

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in Regular Session on Monday, April 7, 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.

Martha Hicks led prayer.

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

Proclamations and Awards – Russell Taylor

Russell Taylor, Director of the Library at Lees McRae College and member of the Morrison Library Board and AMY Library Board, read a proclamation for National Library Week 2014. The proclamation reads as follows:

Whereas, libraries helps lives change in our community, campuses and schools;

Whereas, librarians work to meet the changing needs of our communities, including providing resources for all ages, interests and needs and bring in services outside of library walls;

Whereas, libraries and librarians bring together community members to enrich and shape our community and address local issues including literacy, economic development, domestic abuse, unemployment, healthy living, cultural heritage, and school success at all levels;

Whereas, librarians are trained and tech-savvy professionals providing technology training and access to online resources including e-books, homework help, faculty support, occupational tests, GED support, health information, financial planning, movies, language learning, and social media;

Whereas, libraries offer special programs to meet community needs, providing residents with story times for children, resume writing help, individual computer assistance, teen programs, job and career guidance, and help for older adults planning their retirement;

Whereas, libraries continuously grow and evolve in how they provide for the needs of every member of our community;

Whereas, libraries, librarians, library workers and supporters across America are celebrating National Library Week,

NOW, THEREFORE, be it resolved that I, Kenny Poteat, Chairman of the Avery County Board of Commissioners, proclaim National Library Week, April 13-19, 2014 in Avery County. I encourage all residents to visit our libraries this week and take advantage of the wonderful information and recreation resources available.

Motion by Reo Griffith and second by Martha Hicks to approve Avery County's recognition of National Library Week 2014 and approve the Resolution.

Phyllis Forbes stated that she served on the library board and that Avery County was very fortunate to have a very good library.

VOTE: Motion unanimously approved.

Public Comments

Chairman Poteat read from a document dated August 6, 2007 which was policies and procedures regarding meetings especially public comment times by county commissioners. 2.10A at least one period of public comment shall be scheduled each month at a regularly scheduled meeting of the Board. A designated time should be allotted for public comment period. It is anticipated that the total time allotted for public comment is 15 minutes. That is a total of 15 minutes. However, this time allotment may be extended or shortened at the discretion of the Board to meet the time constraints of a particular meeting. 2.10B Any person desiring to speak during the public comment period shall prior to the beginning of the public comment period register on the sign-up sheet provided by the clerk. We don't normally require anyone to sign-up for public comment time. 2.10C Public comment time is not intended to require

the Board of Commissioners to answer any impromptu questions. Speakers shall address all comments to the Board of Commissioners as a whole and will not be allowed to address any commissioner or staff member individually. 2.10D Each speaker appearing before the Board will be limited to 3 minutes speaking time commissioners excluded with a maximum of 10 minutes for 3 or more speakers on the same issue. Additional times for speakers may be allowed as set forth in Section 2.7. 2.10E Each person shall address the Board from the podium and state his or her name and address for the record which we normally do. 2.10F Only one speaker will be acknowledged at a time. Discussion between speakers and members of the audience will not be allowed. 2.10G No action shall be required to be taken by the Board on any non agended items raised during the public comment period. 2.10H Any person who willfully interrupts, disrupts or disturbs including but not limited to being verbally abusive or shouting during a Board meeting including the public comment period may be asked by the Chairman or other presiding commissioner to leave the meeting. If such person refuses to leave, then such individual will be charged with a Class II misdemeanor.

Chairman Poteat stated that there were 5 people to speak and would be limited to 5 minutes per person. One exception will be made for Mr. John Millan. John Millan was respectively asked to be placed on the agenda and that was denied because it did not meet the criteria that is established for agenda items. In John's case there were two matters that he wanted to talk about so I will award John 10 minutes; 5 minutes for each topic.

Steve Smith, Carey's Flats Resident, stated that he had been once before the Board regarding the community center in Carey's Flats. He said where we live we are isolated 5 ½ miles down a graveled road. We pay our fire taxes but do not get any benefit from it. We have an old community building that has been deeded to the community of Carey's Flat. We do not have the funds to keep this building up. The building is deteriorating fast. We wanted to ask for some monetary help through grants. We don't get any benefit except for education of our kids. This is a nonprofit and we have our officers set up. We would appreciate if you could help us.

Debbie Gragg, Carey's Flat Resident, invited the Board to the Easter egg hunt and dinner on Saturday at 2:00 p.m. We would like to have something for our children. We would appreciate anything that could be done for us.

