

March 11, 2013

The Marshall County Commission met in regular session on Monday, March 11, 2013 at 6:00 pm in the Marshall County Commission Chambers.

PRESENT WERE:

James Hutcheson, Chairman
William H. Stricklend, III, Dist. 1 Commissioner
R.E. Martin, Dist. 2 Commissioner
C.W. "Buddy" Allen, Dist. 3 Commissioner
Tamey Hale, Dist. 4 Commissioner
Shelly Fleisher, County Administrator
Bob Pirando, County Engineer

NOT PRESENT:

Karen Young, Administrative Assistant
Jennifer Lewis, Commission Clerk

Chairman Hutcheson called the meeting to order and opened the floor for public comments. Andy Grimes spoke regarding funding for the Marshall County school system. Garland Benson spoke regarding his opposition to tag fee. Ray Barnes spoke regarding chemical spraying on his personal property. Kathy Barnes spoke regarding chemical spraying on her personal property and the personal injury she claims was due to the chemical spraying. Curtis Byars spoke regarding chemical spraying/mowing around his personal property.

CONSENT AGENDA

A motion was made by Commissioner Hale, duly seconded by Commissioner Allen, all members voting affirmatively and so carried to approve the consent agenda as read by Chairman Hutcheson.

PUBLIC HEARING FOR GREEN MOUNTAIN RENTALS

Chairman Hutcheson announced the floor was open to begin public hearing for Green Mountain Rentals. County Engineer Bob Pirando gave a brief description of the business and owner Andrew Toews spoke briefly about his plans and explained the business. There were no public comments at the hearing.

A motion was made by Commissioner Martin, duly seconded by Commissioner Allen, all members voting affirmatively and so carried to approve the resolution between the Marshall County Commission and TVA.

Marshall County, Alabama
COMMISSION

RESOLUTION

WHEREAS, The Marshall County Commission encourages and supports recreational opportunities within its borders; and

WHEREAS the United States of America, by and through its agen the Tennessee Valley Authority (TVA), owns and operates public lands within Marshall County, Alabama; and

WHEREAS TVA owns three parcels of land in Marshall County identified as lake-frontage for Tract No. XGR-250, known as lots numbers 3, 4 and 5 of Playgrounds Shore Subdivision that is allocated for Zone 7 usage on Gunter'sville Reservoir's Land Management Plan; and

WHEREAS TVA requires local government support under its phased approach for its development of recreation sites before it can accept an application to develop such properties; and

March 11, 2013

WHEREAS, Green Mountain Rentals has requested to use the subject TVA land rights for *developing a harbor limit for docks and rental boats/watercraft covering approximately .65+/- acres together with approximately .65+/- acres of land rights for associated roads, utilities, and associated facilities; and*

WHEREAS The Marshall County Commission supports TVA recreation efforts in its County and believes the development of recreational opportunities will benefit all its citizens within the County; and

BE IT RESOLVED, That Marshall County Commission, as representatives of the residents and citizens of Marshall County, Alabama, acknowledges its support of the subject request.

APPROVE PAYMENT REQUEST TO ALDOT FOR COA BUSES SOLD IN 2009; \$14,561.60 – PAID FROM FUND BALANCE

A motion was made by Commissioner Stricklend, duly seconded by Commissioner Martin, all members voting affirmatively and so carried to approve reimbursement from fund balance to the State of Alabama for 80% of selling price of COA buses purchased in 2009. This non-payment was an oversight and found by the County Administrator recently.

APPROVE LEASE AGREEMENTS FOR ENGINEERING AND PROBATE WITH XEROX FOR COPIERS

A motion was made by Commissioner Stricklend, duly seconded by Commissioner Allen, all members voting affirmatively and so carried to approve Xerox lease agreements for Engineering and Probate. These are thirty-six (36) month leases and are lower than previous lease agreements.

