

CHEROKEE COUNTY

STATE OF GEORGIA

GRAND JURY PRESENTMENTS

TO: The Honorable Frank C. Mills, III
Chief Judge, Superior Court
Cherokee County, Georgia

The Honorable N. Jackson Harris
Judge, Superior Court
Cherokee County, Georgia

The Honorable Ellen McElyea
Judge, Superior Court
Cherokee County, Georgia

FILED IN OFFICE
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CHEROKEE COUNTY, GA
2012 AUG 23 AM 11:14
PATTY BAKER, CLERK

We, the members of this Grand Jury, chosen and sworn to serve the May 2012 term of the Superior Court of Cherokee County, hereby submit the following report and recommendations.

We, the May 2012 Grand Jury, heard 222 indictments and returned 222 true bills and 0 no bills.

PRESENTMENT 1

We, the May 2012 Grand Jury, would like to recognize and sincerely thank the Cherokee County District Attorney's Office, Garry T. Moss, Shannon Wallace and each of the Assistant District Attorneys for their service and commitment to Cherokee County.

PRESENTMENT 2

We, the May 2012 Grand Jury, would also like to thank Superior Court Chief Bailiff Jane Johnson and Bailiff Johnny Champion for their assistance.

PRESENTMENT 3

We the May 2012 Grand Jury, would like to express our gratitude to Sheriff Roger Garrison, Major Karen Johnson and Captain Hill for the tour and inspection of the Cherokee County Adult Detention Center.

We realize that the inspection was on short notice. However, we found the presentation of the facility was beyond our expectations, to be clean, well-lighted and in good working order.

The staff was very welcoming of our tour and we appreciate the time that they took from their busy schedule to accommodate us.

We thank them for what they do every day not only to protect, serve and keep safe the citizens of Cherokee County, but to maintain a high level of responsibility for the inmates of Cherokee County as well.

PRESENTMENT NO 4

In an interim presentment, the Grand Jury created a committee to investigate and inquire into the formation of the Cherokee County Resource Recovery Development Authority, its issuance of revenue bonds to acquire and construct Ball Ground Recycling and the costs for the cleanup of land currently being used as a youth soccer complex on Blalock Road.

In regards to this matter, the Grand Jury makes the following findings and recommendations:

Findings

For many years Cherokee County operated a landfill at Blalock Road. The Board of Commissioners closed the landfill in October of 1993 and created a trash transfer station at the site. The Cherokee County Clean and Beautiful Commission entered into a lease with the Board of Commissioners in March of 1997 for a recycling center located on the Blalock Road site. The premises was to be used for recycling, composting, grinding, waste disposal and waste transfer. Eventually the terms of the lease were renegotiated so that the lease period was increased from January 1, 1998 to December 30, 2028. The final lease provided that the Clean and Beautiful Commission could not assign or sub-lease its interest in the lease without approval by the Board of Commissioners.

Mr. Jimmy Bobo was in the business of recycling construction debris at a location on Highway 92. That business expanded when Mr. Bobo entered into a lease with Cherokee Clean and Beautiful for a debris grinding operation on the Blalock Road site. There were numerous complaints and threats of legal action by the area residents. The Board of Commissioners was under the belief that they could not remove Mr. Bobo's grinding operation from the Blalock Road site without breaking the lease signed by Cherokee Clean and Beautiful. There were also numerous complaints from local residents concerning the other grinding operation Mr. Bobo operated at the Highway 92 site. The Commissioners sought a way to move the Bobo grinding operations from both the Blalock Road and Highway 92 locations.

In May of 2000, Bobo proposed that the Commissioners should relocate his grinding operations to a more rural site and issue revenue bonds to purchase and build such a facility. On June 18, 2002 the Commissioners and Keep Cherokee Beautiful entered into

an agreement whereby Keep Cherokee Beautiful relinquished and released control of the recycling center at Blalock Road.

On February 15, 2005 the Commissioners and Bobo agreed that over the following two years that Bobo would cease operations at the Blalock Road site and move to another location in Cherokee County. The agreement included a provision that Cherokee County would act as a guarantor to induce the sale of bonds to facilitate the acquisition, development and relocation of Bobo's grinding business.

The Cherokee County Development Authority was approached for the purposes of issuing a bond for the development of a grinding operation for Bobo. They declined.

On April 4, 2006, the Cherokee County Planning Commission approved a request by BG Land, a Bobo company, for the rezoning of almost 49 acres of land from LI to HI for a wood recycling company located on Ball Ground Highway.

