

STATE OF GEORGIA)
COUNTY OF CHEROKEE)

RESOLUTION NO. 2012-R-012

**A RESOLUTION BY THE CHEROKEE COUNTY BOARD OF COMMISSIONERS
IN RESPONSE TO THE GRAND JURY PRESENTMENTS**

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective July 1, 1983, provides in Article IX, Section II, Paragraph I thereof, that the governing authority of the County may adopt clearly reasonable ordinances, resolutions and regulations; and

WHEREAS, the Grand Jury chosen and sworn to serve the May 2012 term of the Superior Court of Cherokee County issued certain Presentments filed and recorded August 23, 2012, in Jury Book 2, Page 154, with the Clerk of Superior Court of Cherokee County (the "Presentments"); and

WHEREAS, the Grand Jury specifically created a committee to investigate and inquire into the formation of the Cherokee County Resource Recovery Development Authority (the "RRDA"), its issuance of revenue bonds to acquire and construct Ball Ground Recycling and the costs for the cleanup of land currently being used as a youth soccer complex on Blalock Road (the "Investigation"); and

WHEREAS, the Grand Jury made certain recommendations upon completion of the Investigation, which the Board of Commissioners discussed at length in its work session and public meeting on September 4, 2012 (the "Recommendation");\

WHEREAS, at its September 4, 2012 public meeting, the Board of Commissioners moved to have a Resolution prepared for consideration at its next regular meeting on September 18, 2012, for the expressed purpose of showing its intentions to be responsive to the Grand Jury's Recommendations;

WHEREAS, pursuant to this Resolution, the Board of Commissioners wishes to express its appreciation for the diligence and commitment of the Grand Jury as evidenced by its thoughtful and detailed list of Recommendations, and to respond to the various Recommendations by announcing relevant actions that have already been taken and/or intentions to take actions as suggested by the Grand Jury.

NOW THEREFORE, BE IT RESOLVED THAT the Cherokee County Board of Commissioners hereby responds to the Grand Jury's Recommendations as follows:

Recommendation 1: *The Grand Jury recommends that a full and complete forensic audit be conducted to review all financial operations associated with Ball Ground recycling and the Board of Commissioners/RRDA concerning the issuance of the bonds for the building and operation of Ball Ground Recycling. The principle reason for this request is to provide any and all applicable law enforcement agencies with the facts to determine if any violations of the criminal or civil law may have occurred. We further request that as a part of said forensic audit that a current realistic market value of the facilities and equipment at Ball Ground Recycling be determined.*

Response to Recommendation 1: With respect to conducting a forensic audit, this is something that the Board of Commissioners has discussed and desired as of its very first notification that there had been a default by Ball Ground Recycling ("BGR"). To further that goal of obtaining a forensic audit, the Board of Commissioners requested access to, and production of, the financial and

business records of BGR on countless occasions. Regrettably, nothing more than a partial production of records could be confirmed as produced and available to the County. As a result, the Board of Commissioners has been plagued with the inability to have all the necessary data to allow a forensic accountant to conduct a complete review, and hesitated to incur the significant expense of a forensic audit when the records were not complete to allow for a thorough review and meaningful conclusion.

Currently, the County and the RRDA are parties to BGR's bankruptcy petition, and are vigorously pursuing discovery in the context of the bankruptcy proceedings – as this has been the first opportunity for the County to utilize the compulsory process of the Courts to achieve a thorough production of records from BGR. The Board has been advised that BGR will be producing approximately 10,000 pages of records this week pursuant to the County's and RRDA's request for production of records in the bankruptcy case. Additionally, the deposition of Jimmy Bobo is scheduled in that case for September 26, 2012. Based upon these efforts, the Board of Commissioners is hopeful that it will obtain the records and information necessary to pursue retention of a forensic auditor. See Exhibit "A" (Areas of Inquiry for Deposition) and Exhibit "B" (List of Requested Documents).

As the Board of Commissioners continues to exhaust its options with the limited information that it has available to it to date, the County would invite and welcome the Grand Jury to conduct a forensic audit of the BGR's records with use of its compulsory subpoena powers. Such action under the force of subpoena would offer the most promising opportunity for a thorough production of records and a full accounting of funds.

