

**MINUTES OF A
SPECIAL MEETING
OF THE JACKSON COUNTY
BOARD OF COMMISSIONERS
HELD ON
NOVEMBER 07, 2019**

The Jackson County Board of Commissioners met in a special meeting on November 07, 2019, 2:00 p.m., Justice and Administration Building, Room A201, 401 Grindstaff Cove Road, Sylva, North Carolina.

Present: Brian McMahan, Chairman	Don Adams, County Manager
Boyce Deitz, Vice Chair	Heather C. Baker, County Attorney
Mickey Luker, Commissioner (via speakerphone)	Angela M. Winchester, Clerk to Board
Ron Mau, Commissioner	
Gayle Woody, Commissioner	

Chairman McMahan called the meeting to order.

(1) **AGENDA**: Chairman McMahan requested to amend the agenda to add one item: Cooper Property. Commissioner Mau moved to approve the amended agenda. Commissioner Woody seconded the Motion. Motion carried.

(2) **COOPER PROPERTY**: Chairman McMahan stated that the Board had a lot of discussions regarding the Cooper property and staff had been working over the last few months with due diligence and evaluating the property. They had a request from the Town of Dillsboro to not consider this property for a proposed SRC location for the Dillsboro-Sylva area. They were in a position to either move forward with the contract or terminate the contract.

Motion: *Commissioner Mau moved to terminate the Cooper Contract. Commissioner Woody seconded the Motion.*

Discussion:

Commissioner Deitz stated that he wanted to go on record stating that they may have not communicated well enough with Dillsboro, but it was not their wish to do anything to take away from Dillsboro. It was always their wish to make the project very nice and he thought they could have, but it was time to move on. No one on the Board was thinking anything but positive about what they were doing to help the county and provide facilities for animal control. He was in favor of going in another direction now and he was sure they would try to be as excellent as they could wherever they put the facility.

Chairman McMahan stated that cancelling the contract would only affect the SRC component. Dillsboro was in full support of all the other proposed ideas on the Green Energy Park property and were eager to see the county start work on the project.

Commissioner Woody stated that she thought this was an example of elected officials working collaboratively and listening to one another. When there was a misunderstanding, they worked to clarify and understand each other and they reached a resolution she felt very good about and she hoped the Town Board of Dillsboro would feel the same.

Motion carried by unanimous vote.

(3) MILLENNIAL APARTMENTS EROSION UPDATE: Tony Elders, Permitting and Code Enforcement Director; Steve Beasley, Chief Erosion Control Officer; Michael Poston, Planning Director; and John Jeleniewski, Senior Planner, were present for this item.

Mr. Adams stated that he was not asking for any action from the Board. The meeting was for informational purposes only to the Board, the public and press. The Commissioners had probably received phone calls individually, he had received phone calls as County Manager and staff had received phone calls regarding the erosion issue that had been occurring at the Millennial Apartments site.

He presented to the Board an overview of the county's participation in the project from June, 2019 to present. County staff would discuss what would fall under the county's purview regarding the project and what staff believed the next steps would be. This was only an information session for the Board.

Mr. Elders stated that the Millennial Apartment site was owned by Western Carolina University and leased to Zimmer Development. Due to rules adopted by the North Carolina Sedimentation Control Commission, any erosion control site larger than an acre on state, county or federally owned property, local erosion control program was not allowed to supervise the project.

They were authorized to issue the building permits and do the building inspections. They were not involved initially permitting this site going forward. The two sections of the North Carolina Department of Environmental Quality they dealt with were the Division of Environment and Land Resources or Land Quality and Division of Water Resources or Water Quality. Land Quality supervised approving erosion control plans and making site visits. When any sediment left the project, private or public and goes into the streams, Water Quality would get involved. They were housed in the same building in Swannanoa, but operated separately. They had a couple of private projects in the vicinity of the Millennial project, so they were aware of some erosion issues beginning as shown on the below timeline.

