

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in Regular Session on Monday, March 3, 2014 at 3:30 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC.

Members Present: Kenny Poteat, Chairman; Glenn Johnson, Vice-Chair; Phyllis Forbes; Reo Griffith; Martha Hicks

Members Absent: None

Call To Order

Chairman Poteat called the meeting to order at 3:30 p.m.

Chairman Poteat led prayer.

Chairman Poteat announced that if anyone would like to speak to an agenda item they must sign up on the sheet with the clerk otherwise there would be a time of public comment.

There were no proclamations or awards.

Public Comment

Chairman Poteat stated that the chairman would allow up to 10 minutes to speak. Chairman Poteat asked the County Attorney, Michaelle Poore, to give a legal opinion on what can be said during public comment.

Ms. Poore stated that public comment would be a time period when the public can make comments to the Board. This is not a question and answer session with the Board. The Board is not obligated to provide answers to any questions that are presented to the Board but the Board may choose to take matters under advisement. The policy and certain parameters pertaining to the statute states that individuals are not to be disruptive. During the time of public comment, if the individual continues to be disruptive after warning they can be removed. The Board does have a policy on public comment. If anyone has questions about that, they can be provided with a copy of that policy.

Stewart Cook, Avery County citizen, stated "I would like to address Reo and ask him if he would not consider stepping down as Commissioner while he is running for Sheriff because he is a very vindictive person, uses his authority against people like he did coming down here to Newland him a Sugar Mountain Officer trying to get a deputy fired when he had no business in Newland. It was nothing to him investigating a crime in Newland. He takes and abuses his badge and comes over here and tries to settle a grudge. I don't trust him as a commissioner because he will do the same thing. As a matter of fact, I hear rumors around about him offering all kinds of stuff to vote for him. Going to get fire departments new trucks and new equipment when he knows he can't do that by himself. That is bad when you misuse your office, badge and your authority to get a vote. He is bad for it and knows he is bad for it. He has no business being here in Newland. Evidently Sugar Mountain has no kind of guidelines; they don't care what he does. I see him with his car down at his house and church and everywhere. They let him do what he wants to at Sugar Mountain. He stepped out of his bounds and I think he should step down as commissioner and police officer, too. He will be stopping people for speeding and he will say hey I will let you go if you will vote for me, that is my opinion. His reputation is bad. That is what I wanted to address Reo about. If I keep a hearing stuff that people says he is offering them all of this deals to do stuff , I will bring it to the Board's attention again."

Pat Buchanan, Avery County citizen, stated "I am a taxpayer. I would like to commend the commissioners on their stance with the Banner Elk School incubator all except for one has done a good job and I guess you know who that one is. I would like to ask Reo if he is man enough to step down from the two positions that he is in at Sugar Mountain and as a county commissioner. I have a personal interest in that because the one that he has investigated was my son and he is a good officer in Avery County if I do have to say. I think it would be of interest if he did step down from both the Sugar Mountain Police and county commissioner. Commissioners you are doing a good job except for him."

Faith Lacey, Avery County citizen, stated "I would like to say in the conditional use permit for the incubator signed by the Town of Banner Elk and Avery County, the county at taxpayer's expense agreed to provide parking spaces for 10 bicycles and complete the parking lot at the AC PRIDE project. According to the site plan submitted by the county, taxpayers will have to pay for approximately 64 new parking spaces, approximately 15 planting sites, 61 trees and shrubs and 20 street lights. Does anyone know how much this is going to cost the taxpayers? Since the Board has already signed the legal document agreeing to build a parking lot is this not another example of the Board having its mind made up before a public hearing. I would like to also know what the utilities for the month of December and January costs the Avery County taxpayers. I have a little notation here and in 2009 the National Parking Association which is located in Washington, DC estimated one surface parking space and they estimated that cost to be from \$1000 to \$1500 and they said the approximate average cost for one parking space would be

\$5,000. Does anyone have any idea before you signed the document what that would cost the taxpayer's? I have the legal document here that was signed."

Chairman Poteat stated that Ms. Lacey's questions were a matter of record now and that he and the County Manager would get answers for Ms. Lacey and send the answers to her.