Further, the Board of Commissioners would invite and welcome the Grand Jury or any other law enforcement agency to review the legality of the BGR operations. Indeed, by way of this Resolution, the Board of Commissioners requests that the Georgia Bureau of Investigation commence an investigation into the records and operations of BGR to determine whether there has been any illegal activity on the part of BGR or any of its members.

Likewise, the Board of Commissioners welcomes the GBI's review of County and RRDA involvement in approval of the bonds and any operational matters in the project evolution. A letter will be sent to the GBI under the Chairman's signature.

As to the second part of the Recommendation, the Board of Commissioners has already obtained an appraisal of the BGR facilities and equipment, which it is utilizing in its negotiations with prospective new operators and/or owners.

Recommendation 2: *The Grand Jury further recommends that any future consideration of a bond initiative between the Cherokee County Board of Commissioners in their capacity as the Cherokee County Resource Recovery Development Authority and a private for profit entity be subject to public referendum prior to the issuance of any future bonds.*

Response to Recommendation 2: The County unequivocally states that there shall be no future consideration of any type of bond initiative between the RRDA and a private for profit entity. Indeed, shortly after this default was made known to the County and the RRDA, the Chairman of the Board of Commissioners made requests to members of the Cherokee County legislative delegation and to the Honorable Sam Olens, Attorney General of the State of Georgia, to promulgate legislation that would prohibit any type of publicly backed bonds for the benefit of private for profit entities to protect other local governments from the situation that has confronted Cherokee County.

and the RRDA in issuance of the bonds for the benefit of BGR were done based upon the direction and advice of bond counsel and in accordance with the bond laws of the State of Georgia, and all applicable public meetings, public hearings, and judicial validation proceedings were held. The bonds were validated as legal by the Cherokee County Superior Court at the culmination of all the requisite statutory proceedings and no referendum was required. The Board of Commissioners appreciates the Grand Jury's recognition of these facts in its findings.

As a final matter and in full disclosure, the Board of Commissioners is not comfortable that it would have the unilateral authority to place such a matter seeking an opinion poll on the ballot without the intervention and assistance of other parties. To the extent that a refinancing opportunity presented itself to save money on the current bond indebtedness, the Board of Commissioners, even if legally permitted to do so, would not be able to submit a refinancing to the voters because of the time lapse that would result in the RRDA and County potentially losing the interest rates that made the refinancing option desirable.

Recommendation 3: *The Grand Jury further recommends that the future issuance of publically backed bonds by the Cherokee County Resource Recovery Development Authority be monitored for compliance by a qualified professional subject to the Cherokee County Board of Commissioners. This simply means boots on the ground watching and monitoring what is being paid for by the tax payers of Cherokee County.*

Response to Recommendation 3: Please see response to Recommendation 2.

Recommendation 4: *The Grand Jury further recommends that the Cherokee County Resource Recovery Development Authority be expanded to consist of a number of non-elected private persons in a number equal to or greater than the number of elected County Commissioners serving on said Authority.*

Response to Recommendation 4: The Board of Commissioners had previously indicated at a public meeting its interest and intent to change the composition of the members of the RRDA. Currently, the RRDA legislation provides for five members. As such, there would need to be an amendment to the RRDA legislation to change the membership, which the Board of Commissioners is willing to do as previously expressed. The Board of Commissioners accepts the recommendation and commits to change the RRDA Board to include a majority of non-elected individuals.

Recommendation 5: *The Grand Jury further recommends that any agreement voted on and signed by the members of the Cherokee County Resource Recovery Development Authority include a signed acknowledgement that each Authority member has personally read and understands any agreement he/she is signing and thereby obligating the tax payers of Cherokee County to honor.*

Response to Recommendation 5: The Board of Commissioners shall request that the RRDA pass a resolution to require that any agreement of the RRDA bear the following acknowledgement prior to the signature lines:

My signature below indicates that I have read this agreement or taken other steps sufficient to ensure my understanding of the contents of this agreement.

