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**CHEROKEE COUNTY**  
**BOARD OF COMMISSIONERS**

**Work Session**

**January 8, 2013**

**3:00 p.m.**

**Cherokee Hall**

**MINUTES**

The Chairman began at 3:06 p.m. with all Commissioners were present. He welcomed everyone and wished them a Happy New Year. He also welcomed Commissioner Gunnin and Commissioner Poole as new members of the Board of Commissioners. The Chairman spoke of a message he sends out, usually at the end or beginning of the year. He stated he wanted to focus on positivity going forward rather than negative this year and building a more competitive advantage. He said it's an opportunity for every department to distinguish themselves with a more competitive advantage.

The Chairman mentioned the Board will address the proposed resolution in response to the Grand Jury presentments with Ms. Davis' help and then look at the Woodstock annexation. Upon approval, findings will be presented to the Grand Jury Monday, January 14<sup>th</sup>.

**1. Preliminary FY2012 Financial Results presented by Janelle Funk.**

Ms. Funk went over the pre-audited financial results for 2012. She mentioned the auditors just came on site this week. Ms. Funk is confident the numbers she presented are materially accurate, but some changes may be necessary pending the auditors' review. Ms. Funk began with the upsides to 2012. We did complete the fiscal year-end change. This will not change the financial results. The purpose for the change in fiscal year is for better transparency. It gives better matching of incoming revenues with outgoing spending, a true "cash basis." Change in revenue recognition for property taxes impacts year of conversion. Commissioner Johnston interjected that a lot of local county and city governments borrow against their future receipts, but Cherokee County

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does not. The County achieved total budget for new inflows of \$93.6M versus \$93.2M. Drivers that helped the inflows are SPLOST and other tax collections. Another upside is all agencies and funds complied with the headcount budgets. Cherokee County still has the lowest number of employees per capita in the ARC. The County is \$17.2M under expenditure budget. Capital funds are \$13.8M under budget primarily due to delays in SPLOST capital project construction. Operating funds are \$3.3M under budget. Twenty out of 25 funds were under budget primarily driven by the General Fund, Fire Fund, and CDBG. Commissioner Johnston commented that this is in contrast to the revenue recognition policy change that caused our revenues to appear just for accounting report purposes to be under budget. This is a true savings compared to the budget and actually improves cash reserves. Ms. Funk continued by reviewing examples of the five smaller revenue funds that were just slightly over budget and all for reasonable purposes.

Another highlight was the General Fund avoided negative cash, even on a combined basis. Change in revenue recognition lowered reported revenue, but did not impact cash receipts; therefore cash balance was not impacted. The lowest cash point was \$1.9M in September. It is positive, although Cherokee County's financial policy requires cash low point of about \$6M or 10% of the General Fund Expenditures. Commissioner Johnston commented the county has intentionally lowered its cash balance over the last few years during the economic downturn and that's a lot of why we have a reserve. We've used it and need to find a way to rebuild it. Out of 30 funds, 28 improved fund balance as compared to budget. Fifteen funds generated revenue better than budget. For funds with lower than budgeted revenue, expenses were managed below budget so fund balance was not impacted. For the 13 operating funds that planned to use reserves, all used less than budgeted. The Insurance and Benefits Fund's unreserved fund balance improved \$1.5M, which is within the recommended range. The Unincorporated County Services Fund was able to improve their reserve by \$745,000 due to additional revenues and lower expenditures.

Ms. Funk moved into the downsides of FY2012 results. For the RRDA Fund, the County was required to make more interest payments than originally planned. Ball Ground Recycling was budgeted to re-assume bond interest payments in July 2012. They did not so the county is making the payments to preserve the County's credit rating and to fulfill that obligation. The County is currently searching for a new operator for the facility. The EMS Fund billings are higher, receipts are down, and cash balance is negative. Commissioner Johnston interjected on the subject of negative cash. All the cash is in one place but is kept up by the Finance Department for each fund. So at any given time, the General Fund could be covering another fund that may have a negative.

