

**STATE OF NORTH CAROLINA  
COUNTY OF AVERY**

The Avery County Board of Commissioners met in a Special Meeting on Monday, February 17, 2014 at 3:30 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC. The purpose of the meeting was to consider and take any necessary action on those matters pertaining to two proposed leases for the AC PRIDE site, being a business incubator located in the Town of Banner Elk, Avery County, NC; said proposed leases being proposed leases to Pilar Harding d/b/a Custom Designs and Highland Pro Clean, Inc., but not limited to, conducting a public hearing on the same.

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.

**Recess**

Chairman Poteat called for a brief recess until the time of the Public Hearing.  
Chairman Poteat declared the meeting to be back in session after a brief recess.

**Public Hearing Regarding Proposed Leases for Highland Pro Clean and Custom Designs  
Motion by Martha Hicks and second by Phyllis Forbes to go out of Regular Session and into a  
time of Public Hearing at 3:35 p.m.**

Reo Griffith stated "There is a time to argue and so forth and it is a 4 to 1 vote and I am fine with that but we cannot argue with the law. Mr. Harrison if you would listen closely. The county is not in compliance with the public notice requirements under NC law for the meeting and this hearing. In 2009, North Carolina amended its public notice laws to require that any public body that has a website maintained by a county employee to post notice of any meetings on that website. Avery County has a website. The county posts regularly scheduled meetings on that website. Avery County in January noted that this public hearing would be held on Wednesday, January 8, 2014 due to inclement weather. The Institute of Government advised me that the county was not permitted to reschedule a public hearing in that matter. I have the article from Ms. Bluestein which discusses this. I have a copy of this notice which shows the county in activity in maintaining this website. Avery County has failed to post notice of this meeting on its website. The County is in violation of North Carolina General Statute 143-318.12 (e). The statute reads if a public body has a website that one or more of its employees maintains the public body shall post notice of any meeting held under subdivisions b1 and b2 of this section prior to the scheduled time of this meeting. An official meeting is defined by the North Carolina General Statute 143-318.10 (d) Official meeting means meeting, assemblies, or gathering together at any time or place or simultaneous communication by conference, telephone or other electronic means of the majority of the members of a public body for the purpose of conducting hearings, participating in deliberations or voting upon or otherwise transacting the public business within the jurisdiction real or apparent of the public body. However, a social meeting or other informal assembly or gathering together of the members of a public body does not constitute an official meeting unless called or held to evade the spirit and purpose of the article. David Lawrence of the NC Institute of Government states in *Open Meetings and Local Governments in North Carolina*, question #48 states 'What public notice is required for special meetings? The third is to post the notice on the county's website. If such a site is maintained by the public body the statute states that the notice must be posted before the meeting is held but does not specifically require a minimum of 48 hours nevertheless the public body should post the notice on its website at the same time it gives the other form of notice. The Board should postpone this meeting and public hearing until proper notice is provided."

Chairman Poteat stated that apparently you contest the fact that we continue with the public hearing because it does not appear on the website. Mr. Griffith said the statute says it "shall appear on the website".

Chairman Poteat stated to the Clerk "apparently the website was not done." "What notification was given for this particular public hearing?" The Clerk answered that it was posted on two boards and advertised in two papers. Chairman Poteat questioned Hal Harrison, County Attorney if sufficient notification was given or if all methods of notification including website should have been given in this situation. Mr. Harrison stated that Ms. Poore had dealt with this matter and she had contacted both Ms. Bluestein and

there is a legal authority in a court case that where the courts have held that what has been done constitutes substantial compliance of the law. Chairman Poteat stated that in this incidence two out of three notifications have been made so you are telling me that in your office opinion it is proper notification. Mr. Harrison said that in his opinion we have legal authority that this is substantial compliance with the law.

**VOTE: Motion unanimously approved.**

Chairman Poteat read aloud the Public Hearing Notice:

*The Avery County Board of Commissioners will hold a Public Hearing on Monday, 17 February 2014 at 3:35 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC 28657. The purpose of this Public Hearing is to receive public comment regarding authorizing two (2) proposed lease agreements for units located in the Economic Development Project known as AC PRIDE, located on certain real property owned by the County of Avery at 185 Azalea Circle, Banner Elk, Avery County, North Carolina. The proposed leases are as follows:*

*1) Proposed lease to Highland Pro Clean, Inc. for Unit 6, consisting of approximately 630 Square feet. The value of the proposed lease is an initial one year rental, with an initial rent of \$350.00 per month, which may increase for subsequent years, with a potential rental up to three years; the proposed consideration for the lease is \$350.00 per month; the value of the interest is \$350.00 per month. It is the intent of the Avery County Board of Commissioners to approve this lease at the 17 February 2014 meeting, or any subsequent date.*

