

CLEVELAND COUNTY BOARD OF COMMISSIONERS

July 27, 2010- Special Called Meeting

The Cleveland County Board of Commissioners met in a special meeting on this date, at the hour of 12:00 p.m., in the Commission Chamber of the Cleveland County Administrative Offices.

PRESENT: Jo Boggs, Chairwoman
Johnny Hutchins, Vice-Chairman
Eddie Holbrook, Commissioner
Mary S. Accor, Commissioner
Ronald J. Hawkins, Commissioner
David C. Dear, County Manager
Robert Yelton, County Attorney
April Crotts, Deputy Clerk
Eddie Bailes, Assistant County Manager
Chris Crepps, Finance Director

CALL TO ORDER

Chairwoman Jo Boggs called the meeting to order.

LEGRAND CENTER FINANCING

County Manager, David Dear and County Finance Director, Chris Crepps reviewed the following documents presented to the Commissioners, Project Fund Agreement (copies found on Page ____ of Minute Book ____), Financing Agreement and Deed of Trust (copies found on Page ____ of Minute Book ____) and Resolution Approving Financing Terms and Documents.

ACTION: Ronnie Hawkins made the motion, seconded by Johnny Hutchins and unanimously adopted by the board, *to approve the following resolution:*

**Resolution Approving Financing Terms and Documents
For Community College Multi-Purpose Facility, and Taking Related Action**

WHEREAS:

Cleveland County has previously determined to carry out the acquisition, construction, and equipping (the "Project") of a new community college multi-purpose facility. The County has also stated its intent to finance Project costs by the use of an installment financing, as authorized under Section 160A-20 of the North Carolina General Statutes.

The Finance Officer has obtained for the County a proposal from Branch Banking and Trust Company ("BB&T") to provide a portion of the required financing.

The North Carolina Local Government Commission will have to approve the County's financing arrangements. Under the LGC's guidelines, this governing body must make certain findings of fact to support the County's application for the LGC's approval of the financing arrangements.

The Finance Officer has made available to this Board the draft agreements listed on Exhibit A (the "Agreements"), which relate to the County's carrying out the financing plan.

BE IT RESOLVED by the Board of Commissioners of Cleveland County, North Carolina, that the County accepts a proposal from BB&T dated July 14, 2010, to provide a portion of the financing for the Project.

Under the financing plan, BB&T will make funds available to the County for use on Project costs. The County will repay the amount advanced, with interest, over time. As part of the financing plan, the County will grant to BB&T a mortgage-type interest in the new facility (and its associated real property) to secure the County's repayment obligation.

BE IT FURTHER RESOLVED that the Board of Commissioners makes the following findings of fact:

- (a) The proposed project is necessary and appropriate for the County under all the circumstances.
- (b) The proposed installment financing is preferable to a bond issue for the same purpose under all the circumstances.

The County has no ability to issue general obligation bonds for this project without referendum approval. This financing is for a single, discrete facility, and therefore lends itself to the use of installment financing. In addition, using installment financing for this project will allow the County to better match the timing of the financing to the timing of the project, and to take advantage of current favorable conditions in the construction market.

(c) The estimated sums to fall due under the proposed financing contract will be adequate and not excessive for the proposed purpose. All amounts to be financed will reflect contract prices or well-developed estimates acceptable to the County and the LGC. The County has closely reviewed proposed lending rates and debt service levels with the LGC.

(d) As confirmed to the Board at this meeting by the County's Finance Officer, (i) the County's debt management procedures and policies are sound and in compliance with law, and (ii) the County is not in default under any of its debt service obligations.

(e) The County estimates that paying principal and interest on the financing will require no increase in County property taxes. The County expects to have sufficient funds available to pay debt service from existing resources. The County believes that the payments required to retire this financing are reasonable, under all the circumstances.

(f) The County Attorney is of the opinion that the proposed project is authorized by law and is a purpose for which public funds of the County may be expended pursuant to the Constitution and laws of North Carolina.

BE IT FURTHER RESOLVED, as follows:

1. Approval of Agreements; Direction To Execute Documents -- The Board approves the forms of the Agreements submitted to this meeting. The Board authorizes and directs the Board's Chair and the County Manager, or either of them, to execute and deliver the Agreements in their final forms. The Agreements in their respective final forms must be in substantially the forms presented, with such changes as the Chair or the County Manager may approve. The Agreements in final form, however, must be consistent with the financing plan described in this resolution and must provide (a) for the amount financed by the County not to exceed \$12,652,000, (b) for an annual interest rate not to exceed 5.50% (in the absence of a default or a change in tax status), and (c) for a financing term not to extend beyond December 31, 2025.