Ms. Funk explained more on the operating funds which were significantly below their expenditure budgets. The General Fund was \$1M under budget. Reasons for this was personnel costs were \$500,000 under budget, in other words, the General Fund spent

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98% of the personnel budget. Workers' Comp was \$150,000 under budget. Operating costs are \$300,000 under budget; primarily from the Sheriff's Office. The Fire Fund was \$1.1M under budget. Personnel costs attributed to the variance, as well as strict management of other operating costs. If spending could be delayed, the Fire Department delayed it. However, maintenance and repair costs cannot be avoided indefinitely. Ms. Funk credited the management of each department for pushing to keep spending down and below budget.

Ms. Funk deferred to the Chairman on whether to proceed with the usual monthly review. The Chairman stated in the case of Ms. Davis' time available, to review in the next work session. Commissioner Nelms agreed and commented on the integrity of the leadership in the County working together to improve budget results.

The Chairman stated they would be working backward a little to allow Ms. Davis time to go over her portion.

## **2. Discussion on Regular Agenda Items.**

Ms. Davis went over the **County Attorney** portion:

Ms. Davis recapped the annexation proposed by the City of Woodstock. The property is at 12730 Highway 92. The applicant is seeking a zoning with setback and parking variances to accommodate 150 units for a senior assisted living facility. The future land use map shows it as a suburban neighborhood. Ms. Davis recalled concerns from the previous meeting and the directive from the Board to work with the city to be sure the development will proceed as intended. Ms. Davis stated she, as well as Jeff Watkins, has communicated with the City, particularly Brian Stockton. An email received stated that the applicable zoning for this type of development is SL-C. This means the zoning is limited to senior living, 55 and older and any commercial that's limited in scope to support that. If there was any attempt to do anything else, there would have to be another rezoning to the City's multi-family use or general commercial development. Ms. Davis stated if the Board finds no grounds for objection, then there would be no need for action in the regular meeting; and we can state the Board is comfortable with this development and memorialize that for the record. In doing so, that will let the City know that it is important to us and we can share that with them, if we're so inclined. Commissioner Johnston asked do we know that this is a true assisted living facility as opposed to apartments marketed toward older people. Mr. Watkins stated that as presented to the County, our zoning will not support the 150 units under the overlay district. If they wanted to take advantage of that, they would have to rezone it. Mr. Watkins suggested to the City that they change it to an OI category which includes institutions, which assisted living would be included. In answer, it will be an assisted living with a memory care unit attached or a part of the facility. There will be a central kitchen, but some units may have kitchenettes. Commissioner Nelms asked which

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category is more restrictive, OI versus SL-C. Mr. Watkins replied they are both roughly the same; it's just a different way of getting there. OI is more of a commercial setting; the SL-C is more residential. Commissioner Nelms asked about the Heritage Springs development. Mr. Watkins stated it is not an assisted living facility but a multi-family apartment facility. Ms. Davis interjected that anytime a property is annexed, the waiting period is a year and after a year, it could be rezoned to anything. Under the City rules, the applicant has an 18-month time period in which the site design must be submitted for approval or else the zoning would revert back. In this case, everything seems safe to move forward.

Chairman Ahrens went over items under the **Chairman's** portion:

F. Review a draft reply to Grand Jury recommendations per letter dated December 2012.

The Chairman first called attention to item regarding a draft reply to the Grand Jury. He asked for Ms. Davis' advice on how to approach it. Ms. Davis suggested she could indicate the subject matter and the finding in a general response and then discuss or could choose key points to discuss. The Chairman mentioned to the new Commissioners they may wish to abstain from a vote on this matter, but it would be their choice.

Ms. Davis indicated the Grand Jury presentments were issued on December 18<sup>th</sup>, which fell on the date of the last Board meeting. As with the last presentments, it was the Boards stated desire to address very specifically point by point the findings of the Grand Jury and their recommendations. There was a special committee set up to investigate the continued review of the Cherokee County Resource Recovery Development Authority bond issue particularly in light of the bankruptcy issue with BGR. The committee specified who was interviewed by the committee through this investigation as the Commission Chair; Commissioners Johnston and Nelms; former Commissioners Bosch and Hubbard; County Manager, Jerry Cooper; former County Attorney, Mark Mahler; a private citizen, Steve Marcinko; and Mr. Larry Lusk, a former member of the Development Authority of Cherokee County and who also had connection with the sale of property on the front end of the deal. They noted individuals who would have information but have not been interviewed: Brother Jimmy and David Bobo; former Chairman, Mike Byrd as well as former Commissioner Derek Good and former Chief Financial Officer, Amy Davis.