John Millan, Avery County citizen, stated "I would like to point out and some people may or may not be aware that I attended the Special Commissioners Meeting on the 17th of February to speak on questions raised to me by Avery County citizens. I did not come to that meeting to confront but rather to seek open facts and continuing dialogue. When I attempted to use a previous action of the Board regarding local real estate industries solely as a comparative point, Commissioner Johnson interrupted me asking the Chair to rule me out of order saying my point was not a matter of address at that meeting. I was ruled out of order and not given the opportunity to rebut that point. I highly respect the chairman but I do disagree I was out of order. I later spoke to an attorney and the legal issues here are simple whether or not I was primarily addressing old issues for action at that session or not. An objective review of the totality of the circumstances obviously shows I was not and I had not articulated enough facts to form an objective opinion when I was silenced. I even went so far to say that I was not there to rehash old issues. Robert's Rules of Order permits addressing an old or otherwise irrelevant point at specific agenda meetings if doing so is solely for comparative purposes to matters at hand. The act of peacefully assembling to address the government is a sacred right of democracy granted by the first amendment of the United States Constitution which also allows free speech at such meetings unless the speech is disruptive, clearly irrelevant or so time consuming as to prevent others from being heard who wish to speak. The short period of time that I had spoken created no such concerns and in fact I was the sole speaker. The United States Supreme Court has ruled in a number of cases that speech in public forums can be time, place and manner restricted but content can only be restricted if it is clearly unrelated to matters at hand. A situational example would be someone speaking about a problem parking at a special board meeting when in fact the subject matter of a special meeting might be an ordinance on stray dogs for example. Clearly there is no nexus between those two areas because a person could be silenced in that particular situation otherwise as a general rule government officials may not silence speech they disagree with. Courts uniformly prohibit any obvious or covert attempt to silence dissent as a defective form of censorship. Legal public commentary periods have expanded first amendment rights from the federal courts that have also ruled against prohibitions on, for example, personal attacks on employees, officials and others since it sensors robust debate and public expression. I am aware that this Board's policy is that we don't attack people and we don't become rude and I certainly don't advocate that but the U.S. Supreme Court has said we can do so thus the Board's policy is unconstitutional. That can be addressed on another day. The reason I came forward to speak though was that this case was troubling, I certainly didn't attack anyone I just wanted to be heard. Although I was not disruptive, I was nonetheless silenced. Government should always as a matter of democratic principle air on the side of free speech so as not to appear to stifle views that might be counter to its own objectives, agendas, personal or political positions. The Board should scrupulously avoid all actions that smack up or appear to be any form of actual or defacto censorship of dissent. I was not verbose and I did not filibuster. I think it is ironic, I have a great deal of respect for Mr. Johnson, but Mr. Johnson is never one to be reluctant to take the time he needs to express himself and for Mr. Johnson to interrupt me which I feel is inappropriate under the circumstances after 30 seconds is inappropriate. I would ask all the commissioners never try to stifle debate and I would say, Mr. Commissioner, if we are going to limit people to the amount of time that they use that this apply to fellow board members also because lengthy debate should be afforded to the citizens. The pattern should be uniform. Information that I have gotten from the first amendment center specifically addresses this public comment time for citizen issues is in a forum where free speech rights have heightened protection and content based exclusions face a high constitutional hurdle. Time, place and manner restrictions can be imposed so long as they are narrowly tailored to suit government needs. In other words, government could impose a time limit to allow everyone to speak. A person who speaks too long and deprives other people of the opportunity to speak can be called down but regardless expressing views to the government is a cornerstone of a constitutionally protected democratic process and the courts again look at a high hurdle in shutting people down for these purposes. Case in particular is Wilkinson versus Bensuson Township and a person who refused to give his identify and then launched personal attacks was silenced and the court ruled that this was inappropriate. The courts also been very weary of laws, rules or regulations that prohibit personal attacks or comments on government officials. The Federal district court ruling in Leventhal versus Vista Unified School District in 1997 seems clear that bylaw prohibition on criticism of district employees is a stifling of public debate and robust speech and is therefore inappropriate. I would as a matter for my last point read a document that we are all familiar with. It says Congress shall make no laws respecting an establishment of religion or prohibiting the free exercise thereof or most particularly abridging the freedom of speech or the press or the right of the people peaceably to assembly and petition the government for address of their grievances. That was created on September 17, 1787; ratified by all the states in 1781; ratified by Congress June 21, 1788 and replaced the Articles of Confederation in 1777. Many wise and brave men worked 11 years to create the sacred blueprint for democracy to be passed as law of our great nation. The US Supreme Court has applied, interpreted and protected this text to this very date. We as Americans especially those who are elected to serve democratically elected government should never try to evade this sublime document or its intent nor should we simply grudgingly comply with its edicts. Our brave young men and women who wear our nations honored uniforms face the horrors of war, injury and death as we speak at this very moment in order to preserve this document and all it represents. Accordingly, we should

honor them and all of those who have served in peace and war and those who suffered, bled and paid the ultimate sacrifice dying for our nations service by cheerfully and fully complying with this revered text. I served in harm's way for my nation in two wars. I humbly remind our Commissioners of this passage and ask that it be upheld, revered and never diminished by act, omission, intent or design. When we fail to honor this documents intent we dishonor our heroes and our valiant warriors who have served our nation with distinction for over 200 years."

