

**STATE OF NORTH CAROLINA  
COUNTY OF AVERY**

The Avery County Board of Commissioners met in Regular Session on Monday, November 5, 2007 at 3:00 p.m. in their offices, Avery County Administrative Complex, Newland, NC.

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

Members Absent: None

**Call to Order**

Chairman Poteat called the Board to order at 3:05 p.m.  
Dan South offered prayer.

**Amend Agenda**

The County Manager asked that the Board approve the addition of some agenda material to today's agenda dealing with grants which the Sheriff's Dept. has applied for. The Board agreed by consensus.

**Public Comments**

**Tweetsie Train Depot Project Update**

Ms. Cindy Peters with the Avery Historical Society Museum updated the Board on the progress their group has made with the repairs/renovation to the old Tweetsie Train Depot. She reported that they are currently at 922 hours of volunteerism on this project and they have just written their first grant for \$20,000 to the Cannon Foundation. They have \$127,000 in donations, including, cash, contract labor, materials, and the Linville Depot appraisal value. Phases I and II are complete. Phase I was acquisition, stabilization, prep, move and relocation. Phase II was the foundation, waterproofing, drain field, and weathering in for the winter. Phases III and IV are for grant writing, and we hope to do that in the spring, Cindy said. Our architect and project manager is Mr. Jim Bower and Suzy Gnann is our grant writer. We have completed one grant and are working on our second grant, which will go to Lowe's Hardware Foundation. We will write grants as fast as we can this winter, Cindy said. We are going to pull up the maple wood flooring and hope to save part of it during renovation, and we are going to clean the bead board ceiling. Chairman Poteat asked about their proposed completion date when the Depot will be ready for viewing. Cindy said that they are now 10 months ahead of schedule. Jim Bauer said that his original goal was to have a ribbon cutting and open house at the end of the summer in 2011. Right now, it looks like even if we don't get all the grants we want, that the outside of the Depot should be done in a year and the inside should be done in about 2 years. So, the project should be finished in 2 or 2 ½ years. Cindy Peters provided some old photos of the original Depot when it was at its original location in Linville, NC. It was the most photographed of all the depots in N.C. she said. She added that they plan to restore the Depot down to the outside window boxes planted with pansies.

**Appointments**

Robert Wiseman advised that per General Statutes, the Village of Grandfather has requested that the Commissioners make appointments to their Planning Board and Board of Adjustments as follows:  
Kathy Masee & Scott Ludgert to the Planning Board for Grandfather Village  
Scott Ludgert to the Grandfather Village Board of Adjustments.

**Motion by Scott Heath to appoint Scott Ludgert and Kathy Masee to the Grandfather Village Planning Board; terms to expire April 30, 2009. Motion seconded by Phyllis Forbes and unanimously approved.**

**Motion by Phyllis Forbes and second by Scott Heath to appoint Scott Ludgert to the Grandfather Village Board of Adjustments with a term to expire April 30, 2009. Motion unanimously approved.**

**Tax Collector Report – Mary B. Daniels**

Mary Daniels presented the monthly Report of Collections for October 2007 in amount of \$891,918.50.  
**Motion by Phyllis Forbes and second by Susan Pittman to approve this report as presented.  
Motion unanimously approved.**

## **Tax Assessor Report – Phillip Barrier**

### **Real & Personal Releases**

Phillip Barrier presented the Real & Personal Releases for October 2007 as follows: \$405.66 County tax and \$43.79 Fire Tax.

**Motion by Susan Pittman and second by Scott Heath to approve the Real & Personal Releases as presented. Motion unanimously approved.**

### **Real & Personal Refunds**

Real & Personal Refunds were presented in amount of \$186.91 County tax and \$14.86 Fire Tax.

**Motion by Dan South and second by Phyllis Forbes to approve the Real & Personal Refunds as presented. Motion unanimously approved.**

### **Motor Vehicle Releases**

Motor Vehicle Releases were presented in amount of \$223.85 County Tax, Fire tax of \$17.35 and Town Tax of \$10.47.