Mr. Beasley stated that when he started getting complaints and doing river watch, he kept the following details in the below Millennial Site Timeline of Emails, Notices of Violation (NOV) and other items:

1. 06/05/19 – Called State, SB
2. 06/10/19 – Visited site as part of river watch/Photographed
3. 06/17/19 – NOV from State, Re: Stormwater (Land Quality). Jackson County held up issuance of Building Permits for site compliance with Land Quality
4. 06/18/19 – Visited site as part of river watch/Photographed – Emailed/Called State, SB
5. 06/19/19 – NOV from State (Water Quality)
6. 06/19/19 – Emailed State, SB
7. 07/03/19 – State sent letter approving submitted sediment removal plan from Millennial; NOV still stands
8. 07/05/19 – Visited site as part of river watch/Photographed
9. 07/05/19 – Emailed State, SB Photos from 07/02/19 & 07/05/19
10. 07/08/19 – Emailed State, SB Photos from 07/05/19
11. 07/10/19 – State followed up with a copy of Inspection Report
12. 07/12/19 – Email from State Re: work that will need to be done to lift NOV; Land Quality lifted NOV but Water Quality will not lift NOV at that time
13. 07/12/19 – Jackson County releases Building Permits per lifting of NOV from Land Quality
14. 07/15/19 – Visited site as part of river watch/Photographed
15. 07/17/19 – Emailed State, SB
16. 07/23/19 – Complaint, Sheri Deitz/Photographed
17. 07/30/19 – State followed up with a copy of Inspection Report
18. 07/31/19 – Emailed State, SB
19. 07/31/19 – NOV from State (Water Quality)
20. 08/01/19 – Visited site as part of river watch/Photographed
21. 10/21/19 – Complaint, Sheri Deitz/Photographed
22. 10/24/19 – Visited site as part of river watch/Photographed - Called State, SB

23. 10/24/19 – Code Enforcement sent letter regarding offsite sedimentation and warned of the possible suspension of building inspections, TE
24. 10/28/19 – Visited site as part of river watch/Photographed - No call or email
25. 10/29/19 – Visited site as part of river watch/Photographed - Called State, SB
26. 10/31/19 – Complaint, Sheri Deitz (7:00 AM)/Visited site, photographed
27. 10/31/19 – Complaint, Sheri Deitz (11:00 AM)/Visited site, photographed
28. 10/31/19 – Condemnation
29. 10/31/19 – Drone Photos
30. 11/01/19 – Photos
31. 11/04/19 – Code Enforcement sent letter regarding stoppage of building inspections on site, TE
32. 11/04/19 – NOV from State (Water Quality)
33. 11/06/19 – Emailed Don Adams, SB

Commissioner Woody stated that there were four NOV's listed above. When those were issued, how was the response from Zimmer or the contractors?

Mr. Elders stated that when the UDO was adopted, the language was inserted for suspending inspections. Since it was not the county's NOV, they did not get a direct response from Zimmer.

Commissioner Mau stated that it did not appear to be a slope failure. Was it a basin over topped?

Mr. Elders stated that it came down and saturated the natural slope behind house six. On November 4th, they hand delivered a letter that they were suspending building inspections on the site. Generally, in the past, the procedure with Water Quality had been that once they accepted the remediation plan to address their NOV, they would start working on the project again. Land Quality was related directly with the earth movement.

Chairman McMahan stated that once the state issued an NOV it was because of a deficiency or did not meet the standard. The contractor had a responsibility to bring that up to standard and that would end the NOV. Was there a timeline attached to the NOV?

Mr. Elders stated that generally there was a timeline for the initial response and from there it was variable depending on the size of the violation and the amount of remediation required.

Chairman McMahan stated that if anyone failed to meet the timeline, it would be the state's responsibility to take further action at that time.

Mr. Adams stated they were there to discuss what the county's authority was in this matter. There could potentially be a lot of reasons why it may or may not have held. Staff had conversations about how they would proceed forward to ensure there would be an approved fix, which fell under the state. The county's concern would, if they could, participate to make sure it was corrected in accordance with the drawings. It could be the design or it could be that it was not installed properly.

Commissioner Woody stated that having followed this issue and sent emails since July with her concerns, she got tired of hearing there were plans made for a 100 year or 50 year flood event. The flood of 1940 took out all of the bridges except one. They could not look at those events and make plans based on that. They had to look at what possibly could happen and how they could protect their land, water and citizens in the county. She did not want to hear excuses about it was a big rain event.

It was not fair to the citizens, water and soil to not make plans to address the most severe. She thought they needed to hold the citizens, contractors and themselves responsible to do the best they could. They were not doing that when she had the emails and others did as well that showed there were multiple violations. After the first violation, this should have been addressed, it could have been prevented.