Ms. Davis went over a variety of findings. The first is the Grand Jury found no evidence of any other RRDA Board in the state of Georgia to do a similar transaction. Our response to that is the legality of the transaction has been proven several times and Ms. Davis cited the statutes. It is a legal transaction that has been contemplated and authorized by statutory law and by the courts through judicial interpretation. Ms. Davis found several government organizations both inside and outside of Georgia who have

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initiated the help of the public on similar issues. The next finding indicated that the circumstances surrounding the original discussion between the Board of Commissioners and Mr. Bobo were murky and virtually undocumented as to the formation of the RRDA and the establishment of the new recycling facility. Response is that they didn't talk to the people involved on the front-end of the deal, including former Chairman, former Commissioner, and the Bobo Brothers. Additionally, we indicate that we take issue to the extent that the formation of the RRDA and the establishment of this transaction was very documented. All legal requirements for formation were followed according to the Georgia statutes. The bond issuance was done in the public eye with multiple public meetings which were noticed and advertised. There were public hearings and Board meetings where public was invited to speak, as well as the validation proceeding that culminated in the validation of the bonds before the Superior Court. The next finding, a series related to acreage purchased and purchase prices and how interest was provided and paid for at closing. Our response, simply stated, those are the very issues that are the heart of the litigation against the Bobo entities and against the architects. Ms. Davis recommended, because of some of what would be speculative of these issues at this point, our comment is best left to be in generally indicating that those are the very issues that we are interested in and concerned about and that we are pursuing based on our litigation and the audit. The Grand Jury next makes a finding there's language in the documents that provides that Mr. Bobo and BGR are the true and lawful agent in the County for the arrangement. Ms. Davis stated it is indeed in the bond documentations as drafted by bond council. This shows further this is not a County project. It was a separate distinct project run by private party. The County's role as emphasized by this agency's statement in the bond documents was to guarantee the bonds; which was intended to result in a desired economic opportunity with the County; only ultimately, taking over ownership of the assets in the truest sense should there be a default by the company. We state again that while the wisdom of the arrangement can be questioned, this Board from the start has been forthcoming stating that in hindsight and due to the economic downturn, it would not have been a wise transaction and the Board would have never entered into such an arrangement, and indeed is lobbying legislators to change the laws so that it is not available for others to fall into the same mistake the prior Board has made. Ms. Davis moved on to the next finding, the Grand Jury notes that there's language in the bond documents between the RRDA and BGR that prohibited BGR from making a profit. It goes on to discuss the County Manager's role in approving disbursement of funds for the BGR facility. It also discusses the process by which the County Manager relied on the design of the architect's certifications. Our response is wisdom being questioned in the course of the way the bond transactions were contemplated and conceived and set up consistent with the law, this was a private project. The architect was retained and designated in the bond documents as having duties and obligations on behalf of the RRDA to work on our behalf with the architect. Each time a certification was provided and a draw as requested. The next finding is the Grand Jury notes resource materials available by ACCG and finds that the County did not follow certain procurement procedures under state law. Ms. Davis stated that since this

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was not a County project, the procurement laws did not apply. The County does routinely follow the procedures for procurement. Response also indicated the County would not proceed in a project with a private company in the future. The next finding is the assets of the RRDA were not carried on the Cherokee County ledger books from 2007 until present and those were not subject to audit. Ms. Davis read from a letter from Mauldin and Jenkins which states the County's actions were appropriate and were consistent with governmental accounting procedures. Now that the contract has been terminated and a default has occurred, these assets are now the County's so they will now be reported on the ledger books, they will be audited and subject to the upcoming audit by Mauldin and Jenkins. The final finding states that the Grand Jury found that in 2009, the Cherokee Office of Economic Development purchased from Mr. Bobo a 53-acre site on Highway 92 and James Dupree Road for approximately \$5M. Our response is that the referenced acquisition was by a different entity. It's not directly related to the RRDA transaction.

