

**CLEVELAND COUNTY BOARD OF COMMISSIONERS**

**May 1, 2012**

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:** Johnny Hutchins, Chairman  
Ronnie Hawkins, Vice-Chairman  
Mary Accor, Commissioner  
Jason Falls, Commissioner  
Eddie Holbrook, Commissioner  
Eddie Bailes, Interim County Manager  
Andrea Leslie-Fite, Attorney  
Kerri Melton, County Clerk  
April Crotts, Deputy Clerk  
Chris Green, Tax Administrator  
Bill McCarter, Planning Director  
Alexis Pearson, Human Resources Director  
Dorothea Wyant, Health Director  
Other individual names on file in the Clerk's Office

**CALL TO ORDER**

Chairman Johnny Hutchins called the meeting to order and led the audience in the Pledge of Allegiance. Planning Director Bill McCarter provided the invocation for the meeting.

**AGENDA ADOPTION**

Vice-Chairman Ronnie Hawkins asked that a Closed Session be added to the agenda to discuss a personnel matter.

**ACTION:** Mary Accor made the motion, seconded by Eddie Holbrook, and unanimously adopted by the Board, *to adopt the agenda as presented by the County Clerk with the following addition:*

16. **CLOSED SESSION TO DISCUSS A PERSONNEL MATTER**  
Ronnie Hawkins, Vice-Chairman

**CONSENT AGENDA**

**APPROVAL OF MINUTES**

There being no corrections, additions, or deletions to the Minutes of *April 17, 2012 meeting with Cleveland Community College and April 17, 2012 regular meeting*, motion was made by Jason Falls, seconded by Mary Accor, and unanimously adopted by the Board, to *approve the minutes as written*.

**SOCIAL SERVICES: BUDGET AMENDMENT (BNA #070)**

**ACTION:** Jason Falls made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to approve the following budget amendment:*

<u>Account Number</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
010.504.4.350.00/93659-2200	Income Maint/State Govt Grants	\$21,600.	
010.504.5.899.00	Income Maint/State Govt Grants	21,600.	

Explanation of Revisions: Budget Amendment necessary to accept additional State Funds for Special Needs Adoption for FY 2011/2012.

**COOPERATIVE EXTENSION: BUDGET AMENDMENT (BNA #071)**

**ACTION:** Jason Falls made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to approve the following budget amendment:*

<u>Account Number</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
010.495.5.530.90	NC Coop Ext/4-H Activities	\$ 629.	
010.495.4.510.90	NC Coop Ext./4-H Activities	629.	

Explanation of Revisions: Additional funds raised by 4-H yard sale and other activities.

**E911 PHONE SYSTEM: BUDGET AMENDMENT (BNA #072)**

**ACTION:** Jason Falls made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to approve the following budget amendment:*

<u>Account Number</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
026.454.4.991.00	E911 Phone Sys/Fund Bal Approp.	\$258,538.	
026.454.5.910.00	E911 Phone Sys/Capital Equipment	258,538.	

Explanation of Revisions: To purchase two ambulances for EMS with part of remaining 50% Public Safety Funds available for use within the E911 Phone System Funds through June 30, 2012.

**HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #073)**

**ACTION:** Jason Falls made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to approve the following budget amendment:*

<u>Account Number</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
012.541.4.350.00/01210-4752	Env. Health/State Gov't Grants	\$ 12,221.	
012.541.5.210.00	Env. Health/Departmental Supplies	3,000.	
012.541.5.240.00	Env. Health/Automotive Supplies	4,221.	
012.541.5.241.00	Env. Health/Motor Fuels	3,000.	
012.541.5.310.00	Env. Health/Travel/Training	1,000.	
012.541.5.311.00	Env. Health/Education Expense	1,000.	

Explanation of Revisions: Budget state performance based Food & Lodging funds for operating expenses.

**HEALTH DEPARTMENT: BUDGET AMENDMENT (BNA #074)**

**ACTION:** Jason Falls made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to approve the following budget amendment:*

<u>Account Number</u>	<u>Department/Account Name</u>	<u>Increase</u>	<u>Decrease</u>
012.543.4.350.00/01120-9371	Grants/State Gov't Grants	\$ 88,822.	
012.543.5.230.00/01120-9371	Grants/Medicine & Supplies	1,474.	
012.543.5.422.00/01120-9371	Grants/Contracted Labor	35,989.	
012.543.5.513.00/01120-9371	Grants/Hospital & Dr. Fees	51,359.	

Explanation of Revisions: Budget Community Health Center Grant for Diabetes Clinic Expenses. Note: This grant is January-December 2012- unspent funds at the end of June, 2012 should carry over.

**LEGRAND CENTER: TRANSFER OF EASEMENTS TO NCDOT**

**ACTION:** Jason Falls made the motion, seconded by Mary Accor, and unanimously adopted by the Board, *to convey, to the North Carolina Department of Transportation, all easements obtained for the LeGrand Center turn lane.*

**SPECIAL RECOGNITION**

**RESOLUTION HONORING THE LIFE OF EARL SCRUGGS**

Famous musician Earl Scruggs passed away on March 28, 2012. His nephew, JT Scruggs represented the family as Commissioners adopted a resolution honoring the life of Mr. Scruggs.

**ACTION:** Ronnie Hawkins made the motion, seconded by Eddie Holbrook, and unanimously adopted by the Board, *to adopt the following resolution:*

**Number 07-2012**

***IN HONOR OF CLEVELAND COUNTY NATIVE EARL SCRUGGS***

***WHEREAS,*** Earl Scruggs was born in 1924, in Cleveland County, to George Elam Scruggs and Lula Ruppe Scruggs; and,

***WHEREAS,*** after being born into a family of talented musicians, Earl began playing the Banjo at the age of four; and,

***WHEREAS,*** it was in the back bedroom of his home, at the age of 10 where he first “got it”- the three finger roll which he has made his own and became the standard known to the world as “Scruggs Style”; and,

***WHEREAS,*** his hard-driving picking style influenced generations of musicians and helped shape the sound of 20<sup>th</sup> century country music; and,

***WHEREAS,*** in 1948, Scruggs and guitarist Lester Flatts formed the Foggy Mountain Boys; and,

***WHEREAS,*** throughout his career, Earl Scruggs received numerous accolades; he became a member of the Grand Ole Opry, earned two Grammy Awards, was inducted into the Country Music Hall of Fame, received a star on the Hollywood Walk of Fame and received a lifetime achievement award; and,

***WHEREAS,*** Earl frequently returned home to Cleveland County to perform concerts and visit family; and,

***WHEREAS,*** Destination Cleveland County will honor Earl’s legacy with the Earl Scruggs Center: Music & Stories from the American South which will showcase his life and music; and,

***WHEREAS,*** friends and musicians described Earl as a man who stayed true to his roots and talked about his love for God;

***NOW, THEREFORE, WE, THE CLEVELAND COUNTY BOARD OF COMMISSIONERS,*** hereby pay tribute to the life of Earl Scruggs and express appreciation for his contributions to the music industry.

