

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in Regular Session on Monday, August 6, 2007 at 3:00 p.m. in their offices, Avery County Administrative Complex, Newland, NC.

Members Present: Kenny Poteat, Chairman; Susan Pittman, Vice-Chair; Dan South and Scott Heath
Members Absent: Phyllis Forbes

The Chairman advised that Ms. Forbes is absent today due to a death in her family.

Call to Order

Chairman Poteat called the meeting to order at 3:00 p.m. Scott Heath offered prayer.

Public Comments

Mr. Jerry Moody, Director, Avery County Cooperative Extension Service, introduced Mr. Adam Keener, the newly hired Agriculture Extension Agent for Avery County. Adam will be handling livestock and home horticulture issues.

Scott Heath commented on a very complimentary letter in the Board's Consent Items regarding one of our 4-H groups in Avery County.

Susan Pittman said she recently spoke with Georgia Henry, our Veterans Officer, who advised her that our VA Board at the Courthouse is full and we need more space so we can put up more names of our Veterans. This board has been full for quite some time she said. The Manager advised that he would look into this matter.

Board Appointments

Long Term Care Community Advisory Committee appointment – R.D. Daniels has resigned from this Committee after many years of service. He is requesting that Mrs. Barbara Ross be appointed as his replacement on that board. Also, the term of Ms. Jean Ray on the Long Term Care Community Advisory Committee has expired and she is willing to serve if re-appointed. Robert Wiseman recommended that the Board appoint Mrs. Ross and re-appoint Ms. Ray to this board as requested.

Following brief discussion, **Motion was made by Scott Heath and seconded by Dan South to appoint Mrs. Barbara Ross and Ms. Jean Ray to the Long Term Care Community Advisory Committee, as requested. Motion unanimously approved with 4 members in attendance.**

Fire Commission Vacancies

Robert Wiseman advised that there will be three vacancies on the Fire Commission. Keith Gwyn's term is up in August 2007. Daryl Smith is an appointee of the Board of Commissioners, Tony Hunter was recommended by the Fire Association and Keith Gwyn was appointed by the 4 seated members of the Fire Commission. All 3 of these terms will expire. Our next Regular Meeting will be August 20, 2007 and at that meeting I think we should anticipate appointing the 2 members, one being recommended from the Fire Association and one being appointed by the Board of Commissioners, Robert Wiseman said. That would make 4 seated members. Then, that would give those appointees between now and Sept. 1 to appoint the 5th member of the Fire Commission (by vote of the 4 seated members).

Chairman Poteat advised that the Fire Association will have their person ready to name by our August 20 meeting. The Manager recommended setting a deadline for the Board of Commissioners' recommendations. It was agreed that this deadline for recommendations would be prior to 12:00 Noon on August 17, 2007.

The Board took a brief Recess at this time.

Following a 2 minute Recess, the Board reconvened in Regular Session.

Motion by Susan Pittman and second by Scott Heath for the Board to convene in a Public Hearing on the Development Moratorium Extension for Avery County. Motion unanimously approved with 4 members in attendance at 3:20 p.m.

Public Hearing – Development Moratorium Extension

Board Members Kenny Poteat, Susan Pittman, Scott Heath and Dan South convened in a Public Hearing to discuss extending the Development Moratorium in Avery County.

The County Manager read aloud the Notice of Public Hearing which was published in this regard.

Chairman Poteat said that we have found that we needed more time to do what we had hoped to do with this moratorium. In talking to legal counsel, this Board's position on this matter has not changed. The

Chair asked Robert Wiseman if anything has happened which would sway this Board from considering an extension of time on this Moratorium. Robert said that the purpose of this Hearing is not to discuss the ordinance itself. It is obvious that a document of this magnitude needs to be considered and polished and gone through. The amount of time we have before the existing Moratorium runs out does not allow for that type of scrutiny and that is our justification for extending this Moratorium, Wiseman said.

The Chair asked if anyone present wished to discuss the extension of the Moratorium itself. Scott Heath was a proponent of not going the amount of time we set when we adopted the Moratorium. This decision we are making is a major decision and it will affect the entire County for a long time, and we need to make sure we are clear on this, Heath said. If we find that we need more time to make sure it is correct, then we need to do so, Heath said. Susan Pittman said that many people think we don't want new industry, but that is not true; we welcome industry. We don't want to do something that will affect our neighborhoods and it is something we need to work together on to get it right, Pittman said. Dan South said he was reluctant not to go the full extent of the Moratorium. The longer we wait, it just drags it out, and we need to get on with it, South said. In looking at the second draft, it shows that the ordinance is more encompassing than just picking on one industry, South said. The people who wrote this did an excellent job in looking at all companies that might come into the county such as medical companies, etc. We have to allow for those who might want to create new businesses in our County as well. We need to do what is best for all people and not just one industry, South said.