Ms. Davis proceeded to the recommendations. The first is that the Board of Commissioners to not limit the cost of the forensic audit. The second recommendation is that the Board of Commissioners pay the cost to publish the full and complete reports of the audit and the County legal organ and also in the Cherokee Ledger News as soon as the results are published and presented. The response is that with the technology available, it can be posted on the County's Transparency page as the documents could be an abundance of pages and would not be feasible to publish in the local newspapers. A hard copy would also be available for review to anyone interested. In an aside, the Grand Jury also recommended the County's legal organ be changed to include both the Cherokee Tribune and Cherokee Ledger News. The Board's response is that it is not their decision by statutory law. It is a decision made by the Sheriff, the Clerk of Court, and the Probate Judge. The third recommendation that any investigation conducted pursuant to the aforementioned forensic audit be pressed to the fullest extent. We believe we obtained a professional auditor recommended by the D.A. and the special committee and have every reason it will be pressed to the fullest extent as that is our intent as well. The fourth recommendation is that we continue our civil suit. Again, we have intention to do that. It is pending and continuing. Ms. Davis gave an update on that proceeding. The fifth recommendation is the BOC and RRDA continue the previous recommendations from the May 2012 Grand Jury to add equal numbers of non-elected citizen members to the RRDA who are not County employees. Ms. Davis stated we have made progress towards that and our response is that we are proceeding as we agreed to. Recommendation six is that the County administration includes the complete assets of RRDA on the County books and subjects the assets to complete and routine audits. Recommendation seven is that the January 2013 Grand Jury continue the investigation and fact finding into this matter. We will fully support any requests of the Board. The eighth recommendation is that the new Grand Jury investigates the circumstances surrounding the Cherokee Office of Economic Development's purchase of 53 acres at Highway 92 and James Dupree Road from Mr. Bobo. We welcome and fully support the

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Grand Jury's review of that transaction. Recommendation nine, the recommendations by Grand Jury in May 2012 not yet accomplished be continued. We have accomplished many and continue our commitment to complete the recommendations as we indicated we would do. The tenth recommendation is that BOC employees be held accountable and are disciplined for their actions. The Board has trouble agreeing with this because of the concept that the transaction was carried out as it was conceived and contemplated. While that can be criticized, we believe the reliance on the architect's certification was exactly how the transaction was set up. The Grand Jury does not indicate specific facts or circumstances or individuals that it would point to for disciplinary action. Recommendation eleven is that the citizens of Cherokee County be diligent in their oversight of their elected officials. We embrace and give every opportunity for that with public comment in the meetings and open communications through the Transparency page. The twelfth recommendation is that before any new real estate is purchased by any entity of Cherokee County government, that an appraisal by a licensed appraiser, independent of the purchaser or seller, be performed to assure Cherokee County is paying a market price. That recommendation is followed by the County as a matter of standard procedure in all acquisitions. The thirteenth recommendation is all new capital assets purchased by Cherokee County be immediately added to County ledger books. Ms. Davis reiterated that is already being followed as a standard operating procedure. The last recommendation is we do research to ensure all capital assets are presently carried on the County ledger books. We have auditors to ensure those types of things are properly recorded and carried on the County ledger.

The Chairman asked what would be a practical way to handle this in the regular meeting. Ms. Davis advised publishing for dissemination and welcome questions and comments by the public. The Chairman asked the Board for questions or comments. Commissioner Johnston commented that the Grand Jury mentioned the Highway 92 property and asked Ms. Funk if that transaction would be on the County ledger books if it was purchased by the Development Authority. Ms. Funk confirmed it would be on the Development Authority books, not the County's.