**ADOPTED THIS THE 1<sup>st</sup> DAY OF MAY 2012.**

**MOTORCYCLE AWARENESS MONTH**

In honor of Motorcycle Awareness Month, Commissioners presented a Certificate of Recognition to the Cleveland County Concerned Bikers Association thanking them for their contributions to the community. The certificate read as follows:

***CERTIFICATE OF RECOGNITION  
FROM THE  
CLEVELAND COUNTY BOARD OF COMMISSIONERS***

***PRESENTED TO***

***CLEVELAND COUNTY CONCERNED BIKERS ASSOCIATION***

***FOR ACTIVELY PROMOTING MOTORCYCLE SAFETY THROUGH THE “LOOK TWICE SAVE A LIFE, MOTORCYCLES ARE EVERYWHERE” PROGRAM ~ FOR OFFERING, AT NO CHARGE, A MOTORCYCLE SAFETY AWARENESS PROGRAM***

***TO LOCAL SCHOOL DRIVER'S EDUCATION CLASSES ~ FOR BEING  
CONCERNED FOR THE SAFETY OF OUR CITIZENS ~ WE COMMEND YOU!***

*Presented this the 1<sup>ST</sup> day of May, 2012.*

**REGULAR AGENDA**

**CLEVELAND COUNTY YOUTH COUNCIL**

In 2008, the North Carolina Association of County Commissioners introduced the Youth Initiative at the state level. The purpose was to give youth a voice. Cleveland County, with the help of Cleveland Early College High School, developed a Youth Council to help understand the needs of the youth in Cleveland County. In February 2012, Commissioners established the Cleveland County Youth Council as an official County Board. Commissioners have received thirty-one applications for the upcoming year. The current Youth Council will help in the selection process.

Commissioner Accor welcomed Youth Council members: Shawanda Mosby (Secretary), DJ Brackett (Media Coordinator), Christiana Taylor and Kelsey Triplett. The Youth Council conducted a survey of the area high schools to study solutions to the top ten problems facing North Carolina teens. The results were presented (*copy found on Page \_\_\_\_\_ of Minute Book \_\_\_\_\_*).

**AT&T WATER AND SEWERLINE BID AWARD**

On April 26, 2012 bids were received for two waterlines and a sewerline to serve AT&T. The project was broken down into two divisions.

Division I was designed by Joel E. Wood & Associates. Four bids were received. The low bid was received from Cooper Construction Company in the amount of \$595,949. The water and sewer line included in Division I will be operated and maintained by the City of Kings Mountain.

Division II was designed by McGill Associates. Five bids were received. The low bid was received from Cooper Construction Company in the amount of \$236,029. The water line included in Division II will be operated and maintained by Cleveland County Water.

Joel Wood of Joel Wood & Associates recommended awarding a contract totaling \$831,978 to Cooper Construction Company to construct Division I and II of the proposed project. Grant funding will be used to pay for construction of this project.

**ACTION:** Mary Accor made the motion, seconded by Ronnie Hawkins, and unanimously adopted by the Board, *to award a contract in the amount of \$831,978 to Cooper Construction Company for construction of the AT&T water and sewer line.*

**(Clerks Note: The Pathways Director asked that the agenda be modified to first address the Partners Behavioral Health Merger Agreement then the Dissolving of Horizons Behavioral Healthcare.)**

## **PARTNERS BEHAVIORAL HEALTH MANAGEMENT MERGER AGREEMENT**

At their November 1, 2011 meeting, Commissioners approved a document authorizing their intent for Pathways to merge with Crossroads Behavioral Healthcare and Mental Health Partners. This merger was due to North Carolina Legislature requiring Local Management Entities (LME's) to be larger. The Intent to Merge document was signed by a total of eight counties. Rhett Melton, Pathways Director, presented the full merger document to Commissioners for approval.

Mr. Melton highlighted a few key points including the following:

- The merged entity will be named Partners Behavioral Health Management (further referred to as Partners).
- The board will consist of 25 members. Cleveland County will appoint one Commissioner and three citizens to the board.
- Partners will be headquartered at the Pathways facility.

With the merger, several jobs involving Medicaid, which are currently being housed in Raleigh, will now be based locally.

Rhett Melton made note, there will be no substantive changes made to the merger agreement as it has been approved by the majority of county attorneys, however, some minor changes could possibly be brought before the board for approval at a later date.

He explained Partners would have three funding sources; local funds, state funds and Medicaid funds. Commissioners elect the amount of local funds given to Partners. All funds given by Cleveland County will be used to serve Cleveland County residents.

Commissioner Falls, who has served on Pathways for several years praised the Pathways organization and Rhett Melton for performing their regular duties, obtaining accreditation and driving all merger discussions. "They are doing a great job", he said.

Partners will have an annual budget of \$300 Million and will include 2,800 providers.

**ACTION:** Mary Accor made the motion, seconded by Ronnie Hawkins, and unanimously adopted by the Board, *to approve the Merger Agreement and Certificate of Merger (copy found on Page \_\_\_\_\_ of Minute Book \_\_\_\_\_).*

## **DISSOLVING OF HORIZONS BEHAVIORAL HEALTHCARE SERVICES**

In March 2010, the County Commissioners of Gaston, Lincoln and Cleveland counties, in partnership with the Pathways Board of Directors, entered into an "Interlocal Agreement for the Provision of Behavioral Healthcare Services in Gaston, Lincoln, and Cleveland Counties" under the provisions of North Carolina General Statute 160A. The agreement served to create Horizons

Behavioral Healthcare. Horizons was established to serve as a mental health, developmental disabilities, substance abuse service provider in a safety net capacity for Gaston, Lincoln and Cleveland Counties.