Tommy Burleson said that the Planning Board has had one Special Meeting and will have another one and have legally advertised it and properly notified everyone of the meetings. The Planning Board meets on the last Monday of each month. We will have another Special Meeting of the Planning Board to review the 3rd draft of this Ordinance, Burleson said.

The Chairman asked if it will take up to 90 days to complete work on this Ordinance. Robert Wiseman suggested adopting the 90 days, but to set ourselves a personal deadline of 60 days to complete the draft, but extend it for 90 days in case of legal complications, etc. That way we would have some time in case of complications or things we don't expect to come up, Wiseman said.

Tommy Burleson advised that the 3rd draft will be ready in two weeks and we hope that the final draft will come out of the final meeting of the Planning Board this month. We also have to give the Ordinance to the County Attorney to make sure it meets all of our state laws and guidelines. The ending date of our current Moratorium is August 14, 2007. (It was adopted for 90 days, beginning May 14, 2007 and expires on August 14, 2007). The Moratorium can be extended up to another 90 days.

Mrs. Marcell Wiseman-Valencia thanked the Commissioners for listening to the people in her area and considering everything so carefully. She said she admires the Commissioners for the job they do. If the Board decided to extend it for 60 days and we see it will not be enough time, could we extend it for another 30 days, Robert Wiseman said. Michaelle Poore advised that it could be extended, but it would have to be re-advertised, and you would have to set a date certain for the ending of the Moratorium.

A gentleman in the audience asked how the public could get a copy of the proposed draft and when could they speak their opinion on it. Tommy Burleson advised he would make more copies of the draft and have them available in his office. There will be a third draft and we hope to have a final draft at the end of the month, Burleson said. Sharon Conley asked to have the draft placed on-line so the public could have access to it. Tommy Burleson provided a draft copy which will be placed on line on the Commissioners' website. There were no further public comments.

Chairman Poteat declared the Public Hearing closed at 4:37 p.m. and the Board reconvened in Regular Session.

The Board discussed the amount of time that they would like to extend the Moratorium.

**Motion by Susan Pittman to extend the Development Moratorium for a period of 90 days.
Motion seconded by Scott Heath and unanimously approved with 4 members in attendance.**

Tax Collector Report – Mary Daniels

Mary Daniels, Tax Collector, reported a tax collection of \$104,634.51 for the month of July 2007.

**Motion by Dan South and second by Susan Pittman to accept this report as presented.
Motion unanimously approved with 4 members in attendance.**

The current tax bills are due from September 1 to January 5, but can legally be paid any time prior to that, Mary said.

Tax Assessor Report – Phillip Barrier

Phillip Barrier, Tax Assessor, presented the Releases and Refunds for the months of June and July.

Real & Personal Releases

Real and Personal Releases were reported in amount of \$188.21 and Fire Tax of \$16.70.

Motion by Susan Pittman and second by Scott Heath to approve the Real & Personal Releases as presented. Motion unanimously approved with 4 members in attendance.

Real & Personal Refunds

Real & Personal Refunds were presented in amount of \$152.33 and \$14.77 Fire Tax.

Motion by Susan Pittman and second by Dan South to approve these Refunds as presented. Motion unanimously approved with 4 members in attendance.

Motor Vehicle Releases

Motor Vehicle Releases were reported in amount of \$33.93 with \$2.70 Fire Tax.

Motion by Scott Heath and second by Susan Pittman to approve the Motor Vehicle Releases as presented. Motion unanimously approved with 4 members in attendance.

Refund of Interest – N.C. Conservation Trust

Phillip Barrier advised that after discussion with the Property Tax Commission, it was brought to his attention that he had added interest incorrectly to the roll-back bill that he had sent to the N.C. Conservation Trust. Phillip asked the Board to approve the refund of this discovery bill interest in amount of \$2,529.67. He said that he was not supposed to charge penalty and interest to these discovery bills. He said that the Conservation Trust of NC is a tax exempt entity that filed for exemption on 6 parcels that they purchased and they are not paying taxes from 2004-05. However, when they don't follow the charitable by-laws in the state law, that becomes an issue with my office. I sent them a letter and they agreed and paid the bills, but then they came to the Board of E&R and asked for a refund. The Board of E&R refused their request. They appealed to the State and the State said we should not have charged them interest, Phillip said, so we had to refund their interest. The Conservation Trust of NC is an entity and the check will be made for interest only to them in amount of \$2,529.67.

Motion by Susan Pittman and second by Dan South to refund the interest amount of \$2,529.67 to the NC Conservation Trust. Motion unanimously approved with 4 members in attendance.

