

CLEVELAND COUNTY BOARD OF COMMISSIONERS

February 7, 2006

The Cleveland County Board of Commissioners met in a regular session on this date, at the hour of 6:00 p.m., in the Commission Chamber of the Cleveland County Administrative Offices.

PRESENT: Ronald J. Hawkins, Chairman
Jerry L. Self, Vice-Chairman
Mary S. Accor, Commissioner
Johnny Hutchins, Commissioner
Willie B. McIntosh, Commissioner
David C. Dear, County Manager
Les FarFour, Deputy County Attorney
Wanda Crotts, County Clerk
Kerri Melton, Deputy Clerk
Eddie Bailes, Assistant County Manager
Chris Crepps, Finance Director
Chris Green, Tax Administrator
Bill McCarter, Planning Director
Pete DeLea, The Star
Lindsey Allen, Cleveland Headline News
Other individual names on file in the Clerk's Office

CALL TO ORDER

Chairman Ronald J. Hawkins called the meeting to order and led the audience in the "Pledge of Allegiance" to the flag of the United States of America. Kerri Melton, Deputy Clerk, provided the invocation for the meeting.

AGENDA ADOPTION

ACTION: Johnny Hutchins made the motion, seconded by Jerry Self, and unanimously adopted by the Board, to *adopt the agenda as presented by the County Clerk, with the following addition:*

- (1) *Economic Development: Release for MRA (David Dear)*

CONSENT AGENDA

APPROVAL OF MINUTES

There being no corrections, additions, or deletions to the Minutes of *January 17, 2006*, motion was made by Willie McIntosh, seconded by Mary Accor, and unanimously adopted by the Board, to *approve the minutes as written.*

SHERIFF'S DEPARTMENT: BUDGET AMENDMENTS (BNA #028)

ACTION: Willie McIntosh made the motion, seconded by Mary Accor, and unanimously adopted by the Board, to *approve the following budget amendments:*

<u>Account Number</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
010.441.4.810.00	Sheriff/Contributions-Donations	\$ 2,500.	
010.441.5.790.00	Shelby/Donations-Contributions	2,500.	

Explanation of Revisions: Request approval to budget \$2,500 the CCSO received for calendar sales from Beatty Calendar Sales (Sheriff's Journal). Funds can be used to provide incentives and awards to recognize employees for their efforts to the department and community.

PLANNING DEPARTMENT: ZONING MAP AMENDMENT (CASE 06-04 – DAVID M. EVANS) (Schedule public hearing)

ACTION: Willie McIntosh made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to schedule the public hearing on March 21, 2006 at 6:00 p.m.*

PLANNING DEPARTMENT: CODE TEXT AMENDMENT (CASE 06-05 – Minimum Lot Size – Section 12-171) (Schedule public hearing)

ACTION: Willie McIntosh made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to schedule the public hearing on March 21, 2006 at 6:00 p.m.*

TAX COLLECTIONS: AGREEMENT WITH THE TOWN OF POLKVILLE

ACTION: Willie McIntosh made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to approve the tax collection agreement with the Town of Polkville to replace lost original adopted in 1993 (copy found on Pages _____ of Minute Book 29).*

TAX COLLECTIONS: AGREEMENT WITH CLEVELAND SANITARY DISTRICT

ACTION: Willie McIntosh made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to approve the tax collection agreement with Cleveland County Sanitary District to replace lost original adopted in 1993 (copy found on Pages _____ of Minute Book 29).*

SPECIAL RECOGNITIONS

“DO THE RIGHT THING” AWARDS

Commissioners presented certificates of appreciation to the following students for having been honored for receiving the “Do the Right Thing” awards: Estephanie Vargas, Kevin Esquivel, and Eugene Fisher.

END-OF-GRADE EXAMS

Commissioners presented Spencer Martin with a plaque in recognition of his outstanding academic accomplishment, having been the only student in Cleveland County to achieve a perfect score on both reading and math state end-of-grade exams for 2004-2005.

COMMUNITY SERVICE

Commissioners presented Dave Hart, Duke Power District Manager, with a plaque in recognition of his countless hours of dedicated service to Cleveland County – “always striving to better the quality of life for all Cleveland County citizens.”