Recommendation 6: *The Grand Jury further recommends that any future bond initiative by the Cherokee County Resource Recovery Development Authority and a private for profit entity require*

that private for profit entity and its owners to pledge its assets and a performance bond as a condition of any indebtedness for which the tax payers of Cherokee County are obligated. The tax payers should not be required to pay for the bad business decisions of the Authority and its business partners.

Response to Recommendation 6: Please see response to Recommendation 2.

Responding further, the Board of Commissioners notes that in fashioning opportunities to meet the County and the RRDA obligations under the current bond issuance, the Board of Commissioners will not be permitted to inject new terms into the Lease Agreement that is part of the existing bond transaction and which would most likely have to be assumed by a new operator. However, the County and the RRDA will seek to incorporate this Recommendation to the extent feasible in any transaction associated with seeking resolutions to the current indebtedness.

Recommendation 7: *The Grand Jury further recommends that any further bond issuances by the Cherokee County Resource Recovery Development Authority for the acquisition of land, buildings, and equipment contain repayment terms matching the useful life of the underlying assets, not to exceed thirty years. Further, any lease with a for profit entity operating and benefitting from the bond issuance should have lease terms of no less than the bond repayment terms.*

Response to Recommendation 7: Please see response to Recommendations 2 and 6.

Recommendation 8: *The Grand Jury further recommends that in the event that the Cherokee County Resource Recovery Development Authority issues future bonds, that the entities with which the Authority contract be required to open for public bid any and all projects and work to be performed under the bond. Said bids are to be reviewed by the Cherokee County Manager under the same terms and conditions as any and all bidding procedures currently then in use by Cherokee County at the time of the performance of said work.*

Response to Recommendation 8: Please see response to Recommendations 2 and 6.

Recommendation 9: *The Grand Jury further recommends in the event that the Cherokee County Resource Recovery Development Authority issues further bonds, and in the event that a third party is required to make payments to satisfy said bonds, that such payments be made to Cherokee County who will then pay the lender.*

Response to Recommendation 9: Please see response to Recommendations 2 and 6.

Recommendation 10: *The Grand Jury further recommends that the citizens of Cherokee County be more diligent and vocal in reviewing and commenting on the proposed actions of our local government. At no time during the bonding process at a Commissioners' meeting, at a meeting of the Resource Recovery Development Authority or at public hearings did any local resident object. It was not until Ball Ground Recycling defaulted and the tax payers of Cherokee County began paying the monthly bond debt that our local citizens, including the Grand Jurors, complained.*

Response to Recommendation 10: The Board of Commissioners appreciates the Grand Jury's recognition of this point. While the bond issuance has been alleged to have been "in secret", there is nothing further from the truth as the Grand Jury as acknowledged in its findings. The Board of Commissioners followed all legal requirements for conducting the bond issuance process in the public eye, and would have welcomed public input. Perhaps there was no public opposition because the state of the economy at the time of the transaction, would have suggested that the development intentions

were sound and the prospects of success were solid. Nonetheless, the Board of Commissioners provides an opportunity for public comment at each of its meetings, as well as offering access to citizens through phone calls, emails, and online website tools. Moreover, the County's transparency page on its website is intended to provide information to solicit public input and awareness.

Recommendation 11: *The Grand Jury further recommends that the Cherokee County Board of Commissioners and the Cherokee County Resource Recovery Development Authority pursue all legal options as the law may allow to enforce the terms of the lease and recover any amounts due from Ball Ground Recycling, Mr. Bobo, and his affiliate companies.*

Response to Recommendation 11: This is most assuredly the goal and intent of this Board of Commissioners. The County and the RRDA are pursuing this effort in earnest in the bankruptcy proceedings, with a two-step strategy of getting BGR off the property as quickly as possible, which has been accomplished to free the property up for negotiations with new prospective operators or owners, and now pursuing all claims available to recover funds due.

