



## **Clay County Board of Commissioners**

### **Regular Meeting Minutes**

**Thursday, April 4, 2019**

The Chairman, Dr. Rob Peck, called to order the Clay County Board of Commissioners Regular Meeting at 7:00 PM.

Those present were: Chairman Dr. Rob Peck, Vice Chairman Randy Nichols, Commissioner Dwight Penland, Commissioner Clay Logan, Commissioner Douglas Scott Penland, County Manager, Mark Pullium, County Attorney, Merinda Woody, Clerk to the Commissioners, Valerie Flanagan, the press and general public.

**Items 1 and 2: Prayer and Pledge** – A prayer was offered by the Chairman and the Pledge of Allegiance to the Flag of the United States of America was said to open the meeting.

#### **Item 3: Public Comment**

There was no public comment.

The Chairman wished those present to recognize the passing of Paul Jordan, who devoted his life to serving the people of Clay County. He requested a moment of silence to honor Mr. Jordan. Following this, he called upon the officials to say a few words of remembrance.

Commissioner Logan said that Mr. Jordan was a Brasstown local resident who had always been a hardworking and dedicated person, seeing through issues from beginning to end. Commissioner Scott Penland said that he had worked with Mr. Jordan for years and that he was an outstanding County Manager, as well as a good neighbor – he remembered him as a great man who will be sorely missed. Commissioner Dwight Penland said that he had had the privilege of serving with Mr. Jordan on the Board of Commissioners in the past and he had been a great man to work with. He recalled a meeting they had both attended at the original courthouse. Judge Downs, who was acting at the time, came to the Commissioners and said the County building was out of compliance and that they needed to do something about the old courthouse. Paul Jordan wasn't a man to back away from a difficult challenge and Commissioner Penland said that the building we're in today has a lot to do with Paul Jordan's commitment to finding a solution, such as we have now. He said that even though he was a Democrat, he was a great man (joking). Commissioner Nichols said he didn't know Mr. Jordan personally, but he remembered that for as long as he's been in Clay County, everyone knew Paul Jordan and talked about what a great man he was and that he will be missed. Commissioner Nichols said he recognized Mr. Jordan for having done much for the younger generation to enjoy in the County now and in later years. Merinda Woody said that she had

worked with Mr. Jordan often when she was special counsel. He was a delight to work with and a visionary. Commissioner Scott Penland said that he watched him while he battled with cancer and Mr. Jordan never let it get him down. Dr. Peck said that he got to know him over the years, and reiterated Mr. Jordan's ability to work cross party lines. He stated that he would be greatly missed.

#### **Item 4: Consider Resolution Declaring Clay County a Second Amendment Sanctuary**

County Manager, Mark Pullium read the Resolution into the record, which is incorporated herein as Attachment A.

A motion to accept the Resolution was made by Commissioner Nichols and seconded by Commissioner Logan.

Before voting, Commissioner Scott Penland raised whether there was a need for this Resolution and said that the Second Amendment was already in place. He indicated, however, that the Resolution was stated very eloquently, and that he is in favour of it and would support it.

Commissioner Logan said that most people in Clay County wanted this type of resolution, and that the Commissioners will stand up and support the Second Amendment in any way they can.

Commissioner Dwight Penland pointed out that Merinda was under a great deal of pressure to get the Resolution drafted quickly and he thanked her for hard work and the high-quality document she produced.

Commissioner Nichols said that we don't live in the same Clay County we grew up in. The reality is that the country will be changing over the next 30 years, so whatever we can do to protect citizen's rights, then we should do this. This resolution was designed to reinforce the County's support for the Constitution and the Second Amendment.

Dr. Peck also wanted to thank Merinda for her hard work on the resolution. He stated that while there was indeed pressure on Ms. Woody to produce the resolution for tonight's meeting, he wanted it to be clear that this is something that has been worked on for multiple weeks. Cherokee County was the first to sign such a resolution in North Carolina and he was in full support of having a similar resolution in Clay County showing our unwavering support for the second amendment and due process as protected by the constitution, especially in light of new red flag laws sweeping across the country.

There was no further discussion and the motion passed unanimously.