Chairman Poteat advised Tim Greene, Finance Officer, that this would be a formal request from the Carey's Flats Community to be considered in the upcoming budget.

Reo Griffith questioned if the building was beyond repair or does anyone know. Mr. Smith answered that we don't know so we would like to have someone from the inspections department to come and look and give us a professional opinion. Mr. Griffith suggested that if the building was repairable that a list be put together and go to Lowes Home Improvements and ask about a community project fund.

John Millan stated " I came here specifically to talk about two issues. One is personnel and hiring practices for the county and the other is attendance policy for the Board of Commissioners. One provision that I feel is illegal is in the county's speaking policy according to the US Supreme Court. The US Supreme Court has been very specific that the right to speak in open session is not supposed to be federed and in fact can be brutal at times and sometimes insulting. The word that the US Supreme Court used in its ruling was that if you have a thin skin and can't take someone talking ugly to you, you don't belong in public politics which we have a long history of dissent in public speaking and I certainly don't condone mean or abusive speaking but I do think that is unfair and restrictive. It has become something of a national tradition to speak and even address individuals so I understand the need of civility and being polite but that might be something that the Board should look at about the prohibition to speak to individuals. Approximately two years ago I applied for a part-time driver's position with the Transportation department and I submitted my application within the cutoff date, filled it out properly and submitted all of my documentation and that I was a disabled veteran and a retired senior noncommissioned officer in the US Armed Forces. Despite that, I was never called back for an interview and never contacted again. According to Federal law any public entity that accepts Federal funds has to give disabled military veterans either a 5 or 10 point preference so barring any disqualifiers veterans should be hired and failure to do so can result in a loss of funding of Federal funds across the board if the complaint is filed with the labor department. I did not file a complaint at the time for several reasons. The number one reason was that if I filed a complaint and the county got spanked by the Federal government that comes out of the taxpayer's wallet so I would be basically sticking a pencil in my own eye if I did that. Number two is that I am blessed with a pension as a retiree which a lot of people don't have. I was just doing this for something to do. The concern arose if that happened to me and I am a former elected official and currently an elected official and retired public employee my concern was how are other veterans being treated or mistreated because this gives a perception of "good ole boy politics" and I truly believe our nation's veterans deserves better than that because it speaks of backwards or inept personnel policies and practices. I would hope there is going to be review of this policy. I question what is the current veterans preference policy and if the board would be willing to elaborate on that.

Secondly, I note that the county does not have any recourse when commissioners are not present at meetings even over a long period of time. I know this has come up repeatedly in recent decades. I believe you, Chairman Poteat, had read a statement that the sole recourse that the county now has was for the electorate to speak if someone was

absent habitually and not performing their duties. Apparently there is not a written policy for attendance by Board members. I will bring up GS 14-230. It provides that if among other officials any County Commissioner shall willfully omit, neglect or refuse to perform duties he/she shall be indicted on a Class I Misdemeanor and upon conviction he/she can be removed from office. Certainly, I don't advocate arresting commissioners for missing meetings but if someone just is going to miss half the meetings or more at that point I think we need to take a look at this and out of courtesy of the electorate they would resign. If a commissioner is habitually absent and refuses to resign if this was incorporated into the policy it does give an enforcement arm to deal with AWOLs from commissioners meeting. I think that should be included because I can honestly say this was brought up at several forums I have been to recently. I have never worked a job where I could miss a half or quarter of the time and not get fired and get paid so I recommend that in addition to incorporating this into an attendance policy for commissioners which would make allowances for personal illness, emergencies, family problems that it would request that a commissioner who was habitually absent or unable to discharge duties would resign and failure to do so could be subject to prosecution and that unauthorized absences from commissioners meeting should not be paid. I have never worked a job where I got paid for not being there unless I took vacation or sick leave and I know that we have working folks in this audience right now that their jobs are dependent on the weather. They do not get vacation or sick leave. I don't think the county commissioners should get any better treatment than anybody else and I think it should be the same for the county employees. What is fair for the county employees should be fair for the county commissioners. I am not going to name someone by name but a certain county commissioner illegally cut me off and I was silenced in less than one minute. We have seen instances where we have had county commissioners read newspapers for hours, tying up time. The US Supreme Court has specifically said that excessive use of time and unreasonable filibustering is grounds to shut someone off. My point to the chairman of the Board would be if I can be shut down in less than a minute then it should be clarified to board members that they too can be cut off because of endless filibuster and nonsensical reading of pointless articles in the paper on and on which deprives other commissioners of the opportunity to speak and deprives the good people of Avery County the opportunity to speak and drags these meetings out to the point that it causes migraines. I would respectfully ask that the Board of Commissioners clarify that the public speaking policies be applicable to everyone."