*2) Proposed lease to Pilar Harding d/b/a Custom Designs for Unit 5, consisting of approximately 756 square feet. The value of the proposed lease is an initial one year rental, with an initial rent of \$400.00 per month, which may increase for subsequent years, with a potential rental up to three years; the proposed consideration for the lease is \$400.00 per month; the value of the interest is \$400.00 per month. It is the intent of the Avery County Board of County Commissioners to approve this lease at the 17 February 2014 meeting, or any subsequent date.*

Andrew Johansen with High Pro Clean stated "I know there was some objection if we were the best fit for the incubator based on our financial situation and whether or not we were a distressed company. This statement goes into this. The company started back in 1978 by Ken Johansen and it started as a janitorial business and turned into as far as I know the only cleaning and restoration company that we have in the county. I have worked with the company my whole life. My dad was diagnosed with prostate cancer at the end of 2011 and had to leave the company. I have been running the company to the best of my ability for the last couple of years. In 2013 we were down 53% since 2010 and had taken a pretty big hit. In 2011 we had 8 employees now we have 2. I feel that the training and visibility that the incubator would give us would help us to start growing again and start hiring. This business is very personal to me. We try to promote family and everyone working together and being a team. I am very proud of our county for providing this opportunity. I think it is a great program."

Chairman Poteat stated that this is a public hearing and we will let the public speak shortly but we would request that any questions be asked to the Board of Commissioners and not the business owners.

Pilar Harding with Custom Designs stated "I do custom draperies. I do the sewing and installation. I would like to tell you my story. 23 years ago I came straight to Banner Elk from Mexico. My sister was living here and invited me to come live here. I was 19 years old at the time and not knowing any English. I started learning English and I took a job making wreaths for Mr. Sluder. I decided that I needed to improve myself and took my GED classes and accomplished that and then I started taking some college classes. My goal was to apply at ASU. That dream came true. I graduated from ASU 6 years ago. I put myself through school taking part-time jobs and working with my drapery business out of my house. My hobby sewing turned into a business. Now this opportunity knowing that the incubator is providing classes and helping people to continue learning I am going to take the opportunity. I am living the American dream. I obtained my American citizenship four years ago. I am planning to continue pursuing my dream."

Chairman Poteat stated that it was his understanding that the office of Harrison and Poore had received a request regarding Highland Pro Clean for public records release of information, i.e. financial information. Mr. Harrison said his office received a request to determine if this information was public record and had to be disclosed. Chairman Poteat read a sentence from the attorney's letter that stated "Therefore,

looking at all the facts of this specific incidence there is a sufficient basis not to release information.” Mr. Harrison stated that was based on NC GS Chapter 132-1.2 is the statute that governs public records what can be disclosed and what cannot. Chapter 132-1.2 subsection 1b talks about confidential information and one of the types of confidential information is trade secrets and another statute for that is Chapter 66-152. Highland Pro Clean has applied for admission into the incubator as a distressed business as the admission requirement they must produce certain financial information. Some of that is necessary and the economic development committee has examined that. Mr. Johansen had requested at the time that he presented this information that it be considered confidential as trade secrets and that it would not be disclosed. This Board has had opportunity to look at it. They have asked under Chapter 66-152 and have demonstrated by affidavit that this request was made initially when they first came to the economic development director and it is our opinion that this not be disclosed because they have met the requirement demonstrating a trade secret and thereby it is limited only to review by this Board.”

Chairman Poteat stated it was his understanding that there has been a request for disclosure of Custom Designs records. Mr. Harrison explained that doing the analysis on Custom Designs it is a different admission criteria. They are applying as a new early stage business or a business that is significantly reorganizing or moving from a home based business to a public business. They are not claiming to be a distressed business therefore their admission criteria does not require them to produce this type of financial information. Apparently that information was provided to the economic development director and the advisory committee and once that happened it is then in the public domain. Ms. Harding had attempted to follow the same process as Highland Pro Clean. She provided a statement but it was not in proper form and does not comply with the statutory requirements to get into the exception of trade secrets. The information is out there. It can be disclosed unless she provides the appropriate requirements. That does not prohibit this Board from proceeding on this application. Chairman Poteat asked the county attorney to tell Ms. Harding her recourse to comply with this. Mr. Harrison stated that the document does not have the proper language. Mr. Harrison said that Ms. Harding has at least 10 days to comply with this.

Chairman Poteat asked for any public comment.

