

**MINUTES OF THE SPECIAL MEETING OF THE BOARD OF COUNTY COMMISSIONERS HELD AT THE RUTHERFORD COUNTY OFFICE BUILDING IN THE COUNTY COMMISSIONERS' MEETING ROOM ON SEPTEMBER 26, 2011 AT 9:00 A.M.**

**PRESENT: CHAIRMAN WILLIAM ECKLER  
VICE CHAIRMAN JULIUS OWENS  
SUSAN CROWE (BY PHONE)  
EDDIE HOLLAND  
ROGER RICHARD**

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**CALL TO ORDER**

Chairman Eckler called the special meeting.

**RESOLUTION/HICKS GROVE ROAD/ABANDONMENT**

County Attorney Beth Miller presented a resolution of abandonment for Hicks Grove Road, SR 1113, which was a revised version of a resolution approved at the September 19 meeting. The North Carolina Department of Transportation had requested that changes be made to the originally approved resolution.

Commissioner Richard made a motion to table this matter until the October 10 meeting when a public hearing would be held on the closing of Hicks Grove Road.

Attorney Miller told the Board that the North Carolina Department of Transportation Board would meet prior to the October 10 meeting, and the resolution needed to be presented to the NCDOT Board at that meeting for their approval.

The vote on the motion by Commissioner Richard was:

Ayes: Commissioner Richard

Noes: Commissioners Eckler, Owens, Crowe, and Holland

A motion was made by Commissioner Crowe to approve the resolution. The motion was seconded by Vice Chairman Owens, and the vote on the motion was:

Ayes: Commissioners Eckler, Owens, Crowe, and Holland.

Noes: Commissioner Richard

**RESOLUTION OF ABANDONMENT**

**WHEREAS**, a petition has been submitted by Sanford Holshouser Economic Development Consulting, LLC to the North Carolina Department of Transportation pursuant to N.C.G.S 136-63, requesting that a portion of Hicks Grove Road, SR 1113 be abandoned for state maintenance and removed from the state highway system in conjunction with an unidentified economic development project and

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**WHEREAS**, the Department of Transportation made inquiry into the request to abandon Hicks Grove Road, SR 1113, in accordance with N.C.G.S. 136-63; and

**NOW THEREFORE, BE IT RESOLVED** that the Rutherford County Board of Commissioners does concur and does approve the abandonment of a portion of Hicks Grove Road, SR 1113, contingent only if an unidentified economic development project which would require this change has made a decision to locate in Rutherford County and upon satisfaction of this contingency, all right, title or interest in the right-of-way is vested in those persons owning lots or parcels of land adjacent to the right-of-way and the title of each adjoining property owner for the width of this abutting land extends to the center line of the right-of-way.

Adopted this the 26<sup>th</sup> day of September, 2011 effective as of September 12, 2011.

**RECESS**

9:07 A.M. - Recess  
9:11 A.M. - Reconvene

**CLOSED SESSION/ATTORNEY CLIENT NCGS 143-318.11(a)(3)/PERSONNEL/N.C.G.S. 143-318.11(a)(6)**

Chairman Eckler asked that Human Resources Director Judy Toney and Finance Director Paua Roach be available for a portion of the Closed Session.

Commissioner Richard made a motion to go into Closed Session for ATTORNEY CLIENT NCGS 143-318.11(a)(3) and PERSONNEL/N.C.G.S. 143-318.11(a)(6). There was a second by Commissioner Crowe and a unanimous vote of approval.

9:11 A.M. - The Board went in Closed Session.  
9:57 A.M. - The Board returned to regular session.

**AGREEMENT/BOND SAFEGUARD/GREY ROCK**

Vice Chairman Owens made a motion to support the resolution approving the settlement of the action with Bond Safeguard in exchange for the cash payment of \$15,250,000 and to authorize the Chairman to execute a formal settlement agreement on behalf of Rutherford County. Commissioner Crowe seconded the motion and the vote of approval was:

Ayes: Commissioners Eckler, Owens, Crowe, and Holland.  
Noes: Commissioner Richard.

**RESOLUTION**

**WHEREAS**, on July 31, 2009, Rutherford County filed an action against Bond Safeguard Insurance Company captioned *Rutherford County v. Bond Safeguard Insurance Company*, Case No. 09-CV-292 (United States District Court for the Western District of North Carolina) (the "Action") asserting claims with regard to seven (7) surety performance bonds (Bond nos. 5025432, 5025433, 5025434, 5025435, 5025436, 5025437, and 5025438) (collectively the "Bonds") issued by Bond Safeguard relating

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to the completion of certain infrastructure improvements at the Grey Rock at Lake Lure subdivision (the "Subdivision"); and

**WHEREAS**, Bond Safeguard filed an answer in the Action in which it asserted various affirmative defenses and denied liability in connection with the Bonds; and

**WHEREAS**, the Rutherford County Board of County Commissioners and Bond Safeguard have agreed to settle the Action in exchange for Bond Safeguard's payment to the County of Fifteen Million Two Hundred Fifty Thousand Dollars (\$15,250,000) (the "Cash Payment"); and

**WHEREAS**, in order to finalize this settlement, Bond Safeguard requires a formal resolution of the Rutherford County Board of County Commissioners to approve the settlement;

**BE IT THEREFORE RESOLVED**, that the Rutherford County Board of Commissioners authorizes the settlement of the Action with Bond Safeguard in exchange for the Cash Payment; and

**BE IT THEREFORE ADDITIONALLY RESOLVED**, that William Eckler, Chairman of the Board of County Commissioners is authorized to execute a formal settlement agreement on behalf of Rutherford County.

Adopted this the 26<sup>th</sup> day of September, 2011.

<b>ADJOURNMENT</b>
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The Board voted unanimously to adjourn the meeting after a motion was made by Commissioner Richard.

10:00 A.M. - Adjourned.

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Chairman, Board of Commissioners

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Vice Chairman, Board of Commissioners

Attest:

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Clerk, Board of Commissioners