Recommendation 12: *The Grand Jury further recommends that the Cherokee County Board of Commissioners pursue all legal options available under the terms of any and all leases and agreements with Cherokee Recycling, LLC for the Blalock Road location operated by Mr. Bobo in order to recover the clean-up costs incurred by Cherokee County.*

Response to Recommendation 12: Notably, the history associated with this site spans decades and includes use of the property by multiple private and government operators and under the knowledge and jurisdiction of predecessor boards of commissioners. The Board of Commissioners has closely studied this issue in the past, and ultimately concluded that its ability to prove causation (i.e., that Bobo's operation was to blame vs. other private and government operators) in a court of law would be challenging. When considering the costs of litigation and the reasonable chances of failure to recover anything in return, the Board of Commissioners determined that pursuit of these claims would be costly and likely unproductive. This decision further took into account that by virtue of the County's efforts to clean up the site, the County was able to develop two (2) additional soccer fields, which are calculated to be more than a \$200,000 value to the County, and to avoid the substantial delays that would have resulted in the County's commitments to youth soccer programs going unfulfilled. Further, to the Board's knowledge and understanding, Mr. Steve Marcinko, a neighbor of the Blalock Road property, complained to the Sheriff's Office and the District Attorney's Office in 2010. See Exhibit "C" (newspaper article dated August 25, 2010). Ultimately, to the Board's knowledge and understanding, the Sheriff's Office dismissed the criminal complaint from Mr. Marcinko and the matter was referred to the Grand Jury at that time. See Exhibit "D" (newspaper article dated September 22, 2010). Finally, the County has taken the position with the Environmental Protection Division in its Revised Notice of Closure dated February 28, 2011, that the County has been unable to quantify the sources responsible for the cumulative volume of materials on the site. See Exhibit "E" (letter to EPD dated February 28, 2011). Accordingly, the Board of Commissioners believes its hands to be tied at this point in terms of taking any additional actions against Cherokee Recycling, LLC, in the absence of additional and new information.

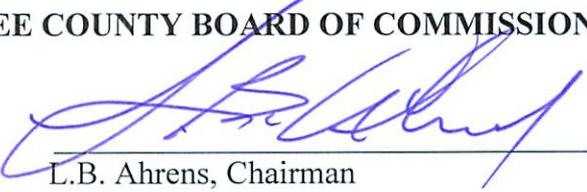
Notwithstanding the Board of Commissioners' conclusions to date, the Board of Commissioners would invite the Grand Jury and any law enforcement agency to conduct a specific investigation into this site and its history and share its findings with the County.

BE IT FURTHER RESOLVED THAT, the Board of Commissioners thanks the Grand Jury for its service and stands ready to take the steps outlined in this Resolution in furtherance of the Grand

Jury's Recommendations.

SO RESOLVED this 18th day of September, 2012.

CHEROKEE COUNTY BOARD OF COMMISSIONERS



L.B. Ahrens, Chairman

ATTEST:



Christy Black, County Clerk











EXHIBIT A

AREAS OF INQUIRY

1. The financing, acquisition, construction, development, management and operation of that certain solid waste disposal and recycling facility ("Facility") located in Cherokee County, including the construction of the Facility and any revenues generated by operations at the Facility.

2. The purchase and sale of the real property on which the Facility is located ("Facility Property"), including (a) the purchase by BG Land, LLC of the Facility Property, including the purchase by BG Land, LLC of any real property which contained any portion of the Facility Property (the "BG Land Property"), (b) the purchase by the Authority of the Facility Property, and (c) the price paid by BG land, LLC for the Facility Property and the BG Land Property.

3. The management and operation of the Facility and any management agreement relating or pertaining to the management or operation of the Facility, including, without limitation, that certain "Management Agreement" by and between Debtor and Bobo Grinding, Inc., referenced on page 22 of the Official Statement, dated September 18, 2007 ("Official Statement") and made in connection with the issuance by the Authority of The Solid Waste Disposal Revenue Bonds (Ball Ground Recycling, LLC Project), Series 2007A (the "Series 2007A Bonds") and The Solid Waste Disposal Revenue Bonds (Ball Ground Recycling, LLC Project), Series 2007B (the "Series 2007B Bonds").

4. The use of any bond funds generated by the issuance of the Series 2007A Bonds and/or the Series 2007B Bonds, including, without limitation, the use of any such bond funds in

connection with the acquisition, construction, development, management and operation of the Facility, including, without limitation, the purchase of any equipment with such bond funds.