**Motion by Phyllis Forbes and second by Susan Pittman to approve these Releases as presented. Following brief discussion, Motion unanimously approved.**

### **Elderly Exemption Workshop**

Phillip advised that he and Danielle went to an Elderly Exemption Workshop recently and will also attend another one on November 14. I will share the changes with you for the 2008 tax year for Elderly & Disabled in December. Their income has changed from \$21,000 to \$25,000. We are still working on the forms and we have until June 1 to administer this exemption, Phillip said. Income has been redefined so that if all monies received are less than \$25,000, then that person would be eligible for this benefit.

### **Appraiser Position**

Phillip Barrier advised that he has received 30 applications for the appraiser position in his office and that over half of those applicants are qualified. Six years ago I only got 3 applications for an appraiser position when I advertised it, Phillip added.

Robert Wiseman advised that this position has not been filled for the past 3 years and Phillip has made do without it. Now that the new Revaluation is cranking up again, he needs the position.

### **Cranberry Water Project**

Robert Wiseman gave the Board a brief synopsis of the Cranberry Water situation in that there are old, antiquated water lines down Hwy. 19-E through Cranberry and down to Tucker Holler. Rep. Phillip Frye, Elk Park elected officials and I met with Government entities and came up with a grant to replace the system and put in a new tank. That system would be attached to Elk Park's town system. The grant was for almost \$1 million dollars. We got a Letter of Intent from all involved agencies such as the State, DEHNR, etc. The only problem was that Elk Park did not qualify for the grant. To circumvent that, the County agreed to serve as lead agent for the grant. Financial arrangements were that the County was only a pass thru for the grant funds. The Town of Elk Park would handle all the other duties involved with the project. The only problem is that the Letter of Intent was signed August 13, 2005 and it has been one issue after another mainly between the engineer and the Town of Elk Park, since then. We had not been involved. This summer I was inundated with calls from people in that community who have no water and asking why the holdup. I thought everything had been on track and was not aware of these problems. I called the allocating agency for the \$1 million dollars. Their regulations stipulate that 2 years from the time the Letter of Intent is signed, all the plans need to be done, all easements acquired and the contracts let. Technically, we lost \$1 million. The good news is that we were able to get an extension on that project. Three months ago was the final date to have those things done. The big issue was the right-of-way acquisitions in the Cranberry community. That was due to either lack of communication or miscommunication. Also, the legal counsel and the architect had problems with each other. To expedite this, I met in Morganton with Rep. Phillip Frye, representatives from McGill & Associates and representatives from Hall & Hall Attorneys for the Town of Elk Park. We all talked and figured out there was a lot of miscommunication. All parties are now in agreement that certain people will assume certain responsibilities. The Town, legal counsel, the engineer and I will meet again in a few days to see what has been done. The project is now on track and I don't think we will lose the grant money, Wiseman said. The bad news is that we have been fiddling around for 2 years and now, trying to install a water system in winter is not good. The old railroad bed is involved which causes some problems as to easements over old railroad property, etc. We have tried to work with some of those folks who have said that they will not sign the right of way. The County is back in the game now and we hope to get something going. Wiseman advised that this is a reimbursement situation. The Town of Elk

Park spends the money and they are reimbursed, but I don't know if they have the money to spend or not, and we may have to work out some creative financing on this project, Wiseman said.

The Board thanked Wiseman for all of his efforts to get this project back on track and handle right of way and easement problems as well. This has been a very frustrating situation for both legal counsel as well as the folks in the Cranberry community.

#### Banner Elk School Property

Robert Wiseman said that we made the deadline on the ingress/egress at the Banner Elk School property site on which we have previously discussed relocating the Day Care Center in Banner Elk. No matter what happens on that piece of property, it was essential that we have access to it across this little trout stream that has about 1 inch of water in it. Whether, it be used as a Day Care or by the school or for some other purpose, that was a cost that would have been incurred at some point in time anyway. We made the October 15 deadline and got the culvert installed; we performed seeding and erosion control as well. We spent about \$14,000 on the project and also created equity in that property.