Glenn Johnson stated "I hesitate to respond under public comments to a public comment. Mr. Millan is exactly right he was not disruptive in anyway and he was very courteous but in listening to the tape of the public hearing Mr. Millan used the term real estate four times before I appealed to the chair. He said after the chairman clearly stated that we were only here to talk about the two businesses that were coming into the incubator. Mr. Millan stated that he understood the role of the hearing today that only specific business participates in the incubator would be addressed and he also said he was going to stick to that. He also said that he had some specific concerns with the real estate firm moving in. That is when I appealed to the chair that Mr. Millan was speaking about the real estate firm and we were only here to talk about Highland Pro Clean and Custom Designs. This according to the tape is an exact quote from Mr. Millan. He said "so the real estate is not up today, Mr. Johnson." Obviously the real estate firm had been in place for four months. "So the real estate is not up today, Mr. Johnson." It was not, so by that statement I took it to mean that Mr. Millan thought we were here to talk about the real estate firm. I believe in talking about real estate four times before I appealed to the chair and in all five times that he must have thought we were here to talk about the real estate firm. They had been in place for some four months and paid some \$1400 in rent. There is money coming into the incubator."

Martha Hicks entered the meeting at 3:45 p.m.

Chairman Poteat thanked three candidates for commissioner for being present at the meeting. Chairman Poteat stated that Bud Phillips had passed away and that Mr. Phillips had meant a lot to Avery County and the economic drive in Avery County.

Phyllis Forbes stated that she was glad to see the candidates here and that she thought it was good to take a moment to remember Mr. Bud Phillips. He was a fine person and he will be missed.

Reo Griffith stated that Bud Phillips was a wealth of knowledge. It is also an honor to serve the people of Avery County.

Martha Hicks asked that everyone remember Doug and Jane Clark. Doug had surgery and is in ICU at Memorial Mission Hospital.

Avery County Planning Board

The terms of Rachel Deal, Cheryl Buchanan and Joe Perry are expiring on the Avery County Planning Board. They have each expressed an interest in continuing. They have done an outstanding job.

Motion by Phyllis Forbes and second by Reo Griffith to reappoint Rachel Deal, Cheryl Buchanan and Joe Perry to the Avery County Planning Board for 3 year terms. Motion unanimously approved.

Avery County Humane Society – Brenda Lyerly; Rachel Deal

Brenda Lyerly, Avery County Humane Society Chairperson, thanked the Board of Commissioners for helping to obtain the property that the Humane Society sets on today. With your help and support you have contributed to the success that we enjoy. Ms. Lyerly stated that she was here to discuss expenditure of taxpayer's money and investing in a crematorium. Ms. Lyerly explained that the Humane Society has a spot at the facility available for the crematorium. The Humane Society will operate and maintain the facility and continue to actively solicit contributions to see the project to completion. This facility is environmentally safe and neighbor friendly. This crematorium would save the Sheriff's office time, money and peace of mind because the deputies have to travel to Charlotte four times per year to dispose of confiscated drugs and other evidence. Sheriff Frye has committed \$10,000 from his equipment budget for this project. The Avery Humane Society has raised \$28,000 to date. Sheriff's Frye has committed \$10,000 from his equipment budget. The total cost of the project is \$60,000 to \$70,000. The Avery County Humane Society is respectfully requesting a contribution from the County of \$10,000 for this needed facility. Ms. Lyerly presented some of the accomplishments of the Avery County Humane Society for 2013.

Troy Cook stated that the Sheriff had asked him to be at the meeting to express the Sheriff's Office interest in the incinerator. The Sheriff has contacted the Governor's Crime Commission for an off cycle grant.

Robert Wiseman stated that for a point of clarification for the record the process that exists for the disposal of euthanized animals in Avery County is a joint effort between two agencies involved. We do not dispose of euthanized animals in our landfill. The animals that are euthanized are frozen, encapsulated and they are taken to Brushy Creek and shipped to Bristol, Virginia which is a certified disposing facility.