Update:

Tax Bills have been sent out, Phillip advised.

Golf Course Appeal – Phillip advised that the Golf Course appeal has been moved to September 12-14 and will be held here in Avery County in the Commissioner's Board Room. The State decided to do a field visit of the property, so they are coming here and we won't have to travel to Raleigh for the appeal.

Phillip advised that his office is doing a review of farm land. We are currently reviewing all of the agricultural land. That review is going smoothly, Phillip said.

Discussion held regarding filing for farm use tax. Phillip explained to the Board what is required to file for Farm Use. He advised that there is also a new Homestead Exemption bill in the works and that it sounds very complicated.

County Manager Report – Robert Wiseman

Fire – Town of Spruce Pine

Robert Wiseman reported that there was a massive fire in the Town of Spruce Pine over the weekend. It was very extensive and a lot of property was destroyed. There were fires on both Lower Street and Upper Street, and the whole town could have been destroyed, he said. Avery County Fire Departments which provided Mutual Aid for this fire were Green Valley, Newland, Frank and Crossnore. They probably saved thousands of dollars by their presence to assist the Town of Spruce Pine through Mutual Aid, Wiseman said.

Wiseman advised that he has some EMS Mutual Aid Agreements for the Board to sign today. One is with Watauga and the other is with Spruce Pine. These are similar to the fire department Mutual Aid agreements, Wiseman said.

Conflict of Interest

At our last Regular Meeting there were some issues voiced about the Chairman of the Avery County Planning Board possibly being in conflict of interest due to the relationship between the Planning Board in a decision making capacity with the proposed Heavy Industry Ordinance and personal interest, Wiseman said. No decision was made at that meeting pending the Chairman of the Planning Board being given the same opportunity to present his side of the situation for this Board's education on the matter. We would then proceed with a decision, if this Board wishes to make a decision, Wiseman said. Our legal counsel has looked into this matter to some degree since that time. Chairman Poteat said that he was not in attendance at our last meeting to be able to hear the dialog on this issue. He understands that Jason Warner filed a complaint against Mike Lacey, Planning Board Director, and that he has asked that Lacey recuse himself from voting on the Moratorium issue due to a conflict of interest. Also, Mr. Warner was allowed to speak to the Board at our last meeting regarding his concerns. Robert Wiseman advised that he felt it was the intent of the board at the last meeting to offer Mr. Lacey the same opportunity to address the Board as Mr. Warner had at the previous meeting.

Mr. Mike Lacey, Planning Board Chairman, then addressed the Commissioners. Mr. Lacey advised that as Chairman of the Planning Board, we are working on a High Impact Land Use Plan at this Board's request. Possible conflicts of interest that someone could see are that we were the brokers on the sale of a portion of the property that Randy Carpenter bought where he is proposing to put in a rock quarry. We were the listing brokers and so as such our first allegiance was to the seller. Mr. Carpenter was the buyer. He came forward with a satisfactory offer to the seller and the sale was consummated. Obviously Mr. Carpenter and I had no discussion on his plans, future or current, but we were the brokers on the sale to him, Lacey said. My brother and I also lease property which is rented by Vulcan Materials. In examining it, if Mr. Carpenter were not allowed to have a rock quarry, and I would expect the same thing would extend to Vulcan Materials, that they also would not be able to do a rock quarry. So, if they are not able to do a rock quarry in Avery County, then they wouldn't continue leasing from us. So, looking at it from that standpoint, I would expect that if we have extremely strict restrictions on rock quarries, then that would benefit me from the standpoint of Vulcan Materials continuing to rent from me. On the other hand, if Carpenter can't do one and possibly Vulcan can't either, then I don't know how they would feel about that or if they would want to do one at some future time. I haven't asked their opinion on this and don't really want to know their opinion.