Chairman Poteat stated that Mr. Millan had made two public record requests and Mr. Millan stated that he had received those records.

Faith Lacey stated "I would like to speak on the AC PRIDE selection committee. I would like to say that I belong to several committees. The selection committee is not in compliance with the NC Open Meetings Law. This is found in Chapter 143 of the NC General Statutes. It is not in compliance with the public record law. The AC PRIDE committee has no minutes for any of its meetings and did not provide notices for its meetings. They have no bylaws as of March 20, 2014. Avery County Board of Commissioners did not appoint any members of the committee. Despite all of these issues, the commissioners voted 4 to 1 to approve the leases at the AC PRIDE incubator. I have never been to a meeting that did not call roll, didn't take minutes, and didn't explain what the meeting was about. "

Maxine Laws stated "Back in 2013 at one of the meetings I asked about the asbestos at the incubator and was told at that time there was not any inspections. I still don't find inspections concerning this matter. In the inspections department the certificate of occupancy does not exist. They have one for a two day tour only. As of this past Friday, they did get a temporary certificate of occupancy for 90 days. There are a couple of things that have to be addressed. They are operating without this. Does anyone know why there is not a certificate of occupancy?"

Mr. Wiseman stated that Mr. Burleson, Inspections Director, was out of town today. It is my understanding that a temporary certificate of occupancy was issued based on certain things being accomplished over a certain period of time.

Ms. Laws stated that the temporary occupancy certificate was only done on Friday. The incubator has been in operation longer than this past Friday. I have a copy from the inspections department. This is for 90 days. I would like to know why they do not have to comply. There are a lot of things the incubator is out of compliance with. I wonder why they can do it and no one else in the county can do it. I would like to have some answers on what is going on. We are the ones footing the bill over there.

Chairman Poteat stated that he would find out and research this and get something to Ms. Laws in writing regarding the certificate of occupancy.

Martha Hicks stated that she wished Mr. Steve Smith had stayed because he had made the comment that all of the lead paint in the school systems had been removed.

Glenn Johnson stated "This was a school from 1939 until 3 years ago. Every year the schools are inspected for asbestos and lead paint. Asbestos was remediated or covered up. The asbestos and lead paint is not there. I believe the report says the only asbestos that is in the school is presumed to be in the tile of the cafeteria area. All you have to do is cover the stuff up. There was asbestos piping wrapped in the boiler room and it was removed. "

Phyllis Forbes stated "I would like to make a comment. Mr. Millan addressed the board about absences of board members. He did not call my name but I am sure he was referring to me missing some meetings. I did go on some trips. I did find out from the School of Government if it was legal for me to attend meetings by phone. The only time is if you are the person that constitutes a quorum and that was not the case. The other time is you cannot be the deciding vote if you are teleconferencing or audio conferencing and that was never the case. There is a lot of misinformation going around out there and I don't know where the information came from but I can tell you that I went to the minutes of every meeting since I have been a commissioner. Here they are listed. My attendance and my absences and the absences of a couple of other commissioners are listed. I attended 8 meetings not 18 by telephone which was very legal. I am counted in the minutes as present and that is legal. I missed out of 609 meetings in the time that I have been a commissioner 52 meetings. That included caregiving for three members of my family that died. So three deaths and three caregiving times in that. That included some vacations which everyone is entitled to and it also included some conflicts with other meetings that I had to attend and a few family emergencies. There was another incidence of a commissioner that did miss some meetings. He was commissioner for 55 meetings. He missed 12 of those 55, no teleconferencing, no phone calls, no contact whatsoever and nothing was ever said about that. I have missed 8% of meetings. He missed 25%. I just wanted to clear the record up for people that are hearing all of the rumors about how many meetings I might have missed. You can ask the Clerk to the Board anytime I am gone I call this office every day. I am very conscientious about this. Mr. Millan, you are right people should not miss and care whether they miss or not and maybe you are right maybe there needs to be a policy."