Resolution For Approval of Insurance District Boundaries – Charlie Franklin

Charlie Franklin, Avery County Fire Department Coordinator, stated that in 2010 we made some changes to the fire district maps. These were signed and approved by the Board and sent to Raleigh. There was a word in the motion of that approval that stated “mapping system” instead of maps and the state would not recognize the approval because of the wording. Mr. Franklin asked for approval of the resolution. Mr. Franklin stated that this resolution would need to be done for each fire department.

Motion by Martha Hicks and second by Glenn Johnson to approve the Resolution for Approval of Insurance District Boundaries. Motion unanimously approved.

3.3C Agenda Item will be addressed under the Finance Officer’s Report.

Tax Administrator Report – Phillip Barrier

Mr. Barrier stated that the Total Tax Collections for the month of February is \$290,719.02.

Motion by Martha Hicks and second by Glenn Johnson to approve the Total Tax Collection Report for February as presented. Motion unanimously approved.

Regular Releases

Regular Releases for the month of February is \$84.26 which involves personal property not real property.

Motion by Phyllis Forbes and second by Martha Hicks to approve the Regular Releases for the month of February 2014 as presented. Motion unanimously approved.

Motor Vehicle Releases

The Motor Vehicle Releases for the month of February 2014 is \$101.61.

Motion by Phyllis Forbes and second by Martha Hicks to approve the Motor Vehicle Releases for the month of February 2014 as presented. Motion unanimously approved.

Real and Personal Refunds

The Real and Personal Refunds for the month of February 2014 is \$209.00. This was business personal property that was double billed.

Motion by Glenn Johnson and second by Martha Hicks to approve the Real and Personal Refunds for the month of February 2014. Motion unanimously approved.

Sales Statistics

Since the revaluation we have had \$7,949,000 worth of sales in the county. The tax value is \$7,484,000. This is a difference of about 5 1/2%. In February there were no foreclosures.

Board of Equalization and Review Appointments

Mr. Barrier explained that the Board had six applicants and that there needed to be a five member board appointed along with one alternate. The Board of E&R will convene the first meeting on Monday, April 7. This Board will adjourn on Thursday, April 24, 2014.

Chairman Poteat stated that ballots are used but each Board member would sign and date the ballot and it will be on file for public inspection. Chairman Poteat explained that the system was like “golf”; the low score wins. For example, the person who you might think is most capable of serving in this capacity you would score a 1; the person you think is least capable of serving would get a 6. You must vote for all six.

Chairman Poteat called for a brief recess while the Chairman and Clerk tallied the votes. Chairman Poteat declared the meeting back in session after a brief recess.

Chairman Poteat announced that there was a tie between Bill Burlinson and Dedy Traver. Chairman Poteat passed out the ballots again. Chairman Poteat explained that only Bill Burlinson and Dedy Traver would be voted for this time.

Chairman Poteat called for a brief recess while the Chairman and Clerk tallied the votes. Chairman Poteat declared the meeting back in session after a brief recess.

Chairman Poteat announced that the members of the 2014 Board of E&R is: Don Baker; Vernon Carpenter; Dempsey Clark; Bob Tatum; Edith ‘Dedy’ Traver; and alternate Bill Burlinson.

Bob Tatum 14 votes (1 first place, 1 second place, 1 third place, 2 fourth places)
Dempsey Clark 14 votes (2 first place, 1 third place, 1 fourth place, 1 fifth place)
Vernon Carpenter 15 votes (3 second place, 1 fourth place, 1 fifth place)
Don Baker 18 votes (2 first place, 1 fourth place, 2 six place)
Edith "Dedy" Traver 22 votes (2 third place, 2 fifth place, 1 sixth place)
Bill Burleson 22 votes (1 second place, 1 third place, 1 fifth place, 2 sixth places)

Tie Breaker Vote: Edith "Dedy" Traver 7 votes (3 first place, 2 second place)
Bill Burleson 8 votes (2 first place, 3 second place)

Chairman Poteat voted as follows: Bob Tatum 1, Vernon Carpenter 2, Dempsey Clark 3, Don Baker 4, Edith "Dedy" Traver 5, Bill Burleson 6.

Glenn Johnson voted as follows: Dempsey Clark 1, Bill Burleson 2, Bob Tatum 3, Vernon Carpenter 4, Edith "Dedy" Traver 5, Don Baker 6.