I also own mineral rights in the Cranberry and Pyatte vicinity, Lacey said. I do not own mineral rights in the vicinity where Mr. Carpenter is proposing to put his rock quarry, or mineral rights with these quarrying operations. I would probably have a personal decision since I am not a particularly large fan of zoning, but that's a personal issue, not a Planning Board issue. I don't know that I have any particular problem with having restrictions on High Impact Industry, but would argue that a few of the things that are currently on the High Impact Plan are not on my list, such as saw mills and concrete mixing plant. I personally don't think these things should be on there, but if the Planning Board decides they should be, then that is what you will receive and you can add or delete to it. As to personal contact, we were brokers to Randy Carpenter; we lease to Vulcan Materials and I own mineral rights which could be conceivably a future mining operation, Lacey said. I have worked for some of the people who are opposed to the quarrying operation. I thought that I had done an appraisal for Mr. Warner but he says no. I have definitely done survey work and appraisal work for Robert Harris, who is Mr. Warner's neighbor. I have also done appraisal work for Phil Barrier. I may have done some appraisal work for some of the other persons who are opposing the Rock Quarry, Lacey said. I contacted Randy Carpenter perhaps 3 times in the past year asking for survey maps. We often trade surveys back and forth doing surveys next to other plots. That's the extent of my interaction with Mr. Carpenter. Mr. Carpenter and Mr. Warner were at the very first meeting we had of the Planning Board addressing the High Impact Ordinance and each of them was allowed to speak for approximately 10 minute. I have had no contact with these gentlemen after that other than sitting in a public hearing for a public meeting. That is the extent of my involvement as I see it. As always, anything the Planning Board does is at your pleasure. If you would like for me to continue, I would be glad to do so. If you do not wish for me to continue, that is fine also; no hard feelings either way, Lacey said. It is completely at your pleasure.

Kenny Poteat stated that the Board appreciates Mike's willingness to work with and for the County and especially for the Planning Board. The Planning Board is a tremendous undertaking and task, Poteat said. The responsibilities we have placed on that Board are major, Poteat said. Poteat asked Lacey if in his personal opinion, he sees any reason why he should recuse himself from voting on this issue as a part of the Planning Board. Mike Lacey said no, that he did not see any reason to recuse himself and that he didn't feel that he had any conflict on this. The closest thing I have as a conflict would probably be that if there are no more rock quarries, that tells me that Vulcan is going to continue to rent from me, so I'm

ahead of the game financially on that end. Beyond that, I don't see that I have any impact. I probably don't want quite as severe restrictions on things in general as some people would like. That is just part of my natural aversion to zoning. I would probably have some smaller setbacks than are currently being proposed on some of the items being proposed, he said

Kenny Poteat said that as a fellow Chair, if the majority feels you are incorrect, you can be outvoted on your Board. That is the same with me. I have friends on both sides of this rock quarry issue, Lacey said. I don't know that I am special friends with Randy, we are business acquaintances, but I do have people and friends that I have worked for who are against the rock quarry, and I have my business dealing with Vulcan. I brought up all of this at that very first Planning Board Meeting with Mr. Warner and Mr. Carpenter both in attendance, Lacey said.

Susan Pittman asked Michaelle Poore that since the Planning Board is a recommending Board and they have no final say, is there a conflict of interest. Is that something you could have in a recommending Board? Michaelle Poore said that the Planning Board is just a recommending Board. What the Planning Board proposes to the Board of Commissioners, the Commissioners can either choose or reject. You don't have to go with it, it is just an advisory board to give proposed information to the Commissioners, Michaelle said. Susan said that anybody could have a conflict of interest on those things, but if they did, it should not reflect on us except in what they recommend. Discussion.

Kenny Poteat asked Michaelle for a definition of what is a conflict of interest. She said there is no specific definition for it, which is what makes it so difficult. If Mr. Lacey feels he has no conflict, and I assume that he disclosed this to the members of his Board, and they felt that he didn't have a conflict, so it would be within the Board's discretion if they wanted to accept that consensus from the Planning Board that there wasn't a conflict, Michaelle Poore said. Discussion continued by the Board on this issue.

Susan Pittman said if the Planning Board feels it is a conflict for him to vote, they should say they feel it is a conflict. Scott Heath asked how many members are on the Planning Board. Mike said there are 7. Scott asked if the Chairman votes or is he just a tie-breaker. Tommy Burleson said he feels it is at the Chair's discretion whether or not he votes; he would be a tie breaker, Tommy said. Lacey said that he couldn't remember if the Planning Board ever had a tie vote where he had to vote to break the tie.

Chairman Poteat said that Mr. Warner had an opportunity to speak previously and Mr. Lacey had his turn today. Now it is up to the Commissioners to decide as to whether Lacey is in conflict of interest and whether he needs to recuse himself from this issue. It was Warner's request at a previous meeting that he be recused, Robert Wiseman said. Wiseman added that there is always the option of doing nothing. Chairman Poteat thanked Mike Lacey for attending the meeting today.

He then asked for comments from the other Commissioners. Susan Pittman asked Michaelle Poore if she felt this was a conflict of interest. Michaelle advised it is not her decision. She said that from her understanding, this information was disclosed to Lacey's fellow board members and there were no objections from the other members of the Planning Board. Dan South felt that Mike Lacey has been forthright in his comments today and from what he said to the Planning Board, I believe there are other people on the Planning Board who would speak out if there was a conflict of interest or if something would affect the integrity of that board. I don't think Lacey should be recused and don't feel there is a need for that and I think the Planning Board can handle it, South said. There was no further discussion. Kenny Poteat agreed with Commissioner South's comment that he feels that the Planning Board can handle this situation among themselves. There were no further comments from the Board.