#### Green Valley EMS Substation

Robert Wiseman advised that he and Jerry Turbyfill have been working on a proposed layout and location for the new Green Valley Substation in the Green Valley Community. We will have a sign up there in the near future saying that it is the home of the new Green Valley Substation. We hope to have this substation up and running after the first of the new fiscal year. It will be early spring before everything is complete, Wiseman said.

Wiseman advised that the Board will hold a Public Hearing at 5 pm this evening. He added that he will be asking the Board to meet in Closed Session today for purpose of discussing acquisition of property.

#### Banner Elk Volunteer Fire & Rescue Project

Robert Wiseman asked that the Board consider approval of a Contract for paving at the entrance to the bay doors at Banner Elk Volunteer Fire & Rescue Department. The Dept. of Transportation makes funding available for certain paving projects such as this, and both Fall Creek and Newland VFD's have received paving from the DOT under this same type of Contract, Wiseman said.

**Motion by Susan Pittman and second by Scott Heath to approve this paving Contract between Banner Elk Volunteer Fire & Rescue (BEVFR), Avery County and the Dept. of Transportation for paving at the entrance to the BEVFR located on SR 1340, Old Linville Gap Road, as presented. Motion unanimously approved.**

#### Finance Office Report – Tim Greene

##### Budget Amendment # \_\_\_\_\_

Appraiser Position, Tax Assessor Office.

Tim Greene advised that we did not budget money for the appraiser position, even though it was a prior position in the Tax Assessor Dept. The time has come to budget for the position. It is a Grade 64, salary of \$26,223.00. Tim advised that he will budget 67% of the annual salary for the remainder of this fiscal year, or \$26,479.00, including fringes.

**Motion by Susan Pittman and second by Dan South to approve a Budget Amendment in amount of \$26,479.00 to fund an appraiser position in the Tax Assessor's Office. Discussion.**

Tim advised that he has figured the salary for 8 months for right now. **Motion unanimously approved.**

##### Budget Amendment # \_\_\_\_\_

#### Workmen's Comp. Insurance

Tim Greene explained that the Worker's Comp. Insurance premium is based upon projected payroll salaries for the upcoming fiscal year. When the FY ends, an audit is conducted by Workmen's Comp. to get actual salaries. The insurance premium is then adjusted based on actual salaries. Following the FY 2006-07 audit, the County has been assessed an additional premium of \$60,895. We paid \$360,000 premium in 2006-07 and we will now have to add this additional \$60,000 to that amount. You don't know what the premium amount is actually going to be until W. Comp. comes and performs the audit, Tim said. Tim added that the NCACC works with counties through Risk Committees in an effort to lower our incidences of claims and injuries and save us money.

**Motion by Phyllis Forbes and second by Dan South to approve a Budget Amendment in amount of \$60,895 to pay additional insurance premium assessed after the Workmen's Comp audit was performed. Motion unanimously approved.**

**Budget Amendment # \_\_\_\_\_**

**Culvert – Banner Elk School Property**

Tim advised that a culvert was placed on the proposed school property at Banner Elk. This will allow future development on the northeast end of that property. The cost for this project was \$15,000.

**Motion by Scott Heath and second by Susan Pittman to approve a Budget Amendment for the culvert at the Banner Elk School property in amount of \$15,000. Motion unanimously approved.**

**Budget Amendment # \_\_\_\_\_**

**CJJP Grant**

Tim stated that the NC Dept. of Corrections has increased the Criminal Justice Partnership Program grant an additional \$3,265.00 bringing the total to \$49,850 for FY 2007-08. The additional increase is for operational and repair expenses. This is 100% money, no match required.