On November 7, 2006, the Board of Commissioners adopted a resolution creating the Cherokee County Resource Recovery Development Authority pursuant to O.C.G.A. 36-63-5. Membership of the new Development Authority consisted of the same persons then serving as Cherokee County Commissioners. During a special called meeting of the RRDA on November 28, 2006, the Authority approved a resolution to issue revenue bonds in the amount of \$15,000,000 for the development of what became known as Ball Ground Recycling. On June 17, 2007, another resolution was adopted increasing the final bond amount to \$18,200,000.

Two RRDA bonds were validated during a hearing in Superior Court on September 18, 2007. The bond closing was conducted on October 5, 2007.

There was at least one public hearing concerning the issuance of the bonds and numerous public meetings of the RRDA. There is no record of any opposition from the public.

Under the terms of the lease agreement between the RRDA and Ball Ground Recycling, Bobo was not required to pledge any personal assets or to make a performance bond. The bond indebtedness was guaranteed with tax revenues from the citizens of Cherokee County. Bobo was to sell the land he purchased in Ball Ground to the RRDA at no profit. The bond was to be repaid in monthly installments of \$100,000 for thirty years. Ball Ground Recycling was to pay the monthly installment for its lease payment directly to the Bank of New York. After repayment in full, the property and operation would be owned by Bobo. Ball Ground Recycling was authorized to build the facility in the manner that Bobo desired and to install all necessary equipment as Bobo deemed necessary.

Bobo managed the entire project including the hiring of all contractors and subcontractors. He did much of the site preparation and construction through his own companies. Bobo was to be reimbursed for expenses by requesting a series of draws from the Bank of New York as approved by the County Manager. There was no requirement that bids would be solicited prior to work being done.

Bobo supplied all the documentation to support the draws which were approved for payment by the County Manager. The first draw, the largest of fourteen draws, was in the amount of over \$4,000,000. This first draw included the reimbursement of the cost of the land for the project to Bobo. Bobo supplied the figures without supporting closing documents to establish the actual cost of the land. The Commissioners still do not know the actual amount Bobo paid for the land and have never received any supporting documents showing the cost of the land to Bobo. The Commissioners in their capacity as a Board and as the members of the RRDA did not hire or contract with anyone to oversee the development of the site. All decisions as to the construction of Ball Ground Recycling were left to Bobo.

Upon construction of the project, Bobo vacated the Blalock Road facility. He was to remove all debris generated by his business and grass the area.

The Board of Commissioners began the building of a soccer complex on the Blalock Road property. The Environment Protection Division halted the project until a large amount of construction debris was removed. The Board had to pay almost \$700,000 to remove the debris/mulch before completion of the soccer complex. The Board has attempted to make Bobo repay it for the removal of debris/mulch. To date he has not.

In early 2011, the Bank of New York informed the Board of Commissioners/ RRDA that Ball Ground Recycling had not made seven of the monthly installments of \$100,000. On May 18, 2012, the Board of Commissioners and the RRDA provided written notice to Ball Ground Recycling that the lease would automatically terminate on May 28, 2012, unless all monies due under the lease were paid. Ball Ground Recycling is in default on its obligation to make the monthly installments as its rent for the facility. On May 25, 2012, Ball Ground Recycling filed bankruptcy. An automatic stay was ordered by the Bankruptcy Court, preventing the Board of Commissioners/RRDA from removing Bobo from the property. On June 29, 2012, the stay was modified. Bobo was ordered to cease operations and vacate the property. Cherokee County is currently repaying and remains responsible for repaying the entire bond debt.

The Commissioners/RRDA are hopeful of finding a company to take over the recycling facility. However, they do not believe that rent for such will equal more than half the monthly installment of \$100,000 for which the citizens of Cherokee County are now obligated.

The Grand Jury makes the following recommendations:

Recommendations

Recommendation 1: The Grand Jury recommends that a full and complete forensic audit be conducted to review all financial operations associated with Ball Ground Recycling and the Board of Commissioners/RRDA concerning the issuance of bonds for the building and operation of Ball Ground Recycling. The principle reason for this request is

to provide any and all applicable law enforcement agencies with the facts to determine if any violations of the criminal or civil law may have occurred. We further request that as a part of said forensic audit that a current realistic market value of the facilities and equipment at Ball Ground Recycling be determined.

Recommendation 2: The Grand Jury further recommends that any future consideration of a bond initiative between the Cherokee County Board of Commissioners in their capacity as the Cherokee County Resource Recovery Development Authority and a private for profit entity be subject to public referendum prior to the issuance of any further bonds.

