

**MACON COUNTY BOARD OF COMMISSIONERS
SEPTEMBER 11, 2018
MINUTES**

Chairman Tate called the meeting to order at 6:00 p.m. and welcomed those in attendance. All Board Members, the County Manager, Deputy Clerk, Finance Director, County Attorney, members of the news media and interested citizens were present.

ANNOUNCEMENTS: Commissioner Beale said that the annual Macon County Fair would be held this week.

MOMENT OF SILENCE: Chairman Tate asked those in attendance to observe a moment of silence, and in doing so to remember Herb James, a former Town of Highlands employee who later served as a town commissioner there, and also a remembrance of the 9/11 terrorist attacks.

PLEDGE TO THE FLAG: Led by Commissioner Beale, the pledge to the flag was recited.

PUBLIC COMMENT PERIOD: **Howell Jacobs** thanked "all who came to Nantahala to meet" and later apologized to the board for "spouting my mouth off" at previous board meetings. He again noted the need for a new community building in Nantahala as well as updates to the recycling convenience center. **Barbara McRae** shared some information with the board regarding the Women's History Trail project. Ms. McRae said the goal is to build a trail from downtown Franklin to all parts of the county to "celebrate the lives of Macon County women." She invited the board to the opening of the trail on October 27th, and spoke of a piece of public art that would represent three matriarchal figures in the county's history. These three women of the pioneer era are all associated with the Indian Mound in Franklin, and she gave a brief history of all three. The public art will be located near the Little Tennessee River/Indian Mound area, she said, adding it will be a long-term project that is going to cost a lot of money. She requested that the board authorize the County Manager to write a letter of support for a \$50,000 grant to help fund the project, and upon a motion by Commissioner Higdon, seconded by Commissioner Beale, the board voted unanimously to approve the request. Ms. McRae also informed

the board of a dedication ceremony for a new gateway interpretative sign as part of the Nikwasi Initiative that will be held September 22nd at the Cowee School Arts and Heritage Center, noting that the sign will be placed near the Cowee Mound. **Birgitta Kaanto** told the board she was here on behalf of the 20 residents of Silver Spruce Lane asking that the county fix the potholes on that road. However, Commissioner Beale pointed out that the county does not do road maintenance, and Emergency Services Director Warren Cabe said Silver Spruce Lane is a private road. Ms. Kaanto also asked about leash laws and nuisance laws in the county.

ADDITIONS, ADJUSTMENTS TO AND APPROVAL OF THE AGENDA: Upon a motion by Commissioner Gillespie, seconded by Commissioner Beale, the board voted unanimously to approve the agenda as adjusted, as follows:

- To add an additional item under Reports/Presentations as Item 9B regarding the new Fixed Base Operator (FBO) at the Macon County Airport, per Commissioner Gillespie.

NANTAHALA COMMUNITY LIBRARY: Ed Trask, a member of the Nantahala Community and also a member of the Macon County Library Board of Trustees, presented a “Summary of Actions” report on the need for a new community library in Nantahala. A copy of his report is attached **(Attachment 1)** and is hereby made a part of these minutes. Mr. Trask reviewed a timeline of events dating back to February of 2018 and requested that the board include a new facility for Nantahala in the county’s space needs analysis and Capital Improvement Plan (CIP). Commissioner Beale noted that finding a location in Nantahala is really tough, and Commissioner Shields asked about housing the community club and library in one building, with Mr. Trask responding that would work. Commissioner Higdon stated that both are “well deserved and long past due,” adding his hope for some “congenial support” for the community club and library to work together. Commissioner Higdon said funding of this should be a top priority in the county’s CIP. No action was taken.

NEW AIRPORT FBO: Commissioner Gillespie, the board’s liaison to the Macon County Airport Authority, announced that a new Fixed Base Operator (FBO) would assume operations at the airport on October 1, 2018 and that the new contract between the FBO and the authority would be much better for the citizens of the county. The new FBO is Macon Air, LCC, a subsidiary of Franklin-based Drake Enterprises.