**Motion by Phyllis Forbes and second by Dan South to approve a Budget Amendment in amount of \$3,265 for the NC Dept. of Corrections Criminal Justice Partnership Grant. Motion unanimously approved.**

**County Attorney Report – Michaelle Poore**

Michaelle Poore advised that there have been no significant developments since the Board last met. She said that they are about ready to wrap up the tax foreclosures until a new round of foreclosures starts. One piece of property is still in the upset bid process, she added.

**Grant Applications – Sheriff Kevin Frye**

Sheriff Frye advised that his department will be applying for some grants to become effective in July 2008 and that he wanted to make the Board aware as far in advance as possible that he would be applying for these grants. These grants will all be in the next budget cycle, Frye said. One of these grants is for Natalie Cook's position in Domestic Violence, and I don't know how we would do without it. Natalie and also one of our Judges recently attended a Criminal Justice Seminar in Florida where they received training, including training on the creation of a Judicial Task Force for Domestic Violence issues. We hope to be able to get something like that started here as the State is really putting a lot of emphasis on this problem and on training for it. This is the second or third year of our 75%/25% grant, and we might get one more year of it, but after that, the County would have to pick up that salary and the Board will then need to decide how they want to handle it, Frye said. Frye advised that the County Manager has a copy of the grant applications that we intend to apply for.

**Overtime Grant for Drug Investigations**

Sheriff Frye explained that this grant will help to pay for the overtime salary of officers when they have overtime from any kind of drug related work. We can also use Drug Task Force Grant money for this same purpose, Frye added. He said that he has heard from many of the citizens of the County who say they are thankful that we are putting so much emphasis on the drug problem, and that he feels that this money is being well-spent for that purpose, Frye said.

**Drug Funds**

Sheriff Frye advised that the County allotted his department \$5,000 this year for drug buy money and they have spent all of it. When I put in my budget request for that amount, I added that if we spent all of that, that I hoped I would be allowed to come back before the Board at a later time and ask for additional funding. Frye then asked the Board to address that issue today. He said they hope to eventually get a Court order for these people we are arresting to pay back those funds. He added that with a lot of these people, it is going to be a long time, if ever, before we get any money back out of them. That is the cost of doing drug enforcement, and a return doesn't happen quickly in most cases.

**Courtroom Security Officer Position**

Sheriff Frye said that he has previously given the Board copies of the letters he received from our Judges in the district expressing their concern about Courtroom security in Avery County. These Judges have been asking me what they can do to get extra Courtroom security. Several incidents have occurred which brought this issue to the forefront, both here and in Watauga County. Threats were made here against some of the witnesses and some of the attorneys. The Bailiff cannot handle his job and also perform Courtroom security, Frye said. If you approve this position I am requesting, we would start it in

January. On the days that we don't have Court, I would like to use Kevin Lane and the person I hire for this new position to do school programs on anti-drugs, anti-guns and anti-violence in the school system. That way these jobs could serve dual purposes. We can then set up the metal detector and screen everyone coming into the Courtroom and make sure we don't have any guns or metal objects coming into Court. Right now we don't have officers available to do that. They can't answer calls, serve papers and still have somebody available to do Courtroom Security, Frye said. We have two officers on the road each day, and if we take one of them off to do Courtroom Security, that just leaves one officer on the road for the entire County.

The Manager said he would support Kevin's request, but that somewhere down the road we will have to do a budget amendment for 2 months for the School Resource Officer. I see the need. The only issue I have is that we recognized the need, but didn't prioritize it high enough for this year's budget. My concern is about doing it in the middle of the FY as opposed to waiting until July 1, Wiseman said. I would support him in his request for a new position, but I would do it in the coming FY.

Discussion on the salary for a new Courtroom Security Officer. Tim Greene advised it is a Grade 63 position and the salary, including fringes for one year is \$39,424. It would cost about \$20,000 for half of the year, if we start someone out at a Salary Grade 1. I would like to hire somebody with some experience if possible, Kevin said, due to the training time and liability issues.