REQUEST TO MOVE GRAVES: ROBERT Z. FALLS ESTATE

Tom Martin, serving as attorney for the Robert Z. Falls estate in the matter “regarding the disinterment, removal and reinterment of the graves located on the property west of Plato Lee Road, which the county wishes to purchase,” explained the request and statutory requirements. Mr. Martin said

a map will be filed with the Register of Deeds indicating where on the Falls property the graves were located and where they were moved.

The following is a description of the inscriptions on the three (3) headstones located at the graves:

Catherine Hamrick
Wife of Berry Hamrick
Infant of C & B Hamrick
2.14.1823 ~ 5.27.1862

Pinkney Hamrick
Infant Son of A & N Hamrick
4.15.1862 ~ 5.15.1864

Celia, Wife of Berry Hamrick
10.16.1832 ~ 12.13.1873

Mr. Martin stated the graves will be moved to Double Springs Baptist Church (*1130 Double Springs Church Road*), where Berry Hamrick is buried, along with his third wife. He explained Mr. Hamrick had purchased two additional plots adjacent to his, so these graves will be moved to those plots. Since there are only two plots, two will need to share a “common grave.” Mr. Martin explained Catherine Hamrick, wife of Berry Hamrick, and their infant already share a common grave (*he said relatives have told him Mrs. Hamrick died in child birth*). Two relatives have responded to the legal advertisements published in *The Star*, both of whom Mr. Martin said “have no problem with the graves being moved.”

ACTION: Mary Accor made the motion, seconded by Jerry Self, and *adopted by a majority vote of the Board, to approve “permission to move the three graves” in accordance with the mandates of North Carolina General Statutes and designate the Cleveland County Health Director, or her designee, to supervise the disinterment, removal and reinterment.* (Votes were recorded as all Commissioners voting yes, with the exception of Commissioner McIntosh who voted no, stating all three should have “separate” graves.)

CLEVELAND REGIONAL MEDICAL CENTER: ELLENBORO PROPERTY

Dan Sweat, CRMC Attorney, stated this property was purchased around 1998 to establish a medical practice, which closed approximately one year ago. He said the hospital had no need of the real estate and they have a buyer for the property.

Mr. Sweat said this property was added to the lease with the county in 2000 as a part of that lease amendment, which is “routinely done.” He said, “We bought the land with hospital funds and we deeded it to the County at no charge so that it would fall under the lease. We would like the County to deed it back to us so that we may dispose of it.”

ACTION: Jerry Self made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to approve the request as submitted.*

TAX ASSESSOR: LATE APPLICATION FOR EXEMPTION (BREAD OF LIFE CHURCH

Chris Green, Tax Assessor, explained that per NCGS 105-282.1, property owners claiming exemption or exclusion have the burden of establishing that the property is entitled thereto. Application is to be filed during the listing period which runs from January 1 thru January 31 each year. Upon showing of good cause by the applicant for failure to comply, the application may be approved by the Board of Commissioners. This is done at the Board’s discretion. Applications approved under this provision are effective for the current tax year and are not retro-active.

Mr. Green stated the Bread of Life Baptist Church, parcel number 32729 (.71 acres and church parsonage) has requested consideration of an application that was filed untimely for 2005 (application received September 8, 2005). Mr. Green advised Commissioners the application does meet appropriate criteria.

Marvin Russ told Commissioners he serves at the Chairman of the Board of Trustees for the Church and due to an “oversight of the secretary and treasurer at that time” the application was not submitted in a timely manner. He said the bill has been paid, but the Church would like a refund.

