

**STATE OF NORTH CAROLINA  
COUNTY OF AVERY**

The Avery County Board of Commissioners met in a Special Meeting on Monday, February 13, 2012 at 3:00 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC. The purpose of the meeting was to consider the Avery County Humane Society's offer to purchase the four plus acres currently leased to them by Avery County.

Members Present: Kenny Poteat, Chairman; Phyllis Forbes, Vice-Chair (via telephone); Scott Heath; Martha Hicks; Glenn Johnson

Members Absent: None

**Call To Order**

Chairman Poteat called the meeting to order at 3:09 p.m.

Chairman Poteat stated that if anyone wanted to speak to this issue they must sign up on the sheet with the clerk.

Chairman Poteat led prayer.

**Avery County Humane Society**

Catherine Morton, Chairman of the Humane Society Board, stated that there was a letter of request sent to the Board to purchase the four acres of property. This purchase is being requested so that the Humane Society will be able to get a loan to pay the bills. To obtain a commercial loan, the Humane Society would need a deed of trust or be able to assign the lease to the financial institution.

Rachel Deal, member of the Humane Society Board, thanked the board for helping the Humane Society the past four years with the lease of the property. Ms. Deal advised that there is a letter of support from the Avery County Fair Board. Ms. Deal asked the Board to help in any way they can.

Jerry Moody, President of the Avery County Fair Board, expressed the fair board's support of the Avery County Humane Society.

Chairman Poteat stated that it had been four years since the initial idea of the new Humane Society building. The County of Avery did agree that this was a worthy use of some of the property owned by Avery County but there were some concerns on this Board's part with the partnership with the Fair Board. The lease agreement had a reversion clause that stated if the property under lease were to ever cease being used for the purpose which it was intended that it would revert back to the County. He thanked Jerry Moody for the comments regarding the fair board's support of the humane society.

Ms. Morton said that the lease also addresses the easement to allow access to the woods road. A single use clause was included saying that if it was not used for an animal shelter it would revert back to the County. Another clause also says that the Humane Society cannot assign their rights to anyone else without the County agreeing to this. The length of the lease was 99 years commencing in 2008.

Chairman Poteat stated that as far as the Board is concerned the intended use of this property is for the humane society. The "bottom line" is that the lending institutions would not loan monies with the "cloud" on this particular lease. Chairman Poteat said his interpretation is that we can leave the lease as it is, a change in the lease with wording deleted, or allow the Humane Society to obtain ownership by purchase of the property.

Michaëlle Poore, County Attorney, advised that a condition was placed on the lease that if it ever ceased to be an animal shelter the property would revert back to the county; it was everyone's intent for the property to be used as an animal shelter. The way the lease was set up there was a condition that this property had to be conveyed to a nonprofit entity carrying on a public purpose. As far as the assignment clause, the county retained the right to refuse any assignments of the lease to anyone else so that the County retains the right to control who is going to occupy the land. It is the understanding that the bank doesn't want these conditions on anything with the animal shelter in the event the animal shelter fails to make the payments the bank wants to be able to foreclose on the property. Most of the lenders do not care if the lease is changed or the humane society retains title to the property; the lenders want those conditions to go away.

Scott Heintzleman, secretary for the Humane Society, stated that the lenders that the Humane Society has spoken with are subject to Federal regulations and they cannot lend money unless it is collateralized in excess of the amount loaned and because of the conditions on the lease now there is no way to loan the humane society money because the lenders have no ability to recoup. That leaves the Humane

Society with either purchasing the property or having the various conditions removed. The Humane Society has the Blair Foundation money coming and of course various significant pledges between now and then.

Glenn Johnson questioned if the Humane Society was going to be able to meet the operational expenses with this new larger building. Ms. Morton answered that normally the humane society raises \$300,000 a year to operate and take care of the animals at about the rate of 40 dogs and 40 cats per month. We have been discussing setting occupancy limits to start out with until we feel secure about our budget.

Scott Heath questioned if the Blair Trust would not give enough collateral for a loan. Mr. Heintzelman answered that there are strict regulations and they would require a deed of trust that would allow them to be in the first lien position.

Glenn Johnson asked if the County approved to sell this property to the Humane Society, is there a way to satisfy the bank and also satisfy the County if this ceases to function as a Human Society to hold onto that property.

Ms. Poore said that if the County tried to place a restriction on the deed to the Humane Society those restrictions would be after the mortgage is paid off and if the lender would agree to this.

Chairman Poteat stated that having listened carefully a decision would be reached today. He said that in his opinion this land should be sold in the amount of \$25,000 and allow Avery County Humane Society to purchase the property. "If the County can gain control after the loan is paid off, that would be wonderful."

Commissioner Johnson said that in the motion he would like the wording that all due diligence would be pursued by the County Attorney that wording would be inserted that after the loan is paid there would be some type of clause if the Humane Society ceased to exist that the property would come back to the County.

Scott Heath said he had some problems with this situation but he was fully in support of the service and the people. He stated that he felt it was unwise that Avery County and the Humane Society are put in a position of vulnerability and he was not willing to do that. "If there is some other solution other than this, I will consider that."

Catherine Morton stated that the Avery County Board of Commissioners and the Avery County Humane Society have been partners in this process for a long time so it would be a guarantee that if the Humane Society found themselves strapped we would be coming to the County to help with a solution.

**Motion by Glenn Johnson and second by Martha Hicks to sell said property to the Avery County Humane Society for \$25,000 contingent upon two things: 1) Avery County would have the right if the Avery County Humane Society defaulted on the loan to pay off said loan and own the property upon which the Avery County Humane Society sits. 2) All due diligence be pursued that if and when the property is paid off that Avery County would retain the wording within the current lease that if the Avery County Humane Society ceases to operate as an animal shelter that Avery County would at that time own said property; also accepting the offer of \$25,000 subject to the easement reserved to Avery County if necessary and to follow the statutory requirement of the upset bid process.**

**Vote: For: Kenny Poteat; Phyllis Forbes; Martha Hicks; Glenn Johnson. Against: Scott Heath  
Motion passes 4 to 1.**

**Adjourn**

**Motion by Glenn Johnson and second by Martha Hicks to adjourn this meeting at 4:47 p.m.  
Motion unanimously approved.**

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

ATTEST: \_\_\_\_\_  
Cindy Turbyfill, Clerk