Phyllis Forbes voted as follows: Dempsey Clark 1, Vernon Carpenter 2, Edith "Dedy" Traver 3, Bob Tatum 4, Bill Burleson 5, Don Baker 6

Reo Griffith voted as follows: Don Baker 1, Bob Tatum 2, Bill Burleson 3, Dempsey Clark 4, Vernon Carpenter 5, Edith "Dedy" Traver 6

Martha Hicks voted as follows: Don Baker 1, Vernon Carpenter 2, Edith "Dedy" Traver 3, Bob Tatum 4, Dempsey Clark 5, Bill Burleson 6

Tie Breaker Vote:

Chairman Poteat voted as follows: Edith "Dedy" Traver 1, Bill Burleson 2

Glenn Johnson voted as follows: Bill Burleson 1, Edith "Dedy" Traver 2

Phyllis Forbes voted as follows: Edith "Dedy" Traver 1, Bill Burleson 2

Reo Griffith voted as follows: Bill Burleson 1, Edith "Dedy" Traver 2

Martha Hicks voted as follows: Edith "Dedy" Traver 1, Bill Burleson 2

County Manager Updates – Robert Wiseman

Courthouse Renovation

Mr. Wiseman stated that there had been a few delays on the construction schedule because of the weather. One of the next steps in the progress is the renovation downstairs of the courthouse and relocating of the inspections department to the Tax Departments Conference Room.

Finance Officer Report – Tim Greene

Budget Amendment

The Senior Center has received an additional \$1,527.00 from The Home and Community Care Block Grant for the 2013/2014 fiscal year. This money will be placed into the Supplies-Food line item.

Motion by Martha Hicks and second by Phyllis Forbes to approve the Budget Amendment of \$1,527.00 from the HCCBG for the 2013/2014 fiscal year with a debit of \$1,527.00 to Supplies—Food (105960.0210) and a Credit of \$1,527.00 to Senior Services (103670.0000). Motion unanimously approved.

Budget Amendment

The Emergency Management department has received two State Homeland Security Grants. Both are 100% reimbursement grants. The purpose of the grants is to be used for conducting training activities to improve preparedness, response and recovery to natural disasters, acts of terrorism, and other man-made disasters.

Motion by Martha Hicks and second by Glenn Johnson to approve the Budget Amendment of \$16,500.00 for two State Homeland Security Grants with a debit of \$15,000 to Training (105250.1000) and a debit of \$1,500.00 to Training (105250.1000) and a credit of \$15,000 to State Homeland Security Grant (103799.0000) and a credit of \$1,500 to State Homeland Security Grant (103799.0000). Motion unanimously approved.

Budget Amendment

The Sheriff's Office received a disaster assistance grant for the severe storms experienced July 3 to July 13, 2013. The grant covers reimbursement of 80 hours of deputies time in responding to emergency calls, barricading affected streets and performing hazardous roadway inspections.

Motion by Phyllis Forbes and second by Martha Hicks to approve the Budget Amendment of \$2,000 with a debit of \$2,000 to Salary-Deputies (105100.0220) and a credit of \$2,000 to State Homeland Security Grant. Motion unanimously approved.

Budget Amendment

Tim Greene, Finance Officer, requested that the Board amends the Courthouse Renovation Project Ordinance in the current year budget. This is not adding any new money to the Project Ordinance it is just shifting from one line item to the other.

Motion by Martha Hicks and second by Phyllis Forbes to approve the Budget Amendment of \$50,000 with a debit of \$50,000 to Furniture (496600.4007) and a credit of \$50,000 to General Construction (496600.4004). Motion unanimously approved.

County Attorney Report – Michaelle Poore

There has been a new lawsuit filed against the county in regard to the Chapman matter. I will have more information on that at the next meeting.

The Grandfather Mountain Appeal is still pending.

Approval of Minutes

Motion by Martha Hicks and second by Phyllis Forbes to approve the February 3, 2014 Regular Session Minutes. Motion unanimously approved.

Agenda Consent Items

Adopted by Consensus of the Board.

Upcoming Meetings

The next Regular Meeting will be April 7, 2014 at 3:30 p.m.

Chairman Poteat announced that Phyllis and the Chairman would be visiting some schools tomorrow with some members of the school board.

Adjourn

Motion by Martha Hicks and second by Phyllis Forbes to adjourn this meeting at 5:30 p.m. Motion unanimously approved.

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

ATTEST: _____
Cindy Turbyfill, Clerk