DISTRICT 1 – APPROVE SPEED LIMIT REQUEST ON LARUE CIRCLE; 25 MPH

A motion was made by Commissioner Stricklend, duly seconded by Commissioner Hale, all members voting affirmatively and so carried approve speed limit request on Larue Circle for 25 mph.

DISTRICT 3 – APPROVE SPEED LIMIT REQUEST ON TURNPIKE ROAD; 40 MPH

A motion was made by Commissioner Allen, duly seconded by Commissioner Hale, all members voting affirmatively and so carried to approve speed limit request on Turnpike Road for 40 mph. This speed limit was lower than standard due to the narrowness of Turnpike Road.

ADOPT LOGGING NOTICE ORDINANCE

A motion was made by Commissioner Stricklend, duly seconded by Commission Allen, all members voting affirmatively to waive reading of ordinance.

A motion was made by Commissioner Stricklend, duly seconded by Commissioner Hale, all members voting affirmatively and so carried to approve and adopt the logging ordinance as read with amendments.

**Marshall County Logging Notice Ordinance
Adopted March 11, 2013**

Section I – Purpose and Authority

Pursuant to the authority granted to the Marshall County Commission under Ala. Code § 23-1-80.1 and in accordance with the provisions of that statute, therefore be it ordained by the Marshall County Commission as follows:

The Marshall County Commission finds that it is in the best interest of the citizens of the county to adopt and implement this Ordinance to require that all timber owners submit proper notice to the county commission prior to initiating any timber harvesting activities or utilizing any county roads or bridges for delivery of pulpwood, logs, poles, posts, or wood chips to any wood yard or processing plant.

Section II – Jurisdiction

This Ordinance shall only apply within the unincorporated areas of the county for activities governed by this Ordinance at access points within the county and on county-maintained roads or bridges. This Ordinance shall be read in addition

March 11, 2013

to and not in place of any other ordinances, rules, or regulations promulgated regarding permissible uses of county roads, bridges and rights of way in the unincorporated areas of the county.

Section III -- Definitions

For the purposes of this Ordinance, the following terms shall have the following meanings:

- (1) **Activities Governed by this Ordinance.** The harvesting of timber and/or the utilization of county roads, bridges and rights of way for the delivery of pulpwood, logs, poles, posts, or wood chips to any wood yard or processing plant by a timber owner or his or her representatives, employees, or contractor.
- (2) **Contractor.** Any person or firm who has executed a written or oral agreement with a timber owner to perform one or more of the activities governed by this Ordinance.
- (3) **Driveway or Access Management Policy.** A policy adopted by the county commission to provide criteria and conditions which must be met by any person or firm desiring to access or connect to county roads, bridges or rights of way.
- (4) **Existing Access Point.** A location where the timber owner desires to utilize a county road or right of way for accessing a tract of land for activities governed by this Ordinance, which will be either:
 - (a) If the county has a driveway or access management policy, a location which (i) has previously been approved, permitted, or grandfathered by the county through the county's driveway or access management policy and has been previously used to access the tract, or (ii) has not been approved or permitted under the county's driveway or access management policy, but has been previously used to access a tract of land unless the county rebuts the presumption that the location is an existing access point.
 - (b) If the county does not have a driveway or access management policy, a location that has been previously used to access a tract of land.
- (5) **New Access Point.** A location to access a tract of land for activities governed by this Ordinance that has not previously been used to access the tract of land.
- (6) **Regular Office of the County Commission.** The Marshall County Highway Department.
- (7) **Route.** The county road, bridge or right of way to be utilized for activities governed by this Ordinance.
- (8) **Timber Owner.** A timber owner is any one of the following:
 - (a) The person or firm who has legal title to timber when the timber enters a county road.
 - (b) Any person or firm that has entered into a contract with a landowner for the purposes of severing timber and delivering pulpwood, logs, poles, posts, or wood chips to any wood yard or processing plant.
 - (c) A landowner who harvests his or her own timber and delivers pulpwood, logs, poles, posts, or wood chips to any wood yard or processing plant.
- (9) **Tract.** A specified parcel of land.
- (10) **Business Day.** Any day that the Marshall County Engineering Office is open, which days and hours of operation are at all times posted 8:00 am to 4:30 pm.
- (11) **Road and bridge fund.** Any county fund in which monies are earmarked specifically for road and bridge projects.