In April 2011, the North Carolina Department of Health and Human Services issued a Request for Proposals in response to legislative action necessitating the need to change the scope of duties and size of the local mental health/substance abuse/ developmental disability area authority, locally known as Pathways. As a result of the legislative changes, Pathways began the process of merging with two peer programs and to move towards the management of the Medicaid funding for the consumers served by the system.

During the period of time between establishment and today, Horizons was never “activated” in that there has not been a need to perform in the role of community safety net.

Pathways is nearing the merger with the two programs referenced above with an anticipated merge date of July 1, 2012. Once completed, the newly created organization will serve eight counties and will expand the current pool of providers significantly, leading to an easier option to find a replacement provider should an existing one fail, close or cease to exist.

As the merged entity works towards the management of the Medicaid funding for its consumer population, it must ensure that it is “firewalled” from the provision of services due to state and federal requirements. The management of the Medicaid services has to be fully removed from the provision of services it is authorizing. In the current situation, maintaining Horizons violates the separation requirement since 1) Pathways is a party to the inter-local agreement and, 2) the other members to the agreement (i.e. the Boards of County Commissioners) are the appointing authority to the governance of the entity who will manage the services. For this reason, it is necessary that Horizons Behavioral Healthcare be dissolved.

On February 15, 2012, the Board of Directors of Horizons Behavioral Healthcare voted to dissolve the organization and requested the same from the Pathways Board of Directors and the Boards of Commission for Gaston, Lincoln, and Cleveland counties. The Pathways Board of directors passed a resolution on February 16, 2012, also to dissolve Horizons Behavioral Healthcare. As noted above, the entity had not been needed to undertake any service activities, had not been needed to become operational, and is not allowed under the requirements which must be met as part of the Pathways merger agreement and subsequent activities as a Medicaid manager of care. Also, with the expanded catchment area and additional provider base that results, the need for a “safety net” is mitigated due to the multiple providers of the same or similar services.

Rhett Melton asked Commissioners to pass a resolution to terminate the inter-local agreement between Gaston, Lincoln and Cleveland Counties thereby dissolving Horizons Behavioral Health Management.

**ACTION:** Jason Falls made the motion, seconded by Eddie Holbrook and unanimously adopted by the board, *to adopt the following resolution:*

*Number 05-2012*

***RESOLUTION DISSOLVING HORIZONS BEHAVIORAL HEALTHCARE***

***WHEREAS,*** Horizons and Pathways have determined that there will be a continuity of MH/DD/SA Services upon the termination of the Interlocal Agreement and that the interests of consumers of MH/DD/SA Services will be protected after termination of the Interlocal Agreement by the operation of Pathways as a MCO; and

***WHEREAS,*** there are no just liabilities or debts of Horizons that remain unpaid; and

***WHEREAS,*** unobligated surplus funds, if any, shall be paid to Pathways; and

***WHEREAS,*** all personal property, medical or other records, personnel files, contracts and all other assets of Horizons shall be turned over and properly maintained by Pathways.

***NOW, THEREFORE, BE IT RESOLVED,*** that all Parties hereby mutually agree that Horizons Behavioral Healthcare, the joint agency created by Pathways and Gaston, Lincoln and Cleveland Counties is hereby DISSOLVED.

Adopted this the 1<sup>st</sup> day of May, 2012

**CLEVELAND COUNTY SOLID WASTE MANAGEMENT PLAN UPDATE**

Health Director Dorothea Wyant introduced Sam Lockridge (Coordinator of Health Services) and Bill Ross (Chairman of the Solid Waste Advisory Board). She then presented the Solid Waste three year revision to the Ten Year Solid Waste Management Plan.

The original plan was completed in 1997 and updated five times to date. The plan has been prepared in accordance with the NC General Statutes to meet local solid waste goals and protect the health of the public and the environment within Cleveland County.

Specific changes include:

1) The "2 for 1" program was changed to include a "sunset clause". The first year, any curbside recycling program will receive two tons tipping fee credits for each ton of recycled waste that has been documented. In year 2, the curbside program will receive a one ton credit for each ton of recycled waste that has been documented. In year 3 the credit will sunset.

2) The Cleveland County Solid Waste Department is working in conjunction with the County Building Permitting and Inspection Office to obtain the addresses of any building activity requiring a permit. The Enforcement Officer contacts the builder to assure that they understand what can and cannot be disposed of in the construction and demolition landfill and enforce that

the waste loads must be covered to prevent littering and illegal dumping. Enforcement Officers make certain that the contractor is aware that waste must be hauled by the contractor or the County franchised hauler.

3) The Cleveland County Solid Waste manned sites are now collecting the following items:

\*anti-freeze

\*used motor oil and filters

\*computer and office paper

Shelby and Kings Mountain have started a curbside recycling program and are eligible to participate in the "2 for 1" and "1 for 1" credits.

Expired prescription drugs are now being collected at the Household Hazardous Waste Collection Day and at quarterly free rabies clinics.

The plan has been updated to include the new population census estimates and solid waste data for the last full fiscal year which is 2010-2011.

The Cleveland County Board of Health, at their April 10, 2012 meeting, voted unanimously to recommend that the Cleveland County Board of Commissioners approve the updated Ten Year Solid Waste Management Plan for Cleveland County.

Bill Ross explained, a goal of the Solid Waste Advisory Board is to increase the amount of recycling which will in turn decrease the amount of waste in the landfill.