Chairman Poteat said his concern is that we have over 30 departments, including outside agency allocations, and the Sheriff currently has slightly over a 20 percent increase in his budget from one year to the next. I am concerned about also being fair to the other departments, and this is setting a precedent, Poteat said, as the Sheriff Dept. is one of the few that received a 20% increase in one year. I think we could do this in the coming year's budget, Poteat said.

Kevin said that as an elected official, he has to determine what the needs and wants are of the people he serves. The reason I am coming here now is due to the concerns expressed by our Judges and as an officer of the Court, when the Judges have a concern, then that's a concern I have to take very seriously. That's why I came now instead of in July, Frye said.

Susan Pittman said that the 20% increase was for the Sheriff's Department and that it didn't have anything to do with the Court system itself. She felt that the Board needs to address this issue now. Phyllis Forbes agreed. Dan South asked how much longer we want to assume this risk of not having an officer in there.

Kevin said that they have hand-held wands and when we get specific threats, I pull officers off of the road to deal with it, but that also puts us in a liability situation with just one officer on the road.

Discussion was held regarding the County's liability for the Courtroom. Michaelle Poore advised that if someone were shot or stabbed in our Courtroom, then they could make a claim against the County.

Scott Heath said that the hardest part of Kevin's job is to make do with what he has. We are behind him 100% and we increased his budget by 20% this year. He has to decide if this Courtroom issue is a bigger liability than having an additional jailer or one officer on the road, etc. I think he needs to prioritize the importance of these needs and handle them in that way, Scott said.

Chairman Poteat asked for a Motion. If there is no Motion, then this issue will be entertained at July 1, Poteat said.

**Motion by Dan South that a Court Security Officer be funded starting in January 2008 as requested by the Sheriff. Motion seconded by Phyllis Forbes. Discussion.**

Dan said that we have to deal with reality. Police work is dangerous and when we pull officers from one thing to do another, it creates another risk factor. Drug cases, domestic violence, etc., I don't think we can allow that risk to be 200 meters away in the Courtroom with no screening going on in there. Nothing but an on-call officer and a Bailiff is a high risk for the County to take.

Phyllis Forbes said she felt it was money well spent to provide what the Sheriff needs for safety in the Courtroom.

The Manager asked that the budget be amended in order to incorporate the necessary funds into the Sheriff's budget.

**Motion was amended by Dan South to include incorporating the necessary funds into the Sheriff's budget for this position. Second by Phyllis Forbes.**

Scott Heath said that we just gave funds for a band trip to Florida and that we are doing these things above the budget. Maybe we should have raised taxes during the budget and funded a lot more things. The money is trickling out. Are we losing sight of where we are financially? We may need a mid-year update from our Finance Officer on these things, Scott said.

**Vote: Motion carried by majority vote of 3-2. Susan Pittman, Phyllis Forbes and Dan South were in favor. Kenny Poteat and Scott Heath were opposed.**

### **Closed Session**

The County Manager asked the Board to meet in Closed Session to discuss acquisition of property.

**Motion by Phyllis Forbes and second by Susan Pittman for the Board to meet in Closed Session under G.S. 143-318.11(a) 5 to discuss acquisition of property. Motion unanimously approved at 4:30 p.m.** Invitees will be the Board, Legal Counsel, County Manager, Finance Officer and Clerk.

The Board came out of Closed Session at 4:48 p.m.

Chairman Poteat advised that the Board has met in Closed Session. Discussion was held, no decisions were made and no vote was taken.

### **Approval of Board Minutes**

**Motion by Phyllis Forbes and second by Scott Heath to approve the Minutes of 10-1-07 Regular Mtg; 10-1-07 Joint Bd. of Ed Mtg; 10-3-07 Workshop on High Impact Ordinance; 10-8-07 Workshop on High Impact Ordinance; 10-15-07 Regular Mtg; 10-15-07 Public Hearing on High Impact Protection Ordinance. Motion unanimously approved.**

### **Agenda Consent Items**

The Agenda Consent Items were approved by a consensus of the Board.

