

January 3, 2011 – Special Session

The Swain County Board of Commissioners held a Special Session on January 3, 2011. Chairman Carson, Vice-Chair White, Commissioner Moon, Commissioner Monteith and Commissioner Dixon.

Chairman Carson called the meeting to order. Commissioner Moon led with prayer and the pledge.

The purpose of this special session is to consider

- Approval of a resolution for financing contract to pay for the acquisition and construction of various public school improvements, including classroom expansion at West Elementary School and possibly to provide required reserves and pay financing costs.
- Awarding bid to the contractor

Commissioner Moon made a motion to approve the following resolution:



Resolution #930-2011-01

**NORTH CAROLINA
COUNTY OF SWAIN**

Resolution Providing Final Approval of Terms and Documents for QSCB School Improvements Financing

WHEREAS:

Swain County has previously determined to carry out various public school improvements (the "Project"), especially including construction of a classroom addition for West Elementary School. The County has also stated an intent to finance project costs by the use of an installment contract, as authorized under Section 160A-20 of the North Carolina General Statutes, that qualifies as a "qualified school construction bond" (a "QSCB").

The County Manager has obtained for the County a proposal from Branch Banking and Trust Company ("BB&T") to provide the QSCB installment financing to the County.

The County Manager has made available to this Board the draft agreements listed on Exhibit A (the "Agreements"), which relate to the County's carrying out the QSCB financing plan.

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

1. *Determination To Proceed with Financing* – The County confirms its plans to undertake and finance the Project. The County accepts a proposal from BB&T dated November 11, 2010, to provide Project financing.

Under the financing plan, BB&T will make funds available to the County for use on Project costs. The County will repay the amount advanced over time. As part of the financing plan, the Swain County School Board will convey West Elementary School (and its associated real property) to the County, so that the transferred property can provide collateral for the financing. The County will grant to BB&T a mortgage-type interest in the property to secure the County's repayment obligation.

2. *Approval of Agreements; Direction To Execute Documents* -- The Board approves the forms of the Agreements submitted to this meeting. The Board authorizes and directs the Board's Chairman and the County Manager, or either of them, to execute and deliver the Agreements in their final forms. The Agreements in their respective final forms must be in substantially the forms presented, with such changes as the Chairman or the County Manager

may approve. The Agreements in final form, however, must be consistent with the financing plan described in this resolution and must provide (a) for the amount financed by the County not to exceed \$1,825,000, (b) for an annual interest rate not to exceed 5.43% (in the absence of a default or a change in tax status), and (c) for a financing term not to extend beyond December 31, 2025.

In addition, the Board's Chairman and the County Manager, or either of them, are authorized and directed to approve, execute and deliver any further documents and agreements they deem desirable for carrying out the purposes and intents of this resolution. It is the Board's understanding that the financing documents may include (a) a lease agreement, providing for the School Board to continue to use the transferred school property during the term of the financing, and (b) an agreement under which the School Board will carry out the planned school improvements on the County's behalf.

The execution and delivery of any document by an authorized officer will be conclusive evidence of his approval of the final form of such document.

3. Authorization to County Manager and Finance Officer To Complete Closing – The County Manager, the Finance Officer and all other County officers and employees are authorized and directed to take all proper steps to complete the financing in cooperation with BB&T and in accordance with the terms of this resolution.

The Board authorizes and directs the County Manager to enter into an agreement with BB&T to formalize the County's commitment to complete the financing with BB&T and thereby establish a "sale date" for the transaction for the purpose of determining the tax credit rate to be applicable to the transaction for BB&T. All prior actions to this purpose are ratified, approved and confirmed.

The Board authorizes and directs the County Manager to hold executed copies of all financing documents authorized or permitted by this resolution in escrow on the County's behalf until the conditions for their delivery have been completed to such officer's satisfaction, and thereupon to release the executed copies of such documents for delivery to the appropriate persons or organizations.

Without limiting the generality of the foregoing, the Board specifically authorizes the County Manager to approve changes to any documents, agreements or certifications previously signed by County officers or employees, provided that such changes do not conflict with this resolution or substantially alter the intent from that expressed in the form originally signed. The County Manager's authorization of the release of any such document for delivery will constitute conclusive evidence of such officer's approval of any such changes.

In addition, the County Manager is authorized and directed to take all appropriate steps for the efficient and convenient carrying out of the County's on-going responsibilities with respect to the financing of the Project. This authorization includes, without limitation, contracting with third parties for reports and calculations that may be required under this resolution or otherwise with respect to the Agreements.

4. Resolutions As To Tax Matters -- The County will not take or omit to take any action the taking or omission of which will cause its obligations to pay principal and interest (the "Obligations") to be "arbitrage bonds," within the meaning of Section 148 of the United States Internal Revenue Code of 1986, as amended, including the applicable Treasury regulations (the "Code"), or "private activity bonds" within the meaning of Code Section 141.

5. Designation as a QSCB – The County designates the Obligations as a "qualified school construction bond" for the purposes of, and within the meaning of, Code Section 54F and related Code provisions. The County and BB&T intend that the financing will qualify as a QSCB.

6. Miscellaneous Provisions -- All County officers and employees are authorized and directed to take all such further action as they may consider necessary or desirable in furtherance of the purposes of this resolution. All such prior actions of County officers and employees are ratified, approved and confirmed. Upon the absence, unavailability or refusal to

act of the County Manager, the Board's Chairman or the Finance Officer, any other of such officers may assume any responsibility or carry out any function assigned in this resolution. In addition, the Vice Chairman or any Deputy or Assistant Clerk to the Board may in any event assume any responsibility or carry out any function assigned to the Chairman or the Clerk, respectively, in this resolution. All other Board proceedings, or parts thereof, in conflict with this resolution are repealed, to the extent of the conflict. This resolution takes effect immediately.

Exhibit A -- Draft Agreements

(a) A draft dated November 26, 2010, of a Financing Agreement and Deed of Trust to be dated on or about December 28, 2010 (the "Financing Contract"), from the County for the benefit of BB&T, providing for the advance of funds to the County for the County's undertaking of the Project, setting out the terms of the County's promise and obligation to repay the amount financed and to care for the collateral, and providing for a security interest in West Elementary School (and its associated real property) to secure the County's obligations.

(b) A draft dated November 26, 2010, of a Project Fund Agreement to be dated on or about December 28, 2010, between the County and BB&T, providing for the custody and investment of financing proceeds pending their application to Project costs.

I certify that the foregoing resolution (which includes the foregoing Exhibit A) was properly adopted at a meeting of the Board of Commissioners of Swain County, North Carolina, that was properly called and held on January 3 , 2011, and that a quorum was present and acting throughout such meeting. Such resolution remains in full effect as of today.

Dated this ____ day of January, 2011.

[SEAL]

Clerk, Board of Commissioners
Swain County, North Carolina

Vice-Chair White seconded the motion. A vote was unanimous.

Commissioner Dixon made a motion to award bid to Kearey Builders. A vote was unanimous

Adjournment

With no further business to discuss at this time, Commissioner Monteith made a motion to adjourn the meeting. Commissioner Dixon Seconded the motion. A vote was unanimous.

Respectfully submitted,

Cindi C. Woodard
Clerk to the Board
Swain County Commissioners

Phil Carson
Chairman
Swain County Commissioners