5. The Lease Agreement, dated as of September 1, 2007, by and between the Authority, as lessor, and Ball Ground, as lessee (the "Lease"), including, without limitation, the amount, timing and other circumstances related to the payment of any rent under the Lease and any purported justification, if any, for any failure by Ball Ground and/or Wood-Tech, LLC (d/b/a "Woodtech Mulch") to pay rent.

6. The condition of the detention pond situated on certain real property that is located adjacent to the Facility Property and that services the Facility Property and the maintenance of such detention pond.

7. Distributions or other transfers of any kind occurring on or after May 1, 2007 made by or on behalf of Ball Ground.

8. Any topics to which any one or more of the Designated Documents relate or pertain and any matters discussed or identified therein.

EXHIBIT B

DESIGNATED DOCUMENTS

1. All documents constituting, recording, reflecting, evidencing, relating or pertaining to any communication (electronic or otherwise) between the Debtor, or any of its officers, employees, attorneys or agents, on the one hand, and any one or more affiliate or direct or indirect principal of the Debtor or, as applicable, any of their respective officers, employees, attorneys or agents, on the other hand, including, without limitation, the following persons or entities:

- (a) Jimmy Bobo
- (b) David Bobo
- (c) BG Energy, LLC
- (d) BG Land, LLC
- (e) Bobo Grinding, Inc
- (f) Bobo Grinding Equipment, LLC
- (g) BGR Trucking, LLC
- (h) D. Bobo, LLC
- (i) J. Bobo, LLC
- (j) Upland Development Group, Inc.
- (k) Wood-Tech, LLC (a/k/a Woodtech, LLC, WoodTech, LLC and/or Woodtech Mulch)

2. All contracts and other documents constituting, recording, reflecting, evidencing relating or pertaining to any agreements between the Debtor, on the one hand, and any one or more affiliate or direct or indirect principal of the Debtor on the other, including, without limitation, the following persons or entities:

- (a) Jimmy Bobo
- (b) David Bobo
- (c) BG Energy, LLC
- (d) BG Land, LLC

- (e) Bobo Grinding, Inc
- (f) Bobo Grinding Equipment, LLC
- (g) BGR Trucking, LLC
- (h) D. Bobo, LLC
- (i) J. Bobo, LLC
- (j) Upland Development Group, Inc.
- (k) Wood-Tech, LLC (a/k/a Woodtech, LLC, WoodTech, LLC or Woodtech Mulch)

3. Any management agreement relating or pertaining to the management or operation of the Facility (as defined above), including, without limitation, that certain "Management Agreement" by and between Debtor and Bobo Grinding, Inc., referenced on page 22 of the Official Statement (as defined above).

4. All communications (electronic or otherwise), contracts or other documents constituting, recording, reflecting, evidencing, relating or pertaining to the financing, acquisition, construction, development, management and/or operation of the Facility.

5. All communications (electronic or otherwise), contracts or other documents constituting, recording, reflecting, evidencing, relating or pertaining to the use of any bond funds generated by the issuance of the Series 2007A Bonds (as defined above) and/or the Series 2007B Bonds (as defined above), including, without limitation, the use of any such bond funds in connection with the acquisition, construction, development, management and operation of the Facility, including, without limitation, all communications (electronic or otherwise), contracts or other documents constituting, recording, reflecting, evidencing, relating or pertaining to (a) the purchase of any equipment with such bond funds and/or (b) the construction of the Facility.

6. All communications (electronic or otherwise), contracts or other documents constituting, recording, reflecting, evidencing, relating or pertaining to (a) the purchase by BG Land, LLC of the Facility Property, including the purchase by BG Land, LLC of the BG Land

Property, (b) the purchase by the Authority of the Facility Property, and/or (c) the price paid by BG land, LLC for the Facility Property and the BG Land Property.

7. All communications (electronic or otherwise), contracts or other documents constituting, recording, reflecting, evidencing, relating or pertaining to any one or more of the Areas of Inquiry.