E. Consider resolution from Mountain Conservative Trust.

The Chairman mentioned the resolution for the Etowah River Water Trail. He called Mr. Reynolds to the podium to discuss. Mr. Reynolds confirmed the attorney who drafted the resolution. He stated the key piece is the public right of passage easement. Mr. Reynolds referred to other communities in Georgia that have recently passed similar resolutions. He stated a key portion of the resolution is the time of more than 20 years of use by the public grants them the right of passage. Ms. Davis stated that the only thing she would question is if there is an abandonment procedure. She added that one concept, if any reluctance, would be to approve it contingent upon no legal impediments to our acceptance.

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The Chairman mentioned the public hearing. Ms. Stallings came forward to give an overview of the public hearing. She stated it is a case where under the Bells Ferry overlay district you can utilize the traditional neighborhood development provision on individual lots. This lot has been classified as neighborhood edge. Under the TND ordinance, there are limited uses. An individual would have to go before the Board to request the specific use of a restaurant. The requestor is looking to use the existing house on the lot but is limited to lot size. The Chairman asked if there was a specific statement. Ms. Stallings responded there was a draft resolution included in the agenda packet.

B. Request to rename County road entrance to Georgia National Cemetery.

The Chairman referred to a letter stating the property for the cemetery was donated by the late Scott Hudgens, with a request to rename a portion of the road to Scott Hudgens Drive.

C. Accept the resignations of three current members of the Resource Recovery Development Authority and assign three citizens to the Board with immediate effect.

Commissioner Johnston stated he would be willing to step down if that's what it took to make room. He would also like to hear from the new Commissioners and include them in the process. He indicated they would most likely have joint meetings. The Chairman recommended keeping himself and a Commissioner on the Board. He also stated they made the commitment in the fall to appoint three citizen members to the Board by the first meeting in January and to fill other citizen positions by July 1 and that can be done at any time.

A. Reminder of retreat dates and change of venue.

The Chairman stated the retreat would no longer be held at Barnsley Gardens, but in a different location, the Lake Lanier Home of Commissioner Johnston.

The Chairman stated the new Commissioners would make appointments in the regular meeting. Commissioner Gunnin stated he had only two appointments ready. Commissioner Johnston commented that for the purposes specifically for the evening's public hearing, they would appoint the former members to the Planning Commission to continue through the hearing and appoint the new members at the next meeting. Ms. Stallings said she reviewed and stated the members would serve until their replacement is appointed.

Commissioner Nelms commented that he has an appointment.

Mr. Cooper went over items under the **Consent Agenda** portion:

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- Consideration to approve lease of space in the Historic Courthouse for Congressman Gingrey's office.

Mr. Cooper went over items under the **County Manager's** portion:

- Consider approval of the 2013 Tax Anticipation Note (TAN) which represents a temporary loan of \$1,264,900 to be received in January 2013 and repaid in December 2013 with an interest rate of 4.75%.
- Consider approval of lease agreement for the use of Trinity Church gym for Cherokee Youth Basketball (CYB) Program for practices and games. Cost is covered within the CYB Program Budget.
- Consider approval to purchase pipe and manhole inspection camera for the Roads and Bridges Department from Environmental Products of Georgia in the amount of \$15,275. A second quote was received by Public Works Equipment in the amount of \$17,995.
- Consider approval of Professional Service Agreement with Rhonda D. McClendon & Associates to perform a forensic audit related to the BGR/BoBo Project in the amount of \$75,000 with authorization for additional funds if necessary as approved by the Board of Commissioners.
- Consider approval to award the construction contracts to the lowest responsible bidders, with the most responsive bid proposals as follows: City of Canton Etowah River Park project to Georgia Development Partners, LLC, in Atlanta, GA for the proposed contract amount of \$3,385,769.99; County Park at Killian Site project to W.E. Contracting in Acworth in the proposed contract amount of \$3,139,360.00.

Commissioner Johnston commented on the attempt to salvage baseball fields where it wasn't feasible and the Univeter Road location will be a much better situation. Canton will be funding operations and maintenance of the Etowah River Park.

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The Chairman asked if there was anything else. Hearing none, the Chairman made a motion to adjourn to Executive Session at 5:02 p.m. Commissioner Nelms seconded and the motion carried unanimously.

Executive Session to Follow