Mr. Millan said that this was not a personal attack on Ms. Forbes this was just a matter of practice of policy for the government. I have had people come to me and complain and I stand by my remark that people should be present and things come up that require the physical presence of the commissioner. If someone is going to miss a meeting I don't think they should get paid for it and if there are prolonged absences it should be dealt with. This was not an attack on you this has been an ongoing problem for an extended period of time and there is no policy to address it. We can't do anything about what has happened in the past but if we come up with a policy from this point forward it will not be a problem anymore and if it is it will be dealt with.

Ms. Forbes stated "I don't necessarily disagree with you on that issue however, I wanted the record to be set straight."

Reo Griffith stated "Be encouraged the trying of your faith worketh patience but let patience have her perfect work that you may be perfect and entire wanting nothing." That is out of the Holy Bible. As you know I am a candidate for Sheriff of Avery County and looking forward to being your Sheriff. I was verbally assaulted this past Saturday night. I am thick skinned and been verbally assaulted many times in the past years. Attacking somebody in front of their children is not right and that is what happened to me at a suit and tie event. There were NC State Senators there, District Court Judges there. The matter that was brought up and several of you sitting in the audience was there. If you have a question about the matter that was brought up I urge you to speak to Chief Deputy Dallas Pate and ask for the truth. He is a man of integrity and has taken oaths and testified in a court of law. I ask you to speak with Chief Deputy Dallas Pate."

Ms. Forbes stated "Like Reo said it is election time, there is a lot of information going around out there that isn't necessarily accurate. If you hear something that doesn't ring true, if you want the truth call the County Manager or call the Clerk. They have the minutes to back up."

Martha Hicks stated "During this campaign, there has been a lot said. This past weekend I was at the Lincoln Day Dinner. When I got home, I stayed on my computer until 1:00 a.m. Sunday morning reading the minutes and the agenda. It is good to do that and when you go back 2011 from 2014 some of the things you forget what was said in the meetings. I want to share one thing. It has been said that the meetings are at the wrong time. We are not having them so people who work can come. I had our secretary do some research in the minutes and back in 1996 the meetings started at 1:00 p.m. Back in 1997, the meetings started at 9:00 a.m. Back in 1998 to 2000 the meetings started at 10:00 a.m. From 2000 to 2008 the meetings were changed to 3:00 p.m. and from 2008 to the present the meetings are at 3:30 p.m. I thought that was something interesting that some of them was early in the morning and people that work couldn't get there at that time and here at 3:30 p.m. some people can't get here. That was a little bit of research I would like the public to know."

Glenn Johnson stated "I want to talk about where I was at the Lincoln Day Dinner. There seems there was some conversation there about myself and others that were not at the Lincoln Day Dinner. I was at Crossnore First Baptist Church listening to Dr. Mark Harris who is running for the United States Senate, being backed by the Southern Baptist Convention, being backed by the Christian Coalition and also Dr. Mark Creech who is the Christian lobbyist for North Carolina. I am going to tell you very frankly, I am very glad that I was there instead of at the Lincoln Day Dinner. From all the negativity that took place at the meeting I really don't need that. I choose to be a little more positive than that. There is so much stuff floating around as Commissioner Hicks pointed out that is not true, half true, heresy, rumor. That is where I was and frankly I am glad that is where I was. I think it is much more productive. I don't need to be a part of those type things."

Chairman Poteat asked everyone who was a candidate for an office to raise their hand. That is wonderful. Thank you for being here. Thank you for what you had to say in public comments. Let me leave you with one thought as Chairman and a 20 year County Commissioner. You never build yourself up by tearing other people down.

Avery County Chamber of Commerce – Sue Freeman; Nancy Morrison

Sue Freeman and Nancy Morrison, Avery County Chamber of Commerce, gave a presentation highlighting the accomplishments of the Avery County Chamber of Commerce in the past year. Ms. Freeman requested that the Board of Commissioners consider a funding request for the Chamber of \$6000 in the upcoming budget.

Chairman Poteat stated that this is a formal request for funding during the budget process.

Recess

Chairman Poteat called for a brief recess.

Chairman Poteat declared the meeting to be back in session after a brief recess.

Avery County Ranger's Office Funding Request – Joe Shoupe

Avery County Ranger Joe Shoupe stated that there has been an increased workload for the past three years in all the forestry programs. There is currently a part-time "Smoke Chaser" position that is funded for eight months. This position typically assists with fire suppression, prevention and equipment readiness. Mr. Shoupe outlined the duties required by the "Smoke Chaser". Mr. Shoupe stated that he was requesting an additional three months of employment per year for the Smoke Chaser to be funded by the County. The cost would be approximately \$2000 per month for the extra 3 months for a total of \$6000 per year. This would be for salary only.