**ACTION:** Jason Falls made the motion, seconded by Ronnie Hawkins and unanimously adopted by the board, *to adopt the following resolution:*

**Number 06-2012**

**RESOLUTION ACCEPTING AND ENDORSING THE SOLID WASTE  
MANAGEMENT PLAN OF 2012 FOR CLEVELAND COUNTY**

**WHEREAS**, it is a priority of this community to protect human health and the environment through safe and effective management of municipal solid waste;

**WHEREAS**, the reduction of the amount and toxicity of the local waste stream is a goal of this community;

**WHEREAS**, equitable and efficient delivery of solid waste management services is an essential characteristic of the local solid waste management system;

**WHEREAS**, it is a goal of the community to maintain and improve its physical appearance and to reduce the adverse effects of illegal disposal and littering;

**WHEREAS**, Cleveland County recognizes its role in the encouragement of recycling markets by purchasing recycled products;

**WHEREAS**, involvement and education of the citizenry is critical to the establishment of an effective local solid waste program;

**WHEREAS**, the State of North Carolina has placed planning responsibility on local government for the management of solid waste;



**WHEREAS**, NC General Statute 130A-309.09A(b) requires each unit of local government, either individually or in cooperation with other units of local government, to update the Ten Year Comprehensive Solid Waste Management Plan at least every three years;

**WHEREAS**, the Cleveland County Solid Waste Management Department and Citizens Solid Waste Advisory Board have undertaken and completed a long-range planning effort to evaluate the appropriate technologies and strategies available to manage solid waste effectively;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF CLEVELAND COUNTY**, that Cleveland County's 2012 Ten-Year Comprehensive Solid Waste Management Plan is accepted and endorsed and placed on file with Clerk to the Board on this 1<sup>st</sup> Day of May, 2012.

#### **OVERVIEW OF 2012/2013 BUDGET**

During their February 2, 2012 Work Session, Commissioners received projections for the 2012/2013 budget from Interim County Manager Eddie Bailes. Mr. Bailes was directed by Commissioners to present them with a balanced budget to include no tax increase and a salary increase for employees. Mr. Bailes presented a PowerPoint detailing highlights of the draft budget (*copy found on Page \_\_\_\_\_ of Minute Book \_\_\_\_\_*). The final budget will be presented to Commissioners during a public hearing at their June 5, 2012 regular meeting.

#### **PUBLIC HEARINGS**

##### **HEALTH DEPARTMENT: ORDINANCE FOR THE GRANTING OF A SOLID WASTE FRANCHISE AGREEMENT**

Prior to the meeting, Commissioners were given an application submitted by Republic Services of North Carolina, LLC (also referred to as GDS) to the Cleveland County Health Department on February 15, 2012.

This application requests a five year franchise/license to provide solid waste collection and hauling services to include residential, commercial and industrial.

Bill Ross, Chair of the Solid Waste Advisory Board, Sam Lockridge, Coordinator of Health Services, the Cleveland County Board of Health and Health Director Dorothea Wyant have reviewed the application received by Republic Services.

Although other companies expressed interest in applying, no other applications were received.

In addition to the essential required services of the franchise/license, Republic Services has agreed to provide the following:

1) Support for Cleveland County Solid Waste and Recycling Programs by providing \$40,000.00 annually for the duration of this agreement which will total \$200,000.00 to be used within the Solid Waste Program at the County's discretion.

2) To expand the curbside recycling services to other municipalities and unincorporated areas of the County.

3) Providing markets for recyclable materials that are collected within Cleveland County.

The Cleveland County Board of Health, at their March 13, 2012 meeting, voted unanimously to recommend that the Cleveland County Board of Commissioners award the Cleveland County Solid Waste Franchise/License to Republic Services of North Carolina, LLC, D.B.A. GDS Cleveland.

Chairman Hutchins opened the public hearing and asked anyone speaking for or against the proposed incentive agreement to come forward.

Bill Ross, Chairman of the Solid Waste Advisory Board, explained the franchisee is responsible for collecting waste in unincorporated areas or in those municipalities who are not willing to collect waste themselves. GDS has been the only waste collection agency for many years. They have an advantage over the others because they are familiar with Cleveland County, the roads and the people. The relationship between the Landfill and GDS has always been a cooperative one.

It is the intention of the Solid Waste Advisory Board to use the \$40,000.00 annual appropriation to educate the community about recycling programs.

Hearing no other comments, Chairman Hutchins closed the public hearing

**ACTION:** Ronnie Hawkins made the motion, seconded by Mary Accor and unanimously adopted by the board, *to award the franchise via ordinance as recommended by the Board of Health (per NCGS 153A-46, franchise cannot be finally adopted until it has been passed at two regular meeting of the Board of Commissioners. Second reading scheduled for May 15, 2012).*

**ORDINANCE FOR THE GRANTING OF A FRANCHISE (REFERRED TO AS LICENSE IN THE CLEVELAND COUNTY CODE OF ORDINANCES) FOR THE COMMERCIAL COLLECTION AND DISPOSITION OF SOLID WASTE IN CLEVELAND COUNTY, NORTH CAROLINA**

Pursuant to North Carolina General Statute 153A-46, North Carolina General Statute 153A-136 and the Cleveland County Code of Ordinances, and for the purpose of providing for the proper collection, transportation, recycling and disposal of solid waste within the County, a franchise is hereby granted, subject to the terms and conditions set forth herein:

1. The term "license", "licenses" and "licensees" mean "franchise", "franchises" or "franchisees".
2. An exclusive franchise is hereby granted to Republic Services of North Carolina, LLC, d/b/a GDS, a North Carolina limited liability company, for the right, subject to the terms of this Franchise Ordinance and the Cleveland County Code of Ordinances, to collect, transport, recycle and dispose of residential solid waste in Cleveland County. The franchisee shall be required to provide service to residential units in areas with rights to service by Cleveland County.
3. An exclusive franchise is hereby granted to Republic Services of North Carolina, LLC, d/b/a GDS, a North Carolina limited liability company, to collect, transport, recycle and dispose of commercial, industrial, construction and demolition waste in Cleveland County in the areas which the County has a right to grant such franchise.
4. The franchise shall be subject to the Cleveland County Solid Waste Ordinances and any amendments duly adopted by the Cleveland County Board of Commissioners during the term of the franchise. The word "license" or "licenses" or "licensee" shall apply to the "franchise" or "franchises" or "franchisee" as provided in this Ordinance and Chapter 11 of the Cleveland County Code of Ordinances shall be applicable to this Franchise Ordinance.
5. The term of the franchise herein granted shall be from July 1, 2012, to June 30, 2017, unless terminated or revoked as provided by the Cleveland County Code of Ordinances; provided, the Board

of Commissioners of Cleveland County, with or without cause, may terminate the franchise at the end of the second, third or fourth years hereunder.