CLASS ACTION MATTER REGARDING PAYMENT IN LIEU OF TAXES (PILT): The County Attorney began by explaining to the board that, like Macon County, there are a number of counties throughout the United States that contain a large amount of federal land. Since federal lands cannot be taxed by local

authorities, the federal government enacted PILT, or payment in lieu of taxes. He said a lawsuit has been filed by Kane County, Utah stating that the federal government did not make full PILT payments during a three-year period from 2015 to 2017. Macon County did not receive its full payment, and is owed approximately \$13,600 or possibly more, he said. The law firm of Smith Currie is handling the suit and has inquired if the county wishes to opt-in. The County Attorney pointed out that opting-in will cost the county one-third of what it is owed should the lawsuit prevail, but if the county chooses not to opt-in, it will receive nothing. He advised the county to opt-in, and a lengthy discussion followed. Commissioner Beale said this action will be "a long road" involving millions of dollars and added his belief that the county needs to be careful of putting its name on the lawsuit. The County Attorney pointed out that the board has until the upcoming Friday (September 14th) to opt-in as set by the federal court system. Commissioner Higdon expressed his opinion that if PILT payments were stopped it would be "all the better" as "it's still tax money." Commissioner Gillespie asked Commissioner Beale about his concerns, and Commissioner Beale said that some counties don't want to be listed in the lawsuit while others question the amount of money owed. "Is this the right number, we don't know," he said, later adding that he was okay with either opting in or not. Commissioner Gillespie asked if joining the lawsuit would jeopardize future PILT payments to the county, and the County Attorney responded it would not. Commissioner Beale made a motion to opt-in on the lawsuit and to authorize either the County Manager or County Attorney to do so on behalf of the county. Commissioner Shields seconded the motion, and the board voted 4-1 to approve it, with Commissioner Higdon opposing.

FIRE STUDY RECOMMENDATION: Emergency Services Director Warren Cabe explained to the board that he was seeking some clarification on Recommendation Number 5 found in the 2017 Fire Study as it relates to fire department expenditures. He quickly noted that this item was for discussion only and no money was needed. He pointed out that nine of the county's 11 fire departments are non-profit organizations, with the other two being the municipal departments of Franklin and Highlands. Those nine departments have contracts with the county, and the current contract for services requires each department to notify the Macon County Fire Marshal's office for concurrence when any new operating expense extends beyond the current fiscal year. Mr. Cabe said he wanted the board members to think about what is specifically required to meet the definition of "concurrence." He said this was put into the contracts to cover big expenses such as new fire trucks, but questioned if a specific dollar amount should be established. With each town having an audit performed, he also questioned if an audit of each volunteer department would help meet the definition of concurrence, but noted that would require a contractual revision. He said there are no financial issues with any of the departments, but he wanted to "give you some stuff to think about."

During the following discussion, Commissioner Higdon stated that there is some \$3.4-million in tax dollars going to the fire departments and there “needs to be some accountability” and that taxpayers have the right to know every detail. He suggested dropping the concurrence term, adding that transparency is key. Mr. Cabe again reiterated that he doesn’t think there are any financial problems with any of the departments and wants to “keep it going in a positive direction” as the volunteer fire departments are “one of the best bargains we have.” There was additional discussion, and no action was taken.