Chairman Poteat advised that the budget workshops were just around the corner and this would be considered a formal request for consideration of funding in the upcoming budget.

Resolution Commemorating the 100th Anniversary of Cooperative Extension – Jerry Moody

Jerry Moody, Cooperative Extension Director, explained that the Resolution was to commemorate the 100th Anniversary of Cooperative Extension. We want everyone to help celebrate this momentous occasion and look forward to hopefully another 100 years.

Motion by Phyllis Forbes and second by Martha Hicks to approve the Resolution Commemorating the 100th Anniversary of Cooperative Extension. Motion unanimously approved.

Tax Administrator Report – Phillip Barrier

Tax Collection Report

The Total Tax Collections for the month of March 2014 was \$695,712.79.

Motion by Martha Hicks and second by Glenn Johnson to approve the Total Tax Collections for the month of March 2014 as presented. Motion unanimously approved.

Regular Releases

The Total Regular Releases for the month of March 2014 is \$793.63.

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

Motor Vehicle Releases

The Motor Vehicle Releases for the month of March 2014 is \$138.97.

Motion by Phyllis Forbes and second by Glenn Johnson to approve the Motor Vehicle Releases for the month of March 2014 as presented. Motion unanimously approved.

Real Property Sales

The Real Property sales for March totaled 34 sales. The total sales amount is now greater than the tax value.

Mr. Barrier stated that the Board of E&R met for the first meeting this morning. This will be open until April 24th at 3:00 p.m.

County Manager Updates – Robert Wiseman

Renovation of Courthouse

Robert Wiseman, County Manager, advised that the courthouse renovation was approximately three weeks behind because of the weather. This week the new furniture is going into the Clerk of Court's Office and they will be moving next week back into their renovated office.

DOT Issue

Mr. Wiseman stated that about a year ago Mr. Barry Sheppard came before the Board regarding the NC DOT tearing up his driveway with a promise to fix it back but this has not been fixed. Mr. Wiseman said that the Chairman of the Board and Vice Chair had looked at the situation. We did contact DOT and nothing ever came of it. We need to plead for Mr. Sheppard's case in this situation.

Barry Sheppard spoke regarding the issue. Mr. Sheppard said that DOT had cut his driveway into and put another culvert in but didn't pave his driveway back and two floods had happened. DOT did not come back and fix this. We need to put a two foot culvert in and put a manhole to be able to clean out the culvert. This is a safety issue because the water goes across the highway and then you get freezing in the winter.

Mr. Wiseman stated that the Board needed to go on record officially with a motion to instruct the County Manager to contact the appropriate officials and meet with Mr. Sheppard and the DOT officials and see if we can get some closure on this situation. In the wintertime this is a public safety issue.

Motion by Martha Hicks and second by Reo Griffith to instruct the County Manager to contact the appropriate officials with the NC Department of Transportation. Motion unanimously approved.

County Attorney Report – Michaele Poore

Michaele Poore, County Attorney, stated that The Grandfather Mountain Tax Appeal was in front of the Court of Appeals. The briefs have been filed. We got a notice that the Court of Appeals has set a date for oral arguments which is the 22nd of April.

Closed Session

Motion by Martha Hicks and second by Glenn Johnson to go into Closed Session regarding Acquisition of Property G.S. 143-318.11 (a)(5) and Attorney/Client Privilege G.S. 143-318.11 (a)(3) at 5:25 p.m. Motion unanimously approved. Invitees are the County Manager, County Attorney, Clerk, Board, Finance Officer, Tax Administrator.

Chairman Poteat declared the meeting to be back in Regular Session after a time of Closed Session at 6:30 p.m. During closed session, no vote was taken.

Approval Of Minutes

Motion by Martha Hicks and second by Phyllis Forbes to approve the January 29, 2014 Board Workshop and the February 17, 2014 Special Meeting. Motion unanimously approved.

Agenda Consent Items

Adopted by Consensus of the Board.

Upcoming Meetings

The month of May begins two meetings a month if the Chairman deems that the second meeting is necessary. The next Regular Meeting will be Monday, May 5, 2014 at 3:30 p.m.

Adjourn

Motion by Phyllis Forbes and second by Martha Hicks to adjourn this meeting at 6:35 p.m. Motion unanimously approved.

Kenny Poteat, Chairman
Avery County Board of Commissioners

ATTEST: _____
Cindy Turbyfill, Clerk