ACTION: Willie McIntosh made the motion, seconded by Jerry Self, and unanimously adopted by the Board, *to grant the exemption and refund.*

PLANNING DEPARTMENT: TEXT AMENDMENT (Case #05-16) (Schedule public hearing for March 21, 2006 at 6:00 p.m.) (Section 12-21: Definition of Basic Terms; Section 12-125: Agriculture)

ACTION: Johnny Hutchins made the motion, seconded by Willie McIntosh, and unanimously adopted by the Board, *to approve scheduling the public hearing as requested.*

PLANNING DEPARTMENT: ZONING MAP AMENDMENT (Case #05-19) (Ronnie Proctor; 636 Belwood-Lawndale Road; Residential to Light Industrial) (Reference public hearing held on December 6, 2005)

Bill McCarter, Planning Director, reviewed that a public hearing was held on December 6, 2005 to solicit comments on the rezoning of a two-acre tract on the Belwood-Lawndale Road for Ronnie Proctor. Mr. Proctor is the owner of a business called Carolina Quilting, operating in an existing large metal building on this property. Mr. Proctor purchased this property in March of 2004 and moved his business to this location.

No zoning permit was issued, since the property is currently zoned “Residential”. He was recently made aware of the zoning when he inquired into selling the property.

Mr. Proctor is now requesting the zoning be changed from Residential to Light Industrial. It was the consensus of the Board to table any action on this request until February 7, 2005. The Board ask for additional information concerning nonconforming uses and spot zoning.

Nonconforming Use

- Shelby allows up to one year (365 days) to re-establish a nonconforming use. The new use can be the same business or a less intensive type use, as determined by staff.
- Kings Mountain allows 180 days to re-establish a nonconforming use. They also use some flexibility in allowing less intensive type uses to occupy the structure.

Spot Zoning

Recent amendments to the planning legislation found in NCGS153A-342(b), attempt to clarify the court mandated analysis of small scale rezoning. The statutes now require a statement that the proposed rezoning has a reasonable basis, based on one of four factors:

- Size of tract in comparison to the “land immediately around it”
- Compatibility with the land use plan
- Benefits and detriments, weigh the degree of harm to the community
- Relationship between current use and proposed use

In a similar situation, the Union County Board of Commissioners were over turned by the court, when they rezoned an 11 acre tract from residential to industrial. An existing sawmill on the site was operating as a nonconforming use. The site had no access to a major highway, rail line, or public utilities, and the industrial development was incompatible with the surrounding residential community. The court found no special features on the tract making it more suitable for industrial use than any of the surrounding properties.

Recommendation

Based on this information, my recommendation would be to deny the request to rezone the property from Residential to Light Industrial, since you can’t meet the test required by the statutes. Grant Mr. Proctor “nonconforming” status to continue his business, then if he finds a buyer for the building we can issue a change of occupancy. If the new tenant is not a textile manufacturing business, it could be permitted, as long as it is considered to be a “less intensive” use.

John McCullough, Chairman of the Planning Board, stated there have been several cases before the Planning Board where conditional zoning would have been appropriate. He anticipates the Planning Board will have suggested wording for conditional zoning classification in April.

ACTION: Johnny Hutchins made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to deny the petition “with them to continue using for current use with non-conforming status.”*

PLANNING DEPARTMENT: MINIMUM HOUSING CODE VIOLATION **(Susie G. Byers; 215 Bridges Circle)**

Bill McCarter, Planning Director, stated that, in accordance with Section 3.5-45(b) of the Cleveland County Code, he is requesting an ordinance ordering the property owner to comply with the Order of the Code Enforcement Officer to repair or demolish the dwelling located at 215 Bridges Circle. He said, “After holding a hearing on May 31, 2005, the owner was allowed 90-days to demolish the dwelling. The property owner was notified by certified mail on June 15. The order has expired and a recent inspection revealed that no action has been taken to demolish the dwelling.” He said, “Adoption of this ordinance authorizes the Code Enforcement Officer to accept bids for any salvage materials in or

about the dwelling and credit the proceeds against the costs of demolition. A lien will be placed against the property for any additional costs incurred by the county as provided by NCGS 160A-446(6).”

There was discussion as to whether or not the letter was actually received by the owner, since a signature is not required for certified mailings. Commissioner McIntosh stated “we need to exhaust all methods to contact owner” and recommended letters be sent by registered mail, which does require a signature.