Public Comment Policy

Robert Wiseman stated that the Board was presented with a public board policy draft concerning the conduct of individuals during a meeting of the Board of Commissioners. It was a second rough draft that was presented to the Board whereby the Clerk had scanned some of our neighboring counties and came up with a comparable policy with some other counties and presented to you at that last meeting. That policy was not discussed at length at that time. Legal counsel had some issues with it such as when people were expelled from the meeting for improper behavior for up to 6 months. Michaelle took the policy back and gave it a chilling effect. That is what you have in front of you today. I think the Board policy right now is lacking in some formal documentation of what constitutes improper behavior and what the consequences are, Wiseman said. Fortunately, since I have been back with the County, we have only had one or two issues where people's actions have been inappropriate. I think that the Chairman needs the teeth in this policy to let people know they are out of line. When someone comes in and attacks verbally either a Commissioner or the Clerk, I think there needs to be some protocol that gives the Chairman the authority to call them down and tell them to refrain from bad language, verbal attacks, and from having verbal contact with persons in the audience while they are at the podium. Discussion was

held on the proposed policy. Michaelle Poore advised that the proposed Section 2.10 is to be in addition to the existing policy and goes underneath Section 2 in the policy handbook.

Scott Heath agreed that this policy would give the Board more teeth in controlling situations that arise in a meeting, adding that he would advise the Chairman to use all the teeth necessary for that purpose.

There is no sense in people being belligerent, using foul language or being allowed to make threats in these meetings, Scott said. They should be required to conduct themselves in a civil manner.

Chairman Poteat said that if this policy is adopted, the public is to be made aware of it and those who speak during Public Comment time will be aware of these changes.

Motion by Dan South and second by Susan Pittman to add Section 2 – Procedures Regarding Agenda for Regular Business Meetings of the Board of Commissioners, beginning with Section 2.10 -- A-H, to our existing policy. Motion unanimously approved with 4 members in attendance.

Avery County Agricultural & Horticultural Fair

Robert Wiseman advised that the Fair Board has presented some extensive documentation from 2003-2006 as far as expenses and revenues for the Avery County A&H Fair operation. They also have projected expenses for the 2007-08 year. There was a deficit in revenue for the Fair during 2006. During the budget process, Mr. Moody requested funding to insure that the funds they needed to open the Fair would be there. We discussed this during the budget process. There were fundraising efforts ongoing at the time and the exact amount of money that would be needed in August to open the Fair was nebulous because we didn't know what the shortfall was going to be due to the ongoing fundraising. The decision of the Board was not to appropriate a specific amount of money at that time, so there is not a line item in this year's appropriation for the Fair, pending today when we were able to determine from them how much deficit they had. They were to be allowed to come before the Board today with the appropriate documentation regarding their deficit. Chairman Poteat said that according to their documentation, their need is \$9,000 for the Fair. He asked the Manager if it is his recommendation that these monies be forwarded to the A&H Fair. Wiseman said that he is of the opinion that unless these funds are forwarded to the Fair, they are going to have a hard time getting started this year. Deborah Smith, Chairman of the Fair Board, advised that they have funds coming in from different things they are trying in order to raise money, but we don't have the actual cash flow we need to get started this year. Ms. Smith said the reason they are behind in funds is because they put \$13,000 of their money into Heritage Park, which is the County's park, to improve that property. This is the first year we have asked for funding, Smith said. Susan Pittman asked if this \$9,000 in funds would be reimbursed to the County after the Fair is over this year. Smith said that at this time it is hard to say due to next year's expenses. Poteat said that the Manager has recommended approving this request but with consideration for reimbursement, if possible. Susan said she is very much in favor of the Fair and feels it should be self-supporting.

Discussion on the improvements to the Heritage Park property made by the Fair in amount of \$13,000. Ms. Smith advised that they installed electrical lines that will cover any activity you would ever want to hold up there, plus water lines to give access to different areas on the park itself. She thanked the County for the labor they provided in working on those projects.

Dan South felt the Fair was very important and if the County has to kick in a little bit of money to get it up and going, then I don't think we can go wrong by putting money toward it each year; but I don't want to entirely fund it. I don't think the money would be ill spent because all of the school children get to go to the Fair free and experience things that our county and region of NC is famous for. I would not be in favor of them reimbursing us this money and would be in favor of them having a line item in the budget each year to make sure the Fair is always available to the citizens of the community, South said.

