

December 14, 2009 – Regular Session

The Swain County Board of Commissioners held a regular session on December 14, 2009. Present were Chairman Jones, Vice-Chair Lindsay, Commissioner Monteith, Commissioner Carson and Commissioner Moon.

Chairman Jones called the regular session to order. Commissioner Moon led with prayer and the pledge.

Adjust Agenda

Commissioner Monteith made a motion to adjust the agenda to better facilitate the meeting. Commissioner Carson seconded the motion. A vote was unanimous.

Minutes

Chairman Jones made a motion to approve the September 8 special session, September 14 regular session and September 28 work session minutes. Commissioner Carson seconded the motion. A vote was unanimous.

Public Comments

Comments were received from Mike Clampitt.

Administrative Reports

Tax Collector’s Report: Kevin King presented a report to the Board for the month of November, 2009. Ad-Valorem tax receivable was reported at \$4,354,723.99. There was \$1,103,588.94 collected for the month. Total collections year to date were \$2,600,600.71. The tax collection percentage year to date was 47.56%. Total releases were \$5,263.20, total discoveries were \$3,077.05 and refunds were \$810.08. Vice-Chair Lindsay made a motion to approve the Tax Collector’s report as presented. Commissioner Moon seconded the motion. A vote was unanimous.

Finance Report: Vida Cody presented a report to the Board for the month of November, 2009. Mrs. Cody reported revenues for the month were \$1,545,298.73. Total revenue year to date is \$5,091,467.57. We have approximately 44.99% of revenues for 2009-2010 fiscal year. Expenditures for the month were \$612,099.65. Year to date we have expended \$3,845,007.66. We have paid out approximately 33.28% of the General Fund appropriations for 2009/2010 fiscal year. Commissioner Moon made a motion to approve the Finance Officer’s report as presented. Commissioner Carson seconded the motion. A vote was unanimous.

ACTION ITEMS

Vo-Ag Board Appointment: Commissioner Carson made a motion to appoint Monty Clampitt to replace Danny Barker on the Voluntary Agriculture District Board. Commissioner Moon seconded the motion. A vote was unanimous.

JCPC Appointments: Commissioner Carson made a motion to appoint Amanda Walls and Elizabeth Starling to the Juvenile Crime Prevention Council. Commissioner Moon seconded the motion. A vote was unanimous. Their terms will expire 6-30-2013.

Westcare parking lot license: Vice-Chair Lindsay made a motion to approve the following License Agreement:

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the “Agreement”) is made as of the ____ day of November, 2009 by Bryson City-Swain County Recreation Commission, a body politic organized and existing under the laws of the State of North Carolina (hereinafter, the “Commission”), and Swain County Hospital, Inc., a North Carolina non-profit corporation (hereinafter, the “Hospital”).

W I T N E S S E T H:

WHEREAS, the Commission is the owner of that certain real property located in Swain County, North Carolina, being more particularly described in Deed Book 102, Page 322, Swain County Registry (the “Commission Property”); and

WHEREAS, the Commission is desirous of granting to the Hospital a license, to use a parking lot located on a portion of the Commission Property in consideration of and pursuant to the terms and conditions stated herein below; and

WHEREAS, the location of the parking lot is more particularly shown on Exhibit A, attached hereto and incorporated herein by reference (hereinafter, the "Parking Lot").

WHEREAS, the Hospital is desirous of obtaining a license to use the Parking Lot pursuant to the terms and conditions stated herein below, and in consideration for said license, has agreed to make certain improvements to the Parking Lot.

NOW, THEREFORE, in consideration of the premises and for other valuable consideration, the receipt and sufficiency which is hereby acknowledged, the Commission hereby grants and declares to and for the benefit of the Hospital, a license, , to use the Parking Lot for the purpose of parking for employees, officers, directors, agents, contractors, invitees, patients, guests, of the Hospital and the tenants and subtenants of the Hospital, together with the privilege of pedestrian and vehicular ingress, egress and regress to and from the Parking Lot, Center Street and any adjacent property belonging to the Hospital, pursuant to the following terms and conditions:

1) Capital Improvements/Maintenance. The Hospital shall, at its sole cost and expense, pave and stripe the Parking Lot (the "Capital Improvements"), within ___ days from the date of this Agreement and shall provide basic maintenance to the Parking Lot throughout the term of this Agreement. The Hospital shall also provide, during the Hours of Use, as defined below, basic operational services for the benefit of the Parking Lot throughout the term of this Agreement, including snow removal and salt and sand spreading, as needed.

2) Use. The Hospital shall be entitled to use the Parking Lot for the purposes described above from 8:00 a.m. to 5:00 p.m., Monday –Friday (the "Hours of Use") during the term of this Agreement.