EXHIBIT C

NEWSPAPER ARTICLE DATED AUGUST 25, 2010

Sheriff reviews soccer field complaint

By: Carolyn Mathews

Published: 25 August 2010

Steve Marcinko, the downstream neighbor of the \$3 million under-construction county soccer complex on Blalock Road, has complained to Cherokee County Sheriff Roger Garrison and District Attorney Garry Moss about what he calls “serious illegal activities” that occurred on the soccer field site in the past. Marcinko has vigorously audited the activities at the soccer complex site and the adjacent, now closed, Blalock Road Landfill for the past 25 years, at one time suing the county for landfill regulatory compliance issues.

Marcinko said the leftover recycled vegetative debris the county is mulching and storing on the site with an inert landfill permit, which was recently required by the Georgia Environmental Protection Division (EPD), is the result of “a multi-million dollar racket” being operated on county property.

“Simply put – a clever scam netted millions for a private company that illegally collected fees for dumping trash on public property,” Marcinko said in the complaint. “And now the taxpayers are paying to clean it up.”

Sheriff Roger Garrison said Aug. 18 that he is reviewing the complaint to see if there is anything in it that would warrant an open investigation.

“We’re taking it as an official complaint,” Garrison said. “It is being handled routinely. It will be very difficult because of the 25-year-span of time, and there have been at least two complete rollovers of the Board of Commissioners since the landfill was closed.”

Marcinko has contended since the mulch was found early last year that it was left on site primarily by private recycler Jimmy Bobo.

Marcinko claims Bobo dumped vegetative debris under the guise that the material would be recycled and removed from county property he operated on. The area reportedly has been used as a dumping ground for decades by local residents, but the EPD has also identified Bobo as the “responsible party.” Bobo moved his business off the site, using a county-backed \$18 million in industrial development bonds, so the county could build soccer fields. The soccer fields are due to be completed next month.

Garrison said that during his investigation of the complaint, Bobo would be contacted. "Certainly... he's obviously the focus of that property, since he is the one that leased the property from the county," he said.

Bobo's attorney Doug Flint said Aug. 19 that there is less mulch at the soccer site now than there was when Bobo arrived on the scene, and he has proof Bobo took more recycling off the site than he took in.

When Bobo moved in, Flint said, there was mulch already present from three different places: a large pile left by a previous recycler; wood debris from site clearing; and mulch that was previously on land between Bobo and the soccer site that had been left there by county citizens who used the area to dump yard waste. Flint said the county asked Bobo to move the mulch left by others to his site because Marcinko complained.

Bobo told the Ledger-News Aug. 19 that Marcinko's comments were "frustrating."

"I am having a hard time thinking up anything nice to say about Steve and his vendetta; so, I suppose I should just do as my folks taught me and say nothing at all," Bobo said.

Marcinko complains that "the Cherokee County Board of Commissioners and county management knew that fraudulent activity was allegedly going on at the site, but did nothing to stop it. In fact, they enabled it," he said, referring to past Boards of Commissioners.

Marcinko claims the debris on the site equals tipping fees in excess of \$5 million. He said that current county officials have "failed to report" what went on at the site to the proper authorities.

"Considering the fraud and illegal activities that are known to have occurred ... your review of this matter for possible investigation or your consideration of a presentation of this matter before a grand jury is prudent," his complaint says.

County Commission Chairman Buzz Ahrens said that Marcinko's complaint is not new.

"Marcinko sued the county more than 10 years ago, mostly related to erosion issues and downstream impact ... for several years he has accused the county of allowing a 'crime' to be committed by leaving inert materials on county property without a landfill permit," Ahrens said.

Ahrens also said Marcinko wants greenspace on the property, not a soccer complex.

In December 2009, the county commission approved a \$700,000 change order for F.E. Sims Construction Company to implement an EPD-required corrective action plan at the 17-field soccer site, resulting from the discovery during soccer field construction of the large amounts of mulch left on the site.

A county-contracted study of the site earlier this year estimated as much as 218,775 cubic yards. The county applied for a landfill permit so that some of the mulch (which is not dangerous as it is made from old trees, etc.) that can't be used to build the soccer fields can be stored onsite.