Section IV – Notice Requirement

The notice requirements set out herein shall be applicable to any use of county roads, bridges and rights of way for activities governed by this Ordinance, which are carried out by a timber owner, his or her representatives or employees, or a contractor. No county road, bridge or right of way shall be utilized by a timber owner, his or her representatives or employees, or a contractor until and unless the timber owner has fully complied with the provisions of this section.

- (a) **Notice Submission.** Prior to any use of the county road or roads for activities governed by this Ordinance, a timber owner shall provide prior notice of such intent under the procedures set out herein.

March 11, 2013

Notice shall be given for each separate tract of land the timber owner intends to utilize for activities governed by this Ordinance. If the timber owner intends to utilize the roads, bridges, or rights of way in any other county, he or she shall also notify that county under the provisions of Ala. Code § 23-1-80.1, if that county has adopted an Ordinance in accordance with that statute.

All notices shall be delivered to the regular office of the county commission, which for the purposes of this Ordinance shall be:

Marshall County Engineering Office
424 Blount Avenue
Guntersville, Alabama 35976
Telephone: (256)571-7712
Facsimile: (256)571-7713
Electronic Mail: mcaeng@yahoo.com

Notice may be submitted in person, facsimile, electronic mail, or regular mail; however, in determining method of delivery, the timber owner shall be aware that he or she shall not be in compliance with this Section unless timely notice is provided as set out in subsection (b). Therefore, no activities governed by this Ordinance may commence until and unless the timber owner has fully complied with all requirements.

- (b) **Time for Providing Notice.** All notices shall be delivered in a timely manner as follows:
- (1) If the planned activities governed by this Ordinance will require use of a new access point to the tract of land where such activities will take place, the timber owner shall provide four business days' notice to the county commission as provided herein.
 - (2) If the planned activities governed by this Ordinance will require use of an existing access point for the tract of land where activities governed by this Ordinance will be conducted, the timber owner shall provide two business days' notice to the county commission as provided herein.
- (c) **Form of Notice.** The notice shall be submitted on the NOTICE OF COUNTY ROAD USAGE BY TIMBER OWNER Form, attached hereto as Appendix A (hereinafter "NOTICE"). The NOTICE shall include each of the following:
- (1) A map or legal description of the area which identifies the of the tract of land where activities governed by this Ordinance will be conducted and the access point or points to the tract from a county road;
 - (2) A statement regarding whether the access point or points are new or existing point or points;
 - (3) The expected routes upon county roads, bridges and rights of way related to the activities governed by this Ordinance;
 - (4) The estimated date that access to the county roads, bridges and rights of way will commence for activities governed by this Ordinance;
 - (5) The name, address, and daytime telephone number of the timber owner;
 - (6) The name, address, and daytime telephone number of any contractor to be involved in activities governed by this Ordinance if not the same as the timber owner; provided, however, that if the contractor is not known at the time notice is submitted, the timber owner shall provide this information prior to accessing the county roads, bridges and rights of way;
 - (7) The name and address for the timber owner's liability insurance carrier;
 - (8) The name and address of the liability insurance carrier for any contractor to be involved in activities governed by this Ordinance if not the same as the timber owner; provided, however that if the contractor is not known at the time notice is submitted, the timber owner shall provide the information prior to accessing the county roads, bridges and rights of way.
- (d) **Notice Period.** A NOTICE properly shall authorize the timber owner to conduct activities governed by this Ordinance as described in said NOTICE for a period of twelve (12) months from the date the PROPER NOTICE is submitted. The county commission may grant the timber owner one six-month extension to conduct activities governed by this Ordinance as described in the NOTICE upon written request from the timber owner received by the county engineer prior to the date of expiration of the NOTICE.
- (e) **Suspension of Notice Requirements.** Pursuant to Ala. Code § 23-1-80.1, in the event the Governor of the State of Alabama declares a state of emergency as a result of an event that causes damage to timber within

March 11, 2013

the county, the notification requirements set forth herein are suspended during the time period in which the Governor's proclamation remains in effect.