3) Assignability. The privileges declared herein for the benefit of the Hospital are intended to create a privilege and license only for the benefit of the Hospital; provided, however, the Hospital may permit its tenants, subtenants, partners, officers, directors, employees, agents, contractors, invitees, licensees and other occupants of any portion of its property to use and enjoy the license and privileges declared herein for the benefit of the Hospital

4) Duration. "This License and privilege hereunder shall remain effective unless and until revoked by the Commission."

5) Indemnification. The Hospital agrees to indemnify and hold harmless the Commission from any and all damages, liability, cost and expense, including, without limitation, the Commission's reasonable attorney's fees, incurred as a result of any and all claims or demands of third parties caused by the negligence, gross negligence or intentional acts of a the Hospital, its agents and/or employees that arise out of or are related to this Agreement or the use of the Parking Lot. The provisions of this section shall survive revocation or termination of this Agreement.

6) Reimbursement upon termination. In the event that the Commission revokes the License created hereunder within five (5) years from the date of this Agreement, the Commission shall reimburse the Hospital for the remaining life of the Capital Improvements, which shall be calculated using straight-line depreciation

7) Costs. In the event any party benefited hereby fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision herein, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including without limitation, court costs and

reasonable attorney's fees. (Kevin, okay to leave this as there is really no obligation for the Commission except the reimbursement upon termination but if the Commission fails to reimburse then this would mean the Hospital can collect atty fees and costs for their breach of contract claim against the Commission. Let me know what you think about that.

8) Modification. This Agreement or any provision hereof, or any covenants and conditions contained herein, may be revoked, modified or amended, but only by a written instrument duly executed by the Hospital and the Commission. No such revocation modification or amendment shall be effective until an appropriate instrument has been properly executed by both parties.

9) Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10) Governing Law; Legal Requirements. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of North Carolina.

11) Exhibits. All exhibits referred to herein are attached hereto and made a part hereof.

IN WITNESS WHEREOF, these presents have been executed by the duly authorized officers of the parties, effective as of the day and year first above written.

“BRYSON CITY – SWAIN COUNTY RECREATION
COMMISSION” [SEAL]

By: _____
Name: _____
Title: _____
Date: _____

SWAIN COUNTY HOSPITAL, INC., a North Carolina nonprofit
corporation [SEAL]

By: _____
Name: _____
Title: _____
Date: _____

Commissioner Carson seconded the motion. A vote was unanimous.

Resolution for Easement – Industrial Park: Commissioner Carson made a motion to approve the following resolution for easement:



Resolution # 900-2009-13

**STATE OF NORTH CAROLINA
COUNTY OF SWAIN**

RESOLUTION APPROVING CONVEYANCE OF ROAD RIGHT OF WAY

BE IT RESOLVED, by the Board of Commissioners of Swain County, North Carolina, as follows:

WHEREAS, Swain County is authorized pursuant to G.S. 160A-273 to convey an easement over County property; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Swain County, North Carolina:

That whereas, said Grantor owns a certain parcel of land located in the Swain County Industrial Park located off Highway 19 as conveyed to Grantor by deed recorded in Book 196, Page 181, Swain County Public Registry, Swain County, North Carolina;

Whereas, said Grantee owns two parcels of lands within the Swain County Industrial Park more particularly described in those deeds recorded at Book 286, page 323 and Book 202, page 449, Swain County Public Registry, Swain County, North Carolina;

Whereas, Grantee has requested that Grantor convey to them a road right of way easement 50 feet in width, extending 50 feet from western boundary line of Grantor's above referred property which easement shall be for the sole purpose of providing ingress and egress access to Grantee's lands described above, along with maintenance and upkeep of the easement area, which easement area is more particularly shown on the attached Exhibit A.

Whereas, Grantor has agreed to grant and convey such an easement for the purposes set out herein under the authority of N.C.Gen.Stat. §160-273 and a Resolution adopted by the Swain County Board of Commissioners at it regular meeting on December 14, 2009.

Adopted this the 14th day of December, 2009

Glenn Jones, Chairman

Attest:

Cindi C. Woodard, Clerk to the Board

Commissioner Moon seconded the motion. A vote was unanimous.

CLOSED SESSION: Vice-Chair Lindsay made a motion to go into closed session as called for under G.S. 143-318.11 (a)(3) to consult with the County Attorney.

Commissioner Carson made a motion to adjourn the closed session. Commissioner Moon seconded the motion. A vote was unanimous.

Chairman Jones noted no action was taken during closed session.

NEW BUSINESS

None

Informal Discussion

Kevin King gave an update on the Hyatt Creek substation. The Board directed him to prepare and send a letter to Duke Energy requesting “non-shiny” metal be used for the structure.

The Board noted the work session scheduled for December 28 would be cancelled.

Adjournment

With no further business to discuss, Moon made a motion to adjourn. Commissioner Carson seconded the motion. A vote was unanimous.

Respectfully Submitted,

Cindi C. Woodard,
Clerk to the Board
Swain County Commissioners

Glenn Jones,
Chairman
Swain County Commissioners