Chairman McMahan stated that the current status was there was an NOV from Water Quality, which allowed the county to stop inspections.

Commissioner Deitz stated that he did not know why they were having the meeting or what direction it was going. He wanted it to be known that his sister owned all of the rentals at the site. If at some point he needed to recuse himself, he would be glad to do so. His sister was a constituent like everyone else.

They did not allow steep slope development all over the county, but they let someone put a steep slope behind ten homes that was more dangerous than some of these other places. There were people being hurt by this, the person that owned the rentals and the people living in the rentals and their families that were concerned about the safety of their kids.

The people contracting to do the job did not want this to happen. It came down to how were they going to stop what had been done and how were they going to take care of the ones that had been injured. Hopefully the development would go on and be something they could all be proud of. They opened up about 12-14 acres on top of the mountain and disturbed the whole mountain. He hoped they were concerned about how they could help their constituents and how they could clean it up so it did not bother the streams and the people that had been injured in this would be taken care of.

Mr. Poston stated that the Planning Department had also received phone calls. They also received calls from the Planning Board, which gave approval for the subdivision. Multi-family was not a traditional subdivision where they would build roads and divide lots, but the county ordinances did classify projects that had more than eight buildings or more than 60 beds as a subdivision.

Part of that was because they did not have countywide zoning, so they only addressed multi-family development outside of zoned areas per the Zoning and Subdivision Ordinances to ensure road networks were appropriately sized, emergency management services were being provided for and those basic types of constraints. Typically, when any issues would arise with erosion, Mr. Jeleniewski and Mr. Beasley usually had those issues well in hand. This situation was atypical of what they normally would deal with. They looked through the Subdivision Ordinance to determine if there were any violations and certainly, they believed there were and would be moving forward with an NOV for violations of the Subdivision Ordinance.

Mr. Jeleniewski stated the Planning Board did approve this project on September 20, 2018. It was a project complete, it was not a phased project, at that time. In doing the research in the subdivision ordinance, there were two items specifically that came to light that this project was currently in violation of:

Article 4 Section 4.4. Above ground drainage ways shall be designed to avoid excessive rates of flow, erosion or overflow into developed areas subject to damage.

What they had heard that day was that locally, they were not inspecting erosion control, but the ordinance did not speak to what agency would be enforcing the specific requirements or standards. The Subdivision Ordinance covered that regardless of what agency would be boots on the ground.

Mr. Poston stated that if the violations were not corrected, there were civil fines, potential criminal penalties and revocation of the subdivision approval, which would stop work on site.

Mr. Jeleniewski stated that also in that section, there was another article the project was in violation of:

Section 4.4(g)(i) In preparation of the subdivision and installation of improvements, appropriate measures shall be taken to prevent erosion and damaging siltation on property and adjoining land or water areas in accord with Article 5.

Mr. Adams stated that priority for staff and emergency management at that point was “lifesaving”. At that time, they had one facility condemned and four facilities that were not allowed to be occupied. Staff was going through a process in order to lift that determination to allow them to be used. Staff was continuing to work with the developer to ascertain the necessary information to open those facilities back up.

The second issue was the erosion as it related to building inspections. Building inspections had ceased due to the NOV being in place. There were continued conversations among staff about what it would take to begin building inspections again. That was where they were at that time. That information would eventually be given to the developer regarding what the developer’s next steps would have to be in order for staff to allow students to move back into the facilities and for building inspections to continue.

There were a lot of questions regarding the state, what they had done and not done. His recommendation would be for the county to ask Water Quality and Land Quality any questions they may have.

Chairman McMahan stated that it appeared that Water Quality had immediately issued NOVs over the course of the last several months. It was Land Quality that had been dragging their feet as far as issuing violations. He would be interested in reaching out to the state for explanation of when they had a slope failure and the documentation they had, why was an NOV not issued and what actions were currently being undertaken by the state to ensure this would be corrected. He thought it would behoove them to put all the documentation in writing and go beyond the regional office and express that they were not satisfied with what transpired and they wanted to see action. They could follow back up at the next work session.

Informational item.

There being no further business, Commissioner Mau moved to adjourn the meeting. Chairman McMahan seconded the Motion. Motion carried and the meeting adjourned at 2:53 p.m.

Attest:

Approved:

Angela M. Winchester, Clerk to Board

Brian Thomas McMahan, Chairman