Recommendation 3: The Grand Jury further recommends that the future issuance of publicly backed bonds by the Cherokee County Resource Recovery Development Authority be monitored for compliance by a qualified professional subject to the Cherokee County Board of Commissioners. This simply means boots on the ground watching and monitoring what is being paid for by the tax payers of Cherokee County.

Recommendation 4: The Grand Jury further recommends that the Cherokee County Resource Recovery Development Authority be expanded to consist of a number of non-elected private persons in a number equal to or greater than the number of elected County Commissioners serving on said Authority.

Recommendation 5: The Grand Jury further recommends that any agreement voted on and signed by the members of the Cherokee County Resource Recovery Development Authority include a signed acknowledgement that each Authority member has personally read and understands any agreement he/she is signing and thereby obligating the tax payers of Cherokee County to honor.

Recommendation 6: The Grand Jury further recommends that any future bond initiative by the Cherokee County Resource Recovery Development Authority and a private for profit entity require that private for profit entity and its owners to pledge its assets and a performance bond as a condition of any indebtedness for which the tax payers of Cherokee County are obligated. The tax payers should not be required to pay for the bad business decisions of the Authority and its business partners.

Recommendation 7: The Grand Jury further recommends that any further bond issuances by the Cherokee County Resource Recovery Development Authority for the acquisition of land, buildings, and equipment contain repayment terms matching the useful life of the underlying assets, not to exceed thirty years. Further, any lease with a for profit entity operating and benefiting from the bond issuance should have lease terms of no less than the bond repayment terms.

Recommendation 8: The Grand Jury further recommends that in the event that the Cherokee County Resource Recovery Development Authority issues further bonds, that the entities with which the Authority contract be required to open for public bid any and all projects and work to be performed under the bond. Said bids are to be reviewed by the Cherokee County Manager under the same terms and conditions as any and all

bidding procedures currently then in use by Cherokee County at the time of the performance of said work.

Recommendation 9: The Grand Jury further recommends in the event that the Cherokee County Resource Recovery Development Authority issues further bonds, and in the event that a third party is required to make payments to satisfy said bonds, that such payments be made to Cherokee County who will then pay the lender.

Recommendation 10: The Grand Jury further recommends that the citizens of Cherokee County be more diligent and vocal in reviewing and commenting on the proposed actions of our local government. At no time during the bonding process at a Commissioners' meeting, at a meeting of the Resource Recovery Development Authority or at public hearings did any local resident object. It was not until Ball Ground Recycling defaulted and the tax payers of Cherokee County began paying the monthly bond debt that our local citizens, including the Grand Jurors, complained.

Recommendation 11: The Grand Jury further recommends that the Cherokee County Board of Commissioners and the Cherokee County Resource Recovery Development Authority pursue all legal options as the law may allow to enforce the terms of the lease and recover any amounts due from Ball Ground Recycling, Mr. Bobo, and his affiliate companies.

Recommendation 12: The Grand Jury further recommends that the Cherokee County Board of Commissioners pursue all legal options available under the terms of any and all leases and agreements with Cherokee Recycling, LLC for the Blalock Road location operated by Mr. Bobo in order to recover the clean-up costs incurred by Cherokee County.

Recommendation 13: The Grand Jury finally recommends that the next Grand Jury and subsequent Grand Juries continue this investigation until such time as all the above recommendations have been followed.

Respectfully submitted this 23rd day of August, 2012.



JAMES F. PAUL
GRAND JURY FOREMAN

STATE OF GEORGIA
COUNTY OF CHEROKEE

FILED IN OFFICE
CLERK OF SUPERIOR COURT
CHEROKEE COUNTY, GA
2012 AUG 23 AM 11:14
PATY BAKER, CLERK

ORDER

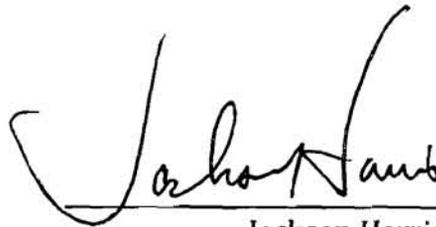
The within and foregoing Grand Jury Presentments having been read and considered, let the same be filed by the Clerk.

Further, a copy of the Grand Jury Presentments and this Order shall be provided to the Cherokee Tribune who will publish the presentments upon payment of the usual fees.

Finally, at the request of the Grand Jury, the District Attorney has agreed and this Court directs that copies of the presentments and this Order be provided to other local media outlets, the Cherokee LedgerNews and radio station WLJA.

So ORDERED this 23rd day of August, 2012.

or



Jackson Harris, Judge
Cherokee County Superior Court
Blue Ridge Judicial Circuit