REQUEST FOR EXCEPTION TO FLOOD ORDINANCE: Planning, Permitting and Development Director Jack Morgan explained that Mr. William Thomas, who resides at 82 Woodchuck Lane off of NC 28 North, was requesting an exception to the county’s flood ordinance. As background information, Mr. Morgan said that his department had received a complaint back in July and that Joe Allen, one of the county’s building inspectors, investigated and found that Mr. Thomas had filled in the floodplain and the fill needed to be removed. Mr. Morgan said Mr. Thomas came to the department stating he was unaware of the ordinance, and as a part of this property was subject to severe flooding, had made an emergency exit from the property onto NC 28. Mr. Morgan said that Mr. Thomas had no intent to harm with his actions, but that any exception must be granted by the board of commissioners and the board must determine if the request for an exception complies with the ordinance. Chairman Tate stated that what follows would be considered a quasi-judicial hearing, in which the board would receive sworn testimony from Mr. Morgan, Mr. Thomas and possibly others. The County Attorney said both men would need to be sworn and then go through the application for the exception with the board, with Mr. Thomas going first. William Thomas and Kay Thomas were both sworn in at 7:17 p.m. Mr. Thomas began by stating that they “didn’t realize we were creating a problem.” He said that water from Woodchuck Lane runs into their front yard, so they created the new driveway in order to be able to get out from the property. He said there are no neighbors immediately downstream and the closest house is “way down the river.” He added that the contractor on the project told them a permit was not needed. “For us, it’s a safety factor,” he told the board. The County Attorney explained that Mr. Thomas needed to address each point in his written request, a copy of which is attached **(Attachment 2)** and is hereby made a part of these minutes. Mr. Thomas then went point by point through his request. Commissioner Higdon told Mr. Thomas, “I’m not opposed to what you’ve done,” but added that it displaces floodwater and forces it on to someone else. Commissioner Higdon then questioned the County Attorney about the criteria for the exception. Mr. Thomas then answered questions from Commissioner Shields and Chairman Tate, and told them the new driveway was a work in progress that was stopped when the violation was issued. He also said the couple knew of the flood hazard when they purchased the property three years ago. Mr. Morgan was

then sworn in at 7:38 p.m. and told the board that the floodway does not exist at the location of the project, nor is it in an encroachment area. Mr. Morgan also went through each of the points in the request for an exception, and told the board, "I think they met the criteria to bring this to you." He said that the safety of the couple getting out of there during flood conditions "is more than fill dirt going in there." He said no federal or state laws have been violated, just the county flood ordinance. "I don't know of any other option they have," he told the board, but later noted it was up to the board to determine the hardship. Commissioner Beale stated that the driveway was simply for safety and noted that the driveway flooded even when the Little Tennessee River was not out of its banks. He said he would support the exception, adding there is "not enough dirt there to matter." Mr. Morgan recommended the installment of three culverts under the new driveway to help with water displacement and flow. He pointed out that unless there are conditions to allow the exception, the driveway must be taken out. Commissioner Higdon said he was "not fully prepared" for the hearing, had not had the opportunity to review the ordinance, and had not personally seen the project. He said he did not see the value of adding the culverts, and Commissioner Gillespie asked Mr. Morgan additional questions about the culverts. Chairman Tate said that he could understand the reasoning behind the exception, but was concerned about setting a precedent. Commissioner Beale said that based on the evidence and Mr. Morgan's recommendations, he would make a motion to grant the exception as requested with the conditions noted by Mr. Morgan (the addition of the culverts). Commissioner Shields seconded the motion, and following additional discussion, the board voted 3-2 in favor of the motion, with Chairman Tate and Commissioner Higdon opposing. The hearing was closed at 7:59 p.m.

PUBLIC HEALTH BILLING AND COLLECTION POLICIES AND FEE SCHEDULES: Tammy Keezer with Macon County Public Health presented the Fiscal Year 2018-19 Billing and Collection Polices and Fee Schedules for the board's consideration. She noted the need for separate votes on the policy section and the fee schedules. She pointed out that the only change in the billing guide and collection policies from the previous year was the removal of a requirement to be a Macon County resident in order to receive certain services provided under federal programs. She requested approval of the billing guide and collection policies with that change, adding that the Board of Health had approved the document on August 28th. Upon a motion by Commissioner Gillespie, seconded by Commissioner Shields, the board voted unanimously to approve the document as presented, a copy of which is attached (Attachment 3) and is hereby made a part of these minutes. Ms. Keezer then reviewed the list of items for the department's fee schedule, a copy of which is also attached (Attachment 4) and is hereby made a part of these minutes. She explained that of the nine items on the list, the first four are new, the next four involve flu vaccines and the final one is the addition of a minor surgical procedure. These

items were also approved by the Board of Health on August 28th. Upon a motion by Commissioner Gillespie, seconded by Commissioner Shields, the board voted unanimously to approve the new fee schedule as presented. Chairman Tate also recognized outgoing Public Health Director Jim Bruckner, who is retiring October 1, 2018, and asked that he come back to the October regular meeting for a formal recognition of his service to the county.