### **Upcoming Meetings**

The Board discussed all upcoming meetings of the Board. The next Regular Meeting will be held on December 3, 2007.

### **Recess**

The Chairman recessed the Board until 5 p.m., at which time a Public Hearing will be held.

### **Public Hearing – High Impact Protection Ordinance**

The Avery County Board of Commissioners held a Public Hearing to receive public comment regarding the proposed High Impact Protection Ordinance for Avery County on Monday, November 5, 2007 at 5:00 p.m. in their offices, Avery County Administrative Complex, Newland, NC.

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

Members Absent: None

Also Present: Rachel Deal with the Avery Planning Board and Tommy Burleson, Avery Inspections Department, as well as approximately 80 members of the press and general public.

### **Call to Order**

Chairman Poteat called the Public Hearing to order at 5:03 p.m.

**Motion by Phyllis Forbes and second by Susan Pittman for the Board to convene in a Public Hearing for purpose of discussion on the High Impact Protection Ordinance. Motion unanimously approved.**

Chairman Poteat advised that 4 persons have signed up to speak at tonight's Hearing. He stated that the Board has held more than one Public Hearing and many workshops on this issue. This type of ordinance has ramifications for all of us, Poteat said. He advised that there have been substantial changes made in this Ordinance from our last Public Hearing.

He then briefly outlined the changes in setbacks and accessory usage areas which were made after the last Public Hearing. Class 1, 50 ft. s/b and 0% s/b accessory usage area. Class 2, 125 ft. s/b with 40% s/b accessory usage area. Class 3, 225 ft. s/b with 35% s/b accessory usage area. Class 4, 400 ft. with 30% s/b accessory usage area. Class 5, 700 ft. s/b with 25% s/b accessory usage area. Class 5 has been expanded. Class 6, 1,500 ft. s/b with 20% s/b accessory usage area. He also explained that the decibel level was changed in the Maximum Permitted Sound Level Table. Residential daytime was changed from 65 dB down to 60 dB. A definition was also given for the term "setback accessory usage area", and soft materials from hard materials were also separated in the last classification change, Poteat said.

## Speakers

### Jody Lovelace

Lovelace said that he is here to talk about the setback from rock quarries. In other counties it is 1,300 ft. to 2,000 feet. The Planning Board did not discuss this issue and we did not understand the reasoning in treating quarries as less harmful than some of these other things. Mike Lacey had said that the 600 ft. was chosen because of the distance from the Old Linville Quarry to the nearest residence. We did some research and there was no home 600 ft. from the Old Linville Quarry, Lovelace said.

This Board reduced the setback for quarries to 700 ft. at their last Workshop. We hope you will vote to put the rock quarry in the appropriate class. We have also visited people in Mitchell County and have letters of complaints from residents down there who experienced quarry noise, dust, etc. We also want you to consider the dangers of fly rock from blasting at quarries as well as the health hazards from the dust and rock.

Phyllis Forbes advised that she spoke with Bobby Pendley, who took this survey, about those problems. It is difficult to talk outside or hear a phone conversation outside due to noise of the crusher down there, Phyllis said. Mitchell County does not have any ordinances in place to protect the public at this time from this issue, Forbes said.

### Ted Johnson

Ted Johnson said that some folks say we are just here to stop the quarry, but if there has to be one, we want responsibility. There is plenty of room to keep the quarry away from our homes. We would rather not have one, but if there has to be one, set it back from the residences, churches and homes and put the proper noise restraints on it. The applicant bought that property in 2006 for \$242,000. There is no guarantee that there will be cheaper gravel if this quarry operates. The leading tree growers tell us that the cost of gravel is not a significant cost in their operation. The quarry would require 50,000 gallons of water per day off of Burleson Bald Mountain to operate. Also, we are 50 families, not 50 residents as has been stated. Lower setbacks just dilute our protection further. We ask for an ordinance to protect the residents from high impact industries. Also, we want hard materials moved to a Class 6 and a 2,000 ft. setback, Johnson said. He concluded that some members of the Planning Board have tried to gut this ordinance, but that Avery County needs this ordinance with the appropriate setbacks.