Poteat advised that he has no problem in giving them the funds this year to help them out, but whether or not it becomes a regular line item in the budget, I would have to discuss that. I feel we need to strive for self-sufficiency. I see no problem with doing it this year in order to help supplement the Fair, Poteat said. He added that we are all very sorry about the theft of your tractor and hope that the culprit is apprehended.

Motion by Susan Pittman to give the Avery A&H Fair \$9,000 to start up the Fair this year. Motion seconded by Scott Heath.

Scott said he thinks that the Fair can and should be self-supporting. If they are adding facility improvements like power and water, that can be used for other activities and they should not bear the brunt of that expense, Scott said. We need to have a joint effort if they want to spend money on the

property. As time goes on there will be maintenance issues and other issues that arise on the property, Robert Wiseman said. With the improvements that have been made up there in the past 4 years, I would not think that we would be looking at any major improvements as far as utilities from this point on, Wiseman said. Dan South commented that they could reduce expenses if they were not having to rent tents and having to take them down all the time.

Deborah Smith commented that they need to look at the water problem up there before the Fair is started this year.

Motion unanimously approved with 4 members in attendance.

County Attorney Report – Michaelle Poore

Michaelle Poore advised that she has nothing to add under her report today other than what has already been covered.

Recess – The Board took a brief Recess.

Banner Elk Day Care Facility

Chairman Poteat welcomed Mr. Hugh Montgomery, Banner Elk Town Manager, John Phillips, Banner Elk Town Council; Rick Herndon, Director of High Country COG and Region D Child Care; Judy Shook, Director of Banner Elk Child Development Center, and Laura Graham, High Country COG Finance Officer. Chairman Poteat referred the Board to a letter from Mr. Hugh Montgomery, Banner Elk Town Manager, regarding the Banner Elk Day Care Facility.

Robert Wiseman advised that in the not too distant past there was confusion about the ownership of the 4.2 acres in Banner Elk being used for the Day Care Facility operated by Region D Child Care, Inc. In 1977, Edgar Tufts Memorial Assoc., Inc. donated that property to Avery County and there were no conditions on the transfer, through a Community Development Block Grant the Child Care Facility was built on that property. In 1985, the property was transferred from Avery County to the Town of Banner Elk with a conveyance covenant which stipulated that if the property ceased to be used for the day Care or any other purpose that was not approved of by the Board of Commissioners that the property would revert to Avery County. Now there is a lot of anxiety in the Banner Elk community about the continuation of operation of that facility. The parents and staff are very anxious as to the future of the provision of those services at that facility and that is the reason these people are here today to discuss this issue.

Robert Wiseman said that he and Hugh Montgomery both agree that the main thing is that the continued provision of Day Care services in the banner Elk area is the important factor. Region D Child Care and the Town of Banner Elk are the two players now. If something goes wrong, Avery County has a voice in this as well. As Mr. Montgomery said, there are two issues involved, short and long term. Region D has been involved with this Day Care for the past 30 years. The complexion for regional day care has changed drastically over the years. They now have a flexible scale on which the parents pay upon their ability to pay and not many private institutions could do that.

Chairman Poteat advised that he has spoken at length with Rick Herndon in an effort to get this issue resolved.

The County Attorney was asked who owns this 4.2 acres of property and building. She advised that in her opinion, the Town of Banner Elk owns it. The deed provides that in the event the property is no longer used as a Day Care or community center for the Town, that it will revert to the County of Avery, Ms. Poore said.

Hugh Montgomery advised that the rent structure covers the rent cost but not capital improvements for the building. He said that he had asked Region D to increase the amount of rent they pay, but his request was rejected. He added that the Mayor and the Town Council would not sign the lease agreement with region D for the time being. He was concerned that those funds would not be there to make these capital improvements they need for the building, from a landlord's perspective.

He was asked the approximate cost of needed renovations and repairs so the facility can continue to be a viable contractor. Montgomery said it is a 30 year old structure and is in need of much repair. We won't know how much it will cost until we get started on the repair work and see what all has to be done.

Rick Herndon was asked the amount of rent Region D pays and he advised they pay \$625/month, which is consistent with the rent they pay for the other two institutions in the other counties. Poteat asked if Region D could increase their rent payment or if they could help with the repairs. Rick said they were asked about a \$400-\$600 increase, but at that time the Board had adopted a budget for the coming year and felt that the \$625 was reasonable; however that is not to say that there could not be an increase down the road. Poteat asked if they are grandfathered on some of the items in the building which might

not pass inspection now if it were a new building. Rick advised that they are grandfathered on those things. Judy Shook, Day Care Director, advised that she spoke with her license consultant last week and that there are some things that were grandfathered in that needed to be addressed. Poteat asked if Judy has shared those concerns with Banner Elk and what might need to be done. Judy said it has been mentioned but not addressed in detail. Poteat asked about the needed repairs and if they included a new roof or air conditioning. Judy said they need air conditioning but she is not sure about the needed roof work. Several other items were mentioned that she felt needed attention. Poteat asked if the roof is leaking and Judy said no, it is not.