6. Cleveland County reserves, notwithstanding any other provision of this Franchise Ordinance and Agreement, the right to haul, collect, recycle, dispose or transport any solid waste and operate manned and unmanned collection sites for solid waste within the entire County which is subject to the solid waste regulations of the County by North Carolina Statutes or interlocal governmental agreement.

**ADOPTED THIS THE 1st DAY OF MAY 2012.**

**PLANNING DEPARTMENT; ZONING MAP AMENDMENT (CASE 12-07) DENNIS WAYNE AND RICHARD MOORE**

Bill McCarter, Planning Director, presented a petition from Dennis Wayne and Richard Moore for a zoning map amendment from Restricted Residential (RR) to Neighborhood Business Conditional District (NBCU) for approximately 9.83 acres along Nalley Rd., currently a vacant tract. The area immediately surrounding this property is residential with some commercial uses along Highway 226, less than one half mile away. There are residential uses on adjoining properties along Nalley Rd. and Metcalf Road. There are commercial uses along Highway 226 including an auto repair garage, a cabinet shop and a convenience store. Mr. McCarter reviewed recommendations from Planning Consultant Jim Edwards and the Planning Board.

**Jim Edwards, Planning Consultant, Isothermal Planning and Development Commission: APPROVE**  
The vacant 9.8-acre property is located on Nalley Road approximately ¼ mile east of NC226. The surrounding property consists of low-density residential and undeveloped land. It is zoned Restricted Residential. There are several businesses along NC 226 within ½ mile of the subject property. The Future Land Use Plan designates a commercial node centered along NC 226 and Zion Church Road just to the northwest of the property. Since the requested NBCU zoning would provide some control over the intensity of any business use and any needed mitigation such as screening of adjacent residential properties, the requested rezoning could be managed to avoid any potential conflicts with surrounding properties.

**Planning Board Recommendation: APPROVE**

The Planning Board voted unanimously to recommend that rezoning be approved with the following conditions.

- Opaque screening planted along the eastern and southern boundary, evergreens were suggested planted in two rows with a woven wire fence in between rows.
- Earthen berm along northern boundary as shown on the grading plan.
- Security lighting around multi-purpose building.
- No lighting on ballfields.
- No outdoor activities after 6pm.

In 2005, NCGS 153A-341 was amended to require that Planning Board review include written comments on the consistency of the amendment with the Land Use Plan and any other relevant plans. The Board must also explain why the action is “reasonable and in the public interest”.

***Consistent with the 2015 Land Use Plan***

Recreational uses are compatible with the surrounding rural residential area.

***Is the amendment reasonable and in the best interest of the public?***

The facility will provide a needed recreational facility for special needs population.

***Surrounding Properties***

Low-density residential and undeveloped land

***Non-Conforming Uses***

Vacant

Mr. McCarter explained the purpose of the conditional use is to negotiate conditions on the project. He made note of the conditions recommended by the Planning Board.

Chairman Hutchins opened the public hearing and asked anyone speaking for or against the proposed zoning map amendment to come forward.

Dale Pendleton, 3322 Polkville Road, spoke in favor of the project as well as his concern for the handicapped. He mentioned the need for people in the community to help the handicapped. “We need these kind of projects”, he said. However, he did understand that the project needs to be screened well.

Teresa Hayes, 714 Nalley Drive, addressed her support for the handicapped. However, Ms. Hayes voiced concern with the traffic already on Nalley Drive. “Nalley drive is used as a cut through. I think this project is great, but I don’t want the noise.” She also voiced her concern for people hanging around at night and recommended a gate be put up to deter people from doing that.

Ruth Davis, 715 Nalley Drive, lives directly in front of the project on Nalley Drive. Ms. Davis spoke in opposition to the project. Ms. Davis has great grandchildren who live with her and she is afraid the traffic will be too much.

Richard Moore (petitioner), along with his father, owns One on One Care. They currently operate seven licensed residential facilities and a day support program. Many of their residents participate in the Special Olympics. Several of them attend North Shelby School, however, North Shelby School does not have a field where these athletes can practice. It is Mr. Moores intention to provide a place for these students to practice. He owns fifteen and a half acres. Half of the property will remain restricted residential. The long term plan is to have houses built on the property while the other half (the part being rezoned) will be used for the multi-purpose facility. Mr. Moore mentioned possibly coming into the project off of Metcalf Road should there ever be an issue with traffic.

Steve Smith, 3520 McKinney Road, was the surveyor on the project. Mr. Smith has made observations regarding the project one of which was the fact that the clients who will be using this multi-purpose facility are very quiet and very friendly.

Hearing no other comments, Chairman Hutchins closed the public hearing.

Mr. McCarter reminded Commissioners that the petitioner is requesting a conditional use which means the Commissioners and the petitioner could work together to come up with conditions which are acceptable to both parties.

Chairman Hutchins mentioned the possibility of fencing around the perimeter of the facility as well as a gate to detract people from entering in to the facility during the evening.

Commissioners discussed at length different options regarding the conditions to be approved in the zoning map amendment.

**ACTION:** Ronnie Hawkins made the motion, seconded by Jason Falls and unanimously adopted by the board, *to approve the following zoning map amendment (Copy of Site Plan found on Page \_\_\_\_\_ of Minute Book \_\_\_\_\_.)*

**ORDINANCE AMENDING THE OFFICIAL ZONING MAP  
CLEVELAND COUNTY  
Nalley Road – 9.83 acres  
Restricted Residential (RR) to Neighborhood Business Conditional District (NBCU)**

**WHEREAS**, Article 18 of Chapter 153A of the North Carolina General Statutes provides for the planning and regulation of development within the territorial jurisdiction of the county; and

**WHEREAS**, the Cleveland County Planning Board recommended the amendment of the zoning map on April 24; and

**WHEREAS**, this parcel is classified as “Residential” on our 2015 Future Land Use Plan, and the recreational uses would be consistent with the comprehensive plan for this area; and

**WHEREAS**, said amendment will promote the health, safety, and welfare of the citizens of Cleveland County, the public interest would be furthered, and said amendment would be reasonable and beneficial to the orderly growth of Cleveland County.