Ted Johnson then presented the Board with a petition containing approximately 360 names urging the Commissioners to enact an ordinance protecting the health, safety and quality of life of area residents by regulating the location and operation of high impact, polluting industries in Avery County, including but not limited to gravel quarries.

### Matt Linvaugh

Mr. Linvaugh spoke about noise issues. He said that his group sent a letter last week asking the Board to restore the noise levels to the right level in the Ordinance. He added that the Planning Board ignored their suggestion to reduce the noise limits. Linvaugh then referred to comments by Mike Lacey about the new Google Datacenter to be constructed in Caldwell County. Last Thursday we spoke to the Google Director of Strategic Planning about the cooling equipment from Google's new center. Google is not using the type of equipment that the Planning Board Chairman described to the Board. He was wrong about that information. We hope you will move mining/excavation to a Class 6 and 2,000 ft. setback for our community and yourselves. Linvaugh concluded that they had originally recommended decibel levels for Educational at 45dB daytime and 55 dB – night; Residential of 55 dB daytime and 45 dB - night.

### Jerry Potter

Mr. Potter said that this has happened where small groups drag a whole county into a mess when something like this is happening in a county. I had a problem with my neighbor about a pond but I took him to court and bet him. I didn't involve this whole county in it and I took care of my own business, Potter said. These people need to do the same thing since they are mad at that boy about the quarry he wants to put in. That document you came up with has conflicts in it. I am waiting for some legal people to call me back on it right now. He asked that the Board hold up on adopting it until he hears from his lawyer and can get back in touch with the Board. He said there is a conflict of interest is over the gravel deal. Mike Lacey owns a lot in Crossnore and leases it to Vulcan Materials, Potter said. It would not be in his interest for us to have a rock crusher, Potter said. Potter concluded that people should not be dragging everybody in the county into their business.

### Rebuttal

Chairman Poteat advised that this is all the people scheduled to speak. He asked if anyone wished to rebut anything that any of the speakers have said.

Jason Warner said that Mr. Potter now has me defending Mike Lacey in that Mr. Lacey previously told this Board about his interests in the leasing of property at Crossnore to Vulcan Materials. Warner added that there is abundant gravel in the county; no shortage. Prices will stabilize and there is no guarantee of cheaper gravel if we have a quarry in our community.

Rachel Deal, member of the Planning Board, said that their board is a volunteer board and that they receive no pay. We don't all agree with what some of our board does, she said. So, I can't say that all the comments made were made on behalf of everyone on our board. A lot of things come to these boards to be looked at and sometimes you can take care of some of it yourselves. We have had 6 or 7 meetings on tonight's issue and have put from 80-120 hours of work into it. We want to do what is right for you, not what is right for us, Deal said.

Chairman Poteat said that the Commissioners really appreciate the Planning Board. They expend a lot of their time and effort with no pay and very little appreciation for what they do.

There being no further discussion, the Chair asked for a Motion to close this Public Hearing.

**Motion by Susan Pittman and second by Scott Heath to close this Public Hearing at 5:45 p.m. and resume Regular Session. Motion unanimously approved.**

### **High Impact Protection Ordinance**

Chairman Poteat stated that the Board has 3 options available to them in regard to this ordinance. We can do nothing; we can make changes, or our third option is to vote on the High Impact Protection Ordinance with changes made as I read aloud earlier tonight in regard to changes in setback and decibel level and a new wording of definitions. He asked what the Board wished to do.

Michaëlle Poore, County Attorney, advised that the Moratorium which the Board previously enacted will expire on Saturday, November 10, 2007 and that there is not sufficient time for the Board to advertise to extend that Moratorium. Chairman Poteat added that if the Board tweaks the ordinance, we would have to decide if it constitutes substantial change. If it does, it would then require another public hearing, Ms. Poore said.