Chairman Poteat said it is up to the Town of Banner Elk to decide if you can do better than keeping it open one month at a time or seek a new tenant, etc. Robert Wiseman said that the potential that exists at the facility is very limited. It is 4.2 acres, masonry building and the insulation is not good. You can only do so much with that building, Wiseman said. Whatever comes out of this situation, we need the foresight to say what happens 10 years down the road as to demographics. I know the student population is decreasing and whatever our actions are, we need to look at the potential need, Wiseman said.

Scott Heath agreed that we need to get some resolution to this issue in order to give the families and workers at the Day Care facility some confidence. We have options we can provide that the Town might not be able to provide. We have looked at the possibility of using the Loved Ones Day Care facility which we now own, and have found that it meets code and could be used for a day care facility. The only unknown is an environmental assessment which would substantiate that there is no black mold or mildew in the building. This facility could hold up to 45 students; the current Day Care at Banner Elk holds 44 students. Scott proposed to move the Loved Ones facility over to the site of the new Banner Elk Elementary School and set it up there. We could establish that as a temporary Day Care, get it ready and sign a long term lease with Region D, Scott said. We could use that as a temporary set up until the new Banner Elk School is built, and then we could add on a day care facility or include it in close proximity to the new school. That school will be occupied by 2010-2011. At that time, the trailer structure could be moved to Heritage Park or where needed. If Region D signs a long-term lease, that would give the parents some peace of mind about their day care needs, Scott said. If the current Day Care building ceases to be used as a Day Care, it would then revert to the county. We could then sell it to the highest bidder, which would offset our cost for moving, plus applied to whatever additional it would cost to build on a day care facility to the new Banner Elk School. We have talked to some of our school representatives who feel that it might be an advantage to have a day care there at the school, Scott said.

Robert Wiseman advised that Bob Tatum thinks there is enough room to move the Loved Ones Day Care facility up to the new Banner Elk School site. He said he had talked with the Superintendent about including a Day Care facility along with construction of the new school and that she was positive about that. Food service would be a plus there, dropping off and picking up kids would make it more convenient for parents with kids of different ages, etc.

Scott commented that there might be a conflict with the Town as far as their ETJ regulations and putting that trailer (Loved Ones) up there. We might need a temporary conditional use permit for that facility if it is going to be inside the ETJ, Scott said.

Dan South asked if the Commissioners want to take on the business of child care. If we are going to provide it at Banner Elk, then we have an obligation to provide it at the other schools as well, he said. We would have to provide it for all of them, or a private business would need to come in and take over, South said. We can't do it for one community and not all communities. Discussion on what percentage of the kids who use the Banner Elk Day Care live in Banner Elk. Dan said he would like to have a permanent fix to this problem, not a temporary one. We need to be careful because we know that the population of Banner Elk is declining and we need to be careful about tying the day care to the school itself. He was reluctant to support any proposal today that drags it out to 2011 where there would be a permanent facility at the Banner Elk School. I think that we need to talk long and hard about this with the School Board about whether or not we will get into the child care business, Dan said.

Susan Pittman felt that Dan and Scott both have valid points. She didn't feel that the County should leave those people hanging without knowing where their children will be. She said she didn't think it would make any difference if it were connected with the school or not if they gave us the property to put it on, but that she did feel that it would be a good idea to have it at the school.

Dan cautioned the Board that if we are going to provide a big facility that the \$625 is not going to pay the rent on it; it would probably be 3 times more than that amount. The county has to recoup something from that, Dan said. Scott said he didn't feel the County should be in the day care business and that we

would provide a facility that would then be leased back. I don't think we are getting into the day care business, we would just be providing a facility to be leased back to Region D and we would not have an obligation to do that everywhere else, Scott said. It doesn't help the parents to just have a temporary solution; it just puts them in limbo. Scott said he wants to put something there that doesn't get us into the day care business but which gives everyone the assurance that this can be worked out.

Discussion continued. Susan Pittman said that both she and Phyllis Forbes like the idea of moving the Loved Ones Day Care facility up to the new Banner Elk School site.

Discussion on the current Day Care facility which would revert back to the County if not used for a day care or community center. Scott Heath said the proceeds from the sale of the building would offset the cost of moving the building over to the school site and anything left over would go to building additional square footage onto the new school. The school would then lease the building back. I don't think Banner Elk would need to put anything else into it and we would not need to either, Scott said. I think this would solve the short and long term problems.