#### **Item 5: Termination of Summit Food Services Agreement with Clay County and Consider entering an Agreement with Skillet Kitchen to provide for Correctional Food Services in 2019**

The County Manager indicated that Sheriff Deese and his staff had worked hard on the issue of food service to the jail and Meals on Wheels and the proposed change of service providers will save the County considerable money over the next few years.

The County Manager said that the County had appointed Summit Foods to provide food to the jail and Meals on Wheels. The Sheriff's office, however, had found another service provider that could save the County approximately \$40,000 in costs. They had also discovered that Summit was not serving healthy meals to the prisoners and it had been found that they were not preparing the agreed portion sizes for the inmates. The County Manager said that they had notified Summit on the 6<sup>th</sup> May and that they intended to end the County's agreement with them. He said it was the County's intention to engage a new company called Skillet Kitchen to take over this service. This choice was made based on the company's good references and reviews.

The County Manager therefore recommended to the Board that the County support Sheriff Deese's proposal to appoint Skillet Kitchen as the new service provider.

Commissioner Scott Penland asked if the company prepared the meals with County staff and whether the County had kitchen facilities where the work was taking place. The County Manager said that the arrangement is to use the County's facilities and equipment. The service provider simply provides the food products that go into the meals. They also use their own employees.

Commissioner Nichols asked if we needed to update the kitchen. The County Manager said that there is not a need for this right now. The County had already upgraded some items, and has agreed to a small buyout on some amortized equipment that Summit requested in their original contract. This will be less than \$5000.

Commissioner Scott Penland asked if any employees were local residents and whether they would lose their jobs. The County Manager said that the agreement and understanding is that they will offer the existing employees an opportunity to come and work for them. The only caveat is that they will ask Sheriff Deese if there are any employees that should be dismissed. Sheriff Deese, however, said that he will try to keep them all.

Commissioner Dwight Penland said that he has seen an improvement in the Sheriff's Department already in the last four months. There is a much more visible police force, which is good for the community.

The Chairman noted that if the department can save this kind of money and provide equal or better service, this would allow such savings to be re-allocated towards other needs.

Commissioner Scott Penland made a motion that the County enter an agreement with Skillet Kitchen, which was seconded by Commissioner Nichols. There was no further discussion and the motion passed unanimously.

### **Item 6: Consent Agenda**

- A. Approval of Minutes
- B. Approval of Refunding Tax Payments
- C. Approval of Budget Amendments

Commissioner Logan made a motion to approve all three items, which was seconded by Commissioner Dwight Penland. There was no discussion and the motion passed unanimously.

### **Item 7: Old Business**

An announcement was made on behalf of the Master Gardeners that there will be a Student Education Day on April 30th, and an additional announcement about a plant sale from the 4<sup>th</sup> until the 6<sup>th</sup> of May.

The County Manager indicated that the County is ahead of schedule with the move of the Water and Sewer Department, which will be re-opening on April 22<sup>nd</sup> at the new location in the Community Services Building. The Chairman said it is the County's intention to announce at the May meeting that the old County building will go up for public auction.

The County Manager said that the Rec Park has been undergoing major renovations. There had been an electrical upfit on the Gibson Cove side, providing both 50amp and 30amp hook-ups, as well as a 110 volt outlet. The County has also replaced water lines and made other aesthetic improvements to the campground, including putting new sand at the beach. He said it is much more visually pleasing to the eye. He also pointed out that an important new change is that the Commissioners had enacted a 14-day maximum stay on the Gibson Cove side and campers can now use the campsites to pitch a tent. He said he believes that this will have a positive impact on the campground. The rates are now set at \$25 for a lakefront site, \$22 for a lake view site, and \$18 to pitch a tent. The reason it is less for tents is because those campers don't use electricity. The County Manager said that the campground is now much nicer and he hopes everyone will use it. Reservations can be done online using Reserve America and people can reserve a specific site using the mapping function. People can still drive up or into the campground and the camp hosts or supervisor can help them to find a vacant site for their stay.

Commissioner Nichols commented that all the Rec Department staff worked very hard on the campground and he felt that it's now in the best shape that it's ever been in. He also appreciated Manager Pullium for his efforts.

