

- Front Page
- News
- Sports
- > Ruralite Cafe
- > Editorial
- > Things and Stuff
- > Letters to Editor
- > Births
- > Then and now
- Obituaries
- SylvaCam
- Classifieds
- Archives
- Search Site
- Submissions
- Subscriptions
- Advertising
- Commercial Printing
- Resource Links
- Need Help with Site?
- About Us
- Deadlines
- Contact Us

## Local airport is once again at center of court battle

By Lynn Hotaling

Controversial since its mid-1970s construction, the Jackson County Airport is once again at the center of a lawsuit.

The latest litigation, filed last November by adjacent landowners R.L. Ammons and Dewayne Pruett, contends slope failure at the airport that sits atop Berry Ridge near Cullowhee is threatening their homes and property. Those suits name as defendants Jackson County and the Jackson County Airport Authority.

The complaints hinge on a landslide that occurred Aug. 22, 2005, when an isolated storm dumped massive rainfall on the Little Savannah watershed sending large amounts of mud onto the Ammons property. The same rain event triggered movement at an earlier slide on the Pruett property.



N.C. Department of Transportation District Engineer Jonathan Woodard, left, and Jackson County Airport Authority member Jim Rowell take an up-close look in August 2005 at a slide triggered by an isolated storm that is thought to have dumped as much as 5 inches of rain on the Little Savannah watershed in a single hour. The slide, termed at the time a “debris flow” by N.C. Department of Environment and Natural Resources geologist Rick Wooten, left a swath of mud down the mountainside, damaging the driveway to the homes of R.L. Ammons and Brian Ammons, located off Ben Cook Road. That slide also triggered November 2006 lawsuits against Jackson County and the Airport Authority filed by R.L. Ammons and another nearby landowner, Dewayne Pruett. A motion with regard to discovery in that suit is scheduled to be heard Monday, Aug. 20, in Haywood County Superior Court. – Herald photo by Nick Breedlove

The lawsuits, filed on behalf of Ammons and Pruett by Sylva attorney Eric Ridenour, contend that county officials and the Authority share responsibility for addressing these concerns and ask for fair market value for their property, damages and interest.

Jackson County’s answer to the suit maintains the county is not liable because officials deeded the airport to the JCAA in 1997 when they created the Authority.

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That response was drafted and filed by county attorney Paul Holt, but, at the request of the defendants, Holt no longer represents the county in the matter.

“They kicked me out,” Holt said. “My firm once represented the Ammons, and they said it was a conflict of interest.”

Hendersonville attorney Sharon Alexander, who did not return The Herald’s phone calls, is representing Jackson County in Holt’s stead.

The Airport Authority, which initially approached county officials about mounting a common defense, is represented by Asheville attorney Doug Wilson, who also did not return the newspaper’s calls.

“The county is not joining forces with us to fight the lawsuit,” said Authority Chairman Greg Hall.

Based on the answer Wilson filed on behalf of the Airport Authority and discussions at JCAA meetings, the Authority maintains the slide was due to an “Act of God” over which the Authority has no control.

According to county Manager Ken Westmoreland, the county is seeking to be removed as a defendant.

“The Airport Authority has title to the airport,” he said. “The only direct relationship the county has is to appoint members. There’s no longer any substantive connection.

“(The defendants) are arguing that the Airport Authority is the alter ego of the commissioners – that it’s a de facto extension of the board of commissioners, and that’s not true,” Westmoreland said.

According to Ridenour, that argument is incorrect. In court documents on file at the Jackson County Clerk of Court’s Office, he contends that the county was aware of “impending slope failure” and its resulting liability when commissioners created the Airport Authority. Ridenour also alleges the county had no intent to give up control over the airport; as evidence, he points to actions taken by the county in 2005 to remove then-Chairman Tom McClure from the Authority. A suit filed by McClure and two other JCAA members ended with a judgment against the county and a ruling that commissioners had violated North Carolina’s Open Meetings Law. Ridenour also references commissioners’ actions during 2005 and 2006 to get legislation through the General Assembly to change the way JCAA members are appointed and to secure an enabling act that would allow the creation of a regional airport authority and the dissolution of the existing county Airport Authority.

Westmoreland countered that those actions, only indicate commissioners were seeking a legislative arrangement and asking someone who has the authority to change statutes to do so.

In the lawsuit, Ridenour contends that a reversionary clause, which returns Airport property to the county if it ceases to be used as an airport, in the legislation that created the Airport Authority means the county should remain a party to the suit.

Westmoreland, on the other hand, maintains a reversionary clause carries no current responsibility or obligation.

The first courtroom skirmish in the current lawsuit, which appears to be the 10th legal action to revolve around slope failure in the 30-year-old airstrip’s history, is set for Monday, Aug. 20, in Haywood County Superior Court.

At issue that day will be Ridenour’s February request to compel the county to provide documents he sought.

Holt filed a motion in April asking for a protective order that would relieve the county from having to produce documents dating back three decades that related to details of airport construction. To do so would impose a “great financial and time burden” on the county, Holt wrote in April, and Alexander apparently will pursue a similar argument next week.

