first transaction was questioned, would be arriving soon having been delayed in traffic. She said that her firm had also performed a legal review at the Board's request and had come to the same conclusions. She said to help understand the transaction, she would like to break it down into three components:

1. Process and procedures (time line), 2. Substance of the bond, and 3. The impact of the Superior Court's validation order. She began with the remark about a 'back-room deal', stating that there were quite a lot of public meetings and opportunities for public involvement and she went over the timeline of dates:

1. February 15, 2005 - BOC approves AGREEMENT with Cherokee Recycling (CR) regarding exit timing and certain conditions from CR's lease operation at Blalock Rd. One of conditions [item 1. VI] stated "...,[Cherokee County] ... CC and shall act as guarantor to induce sale of such bonds to facilitate the acquisition, development, and relocation of CR's facilities; "
2. Mid/end of 2006
 - a] November 7, 2006 - BOC activated the Resource Recovery Development Authority [RRDA] by adopting resolution
 - b] November 28, 2006 - Special Called meeting of RRDA
 - [1] resolution to approve \$15. Million revenue bonds and execution of Letter of Intent Inducement Agreement
 - [2] appoint Secretary - Sheila Corbin
 - [3] accept resignation of BOC Chair, Mike Byrd, effective December 31, 2006, the end of his term of office
3. Actions in 2007
 - a] BOC June 17, 2007 - resolution supporting up to \$18.2 Million [original was \$58 Million]
 - b] July 3, 2007 - Called meeting of RRDA. Vice Chair Hubbard presiding [*Ahrens non-voting*]
 - [1] Series 2007 Bond Resolution adopted authorizing the issuance of its revenue bonds, including Form of Trust Indenture and Security Agreement, Form of Lease Agreement, and Form of Intergovernmental Solid Waste Contract
 - c] August 14, 2007 - Civil Action (**Bond Validation Hearing in Superior Court**). Appeared before Judge Jackson Harris at 9:00 a.m.
 - d] Sept 18, 2007 - called meeting of RRDA, Vice Chair Hubbard presiding [*Ahrens non-voting*]
 - [1] Meeting to consider a Supplemental Bond Resolution and Bond Purchase Agreement
 - e] October 4, 2007 - (TEFRA Hearing) Note: required 14 days passed after advertisement runs for TEFRA Hearing
 - e] October 5, 2007 - official bond closing date
 - f] October 16, 2007 - called meeting of RRDA
 - [1] sole purpose to add Chairman Ahrens to Board of RRDA and to act as its Chairman
 - g] December 2007, debt service payments begin by Ball Ground Recycling [BGR]

Earle Taylor arrived and Ms. Davis asked him to begin with the substance of the bond transaction. Mr. Taylor briefly went over the details of the transaction. He said that the Board created the RRDA to issue Revenue Bonds to finance the solid waste recycling project, bonds were issued, the project was owned by the County and was leased to Cherokee Recycling, LLC. Based on the Intergovernmental Contracts Clause, Cherokee County was authorized to unconditionally obligate itself to make payments to the RRDA for the services provide by the RRDA under the contract. He mentioned that the

County's Solid Waste Intergovernmental Contract with RRDA means that the County pledges full faith and credit to pay them up to 1 mill of ad valorem taxes to fulfill its obligation. He went on to say that out of caution, he and the other bond attorneys involved, structured the IGA between the County and the RRDA so that only one mill of ad valorem taxes was pledged, as opposed to unlimited ad valorem taxes that could have been authorized to support the payment obligation of the County pursuant to the contract.

He said that the Superior Court of Cherokee County entered an Order and Final Judgment validating the entire bond transaction including all security on August 14, 2007 after holding the publicly noticed hearing. In particular, the Court's validation order declared, and ordered that the RRDA and the County have properly authorized and are authorized to execute and deliver and to assume the obligations represented by the Intergovernmental Solid Waste Contract referenced in and made a part of the pleadings, and that the IGA and all terms and conditions contained therein will, upon execution and delivery concurrently with the delivery of the bonds, constitute valid, binding and legally enforceable obligations of the RRDA and the County in accordance with its terms.

Angie Davis restated what Earle had said, in regards to the concern over a portion of the RRDA statute that says 'we can't do what we did'. She said when taken in context of all of the law, it becomes clear that it is permissible as long as it was not a direct pledging but through an Intergovernmental Contract provision. She said that as in the Ambac case, the bond validation order that was entered by the court did find that the bond transaction was legal and stands as conclusive proof that all of the bond documents and the transaction as a whole is legal and in accordance in the authority of the constitution and the state of Georgia law and the Supreme Court authority.

COMMISSION POST 1

HARRY B. JOHNSTON

COMMISSION POST 2

JIM HUBBARD

VICE CHAIR/COMMISSION POST 3

KAREN BOSCH

COMMISSION POST 4

JASON NELMS

CONSENT AGENDA

- 1.1 Consider mileage reimbursement for Commissioner Bosch in the amount of \$122.10 for round trip to Tift College in Forsyth, GA for ACCG Training Committee Meeting, a committee on which she serves.

Commissioner Hubbard made a motion to approve Consent Agenda; Commissioner Johnston seconded and there was unanimous approval.

Chairman Ahrens commented that Commissioner Bosch does an excellent job on this committee and he may appeal to ACCG to reimburse mileage.

COUNTY MANAGER

- 2.1 Consider approval of agreement with CGI Communications for a cost-free County video promoting Cherokee County.

Mr. Cooper said that he was approached to participate in the project and that the County's commitment includes providing a letter of introduction to businesses who CGI hopes to get sponsors from and to publish the videos to the County's website.

Commissioner Nelms made a motion to approve; Commissioner Hubbard seconded and there was unanimous approval.

COUNTY ATTORNEY

- 3.1 Appeal by Mr. Dennis Ray of the denial of a precious metal dealer's permit application for Goldhound, 2382 Marietta Hwy, Canton, Georgia.

Angie Davis said that Mr. Dennis Ray has sold out and a permit has been issued to that location with a new owner. She said they had tried to reach out to Dennis Ray's lawyer to have them put in writing that they are withdrawing the appeal. She said they had not yet communicated back to her.

- 3.2 Resolution to Designate County Clerk as Open Records Officer.

Angie Davis said that in order to have a single person to ensure that Open Records requests were received and responded to according to the Open Records Act, the position of County Clerk would be designated as Open Records Officer by resolution.

Commissioner Nelms made a motion to approve the resolution; Commissioner Hubbard seconded and there was unanimous approval.

PUBLIC COMMENT

1. Felicia McAleer spoke about issues including camp fires being set in the woods at the Falls of Cherokee neighborhood. She asked the Commissioners to look into the burn ordinance because her understanding was that the fires were allowed 'for heat and for food' and so citations were not being issued.
2. Carolyn Cosby spoke about the RRDA bond issue and said she disagrees with Earle Taylor and stands by her original opinion that it was a 'backroom deal'.
3. John Hiland had signed up to speak but said he gave his time to Carolyn Cosby so that she could speak longer than her three minutes.
4. Phil McNiff spoke about the land purchase from Bobo and said that the County paid twice what Bobo had bought it for.
5. Monte Bores had signed up to speak but said she had also given her time to Carolyn Cosby.

ADJOURN

The Chairman asked if there was any further business. Hearing none, Commissioner Hubbard made the motion to adjourn at 7:39 p.m.; Commissioner Nelms seconded and the motion received unanimous approval.