**WHEREAS**, notice of the Public Hearing was published in the Shelby Star on April 20, 2012, and April 27, 2012, notices were mailed to adjoining property owners on April 17, 2012 and a sign posted at the property on April 20, 2012; and

**WHEREAS**, all requirements of the North Carolina General Statutes have been met prior to any action by the Cleveland County Board of Commissioners to amend the Official Zoning Map following a Public Hearing on May 1, 2012; and

**NOW THEREFORE BE IT ORDAINED** by the Cleveland County Board of Commissioners that the Cleveland County Zoning Map, as described in Section 12-147 of the Code, be amended to change the classification from Restricted Residential (RR) to Neighborhood Business Conditional District (NBCU) for an office and recreational facility for special needs population (NAICS 71399). The property is identified on the attached map designated “Rezoning Case 12-07”, being incorporated herein by reference and made part of this ordinance.

Beginning at the southwest corner of the Lutz property (42796), said point being located South 10-18-46 West 294.52 feet from a nail in the center of Nalley Road; thence with the Lutz property, South 89-04-31 East 241.34 feet; thence with the Winfield property South 07-02-13 East 158.82 feet; thence with the Ledford property South 07-02-13 East 235.07 feet; thence with the Moore property South 07-02-13 East 238.24 feet, South 07-02-13 268.57 feet, South 07-02-27 East 205.39 feet; thence with the Weaver property South 07-00-58 East 39.59 feet, North 79-30-35 West 206.90 feet, North 59-29-24 West 505.86 feet, thence with the Moore property North 32-32-58 East 14.10 feet, North 32-32-58 East 215.20 feet; thence with the right-of-way of a new road North 29-13-40 East C=97.3896 L=134.1804 feet, North 18-40-10 West C=33.9181 L=36.0479 feet, North 10-18-46 East 544.84 feet, to the point of beginning.

NOW THEREFORE BE IT ALSO ORDAINED that the following conditions were found to be needed to insure that the spirit and intent of the code was preserved:

- Install Perimeter fencing with gate around facility
- Construct facility as shown on site plan

This Ordinance shall become effective upon adoption and approval.

Adopted this 1<sup>st</sup> day of May 2012 at 6:00 p.m.

**PLANNING DEPARTMENT: ZONING MAP AMENDMENT – (Case #12-08)- DENNIS SCOTT SNELLINGS**

Bill McCarter, Planning Director, presented a petition from Dennis Scott Snellings requesting a zoning map amendment from Restricted Residential Corridor Protection (RRCP) to General Business Conditional District (GBCU) for approximately 1.77 acres at the intersection of Wilson Cornwell Road and Polkville Road, currently a vacant tract. Mr. Snellings would like to operate an Auto Repair

business on the property. The area immediately surrounding the property is rural residential with some commercial uses along Highway 226, less than a quarter mile to the south. This property is within a commercial node on the 2015 Land Use Plan.

Mr. McCarter reviewed recommendations from Planning Consultant Jim Edwards and the Planning Board.

**Jim Edwards, Planning Consultant, Isothermal Planning and Development Commission: APPROVE**

The subject vacant property is located on Wilson Cornwell Road at the intersection of NC 226. The surrounding property is mostly low-density residential and undeveloped land, with a commercial use (salon) on Polkville Road immediately to the north. The area is zoned Restricted Residential and Residential. There are several other commercial uses on NC 226 south of the property. The Future Land Use Plan designates a commercial node centered on NC 226 and Zion Church Road just south of the property. Since this request has been amended to conditional use, the County could determine any additional control over the intensity of the proposed auto repair business that might be appropriate to avoid or lessen potential conflicts with surrounding properties.

**Planning Board Recommendation: APPROVE**

The Planning Board voted unanimously to recommend that rezoning be approved with the following conditions:

- Maintain existing vegetative buffer along eastern boundary and along Wilson Cornwell Road.
- Provide Opaque planted screening (Type A) in areas where existing vegetation is not adequate.
- Security lighting must be down lighting or shielded from adjoining properties.
- Hours of Operation Monday-Friday (7am-6pm), Saturday (8am-4pm), No Sunday.
- Business activities shall be conducted inside the building.
- Remove parking adjacent to Wilson Cornwell Road to preserve screening.

These conditions were recommended to reduce the potential impact on surrounding residential neighborhood.

In 2005, NCGS 153A-341 was amended to require that Planning Board review include written comments on the consistency of the amendment with the Land Use Plan and any other relevant plans. The Board must also explain why the action is “reasonable and in the public interest”.

***2015 Land Use Plan Strategy T-B3***

“Encourage commercial development along thoroughfares at strategically located nodes”

This property is located within a designated commercial node, and therefore would be consistent with the plan.

***Is the amendment reasonable and in the best interest of the public?***

These conditions provide an opportunity to minimize the impacts of commercial use on the adjoining residential properties.

Chairman Hutchins opened the public hearing and asked anyone speaking for or against the proposed zoning map amendment to come forward.

Audrey Metcalf of Charlotte, owns property along Polkville Road. Ms. Metcalf spoke in opposition of the project. She explained the property she owns has been passed through generations of the Metcalf family. Ms. Metcalf was concerned with the effect of property values. Ms. Metcalf read a letter written by her son Tim Weldon Metcalf. In the letter Mr. Metcalf expressed his concern with preservation of the Metcalf Heritage. “Highway 226 is a North Carolina Scenic Byway. We would like to preserve this area.”

In his letter, he also asked the board to consider whether or not their decision was in the public's best interest, whether it was for the greater good of all parties involved, and hoped that this decision would not result in the loss of value, marketability or quality of life of adjoining property owners.

Gene Metcalf, 2937 Metcalf Road, strongly urged Commissioners to vote against the rezoning making note of the effects it would have on the land all around including the Metcalf Museum. "There is no way this will not be an eye-sore." Should Commissioners approve the rezoning, he asked that all conditions recommended by the Planning Board be approved.

Benny Jean Pryor, White Oak Springs Baptist Church, spoke in opposition to the project. The church owns 33 acres across from the proposed site. They have delayed construction of their church until they could build something suitable to the standards of the area. "We pray and hope you do not lower the standards of the area."

Billy Cooper, 731 Wilson Cornwell Road, spoke in opposition to the rezoning. He made note of the many people at the meeting in opposition. "I respect Mr. Snellings for wanting to do this, but I don't think this is the place."

Fred Wright, 1000 Allendale Drive, owns a piece of property close to the property in question. "I was intending on building a house on the property I own but I will probably sell it."