The County Manager gave an update on the submission of the primary school financing documents to the Local Government Commission (LGC). He said that the County had submitted the required paperwork to the LGC to get the financing approved. The feedback received was that the County had submitted a very professionally presented application. The County Manager said that they are currently working with BB&T Bank to finalize the Deed of Trust and

Financing Agreement and are looking toward the May 7<sup>th</sup> date when the LGC will act on the County's application. The County has meanwhile planned a May 7<sup>th</sup> closing on the loan. Once the LGC authorizes the financing, then the County can go ahead and enter an agreement with the lowest bidder, Wells and West, to build the primary school.

The County Manager gave an update on the baseball fields. He said that the work is ongoing, and that machinery is currently being used to drill and test the soils to see what's below the surface and to see if there are any other impediments that may get in the way of drawing up the ballfield plans. There was an archaeological survey done and there were some interesting artefacts discovered, particularly near the area where the Master Gardeners had their plot. This suggested possible graves, though none have yet been discovered. He said that the County had received approval from the Eastern Band of Indians and the State of North Carolina that it can move the project forward, but the Eastern Band will supervise the excavation so that the excavators don't go below the plow line. If there are artefacts discovered, e.g., human remains, then the County must go through another process to remediate the gravesite. The County Manager said he was hopeful that the County will be able to move forward in the near future. An architect is currently working on the ballfield's plans and he believed that the High School will have a ballfield by next baseball season.

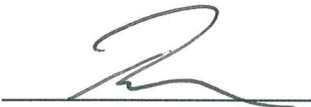
County Manager Merinda Woody tendered a deed document donating the Cox property where the VIPER Tower will be located to the County. She presented the deed the Cox family had signed, along with the plat to be recorded. The .33 acres will be accompanied by a road right of way and utility easement so that fiber or whatever else is necessary can be laid to the tower. This deed is incorporated with these minutes as Attachment B. The property will then be leased to the State, which will still need to be negotiated, and the State will build the road to the tower.

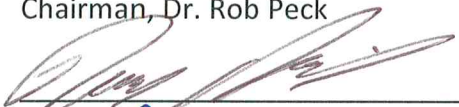
Commissioner Dwight Penland asked if the tower will belong to the county. Ms. Woody said that the tower will belong to the State of North Carolina but the land will belong to the County. He also asked if there is potential to cover the area with broadband. The Chairman indicated that they intend to negotiate this with the State. The County Manager said that the State legislature has authorized broadband equipment to be put on VIPER towers and therefore it was the County's intention that this be encouraged.

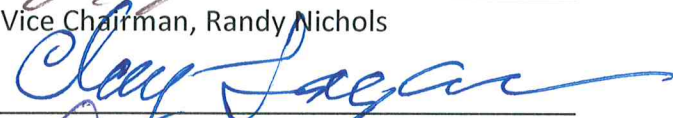
A motion to accept the deeded property was made by Commissioner Logan and seconded by Commissioner Scott Penland. There was no further discussion and the motion passed unanimously.


Commissioner Dwight Penland made mention of the Master Gardeners use of the property between the Copper Door and the County building, and said the Master Gardeners wished that the County would donate the property to the Town so that they could continue to maintain the garden there. He indicated that the Master Gardeners can only do work on publicly owned property and if the property was sold to a private developer, it would not be possible to continue their maintenance of the garden. Commissioner Dwight Penland said that the garden is an asset to the community and we should not lose it.


There being no further business, a motion to close the meeting was made by Commissioner Nichols, seconded by Commissioner Dwight Penland and passed unanimously. The meeting closed at 7:54 PM.

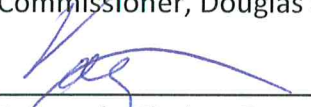
  
Chairman, Dr. Rob Peck

  
Vice Chairman, Randy Nichols

  
Commissioner, Clay Logan

  
Commissioner, Dwight Penland

  
Commissioner, Douglas Scott Penland

  
Attested: Clerk to Board

## **RESOLUTION DESIGNATING CLAY COUNTY AS A SECOND AMENDMENT SANCTUARY COUNTY**

WHEREAS, the purpose of this resolution is to preserve the Second Amendment of the United States Constitution and to declare Clay County as a Second Amendment Sanctuary County;

WHEREAS, this resolution does not mean the criminal element will be free to do whatever they please. We will prosecute them to the fullest, and we will protect law-abiding citizens in this County;

WHEREAS, our law enforcement is engaged to enact the laws that they can use that impact criminal, not law-abiding citizens.