In addition, the Board's Chair and the County Manager, or either of them, are authorized and directed to approve, execute and deliver any further documents and agreements they deem desirable for carrying out the purposes and intents of this resolution. The execution and delivery of any document by an authorized officer will be conclusive evidence of his approval of the final form of such document.

2. Authorization to County Manager and Finance Officer To Complete Closing -- The County Manager, the Finance Officer and all other County officers and employees are authorized and directed to take all proper steps to complete the financing in cooperation with BB&T and in accordance with the terms of this resolution.

The Board authorizes and directs the Finance Officer to hold executed copies of all financing documents authorized or permitted by this resolution in escrow on the County's behalf until the conditions for their delivery have been completed to such officer's satisfaction, and thereupon to release the executed copies of such documents for delivery to the appropriate persons or organizations.

Without limiting the generality of the foregoing, the Board specifically authorizes the Finance Officer to approve changes to any documents, agreements or certifications previously signed by County officers or employees, provided that such changes do not conflict with this resolution or substantially alter the intent from that expressed in the form originally signed. The Finance Officer's authorization of the release of any such document for delivery will constitute conclusive evidence of such officer's approval of any such changes.

In addition, the Finance Officer is authorized and directed to take all appropriate steps for the efficient and convenient carrying out of the County's on-going responsibilities with respect to the financing of the Project. This authorization includes, without limitation, contracting with third parties for reports and calculations that may be required under this resolution or otherwise with respect to the Agreements.

3. Resolutions as to Tax Matters -- The County will not take or omit to take any action the taking or omission of which will cause its obligations to pay principal and interest (the "Obligations") to be "arbitrage bonds," within the meaning of Section 148 of the United States Internal Revenue Code of 1986, as amended, including the applicable Treasury regulations (the "Code"), or "private activity bonds" within the meaning of Code Section 141.

4. **Designation as a Recovery Zone Bond** – The County designates the Obligations as a “recovery zone economic development bonds” for the purposes of, and within the meaning of, Code Section 1400U-2 and related Code provisions. The County intends that the initial BB&T financing approved by this resolution will qualify as such a recovery zone bond.

5. **Approval for Subsequent Financing** – The Board authorizes and directs the County Manager, the Finance Officer and all other County officers and employees to enter into one or more subsequent agreements with BB&T to provide the additional installment financing required to complete the Project. These financing agreements may take the form of one or more agreements modifying the Agreements described on Exhibit A. These agreements may proceed on whatever financing structure the County Manager and Finance Officer may approve; the Board understands this may take the form of traditional tax-exempt financing, or financing that qualifies as “Qualified School Construction Bonds,” or financing that qualifies as “Build America Bonds.” In any event, the contemplated additional financing documents must provide (a) for the total amount financed by the County between the two contemplated financings not to exceed \$18,000,000, (b) for an annual net interest rate to the County on the subsequent financing not to exceed 5.00% (in the absence of a default or a change in tax status, and which may take into account expected subsidy payments from the United States), and (c) for a financing term not to extend beyond December 31, 2025.

6. **Miscellaneous Provisions** -- All County officers and employees are authorized and directed to take all such further action as they may consider necessary or desirable in furtherance of the purposes of this resolution. All such prior actions of County officers and employees are ratified, approved and confirmed. Upon the absence, unavailability or refusal to act of the County Manager, the Board’s Chair or the Finance Officer, any other of such officers may assume any responsibility or carry out any function assigned in this resolution. In addition, the Vice Chair or any Deputy or Assistant Clerk to the Board may in any event assume any responsibility or carry out any function assigned to the Chair or the Clerk, respectively, in this resolution. All other Board proceedings, or parts thereof, in conflict with this resolution are repealed, to the extent of the conflict. This resolution takes effect immediately.

* * * * *

I certify as follows:

- 1) that the foregoing resolution (which includes the attached Exhibit A) was properly adopted at a meeting of the Board of Commissioners of Cleveland County, North Carolina, held on July 27, 2010, and that a quorum was present and acting throughout such meeting;
- 2) that such meeting was properly called as a special meeting, (a) by the posting of a notice of such meeting, stating its purpose, on the Board’s principal bulleting board, and (b) by mailing or delivering such notice to all parties that have requested such notices pursuant to Section 143-318.12 of the General Statutes, in each case at least 48 hours prior to the time of the meeting; and
- 3) that such resolution remains in full effect as of today.

Dated this 27th day of July, 2010.

ADJOURN

There being no further business to come before the Board at this time, Mary Accor made the motion, seconded by Eddie Holbrook, and unanimously adopted by the Board, **to adjourn.**

*Rebecca Jo Powell Boggs, Chairwoman
Cleveland County Board of Commissioners*

*April Crotts, County Deputy Clerk
Cleveland County Board of Commissioners*