The county is referring to the matter of handling the mulch as "potential litigation."

"The county continues to discuss with relevant parties financial, legal and practical resolutions to some very complex issues spanning more than 10 years," Ahrens said.

"As many residents know, going back to the early 1990s, and perhaps earlier, the Blalock Road site across from the now-closed garbage dump was used as a place for county residents to bring cut wood, stumps, branches and brush," Ahrens said. Ahrens said, in the late 1990s, the contract with Bobo allowed larger quantities of wood waste to be processed and recycled at the site.

"Thus, the presence of inert materials on the site during the recycling operations was expressly intended and consistent with the use of the property as a public recycling facility. Recycling operations are required by the EPD to remove processed materials from the site on a regular schedule," Ahrens said.

Ahrens said the inert landfill permit would limit the county from constructing buildings or parking lots on the areas where mulch remains underground, but that is not a factor in the soccer field construction.

"We will use it as greenspace," he said. "The county has not concealed the fact that its current construction contractor discovered a significant amount of wood mulch that may have been left buried on the site by one or more previous operations there.

Ahrens said the county is working to recover the cost, to the extent it can clearly establish "which of the past operators on the site might be responsible for certain site conditions" as well as a volume estimate of materials that might already have been on site when private operators began their operations.

EXHIBIT D

NEWSPAPER ARTICLE DATED SEPTEMBER 22, 2010

dismiss soccer complaint, Grand Jury could still review

By: Carolyn Mathews

Published: 22 September 2010

The Cherokee County Sheriff's Office has dismissed a criminal complaint made in regard to the dumping of vegetative debris over the past few decades on county property.

After a preliminary review by the CCSO Criminal Investigations Division (CID), case detective Lt. T.K. Pinyan determined there is no need for an investigation by the sheriff's office.

Pinyan concluded that the situation reported by South Holly Springs Road/Blalock Road resident Steve Marcinko, in a written complaint to Sheriff Roger Garrison and Cherokee County District Attorney Garry Moss, already had been investigated by the Georgia Environmental Protection Division, and Cherokee County currently is under a consent order to clean up the site, which is county-owned property located near Marcinko.

However, Moss said the letter has been given to the September Cherokee County Grand Jury for its consideration, and it has not indicated whether it will review it.

"The Grand Jury, as part of its civil responsibility, has the authority to examine books and records of county government and review overall matters concerning the jurisdiction of county government," Moss said.

Marcinko, the downstream neighbor of the \$3 million under-construction county soccer complex on Blalock Road, complained in an Aug. 9 letter about what he calls "serious illegal activities" that occurred on the soccer field site in the past. Marcinko vigorously has audited the activities at the soccer complex site and the adjacent, now closed, Blalock Road Landfill for the past 25 years, at one time suing the county for landfill regulatory compliance issues.

Marcinko said that the leftover recycled vegetative debris the county is mulching and storing on the site with an inert landfill permit, which recently was required by the Georgia Department of Environmental Protection, is the result of "a multi-million dollar racket" being operated on county property.

Pinyan interviewed Marcinko, Cherokee Recycling owner Jimmy Bobo (who operated a mulching business on the site), and Scott Coburn and Jamie Lancaster with the Georgia Environmental Protection Division.

"It is my opinion that there is nothing for the Cherokee Sheriff's Office to investigate in this matter," Pinyan said in the report, adding the EPD has jurisdiction.

Pinyan said Marcinko complained that the citizens of the county have been stuck with a cleanup bill from an illegal dump.

"During our conversation, Mr. Marcinko insinuated that there was possible county corruption, but would never come out and make an actual complaint against a specific county official," Pinyan said in the report.

Pinyan said Marcinko stated that he believed that the EPD did not have any investigative or enforcement authority. However, Pinyan said, Coburn told him "the EPD did in fact have both investigative and enforcement authority."

Coburn, the report says, told Pinyan that the EPD had conducted an investigation into the complaints made by Marcinko. Coburn told Pinyan the EPD investigation still was open, but there was a consent order in place, and the county was held responsible because it was the property owner and had oversight on the property, the report said.