Ridenour maintains that many of the documents he seeks should be available pursuant to North Carolina’s Public Records Act and that many others are part of court records from previous lawsuits. In particular Ridenour references a 1979 suit in which Jackson County sued the contractor (Burton) who built the airport and the engineering firm (Barbot) that supervised its construction. A copy of that suit, located in The Herald’s files, indicates that the county alleged negligence on the part of both Burton and Barbot.

In that suit, the plaintiff, Jackson County, which was represented at the time by now-retired attorney Ben Bridgers and Holt, alleges that since construction of the airport began ... “the drainage has not been adequate or proper” and “the plaintiff has encountered numerous serious problems and defects ... in that water and other materials have drained and washed from the airport onto the property of adjoining landowners damaging the property of said land owners” and “one large landfill area has failed and eroded, sliding down the slope and removing the lateral support of the airport runway.”

Ridenour contends that many of the documents he seeks were part of that court proceeding, which was moved to federal court in Asheville, and that if he can't obtain the records from the county, his clients will have to pay 50 cents per page to retrieve them from the federal archives in Atlanta.

When contacted by The Herald as to the outcome of that court battle, Bridgers said earlier this week that the contractor was not found to be negligent because testimony showed he didn't do anything he was not told to do.

The engineering firm, on the other hand, was found negligent but did not pay any damages because the county was found to be “contributorily negligent” in that county officials approved improper construction methods, Bridgers said.

A local contractor who was hired by the Airport Authority to clean out drainage ditches and repair some of the damage to the Ammons property after the 2005 landslide told The Herald then that airport construction was to blame for both the Ammons and Pruett slides.

“Building the airport caused the runoff problems,” Paul Lewis said. “I was raised in that area, and there never were these kind of problems before they built it.”

According to Lewis, no effort was made to clear the site of vegetation before airport construction began.

“They just went up there with big bulldozers and started in,” he said. “There was no pipe, and no drainage.”

Pruett said this week that geologists with the N.C. Department of Environment and Natural Resources continue to monitor the slide on his property and have noticed additional movement since 2005. (*See related story on page 3A.*)

“I truthfully don't want to move, but I don't know if they could afford to fix (the airport),” he said. “I'm not asking for a phenomenal amount – just what the property is worth.”

According to Pruett, the property has been handed down through his wife's family for more than 100 years.

With regard to the current situation, he holds the county responsible.

“I think the county is ultimately responsible,” he said. “They used taxpayer money and built the airport. The Airport Authority owns the airport, but the county appoints them.

“I'm not against the airport,” Pruett said. “I don't care if they have it or not. I just want my problem fixed.”

Ammons told The Herald the house he lives in now was his father's and had to be moved after the site it was on was condemned in the wake of the 1977 slide.

“(The slide) came off the other end of the rock fill, and there wasn't a tree left,” he said. Mud also came in on top of his brother Jimmy's house, he said.

Ammons expressed his frustration with ongoing problems relating to the airport.

“The county just won't do anything. This has been going on for 30 years now,” Ammons said.

Giving the property to the Authority doesn't relieve the county of liability, according to Ammons.

“They're the ones that started it,” he said. “They're the ones that are going to have to end it.”

The airport lost 500 feet of runway to that slide, and Jackson County had to buy out several adjacent land owners, including that of several members of the Ammons family and Lenoir Stack, after their property was condemned.

Other litigation through the years has included a 1975 suit against the county by a group called Citizens Against the Airport, and a 1978 action brought against Jackson County by the N.C. Department of Natural Resources, which included the assertion that “the absence of a revised drainage system on the subject property represents an immediate pressing threat to the health, safety and welfare of the citizens of Jackson County and may result in irreparable injury to the state of North Carolina.”

Most of those previous judgments against the county centered around the issue of inverse condemnation, and that’s also the first cause of action Ridenour lists in the current lawsuit, which also charges the county with negligence, trespass and misuse of governmental authority.

In their answers to the lawsuit, lawyers for the county and Airport Authority deny those allegations and their list of defenses include governmental immunity. They also say the statute of limitations bars the plaintiffs from seeking relief 30 years after the airport was built.

Ridenour counters that the 2005 slide reopened the issue and that the statute of limitations no longer applies. As to inverse condemnation, he maintains that action by the county when the airport was constructed caused the recent damage to his clients’ property.

“It was unintentional, but they took my clients’ property and rendered it both unusable and dangerous,” Ridenour said. “Now they refuse to pay for it, forcing my clients to sue.”

The plaintiffs’ lawyer also said he doesn’t think governmental immunity applies in cases of eminent domain or condemnation.

“The Constitution is clear that you can’t have governmental taking without compensation,” he said.

In the suit, Ridenour also contends that the county misused its powers by creating the Airport Authority when county officials “were well aware of the impending slope failures and liability that would result.”

For one county official, the current lawsuit is deja vu all over again.

Commissioner Tom Massie, who was sworn in for his first term as an elected official last December, was county planner for a decade, from 1984 until 1994. Though that was a period without legal action with regard to the airport, the facility was a frequent topic of discussion.

“(The county) made some repairs while I was there to improve drainage,” Massie said Tuesday. “I had assumed that between the county and the Airport Authority that they had continued to maintain the airport – when I left it was in good shape.

“I was sworn in on a Monday and served with papers on Tuesday,” Massie said. “I was as surprised as anybody when I found out I was getting sued over the airport.”

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