Sam Wilson, 2966 Laura Road, spoke as a representative for the people who live out there. Mr. Wilson explained, Wilson Cornwell Road is three-tenths of a mile long and sixty houses feed directly into Wilson Cornwell Road. Mr. Wilson described the "planned community" as a rural community. "I do not find any advantage to this rezoning except for Mr. Snellings. A garage is still a garage. This is one of the densest developments in the county. Everything in the area is at odds with this garage."

Casey Carpenter, 151 Pete Mauney Road, is a first grade teacher at Union who drives up and down Hwy 226 every day. "This will be a family business, everything Scott Snellings does is top notch and the outside of the building he currently occupies is always clean." Ms. Carpenter made note of several salvage yards and trailer parks less than a mile from the property in question.

James Ekols, 737 Wilson Cornwell Road, recently retired and moved into his new home two months ago. Shortly thereafter was when he heard about the rezoning request. When building his home, Mr. Ekols followed all covenants required for that area. Mr. Ekols worries about the environmental affects, security lighting, traffic and noise. "This is nothing positive for the neighborhood."

Keith Earwood, 2736 Polkville Road, described Scott Snellings as a great mechanic. "You can eat off the floor of his shop." After listening to the concerns of the property owners, Mr. Earwood felt that the biggest concern is the property value. "I don't see that being an issue." There are lots of businesses located within a quarter mile of this location. "Mr. Snellings is not building on Wilson

Cornwell Road or Cotton Road, he is building on Highway 226 which is zoned for business.” This project will bring additional property tax to the county.”

Dale Pendleton, 3222 Polkville Road, spoke in favor of the project. He made note of the need for a good garage.

Kim Pryor, 1012 Mark Drive, as a member of White Oak Springs Baptist Church, spoke in opposition to the project. “If the proposed project were next to Kebo’s, for example, I would be for it. However, you need to look at how it will affect the neighbors.

Myra Wilson, 2966 Laura Road, disagreed with comments made by Keith Earwood regarding the value of property should this project be approved. Ms. Wilson is a real estate agent who has sold many of the houses in this area.

Loride Foster, 102 Cotton Drive, is concerned with neighbors who have small children. This area has seen a problem with Case Farms trucks driving up and down the road. Ms. Foster encouraged Commissioners to take the time to visit the community before making a decision.

Scott Snellings, Petitioner, has operated a garage out of his home for the past twelve years. Mr. Snellings has been looking for affordable property for 12 years. The property in question recently went up for sale. It was Mr. Snellings intention to put the driveway off of Highway 226, but due to code, it is not allowable. He assured the residents, most of which are his friends and customers, that he would not be “zooming up” Cotton Road or Wilson Cornwell Road. He apologized for upsetting those who live in this area.

Linda Ekols, 737 Wilson Cornwell Road, recently built her home and “has not even made the first payment”. Ms. Ekols views Wilson Cornwell Road as an “entrance into our neighborhood”. “Mr. Snellings can go somewhere else, he has not bought the property, we cannot go anywhere else”. She asked Commissioners to consider denying the rezoning request.

Hearing no comments, Chairman Hutchins closed the public hearing.

Commissioner Holbrook described the area as “one of the garden spots of Cleveland County.” Although he described himself as very pro-business, he felt as though he would have to speak in support of the people in this matter.

Commissioner Falls voiced his appreciation for the public input. Being a small business owner, he understands the views of both sides.

Commissioners asked Mr. McCarter if this would be considered spot zoning. Mr. McCarter responded by stating the current zoning (RR-CP) has an overlay that allows limited business use. Mr. Snellings is required to apply for a zoning permit because his requested use (Auto Repair Shop) is not a



permitted use in the corridor protection district. Also, the requested zoning is consistent with the current Land Use Plan.

Commissioner Holbrook commented, "If approved, I would request that Mr. Snellings sincerely buffers and the tree-lines be appropriately done."

**ACTION:** Ronnie Hawkins made the motion, seconded by Jason Falls and approved by a majority of the board (Ayes: Hutchins, Hawkins, Accor, Falls Nays: Holbrook) by the board, *to approve the following zoning map amendment.*

**ORDINANCE AMENDING THE OFFICIAL ZONING MAP  
CLEVELAND COUNTY  
754 Wilson Cornwell Road – 1.7 acres  
Restricted Residential (RR) to General Business Conditional District (GBCU)**

**WHEREAS**, Article 18 of Chapter 153A of the North Carolina General Statutes provides for the planning and regulation of development within the territorial jurisdiction of the county; and

**WHEREAS**, the Cleveland County Planning Board recommended the amendment of the zoning map on April 24; and

**WHEREAS**, this parcel is classified as "Commercial" on our 2015 Future Land Use Plan, and a proposed auto repair facility would be consistent with the comprehensive plan for this area; and

**WHEREAS**, said amendment will promote the health, safety, and welfare of the citizens of Cleveland County, the public interest would be furthered, and said amendment would be reasonable and beneficial to the orderly growth of Cleveland County.

**WHEREAS**, notice of the Public Hearing was published in the Shelby Star on April 20, 2012, and April 27, 2012, notices were mailed to adjoining property owners on April 17, 2012 and a sign posted at the property on April 20, 2012; and

**WHEREAS**, all requirements of the North Carolina General Statutes have been met prior to any action by the Cleveland County Board of Commissioners to amend the Official Zoning Map following a Public Hearing on May 1, 2012; and

**NOW THEREFORE BE IT ORDAINED** by the Cleveland County Board of Commissioners that the Cleveland County Zoning Map, as described in Section 12-147 of the Code, be amended to change the classification of Parcel 28256 from Restricted Residential (RR) to Neighborhood Business Conditional District (NB-CU) as identified on the attached map designated "Rezoning Case 12-08", being incorporated herein by reference and made part of this ordinance:

Beginning at a point in the intersection of NC-226 Polkville Road and Wilson Cornwell Road, thence with the right of way of NC-226 North 02-12 East 100 feet, North 01-05 East 100 feet, North 00-32 West 100 feet, North 04-19 West 127 feet; thence with the Greene property South 29-23 East 460 feet; thence with the right of way for Wilson Cornwell Road South 82-19 West 237 feet, to the point of beginning

**NOW THEREFORE BE IT ALSO ORDAINED** that the following conditions were found to be needed to insure that the spirit and intent of the code was preserved:

- Maintain existing vegetative buffer along eastern boundary and along Wilson Cornwell Road.
- Provide Opaque Planted Screening (Type A) in areas where existing vegetation is not adequate.
- Security lighting must be down lighting or shielded from adjoining properties.
- Hours of Operation Monday-Friday 7am-6pm, Saturday 8am-4pm, No Sunday operations.
- Business activities shall be conducted inside the building.
- Remove parking adjacent to Wilson Cornwell Road to preserve screening.

