

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in a Regular Session on Monday, May 7, 2012 at 3:30 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC.

Members Present: Phyllis Forbes, Vice-Chair; Scott Heath; Martha Hicks; Glenn Johnson

Members Absent: Kenny Poteat (vacation)

Call To Order

Chairperson Forbes called the meeting to order at 3:30 p.m.

Glenn Johnson led prayer.

Chairperson Forbes stated if anyone would like to speak to an agenda item to sign up on the sheet with the clerk.

Public Comment

Jean Taylor Todd stated that last month she had given the Board a packet of information concerning the "mortgage mess". These packets included information regarding a Mortgage Electronic Registry System (MERS) which is a company that poses as a mortgagee. At this point in time the company is being sued by individuals as well as members of government because of the illegal foreclosures. In the packets, I asked that the county look at this as a possible liability. I received a letter from the county attorney in which she stated that this was not something that the county wanted to be involved with at this time. There are 2000 mortgages in Avery County which MERS is a part of the chain of title. I wanted to call attention to the Board and ask that this "evil" be looked into.

Steve Smith stated that he was at the meeting as a representative from Carey's Flat Community which is a small community approximately 5 ½ miles on a gravel road off of Hwy 221. There is a small community building which is getting a lot of years on it. It is my understanding there is a possibility there may be some money to help different communities. We would like for you to consider us with any help you could give to help with the community building. This building was donated by two brothers Archie Coffey and Spencer Coffey. We have no funds at this time.

Board Appointments

Planning Board

The Avery County Planning Board has three members whose terms expired in 2011. The Avery County Planning Board requests that Cheryl Buchanan, Rachel Deal, and Joe Perry be reappointed to three year terms.

Motion by Martha Hicks and second by Glenn Johnson to reappoint Cheryl Buchanan, Rachel Deal and Joe Perry to the Avery County Planning Board for three year terms. Motion unanimously approved with those in attendance (4-0).

County Manager Updates – Robert Wiseman

Utility Easements

There are four utility easements that need approval by the Board of Commissioners. These utility easements involve the Avery High School, Avery Middle School, Newland Elementary and Crossnore Elementary. These easements have been reviewed by the school board attorney and approved by the school board. This is to allow the organization RidgeLink LLC to the easement on the properties.

Motion by Scott Heath and second by Glenn Johnson to approve the utility easements and authorize the chairman to sign. Motion unanimously approved with those in attendance.

Public Comment

Phyllis Forbes reminded everyone that election day was tomorrow and to go out and vote.

Martha Hicks announced that tomorrow is Flag Day and to show appreciation to the veterans by flying the flags.

Public Hearing- Amendments to the Avery County Farmland Preservation Ordinance – Ann Coleman

Motion by Glenn Johnson and second by Scott Heath to go into a time of Public Hearing regarding Amendments to the Avery County Farmland Preservation Ordinance at 3:50 p.m. Motion unanimously approved with those in attendance (4-0).

Ann Coleman explained that at the last meeting she had went over all the changes that needed to be made in the Farmland Preservation Ordinance because legislature has mandated some different definitions for farming. A resolution needs to be adopted by the Board. Michaelle Poore, County Attorney, stated that basically what the state did was change the definition of a qualified farm and the amendments are to reflect the current definition of what a qualified farm is.

There were no public comments.

Motion by Martha Hicks and second by Scott Heath to go out of a time of Public Hearing regarding the Avery County Farmland Preservation Ordinance and back into Regular Session at 3:53 p.m. Motion unanimously approved with those in attendance (4-0).

Motion by Martha Hicks and second by Glenn Johnson to adopt the Resolution regarding Amendments to the Avery County Farmland Preservation Ordinance. Motion unanimously approved with those in attendance (4-0).

Michaelle Poore, County Attorney, stated that the Resolution regarding Amendments to the Avery County Farmland Preservation Ordinance would need to be voted on again at the next meeting of the Board because to approve amendments to an ordinance there must be a full Board present.