Section V – Penalties for Noncompliance

- (a) **Warning.** A timber owner who fails to comply with the notice requirements set out in Section IV or fails to comply with the terms of a properly submitted NOTICE shall be provided one written WARNING granting the timber owner the opportunity to properly comply with the notice requirements or the terms of the properly submitted NOTICE. The WARNING shall be personally delivered by the county engineer or his designee to the timber owner or to his or her representatives, employee, or contractor located at the site where a violation of the notice requirements or of the terms of a properly submitted NOTICE has occurred. The person to whom the WARNING is issued shall acknowledge in writing receipt of the WARNING at the time delivered. If the timber owner is not at the site where the WARNING is issued, a copy of the WARNING with the signed acknowledgment shall be immediately forwarded to the timber owner by facsimile or email and U.S. mail.

In the event the WARNING is issued for the failure to properly submit a NOTICE as required in Section IV, including the failure to correct any deficiencies in a submitted NOTICE as set out in Section IV(d), all activities governed by this Ordinance shall cease immediately upon receipt of the WARNING until such time as the timber owner has properly complied with the notice requirements set out in Section IV and has received a PROPER NOTICE CONFIRMATION from the county engineer.

In the event the WARNING is issued for failure to comply with the terms of a properly submitted NOTICE, the non-compliant activities shall cease immediately. Any continued activities in violation of the terms of the NOTICE shall result in the issuance of a CITATION as set out in subsection (b).

- (b) **Issuance of Citation.** If the timber owner fails to comply with the notice requirements set out in Section IV or fails to comply with the terms of a properly submitted NOTICE following receipt of a WARNING as provided in subsection (a), he or she shall be issued a CITATION for noncompliance by a county engineer or
- (c) his designee appointed by the county commission as authorized in Ala. Code § 23-1-80.1. (See also Ala. Code § 40-12-10.)

The procedure for issuing the citation shall be as provided for issuance of the WARNING as set out in subsection (a). The CITATION shall be personally delivered to the timber owner or to his or her representatives, employee, or contractor located at the site where a violation of the notice requirements or of the terms of a properly submitted NOTICE has occurred. The person to whom the CITATION is issued shall acknowledge in writing receipt of the CITATION at the time delivered. If the timber owner is not at the site where the CITATION is issued, a copy of the CITATION with the signed acknowledgment shall be immediately forwarded to the timber owner by facsimile or email and U.S. mail.

- (d) **Assessment of Fines.** A timber owner who has been issued a CITATION as set out in subsection (b) shall be fined five hundred dollars (\$500) per day for each day that he or she is in violation of the provisions of this Ordinance or that he or she fails to comply with the provisions set out in a WARNING issued under subsection (a). All fines collected shall be payable to the county commission and deposited into the county's road and bridge fund.

The county engineer or his designee appointed to enforce this Ordinance shall assess all fines from the date of issuance of the CITATION until such time as he or she receives satisfactory proof that the violation or violations are no longer taking place. The county engineer or his designee shall notify the timber owner in writing of the total amount assessed in fines for the violation or violations of this Ordinance, with instructions to make full payment of all fines payable to the county commission within 10 days of the date of the notice of final assessment of fines. No new notice applications shall be accepted by the county commission from the timber owner until and unless all fines have been properly paid as set out in the county engineer or his designee's final assessment of fines.

- (e) **Injunction.** In addition to the issuance of a citation and assessment of a \$500 fine for each day the timber owner is in violation of this Ordinance, the county commission may bring a civil action in a court of competent jurisdiction in the county to enjoin the timber owner, his or her representatives or employees, or a contractor from conducting activities governed by this Ordinance in violation of this Ordinance. All court actions shall be filed and conducted in accordance with the Alabama Rules of Civil Procedure and the laws of this state.