ACTION: Willie McIntosh made the motion, seconded by Johnny Hutchins, and unanimously adopted by the Board, *to adopt the ordinance to demolish property upon receipt of signature that owner received registered letter notifying of pending demolition (signature must be that of owner or Power of Attorney).*

CLEVELAND COUNTY
NORTH CAROLINA

**AN ORDINANCE AUTHORIZING THE CODE ENFORCEMENT OFFICER TO DEMOLISH
DWELLING
AT 215 BRIDGES CIRCLE**

WHEREAS, pursuant to the provisions of Chapter 160A, Article 19, Part 6 of the North Carolina General Statutes, the dwelling(s) located at 215 Bridges Circle, Cleveland County, North Carolina have been inspected and found to be unfit for human habitation and to otherwise constitute a danger to persons and a threat to the health and welfare of the citizens within County; and

WHEREAS, according to the procedures provided by law, the owner(s) of said property have been given notice of the aforesaid inspection, defective conditions, determination and order to bring said property into compliance with the minimum housing code of Cleveland County and the State of North Carolina by appropriate repair and/or demolition of said dilapidated dwelling(s); and

WHEREAS, the owner(s) have not complied with the Findings and Order by the Code Enforcement Officer within the period allowed by law; and

WHEREAS, the said dilapidated dwelling(s) remain at this time unfit for human habitation, dilapidated, and a danger to the health and safety of the citizens of Cleveland County and should be demolished in order to prevent and alleviate such danger and dilapidated conditions;

NOW, THEREFORE, BE IT ORDAINED BY THE CLEVELAND COUNTY BOARD OF COMMISSIONERS that the dilapidated dwelling known as and located at 215 Bridges Circle and now or formerly owned by Susie G. Byers, shall be demolished, and a lien placed against the property for the costs incurred by the county as provided by GS160A-446(6).

Adopted and approved this the 7th day of February 2006 by the Cleveland County Board of Commissioners in open session.

CITY OF SHELBY: AIRPORT COMMISSION APPOINTMENT

David Dear, County Manager, explained that the Shelby City Council has requested that Commissioners appoint a liaison to serve on the Airport Commission to “enhance communication and cooperation as the airport continues to develop and improve.”

ACTION: Jerry Self made the motion, seconded by Willie McIntosh, and unanimously adopted by the Board, *to appoint Ronnie Hawkins to serve as liaison. (There is no specific term length associated with this appointment, will track Commission term.)*

ECONOMIC DEVELOPMENT: MRA – AGREEMENT AND MUTUAL RELEASE

ACTION: Willie McIntosh made the motion, seconded by Jerry Self, and unanimously adopted by the Board, ***to accept and approve release of funds*** (copy of signed Agreement and Mutual Release found on Pages _____ of Minute Book 29).

COMMISSIONER REPORTS

Commissioner Accor advised she will provide each Commissioner with a copy of the School Finance Study, which has now been completed.

Commissioner Hutchins reported he attended the town council meetings of Kings Mountain and Grover and that Kings Mountain has decided to “add two more people to serve as extra-territorial jurisdiction representatives to the planning/zoning board.” They will submit a recommendation to Commissioners for consideration in the near future.

Commissioner McIntosh announced that “immediately after this meeting” several Commissioners will attend the awards banquet for the Boy’s Scouts and Eagle Scouts.

Vice-Chairman Self stated, “At the Upper Cleveland Chamber (*meeting*), they approved a resolution also in support of Duke Power in terms of positioning an additional steam plant at Cliffside.”

Chairman Hawkins announced that Commissioners will participate in a joint meeting with Gaston and Lincoln commissioners and the Pathways board at Pathways, scheduled for February 28, 2006 at 6:00 p.m.

Chairman Hawkins also noted he has received positive feedback regarding the recent Employee Appreciation and Recognition ceremony.

ADJOURN

There being no further business to come before the Board at this time, Willie McIntosh made the motion, seconded by Jerry Self, and unanimously adopted by the Board, to adjourn the meeting (*at 7:15 p.m.*). The next regular meeting of the Commission is scheduled for ***Tuesday, February 21, 2006 at 6:00 p.m.*** in this Commission Chamber.

*Ronald J. Hawkins, Chairman
Cleveland County Board of Commissioners*

*Wanda Crotts, CMC, Clerk
Cleveland County Board of Commissioners*