Yellow Mountain Enterprises – David Tate

David Tate, Executive Director of Yellow Mountain Enterprises, reported that the Avery Association for Exceptional Citizens operates two programs for adults with intellectual and developmental disabilities for the people of Avery County. Yellow Mountain Enterprises is a vocational program providing jobs, scaled to clients' abilities. The Avery County Group Home is the other program. This provides a home-like residence for six people. Mr. Tate stated that Yellow Mountain had been in some financial difficulty but currently Yellow Mountain is working its way out of that. Yellow Mountain serves approximately 30 clients a day. Currently there are 6 different enterprises that Yellow Mountain operates. A fundraising event is scheduled for June 22 and June 23 called Step Up for Yellow Mountain.

Vivian Phillips spoke to the Board about her daughter who is a client with Yellow Mountain Enterprises and how Yellow Mountain has helped her daughter. Melvin Turbyfill also spoke to the Board about his sons who have been helped by Yellow Mountain Enterprises.

Tax Administrator Report – Phillip Barrier

The Tax Collections Totals for the month of April 2012 is \$233,038.58.

Motion by Martha Hicks and second by Scott Heath to approve the Tax Collection Report for the month of April 2012 as presented. Motion unanimously approved with those in attendance (4-0).

Real and Personal Releases

The Real and Personal Releases for the month of April 2012 are County Tax Release of \$2045.67; Fire Tax Release of \$195.99 for a total of \$2359.14.

Motion by Martha Hicks and second by Glenn Johnson to approve the Real and Personal Releases for the month of April 2012 as presented. Motion unanimously approved with those in attendance (4-0).

Motor Vehicle Refund

The Motor Vehicle Refund for the month of April 2012 is County Tax Refund of \$14.25; Fire Tax \$1.72; City Tax Refund \$22.03 for a total taxes to be refunded of \$38.00.

Motion by Scott Heath and second by Glenn Johnson to approve the Motor Vehicle Refund for the month of April 2012 as presented. Motion unanimously approved with those in attendance (4-0).

Motor Vehicle Releases

The Motor Vehicle Releases for the month of April 2012 is \$943.42.

Motion by Martha Hicks and second by Scott Heath to approve the Motor Vehicle Releases for the month of April 2012 as presented. Motion unanimously approved with those in attendance (4-0).

Resolution/Order of Collection

Motion by Glenn Johnson and second by Martha Hicks to approve the Resolution authorizing the Tax Collector authority to proceed against personal property and collection of taxes. Motion unanimously approved with those in attendance (4-0).

Sales Statistics

During the month of April there were 22 sales. There were 37 foreclosures at the beginning of April at a development called Chestnut Falls.

Mr. Barrier stated that there was one more hearing for the Board of Equalization and Review. There were 58 different hearings through the Board of Equalization and Review.

NC Tomorrow Program – Michelle Ball

Michelle Ball stated that there were two items that needed Board action with the NC Tomorrow Program. One action is the grant project ordinance needs to be adopted. The total grant is \$50,000; \$45,000 planning and \$5000 administration.

The other item is the technical service contract between High Country Council of Government and Avery County. This will be to create a comprehensive economic development strategy. Avery County is the lead agency on this grant.

Motion by Martha Hicks and second by Scott Heath to approve the NC Tomorrow Grant Project Ordinance for \$50,000. Motion unanimously approved with those in attendance (4-0).

Motion by Glenn Johnson and second by Martha Hicks to approve the Technical Service Contract between the High Country Council of Government and Avery County. Motion unanimously approved with those in attendance (4-0).

Avery County Telecommunications Survey- Kurt Frenzel

Kurt Frenzel with ECC Technologies conducted a power point presentation on the Avery County Telecommunications Survey. This report is a compilation of the telecommunications service providers' infrastructure in the Avery County area. The data collected includes all relevant service providers and information on infrastructure was collected and includes fiber optic and coaxial cabling, wire line boundaries, central office locations with available services and wireless towers with contact information.

Recess

Chairperson Forbes called for a brief recess.

Chairperson Forbes declared the meeting to be back in session after a brief recess.

Economic Development Director – Bret Gardella

Bret Gardella, Economic Development Director, stated that the camera system at the old Banner Elk School had been installed. On May 18th there will be a cleanup day at the old Banner Elk School.

Mr. Gardella explained all of the upcoming events at the old Banner Elk School.