WHEREAS, laws that are overreaching and violate other constitutional amendments, or violate the due process of the law are violating the very essence of the Second Amendment of the US Constitution and shall not be condoned in Clay County;

WHEREAS, the Constitution of the United States is the Supreme Law of our nation;

WHEREAS, The Second Amendment to the Constitution of the United States of America states: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.";

WHEREAS, the U.S. Supreme Court found in *Miranda v. Arizona* (1966) stated that "Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them."

WHEREAS, the U. S. Supreme Court in the *District of Columbia v. Heller* (2008) decision affirmed that the Second Amendment right to keep and bear arms is an individual right not connected in any way to service in militia;

WHEREAS, the Fourteenth Amendment to the Constitution of the United States, Section 1, states: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

WHEREAS, *McDonald v. City of Chicago* (2010) is a landmark decision of the U.S. Supreme Court that found that the right of an individual to "keep and bear arms" is protected under the Second Amendment and is incorporated by the Due Process Clause of the Fourteenth Amendment against the States because the individual right to possess and use firearms for traditionally lawful purposes, particularly self-defense, is fundamental to the American scheme of ordered liberty and system of justice. The Supreme Court ruled that the Second Amendment

to the US Constitution, which guarantees' the right of the people to keep and bear arms, applies to state and local governments as well as to the federal government.

WHEREAS, The Supreme Court in McDonald v. City of Chicago (2010) further stated that an individual has the right to keep and own a gun for traditionally lawful purposes, and the Court in McDonald concurred with the Court in Heller that the Second Amendment right to keep and bear firearms is not absolute, and a wide range of gun control laws remain "presumptively lawful" according to the Court in Heller, which include laws that:

- (1) Prohibit carrying concealed weapon
- (2) Prohibit gun possession by felons or the mentally ill
- (3) Prohibit carrying firearms in sensitive places such as schools and government buildings
- (4) Impose conditions and qualifications on the commercial sale of arms
- (5) Prohibit "dangerous and unusual weapons"
- (6) Regulate firearm storage to prevent accidents

WHEREAS, the North Carolina Constitution, Article 1, Section 5, states: "Every citizen of the State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force."

WHEREAS, The North Carolina Constitution, Article 1, Section 30, states: ".....the right of the people to keep and bear arms shall not be infringed;.....Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice;

WHEREAS, the Second Amendment Sanctuary is based on the 10<sup>th</sup> Amendment to the US Constitution, to wit:

"The powers not delegated to the US by the Constitution, nor prohibited by it to the States, are reserved to the State respectively, or to the people."

WHEREAS, the political subdivision closest to the people is the County;

WHEREAS, the people, by and through its duly elected Board of Commissioners, oppose any new laws that restrict the individual rights to own a firearm;

WHEREAS, the people, by and through its duly elected Board of Commissioners, oppose laws which are unenforceable, overreaching, unconstitutional and a great waste of taxpayers' resources;

WHEREAS, we, being the Board of County Commissioners as well as our law enforcement, took an oath to uphold the Constitution of the United States and the NC Constitution;

WHEREAS, having taken that oath, we oppose all new laws that infringe upon the constitutional right of the citizens of Clay County to own and bear firearms;

NOW, THEREFORE, BE IT RESOLVED, that the people of Clay County, North Carolina, through their duly elected officials on the Board of Commissioners, will not authorize or appropriate any funds or resources for the purpose of enforcing laws that unlawfully infringe on the constitutional right of the individual to keep and bear arms.

FURTHER, LET IT BE RESOLVED, we are sworn to protect the US Constitution and in passing this resolution, we are protecting that right and protecting our constituents from those trying to take away our constitution rights under the Second Amendment;

FURTHER, LET IT BE RESOLVED, in order to preserve our Constitutional rights to own and bear arms guaranteed to us under the US Constitution as well as the NC Constitution, Clay County is declared as a Second Amendment Sanctuary County.

**ADOPTED** this the 4<sup>th</sup> day of April, 2019.

Clay County Board of County Commissioners:

By: 

Dr. Rob Peck, Chairman of the Board

  
Randy Nichols, Vice Chairman of the Board

  
Clay Logan, Board Member

  
Dwight Penland, Board Member

  
Douglas Scott Penland

Attest:

  
Valerie Flanagan, Clerk to the Board