This Ordinance shall become effective upon adoption and approval.

Adopted this 1<sup>st</sup> day of May 2012 at 6:00 pm

**PLANNING DEPARTMENT; CODE TEXT AMENDMENT (CASE 10-18) AMATEUR  
RADIO TOWERS**

At their November 16, 2010 regular meeting, Commissioners adopted a definition of Radio Towers (*Clerks Note: Reference November 16, 2010 meeting minutes*).

Chairman Hutchins requested the Board of Commissioners reconsider the recommendation from the Planning Board that was presented at the meeting. The recommendation included a definition, development standards and a table of use change that would allow towers in all zoning districts with the issuance of a zoning permit. See recommendation below:

*Sec. 12-21 – Definitions of basic terms.*

*ADDED: Amateur Radio Tower: A structure, including cables, guy wires, or other structural supports, on which an antenna is installed for the exclusive purpose of transmitting and receiving radio signals and is operated by an amateur radio operator licensed by the Federal Communications Commission.*

#### *ARTICLE IX. DEVELOPMENT STANDARDS*

*ADDED: Section 12-158 – Amateur Radio Tower standards.*

*The following standards for the construction of Amateur Radio Towers shall apply to all towers with a height of seventy-five feet (75ft) and higher. Any amateur radio tower with a height below seventy-five feet (75ft) is exempt from any standards set forth in this chapter.*

- (a) Amateur Radio Towers are a compliant use in all zoning districts.*
- (b) There shall be a setback of thirty percent (30%) of the height of the tower from property lines, rights-of-ways, and easements.*
- (c) Cables, guy wires, or any structural support associated with the tower shall meet a setback requirement of at least five (5) feet.*
- (d) Prior to the issuance of a zoning permit, a site drawing shall be provided to the administrator, including property lines, any existing structures, proposed tower, tower setbacks, and tower height.*

Chairman Hutchins also requested the Board review Conditional Use Permit Site Plan requirements. Sec. 12-33(a)(2) requires a site plan be submitted with the application. The site plan, “shall include...a **boundary survey** and vicinity map, total acreage, zoning classification(s), adjoining streets, etc.” to be reviewed by the Board of Adjustment. Currently, the Zoning Board of adjustment requires the survey be performed by a licensed surveyor for any conditional Use Permit Application. Due to the inexpensive nature of a radio tower, Chairman Hutchins is recommending exempting radio towers from the survey requirement. He is also recommending radio towers less than 90 ft. to require a simple building permit.

Chairman Hutchins opened the public hearing and asked anyone speaking for or against the proposed zoning map amendment to come forward.

Frank Kopenec, 213 John Cline Road, voiced concern with the current requirement of a conditional use permit for radio towers. Mr. Kopenec volunteers with the boy scouts. This requirement is restricting him for teaching the scouts about radio towers. He noted state law which says counties “shall have reasonable accommodations for radio towers less than ninety feet.” Over the last five years, Mr. Kopenec has talked to operators in over 130 countries.

Neil Hodges, 5103 Carroll Street, has been working towards changing the radio tower ordinance for two years. Mr. Hodges encouraged Commissioners to not require a permit for radio towers less than

90 feet. He encouraged Commissioners to adopt the standards recommended by the Planning Board with the removal of item (c). In response to Chairman Hutchins recommendation for building permits, Mr. Hodges asked that a building permit not be required. "I have six radio towers on my property."

Peter Potemkin, 711 Virginia Drive, encouraged Commissioners to make the construction of radio towers as restrictive as possible. "These towers are an eye store and very dangerous."

Nancy Kopenec, 213 John Cline Road, voiced concern with current requirements and the inability to teach Boy Scouts about ham radio. "In the past couple of years, more boys have been interest in ham radio." Ms. Kopenec would hate for this to be cost prohibitive to young men interested in this hobby.

Hearing no other comments, Chairman Hutchins closed the public hearing.

Commissioners discussed at length the requirements and the permitting process and fees.

**ACTION:** Jason Falls made the motion, seconded by Ronnie Hawkins and unanimously adopted by the board, *to approve the following change to the Cleveland County Code:*

**Sec. 12-126. Amateur Radio Towers.**

NCGS § 153A-341.2 specifically exempts the antennas or antenna support structures of amateur radio towers from zoning regulations if less than ninety (90) feet in height.

**CLOSED SESSION**

**ACTION:** Jason Falls made the motion, seconded by Eddie Holbrook, and unanimously adopted by the Board, *to conduct a closed session to discuss a personnel matter, as allowed under North Carolina General Statute 143-318.11(a)(6).*

Clerk to the Board did not attend the Closed Session.

**ACTION:** Mary Accor made the motion, seconded by Jason Falls, and unanimously adopted by the Board, *to reconvene in open session.*

**ACTION:** Ronnie Hawkins made the motion, seconded by Jason Falls, and unanimously adopted by the Board, *to appoint Eddie Bailes as Cleveland County Manager. Commissioners will negotiate with Mr. Bailes regarding his contract and a contract will be presented for approval at their May 15<sup>th</sup> regular meeting.*

**COMMISSIONER REPORTS**

Commissioners did not make Commissioners Reports.

**ADJOURN**

There being no further business to come before the Board at this time, Ronnie Hawkins made the motion, seconded by Jason Falls, and unanimously adopted by the Board, *to adjourn the meeting* . The next meeting of the Commission is scheduled for *Tuesday, May 15, 2012 at 6:00 p.m in the Commissioners Chamber.*

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*Johnny Hutchins, Chairman  
Cleveland County Board of Commissioners*

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*Kerri Melton, Clerk  
Cleveland County Board of Commissioners*