Michaelle Poore, County Attorney, advised that in the agenda consent items there is a proposed agreement for the users of the Banner Elk School Site so the Board will know what is going on with that. In talking about the old school site and the individuals using the ground outside, this would be a use agreement for the individuals to sign indicating the terms of the use of the property such as carrying liability insurance. There is a one page document of the proposed fees which is similar to the fees that the school board charged for the property.

County Manager Updates Cont. – Robert Wiseman

Probation and Parole Services

Robert Wiseman, County Manager, advised the Board that there were certain space requirements mandated by the state for Probation and Parole Services. He said that the project manager who was no longer employed by Beeson, Lusk and Street was aware of these requirements. The space that Probation and Parole intends to occupy in the new portion of the jail facility does not meet the space requirements. There is the possibility that some walls would need to be moved to accommodate more square footages. When this office is ready and when the certificate of occupancy is issued, the sheriff's personnel who are occupying the office now will move down to the renovated portion of the jail facility. There is one thing I have not mentioned to the Board of Elections but something that might be considered. When Probation and Parole Services leaves the Daycare Facility in Banner Elk it will leave that facility vacate. The space that is occupied now by the Board of Elections has a lot of difficult issues such as handicapped access, curbside voting, storage issues for the numerous machines and I think it is

worth considering moving the Board of Elections to the building in Banner Elk. This is something that needs to be considered after the election season is over with.

Expansion of Sheriff's Office Space

Mr. Wiseman stated that there was an area that has been proposed for an addition to the existing jail facility. The area is nothing but a roof. The architects and sheriff have discussed this along with Vannoy and MB Kahn. It would appear that 220 square feet could be gained in this portion. This would be very expensive per square foot. The estimates are between \$80,000 and \$90,000. We need to make a decision on this. There was considerable discussion regarding this issue. Scott Heath said he thought this is an opportunity lost. If we are going to move the Board of Elections, then maybe the Sheriff's office could occupy the Board of Elections space.

Consensus by the Board for the County Manager to meet with the Board of Elections and discuss the options of moving the Board of Elections.

Courthouse Renovation

The Board will go into closed session to discuss contract negotiations.

Finance Office Report – Tim Greene

Budget Amendment

Prior to New River Behavioral Healthcare Services (NRBHS) being taken over by Daymark, NRBHS over billed the County for the Adolescent Substance Abuse program. Attempts to receive a reimbursement from NRBHS have been unsuccessful.

Motion by Scott Heath and second by Martha Hicks to approve a Budget Amendment of \$2,254.00 with a debit of \$2,254.00 to Adolescent Substance Abuse (107000.6148) and a credit of \$2,254.00 to Fund Balance Appropriation (103990.0000). Motion unanimously approved with those in attendance (4-0).

Budget Amendment

The Avery County Sheriff's Office seized \$888.00 from a drug dealer and received \$125.00 contribution from the Grandfather Home for Children to be used for the K-9's.

Motion by Scott Heath and second by Martha Hicks to approve a Budget Amendment of \$1,013.00 with a debit of \$888.00 to Drug Fund Expenses (105100.5700) and a debit of \$125.00 to Drug Fund Expenses (105100.5700) and a credit of \$888.00 to Drug Fund (103514.0000) and a credit of \$125.00 to Drug Fund (103514.0000). Motion unanimously approved with those in attendance (4-0).

Budget Amendment

Request Budget amendment to shift \$18,000 from the General Construction line item to the Architect/Engineering Fee line item with respect to the Banner Elk School Capital Project Ordinance.

Motion by Glenn Johnson and second by Scott Heath to approve a Budget Amendment in the amount of \$18,000 with a debit of \$18,000 to Architect/Engineering Fee (436600.4005) and a credit of \$18,000 to General Construction (436600.4004). Motion unanimously approved with those in attendance (4-0).

Budget Amendment

Avery County has agreed to be the applicant for a \$50,000 Community Development Block Grant (CDBG) NC Tomorrow grant. This grant will be used for and administered by the High Country Council of Governments in order to update their Comprehensive Economic Strategies (CEDs). The CEDs is a requirement of the US Economic Development Administration.