PURCHASE OF IN-CAR AND BODY CAMERAS FOR SHERIFF'S DEPARTMENT: Sheriff Robert Holland told the board members that the in-car cameras in his department's vehicles are dilapidated. After discussing replacements for years, he said he reached out to state Rep. Kevin Corbin for help, and said the county has been awarded a \$65,000 grant to purchase in-car and body cameras for the department. After further discussion, the Finance Director explained that she had prepared a budget amendment to appropriate the funds. Upon a motion by Commissioner Beale, seconded by Commissioner Gillespie, the board voted unanimously to accept the grant and to approve the budget amendment as presented. A copy of Budget Amendment Number 46 is attached (Attachment 5) and is hereby made a part of these minutes.

RESOLUTION OF SUPPORT FOR SENATE BILL 711: Commissioner Gillespie requested the board's consideration of a resolution in support of Senate Bill 711, legislation that he said is aimed at protecting farmers from nuisance lawsuits. Following additional comments from Commissioner Gillespie and discussion among the board members, upon a motion by Commissioner Gillespie, seconded by Commissioner Beale, the board voted unanimously to approve the resolution as requested, a copy of which is attached (Attachment 6) and is hereby made a part of these minutes.

CONSENT AGENDA: Upon a motion by Commissioner Higdon, seconded by Commissioner Gillespie, the board voted unanimously to approve the items on the consent agenda as follows: the following budget amendments: #38 for the Department of Social Services to allocate a \$500 foster care donation and a \$5,000 daycare subsidy allowance; #39 for Solid Waste to appropriate an insurance settlement of \$5,368 for fence replacement following a vehicle accident at the Highlands Road Convenience Center; #40 for Solid Waste to appropriate an insurance settlement of \$275 following a vehicle accident at the Highlands Road Convenience Center; #41 for the Transit Department to appropriate an insurance settlement of \$1,814 for funds received for a Transit van; #42 for the Health Department to carry forward unexpended Tobacco Grant money in the amount of \$90 from Fiscal Year 2017-18 to the current year; #43 for the Health Department to carry forward unexpended grant revenue in the amount of \$1,146 from Fiscal Year 2017-18 to the current year; #44 for the Health Department to carry forward unexpended Evergreen

Foundation grant money in the amount of \$8,767 from Fiscal Year 2017-18 to the current year; #45 for a Special Appropriation to the Cullasaja Community Association to carry forward \$11,622 in unexpended funds from Fiscal Year 2017-18 to the current year; (Copies of the amendments are attached); tax releases for the month of August in the amount of \$9,075.88; monthly ad valorem tax collections report (no action necessary).

CLOSED SESSION: Upon a motion by Commissioner Gillespie, seconded by Commissioner Shields, the board voted unanimously to go into closed session at 8:17 p.m. for the purpose of discussing the acquisition of real property under NCGS 143-318.11(a)(5). At 8:29 p.m., upon a motion by Commissioner Higdon, seconded by Commissioner Beale, the board voted unanimously to come out of closed session and return to open session. No action was taken.

RECESS: With no other business, at 8:30 p.m., upon a motion by Commissioner Higdon, seconded by Commissioner Shields, the board voted unanimously to recess the meeting until Tuesday, September 25, 2018 at 6:30 p.m. in order to hold a joint meeting with the Franklin Town Council and the Town of Highlands Board of Commissioners. The meeting will be held at the Old Edwards Inn Springhouse at 461 Spring Street in Highlands, NC.

Derek Roland
Ex Officio Clerk to the Board

Jim Tate
Board Chairman