In the report, Pinyan states that Coburn told him the EPD did not find any criminal violations during its investigation and that sanctions were civil only.

Lancaster told Pinyan the EPD case should be closed at this time because the consent order had been satisfied.

In an interview outlined in the report, Bobo told Pinyan that he had accounting receipts that confirmed that he sent off as much material as was brought into the site.

"Mr. Bobo stated that he had some previous discussions with Buzz Ahrens, the county commission chairman, and that those talks had stalled," Pinyan said. "Mr. Bobo stated that it was his position that his company was not responsible for the cleanup and Mr. Ahrens thought that his company was responsible to at least some degree."

When asked for a comment Sept. 17, Ahrens said, "The sheriff's office investigates complaints in the manner and scope they deem appropriate. As such, the statement

regarding their investigation of this matter and (Pinyan's statement regarding what Bobo said about his position and Ahrens' position) appear accurate and consistent."

Marcinko said Sept. 17 it was his duty as a citizen to report this situation; so, that is what he did.

Marcinko alleged that "a lot of powerful people and more than \$20 million of taxpayer funds" were involved.

"At the very least, there has been an abysmal lack of competence at the county level," he said. "Now the taxpayers are being forced to clean up that mess to the tune of more than \$700,000."

At press time, Bobo had no comment.

EXHIBIT E

LETTER TO EPD DATED FEBRUARY 28, 2011

Chairman
L. B. Ahrens, Jr.

Western District
Karen Bosch
Jason A. Nelms



Eastern District
Jim Hubbard
Harry B. Johnston

County Manager
Jerry W. Cooper

CHEROKEE COUNTY BOARD OF COMMISSIONERS

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February 28, 2011

Mr. Jeff Cown
Solid Waste Management Division, Land Protection Branch
Georgia Dept of Natural Resources
Environmental Protection Division
4244 International Parkway, Suite 104
Atlanta, GA 30354

Re: Cherokee County Soccer Complex
PBR-028-1311L

=> **REVISED NOTICE OF CLOSURE** (Replacing January 06, 2011 Notice of Closure)

Dear Mr. Cown:

For the record, Cherokee County wishes to replace the text portion, item # 1, of our January 06, 2011, Notice of Closure for PBR-028-1311L at the Cherokee County Soccer Complex, as follows:

1. The estimated total amount of material deposited at this site is approximately 187,000 cubic yards. The material consists of earth and earthlike products. The total amount of material deposited at the site is calculated as follows:
 - a. A portion of this site had been leased to several companies that operated wood recycling operations from the mid-1990's through 2008, prior to Cherokee County developing the site as a soccer complex. Per an earthwork and topographic comparison of the site covering roughly 20 acres, before and after the various wood recycling operations' occupation, it was determined that the various operators deposited approximately 285,000 cubic yards of earth and earthlike debris on the site. We are uncertain as to the margin of error related to this comparison, but could be at least 10 to 20% based on the documents used.
 - b. Nevertheless, the County concludes that this cumulative volume is attributable to several factors, but is unable to quantify the sources. For example, there was some

volume of material on site in the late 1990's; there were materials reportedly moved to this location from other sections of the total 150 acres of the site; there were materials natural to the site related to clearing, stripping, grading, etc. from recycling operations and County activity. The site had been used as a temporary location to deposit debris from the tornado several years ago.

- c. During the course of the development of the soccer complex site, Cherokee County utilized approximately 98,000 cubic yards of the material as topsoil on the field areas, per a Corrective Action Plan approved by the EPD on November 24, 2009. The approximately 98,000 cubic yards of material were measured in place. The remainder of the material, approximately 187,000 cubic yards, is located in the inert landfill area permitted under PBR-028-131IL.

2. All other statements and enclosures remain as originally submitted.

If additional information is required please contact me at 678-493-6001.

We appreciate very much the guidance, cooperation, and assistance provided by your office and the Cartersville office.

Sincerely,

L. B. Ahrens, Jr. (Buzz)
Chairman,
Cherokee County Board of Commissioners

Cc Jerry Cooper, County Manager
Geoff Morton, County Engineer
Jamie Lancaster, Mountain District Office