Motion by Martha Hicks and second by Scott Heath to approve the Budget Amendment for the NC Tomorrow Grant with a debit of \$50,000 to NC Tomorrow (417000.6925) and a credit of \$50,000 to Revenue-NC Tomorrow (413103.0000). Motion unanimously approved with those in attendance (4-0).

County Attorney Report – Michaelle Poore

Property Tax Commission

Michaelle Poore, County Attorney, stated that there were two tax appeals pending in front of the Property Tax Commission. The first one is the appeal from Grandfather Mountain. Grandfather Mountain had filed a petition to be exempt from the property tax indicating they were a charitable organization and the local Board of Equalization and Review denied that request and they have appealed to the Property Tax Commission. An additional appeal is the Hagman Appeal which is scheduled for June.

Tax Collections

There are five open tax foreclosures from last year and these should be completed by the end of the fiscal year. Eighty-one demand letters were sent out April 30, 2012 for collection of delinquent taxes.

Appling, et al v. New River, Alleghany County, et al

This suit has been filed in federal court. Alleghany, Ashe, Avery, Watauga and Wilkes Counties are parties to this lawsuit. It is recommended that the five counties enter into a Mutual Aid Agreement in regard to representation. Former Justice Bob Orr has agreed to represent the five counties at a reduced rate. It is also recommended that his engagement be approved. Ms. Poore stated that the Board needed to approve the engagement letter and the mutual aid agreement attached to the documents.

Motion by Scott Heath and second by Glenn Johnson to approve the engagement letter from Poyner Spruill for legal services. Motion unanimously approved with those in attendance (4-0).

Ms. Poore advised that the mutual aid agreement needed to be approved which is an agreement between the five counties to join and hire legal representation in regard to matters with New River.

Motion by Martha Hicks and second by Glenn Johnson to approve the mutual aid agreement in regard to New River. Motion unanimously approved with those in attendance (4-0).

Lawsuits

Two of the lawsuits have been dismissed and another one has been referred to the insurance carrier for representation.

Old Yonahlossee Road

The matter regarding Old Yonahlossee Road came before the Board a few months back. If the Board wanted to consider setting a public hearing on the closing of the road then the resolution needs to be adopted.

Motion by Scott Heath and second by Glenn Johnson to adopt the Resolution regarding Old Yonahlossee Road.

Ms. Poore stated that in order to set a public hearing the statute requires that the Board has to indicate that they intend to close the road and that is why the public hearing is necessary. The Board will recall that Kathryn Hemphill appeared on behalf of Linville Resort and indicated that Linville Resorts would take care of providing notice to the property owners. Whenever a public hearing is scheduled a notice has to be given to the adjacent property owners to notify them of the public hearing that the road may be closed and that there has to be signage posted along the road indicating that a public hearing has been set. The public hearing will need to be advertised for a three week period.

Glenn Johnson stated that he seconded the motion reluctantly.

**Vote: FOR: Phyllis Forbes; Scott Heath; Glenn Johnson AGAINST: Martha Hicks
Motion passes 3:1.**

Closed Session

Motion by Martha Hicks and second by Scott Heath to go into Closed Session at 6:55 p.m. regarding Attorney/Client Privilege G.S. 143-318.11 (a)(3). Invitees include the Board, County Attorney, County Manager, Finance Officer, Clerk. Motion unanimously approved with those in attendance (4-0).

Chairperson Forbes declared the meeting to be back in Regular Session at 7:31 p.m. During said Closed Session, no vote was taken.

Approval of Minutes

Motion by Martha Hicks and second by Scott Heath to approve the March 5, 2012 Regular Session minutes; April 2, 2012 Regular Session Minutes; April 2, 2012 Closed Session Minutes.

Agenda Consent Items

Agenda Consent Items adopted by consensus.

Upcoming Meetings

Budget Meeting May 10, 2012 with the Avery Fire Commission; Avery Sheriff's Office; Avery County Board of Education. Budget Meeting May 15, 2012; Budget Meeting May 17, 2012; Regular Meeting May 21, 2012.

Adjourn

Motion by Martha Hicks and second by Scott Heath to adjourn this meeting at 7:37 p.m. Motion unanimously approved with those in attendance (4-0).

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

ATTEST: _____
Cindy Turbyfill, Clerk