A concerned parent in attendance commented that the other two facilities that Region D rents are owned by counties as opposed to Banner Elk, which is owned by the town. She said she didn't feel there would be a lack of tenants for the Day Care since every other day care in the county has a list of kids waiting to get in.

John Phillips, Banner Elk Town Council, said they would like to keep it as a day care, but before they would spend \$50,000-\$70,000 on the building that they would exercise the clause in the deed and turn it over to the County. You can then have an agreement with Region D. I think that is where my Board is going on this issue, Phillips said. Our Mayor feels that way and I think that most of our Board does as well. We would let you have the relationship with Region D to provide day care for Banner Elk. This Day Care helps the community of Banner Elk and is very important for the community. Phillips suggested that they could have a contingency on the facility it to let it revert back to the County with the contingency that a form of day care would remain there.

Robert Wiseman suggested that since more dialog needs to take place and since we don't have a full board in attendance today, that both he and Mr. Montgomery be allowed to collaborate and act as facilitators in this situation and try to come up with a proposal that could be considered based on what Scott and Dan have said. That information could then be presented to both boards as a starting point to get out of this impasse. Dan said he doesn't feel we are at an impasse; I just don't know that locating the Child Care Center at Banner Elk School is the best answer, he said. The majority of the children at that center come from throughout the county. Maybe it would help some of the parents in that area to move it to some other location, South suggested. However, if that is the best place to put it and we have thought through everything else, then that's the best place. If I were the parents and I lived at Riverside, I would come with the same proposal asking for a building down there for our kids on that end of the county, South said.

Discussion continued on how the day care program operates in Mitchell and Yancey Counties. Scott felt this is a financial opportunity. It would benefit the Town and they wouldn't have to put a lot of money into it. We own a day care building and would not be putting a lot of money into a new building. This is a one-time opportunity for 3 governmental entities and I feel we need to take advantage of it this one single time, Scott said. I would like to see Mr. Wiseman, Mr. Montgomery, our legal counsel and the School Board brought into this to discuss this issue, Scott said, because I want a permanent facility for Banner Elk.

Chairman Poteat said he would like to have a full board in attendance before making a decision on this matter. He agreed that Mr. Wiseman and Mr. Montgomery should meet on this issue. Poteat said that on August 20 this Board will do a motion on whatever it takes to resolve this issue. Mr. Phillips can advise his board at their next meeting on this matter, Poteat said. Phillips suggested that the two entities could work together on the water/sewer for the facility.

There was no further discussion and the group left the meeting at 5:50 p.m.

Closed Session

**Motion by Scott Heath and second by Susan Pittman for the Board to convene in Closed Session for Attorney Client Privilege matters under GS 143-318.11(a) (3) at 5:51 p.m.
Motion unanimously approved with 4 members in attendance.**

The Board came out of Closed Session at 6:38 p.m.

The Chairman advised that the Board has met in Closed Session and that no decision was made during Closed Session and no vote was taken.

Approval of Minutes

Motion by Susan Pittman and Second by Dan South to approve the Minutes of July 16, 2007 Regular Meeting; Closed Session of July 16, 2007 and Special Meeting with Fire Commission and Fire Departments on July 23, 2007. Motion unanimously approved with 4 members in attendance.

Agenda Consent Items

Scott Heath asked about the Energy X-Change Program and how it works. The Manager explained. Dan South advised the Board that the plans for Cranberry House have been changed from their original plans. It will now be used for dementia and Alzheimer patients.

Scott Heath advised that he read in the Charlotte Observer that the Land Transfer Tax is going to be a reality and that some counties are looking to get this issue on the ballot as early as this November. The Manager felt it would be rushing it if we were to try to get it on the ballot in our county by November, but he agreed that the Land Transfer tax is going to be passed. He added that we had asked for a 1 percent tax but the bill calls for 4/10 of 1%. Also in the state version, it calls for the seller to pay the tax, not the buyer, as we had written. He added that if our bill does not get passed, that we will have to go with whatever the State passes in this regard.

Upcoming Meetings of the Board

The Chairman advised that the NCACC Annual Association Meeting will be held next week in Fayetteville, NC. Our next Regular Meeting will be on August 20, 2007 at 3 pm. We will also have a Secondary Road Meeting at 6 pm on August 20. That meeting will immediately follow our Regular Board Meeting.

Adjourn

Motion by Susan Pittman and second by Scott Heath to adjourn this meeting at 6:50 p.m. Motion unanimously approved with 4 members in attendance.

Kenny Poteat, Chairman
Avery County Board of Commissioners

ATTEST: _____
Nancy H. Cook, Clerk to the Board