March 11, 2013

- (f) **Requirement to Post Security.** If any timber owner has been cited for any violations of this Ordinance on three separate occasions within a 24-month period as set out in this section, the county commission shall require the timber owner to post security as a condition of utilizing the county roads, bridges, and rights of way for activities governed by this Ordinance. Security shall be set in an amount determined by the county commission to be adequate for any damage resulting to county roads or bridges from the use of such roads and bridges by the timber owner or his or her representatives, employees or contractors.

Section VI – Liability of Timber Owner

Compliance with the notice provisions of this Ordinance shall in no way operate to relieve the timber owner or his or her representatives, employees, or contractors from liability for any damages which may arise from their use of public roads, bridges or rights of way in the county. Additionally, the issuance of a PROPER NOTICE CONFIRMATION shall in no way constitute an act on behalf of the county which shall result in the county commission, the county engineer, or any employees of the county commission being held liable in any matter arising from the actions or inactions of the timber owner, of his or her representatives, employees, or contractors.

Section VII – Relation to Other Laws

This Ordinance is intended to comply with the provisions of Ala. Code § 23-1-80.1 regarding a timber owner providing notice of intent to utilize county roads and bridges for activities governed by this Ordinance. Nothing in this Ordinance shall be viewed as a limitation on Marshall County's general superintendence of the roads and bridges within its jurisdiction or its authority to promulgate and enforce rules and regulations related thereto as provided in Ala. Code § 23-1-80, Ala. Code § 11-3-11, or any other general or local laws applicable to the county. Additionally, nothing in this Ordinance shall in any way limit or affect the county's authority to regulate and enforce any laws governing the use of or damage to a county-maintained road or bridge or a county right of way.

Section VIII -- Amendments

The county commission may adopt amendments to this Ordinance at a regularly scheduled meeting of the county commission; provided, however, that any adopted amendments shall not take effect for thirty (30) days after the action of the county commission. All forms referenced in this Ordinance may be altered or amended by the county commission as necessary and appropriate without amendment to the Ordinance; provided that each form being utilized by the county commission pursuant to this Ordinance shall at all times be attached as an Appendix to the Ordinance.

APPROVE SELL, TRADE OR SCRAP OF FIXED ASSETS

A motion was made by Commissioner Hale, duly seconded by Commissioner Strickland, all members voting affirmatively and so carried to approve sell, trade or scrap of fixed assets.

District 4 – Komatsu Dozer Blades; 2 sets

ANNOUNCE TWO (2) WEEK APPLICATION PERIOD FOR MOUNTAIN LAKES BEHAVIORAL HEALTH BOARD; 2 POSITIONS

Chairman Hutcheson announced the beginning two (2) week application period for two (2) board appointments for Mountain Lakes Behavioral Health Board. The application period will end March 21, 2013 and will be announced at the March 25, 2013 commission meeting.

APPROVE SPONSORSHIP OF MARSHALL COUNTY SPORTS HALL OF FAME; \$500 FROM COUNTY-WIDE FUNDS

A motion was made by Commissioner Strickland, duly seconded by Commissioner Martin, all members voting affirmatively and so carried to approve sponsorship of Marshall County Sports Hall of Fame; \$500 to be paid from county-wide funds.

APPROVE AD IN SAND MOUNTAIN REPORTER TO BE PAID FROM COUNTY-WIDE FUNDS
Item died due to lack of motion.

ADJOURNMENT

There being no further business; a motion was made by Commissioner Martin, duly seconded by Commissioner Allen and so carried to adjourn.

MEETING ADJOURNED

March 11, 2013

James Hutcheson, Chairman

William H. Strickland, District 1 Commissioner

R.E. Martin, District 2 Commissioner

C.W. "Buddy" Allen, District 3 Commissioner

Tamey Hale, District 4 Commissioner