Discussion was held on what kinds of changes might constitute a substantial change in the ordinance. Michaëlle Poore advised that "substantial change" is not defined in the statutes. Susan Pittman said that this ordinance can be amended at any time. Michaëlle said that the Board can make minor changes to this document tonight, make that part of your motion and vote on it tonight, if you wish.

Chairman Poteat said that he has a problem with the decibel levels being set too high. I feel some judgmental errors were made in decibel levels. He suggested a change on Page 17 to the decibel levels; change Educational - Daytime from 60 to 55 dB and change Night from 65 to 50. In Residential, he suggested changing Daytime from 60 dB to 55 dB and Night from 55 dB to 50 dB.

The Chair asked Ms. Poore if she feels there is any problem with changing those levels and if that constitutes a substantial change. She said she did not think that it constitutes a substantial change, since she thinks those were the levels which were available to the public at the last Public Hearing.

Phyllis Forbes was concerned about the setback level itself on quarry operations. She said she was not sure if the 700 ft. setback is enough. She read aloud from a handout provided to the Board tonight in regard to fly rock from blasting at quarries and expressed her concern about this issue as well.

Dan South said that the setbacks are from the property boundary, not from the point of operation. He felt we need to be fair to both parties. When we increase the setback, we get back into the issue of how much property you have to have in order to have that operation. If we change the setbacks, then we need to re-visit where the setbacks are from. We have gone over this and over it and tried to be fair to both parties, South said. Chairman Poteat asked the County Attorney if a change in setback would be considered as a "substantial change." She advised that it depends on how great the setback is. It is arguably a substantial change she said.

Scott Heath said that we were concerned that we made these setbacks too big to be practical. We wanted to be fair on both sides. I don't want to exclude anybody, but I want to protect those around those industries. The decibel level is a difficult thing to enforce, Heath said. If we pass this ordinance, we need to work with the Inspections Department to help them with enforcing this Ordinance.

**Motion by Scott Heath to approve this High Impact Protection Ordinance we have worked very hard on, as written, with changes in decibel level as the Chairman has suggested tonight. Motion seconded by Susan Pittman.** Discussion.

Dan South asked about the previously suggested paragraph dealing with the need for legal recourse and negotiation between the land owners. It was so two landowners could get together and agree, Dan said. He said that was not mentioned tonight and he wondered why it wasn't. He said that he felt very strongly that if you had that, that you didn't need the ordinance because that answers the question of the ordinance. Because if two landowners can get together and work it out, then the government doesn't need to be involved because we have too much government regulation as it is, South said.

Tommy Burleson replied that the Planning Board felt that if you allow that landowner to negotiate with the business that you have a chain reaction by allowing that landowner to impact another landowner, then you get 2 or 3 landowners involved. The Planning Board felt it was kind of like mineral rights. People could go in and buy up those commercial sound rights on that property from these people and then you have deeded restriction on that property. Then if somebody wants to put in a business on that property and wants to purchase the property, they have to purchase the sound rights from that person. The only way to do it properly is to sell those rights back at Fair Market Value, which makes it legal, and it then becomes a commodity, just like Mineral Rights, Burleson said. Somebody can buy up the sound rights, then wait until a new business comes in and negotiate with that business. The Planning Board just felt that this would be a win/win for the attorneys.

**Vote: Scott Heath, Susan Pittman, Phyllis Forbes and Kenny Poteat – in favor. Opposed: Dan South. Motion carried by majority vote.**

**Adjourn**

**Motion by Phyllis Forbes to adjourn this meeting at 6:00 p.m. Second by Susan Pittman and unanimously approved.**

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**Kenny Poteat, Chairman  
Avery County Board of Commissioners**

**ATTEST: \_\_\_\_\_  
Nancy H. Cook, Clerk to the Board**