

**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 AUGUST 19, 2009 AT 8:30 A.M.**

**PRESENT: CHAIRMAN BRENT WASHBURN  
VICE CHAIRMAN MARGARET HELTON  
SUSAN CROWE  
EDDIE HOLLAND  
PAUL MCINTOSH**

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**CALL TO ORDER**

Chairman Washburn called the special meeting to order.

**AGENDA**

Vice Chairman Helton moved to approve the agenda of the special meeting. There was a unanimous vote of approval.

**PUBLIC HEARING\INDUSTRIAL INCENTIVE\CARPENTER DESIGNS**

Chairman Washburn opened the public hearing to listen to comments regarding the granting of an incentive agreement pursuant to N.C.G.S. 158-7.1 in an amount not to exceed \$30,000 to Carpenter Designs to locate a new facility in Rutherford County. The company commits to creating or maintaining 40 jobs prior to the end of calendar year 2009.

EDC Director Tom Johnson said this is a job retention project grant of \$750 per job per year provided that at least 40 regular fulltime jobs are maintained. For the first year there is a cap of \$7,000 and a cap of \$23,000 for the second year. He recommended that the incentive be the greater of \$750 per job or \$7,000.

On a question by Commissioner McIntosh, Mr. Tom Carpenter advised that inmate labor will be excluded from the 40 regular fulltime jobs.

Chairman Washburn declared the public hearing to be closed.

Vice Chairman Helton made a motion to approve the incentive agreement as presented, and the Board voted unanimously in favor.

**RURAL CENTER/BUILDING REUSE GRANT APPLICANT**

Mr. Johnson spoke to the Board about a Rural Center Grant used for restoration and reuse of existing buildings. If Carpenter Designs purchases the Hanes Printables Building in Forest City, there will be space over and above the amount needed for this operation. Another company is looking at using approximately 300,000 square feet for warehouse space. The renovation will probably cost in excess of \$100,000. The deadline for this cycle of applications for the Rural Center grant is September 4. Mr. Johnson asked for formal approval from the Board to allow the Chairman to sign the application.

Mr. Johnson also told the Board that the Rural Center will provide 50% of the cost, but the tenant must create the number of jobs required in two years and must maintain that number for six months. If that does not happen, Rutherford County will have an obligation to repay the grant. Mr. Tom Carpenter of Carpenter Designs will pay this amount to Rutherford County who will repay the Rural Center.

Commissioner McIntosh moved to approve the application to the Rural Center and to authorize the Chairman to sign the application. The vote of approval was unanimous.

**RURAL CENTER/BUILDING REUSE GRANT APPLICANT**

Mr. Johnson also described another Rural Center grant application that could be used for the restoration and reuse for the Riverstone shell building. A company which is considering the Riverstone building as a location would need a grant of \$480,000 which would require 24 jobs to be created. Stonecutter would be responsible for repaying the county if jobs are not created.

Commissioner McIntosh presented a motion to approve the application and authorize the Chairman to sign off on the application, and the Board voted unanimously in favor.

**CLOSED SESSION\ INDUSTRIAL LOCATION\G.S. 143-318.11(a)(4)\ ATTORNEY-CLIENT PRIVILEGE\G.S. 143.318.11(a)(3)**

Commissioner Crowe moved to go into Closed Session for Industrial Location/G.S. 143-318.11(a)(4) and Attorney-Client privilege\G.S. 143.318.11(a)(3). The vote of approval was unanimous.

- 8:45 A.M. - The Board went into Closed Session.
- 9:21 A.M. - The Board returned to regular session.

**RESOLUTION\QUEEN'S GAP**

Commissioner Helton made a motion to approve a resolution that would call all of the bonds for Queen's Gap due to the default of Devinshire Land Development, LLC under the Performance Guarantee Agreement. The Board voted unanimously in favor.

**RESOLUTION**

**WHEREAS**, Rutherford County and Devinshire Land Development, LLC, an Ohio Limited Liability Company, as the developer of a certain subdivision located in Rutherford County and commonly referred to as "Queens Gap" (the "Subdivision"), entered into the following Performance Guarantee Agreement:

- (a) Performance Guarantee Agreement dated August 7, 2006 for Phase 1 of the Queens Gap Subdivision;

AND WHEREAS, Devinshire Land Development, LLC obtained the following surety bonds issued by Lexon Insurance Company (collectively the "Bonds") to secure Devinshire Land Development, LLC's obligations under the Performance Guarantee Agreement, including, without limitation, the obligation to install roadways within the Subdivision in compliance with Article IX, Section 901 of the Rutherford County Code.

- (a) Bond #1018279 in the amount of \$5,801,969.00 for Phase 1 Road Construction; and
- (b) Bond #1018280 in the amount of \$5,248,213.00 for Phase 1 Water Distribution System; and
- (c) Bond #1018281 in the amount of \$800,000.00 for Phase 1 Sewage Treatment; and
- (d) Bond #1018282 in the amount of \$602,800.00 for Phase 1 Sewage Collection System;

Total: \$12,452,982.00

(Copies of the Bonds are attached hereto and incorporated herein by reference as if fully set forth);

**AND WHEREAS**, pursuant to the Performance Guarantee Agreement dated August 7, 2006, Devinshire Land Development, LLC was obligated to complete improvements on Subdivision Phase 1 no later than June 30, 2009 which Devinshire Land Development, LLC failed to do;

**AND WHEREAS**, the Performance Guarantee Agreement provides that in the event the June 30, 2009 deadline is missed, "the Developer shall forfeit the surety performance bond providing Rutherford County the option of allowing the bonding company to complete the project or require that the bonding company shall pay the funds to Rutherford County".

**AND WHEREAS**, the construction is not complete in Phase 1 of the Subdivision;

**AND WHEREAS**, Devinshire Land Development, LLC is in default of its obligations under the above referenced Performance Guarantee Agreement;

**BE IT THEREFORE RESOLVED**, that based upon the foregoing, the Rutherford County Board of Commissioners hereby calls each and every one of the Bonds; and

**BE IT ADDITIONALLY RESOLVED** THAT County Manager John Condrey is authorized to forward this Resolution to Lexon Insurance and proceed with the necessary actions to enforce Rutherford County's rights as to the Bonds.

Adopted this the 19<sup>th</sup> day of August, 2009

**ADJOURNMENT**

Chairman Washburn declared the meeting to be adjourned.

9:22 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