John Millan stated “I appreciate the opportunity to speak. I understand the role of this hearing today that we are debating only the specific businesses that are applying to participate in the incubator and nothing else so I am going to stick to that. I did have some questions and I think you are aware there are some concerns in the community that people have communicated to me. I want to address them to the Board. We are addressing only these issues here. I think one of the specific concerns about this rental process is that a real estate agency is moving in because I do know that we are having an economic downturn in our county like the state and the rest of the country but the bedrock businesses of Avery County real estate, second homes, vacation rentals, tourism, agricultural and forestry those type of businesses is what keeps this county going; those are the engines that drive us forward. I think there is a concern that if we rent to certain businesses we may be undermining the economic strength of the county. The question I have of the Board is what is the dividing line between maintaining cost effective county services and disposing of that which we don't need and providing services that give the most optimal return to our county? I can say as someone that is not involved in real estate but I do have a little bit of background in business but I don't think we want to do anything that could potentially harm the real estate business.

Glenn Johnson stated “Could I interject something here? What Mr. Millan is talking about is not germane to what we are talking about today. It is not germane to Highland Pro Clean or Custom Designs. He keeps mentioning real estate and other businesses and rental and all we are concerned about here today is Highland Pro Clean and Custom Designs. John Millan said “So the real estate is not up today Mr. Johnson, just those two.” Chairman Poteat said he would rule in favor of Commissioner Johnson and we had addressed a couple of weeks ago the aspect of the realty business placed in the incubator. There was considerable debate in the public hearing but that one is behind us so if you would confine it to the two proposed leases today.

John Millan stated “What if any background checks or investigations are required like licensing agencies often times require background investigations for certain disciplines and professions in the state? Does the county require any background investigation process for a potential tenant? Bret Gardella questioned “Like criminal background checks or general background checks? There is no zoning in Avery County that requires that for any business regardless of where they go so that would not have been on the radar to discuss.”

John Millan questioned "What if any measures of success exist for participatory businesses as far as timelines and benchmarks? Do we have set benchmarks for success and timelines and so forth?" Chairman Poteat answered "In my opinion we certainly do as part of the parameters of what we are trying to do. You realize this is an incubator to grow a business and we do not keep them forever unless it is termed an 'anchor business' which there is none to date. It is simply to get them on their feet and then they will go elsewhere."

John Millan stated "If theoretically a local business feels that some aspect of this program could give competition an unfair advantage economically do they have any procedure that they can apply for a tax break if they feel any of these businesses get an undue advantage?" Mr. Wiseman stated there is nothing that he is aware that those particular individual businesses would have rights above and beyond.

John Millan also questioned "What liability insurance do we have or protection through insurance? Is it correct if someone gets hurt in the confines of the business that it would be up to them to have their own insurance? If it is outside that would it be on the county's insurance?" Mr. Wiseman stated that being a county owned building the county's liability insurance would cover this. Mr. Gardella stated that each tenant that signs a lease agreement has to include the county as an additional insured of not less than \$1,000,000.

Commissioner Griffith stated "Mr. Harrison, this is solely a matter of record. On February 3, 2014 we had a public hearing concerning heating units at the Banner Elk School and in that I posed a question would Highland Pro Clean be willing to produce a financial statement and I believe that is a verbatim quote. The answer from a county employee 'yes they have produced a financial statement and it has been viewed by the selection committee and the selection committee has put the approval on Highland Pro Clean to go in.' The selection committee which is a public body has viewed this financial statement. It was not said at any time during the February 3 meeting or prior to this date that it was confidential. On February 5, 2014 I made a request; the Selection Committee has viewed the financial statement. I called the clerk and the clerk forwarded the request to the County Manager. Two or three days later went on and some debate went on and they said no it is not public record. My argument was that it has been viewed by one public body, the Selection Committee and that forfeited the rights to confidentiality. Two or three days go on and back and forth and it turns out that it is said it is not public record. My argument there was that it has been viewed by a public body and that forfeited the confidentiality. Come to find out last Friday Ms. Poore's office was delivered some financial statements and I have not viewed any of it. My fingerprints have not touched any of it. I have asked questions. On February 3, 2014 it was testified right there that the document had been viewed by a public body known as the Selection committee. On February 5 I made a request through our clerk and days later it comes about it is not going to be a public record and when it is produced to Ms. Poore's office come to find out that the document I asked about, a computer generated document, wasn't even produced until February 6 so I have been told. Keep in mind I have not laid eyes on it but I have been told by an intelligent person that this does have February 6 date on it. I don't know how it was viewed before February 3, 2014 if it was generated February 6. The big argument here is I do not understand how it can be viewed by one public body and is not a matter of public record. If you could enlighten me on this."

Mr. Harrison stated "Chapter 132 is the public records statute and like most laws you have a general principle and then you say, but, for or except and that is what the 132-1.2 is, an exception for confidential records and this is what would be considered a statutory trade secret which is defined in GS 66-152. These records were turned over to EDC with the application because they were required by this county's admission criteria document. Just because they were reviewed by the EDC director and the selection committee does not in itself not make them public records but when they take the statutory steps that are defined to put EDC on notice that these are confidential and they are trade secrets then they are no longer public record. I have the original affidavit."

**Motion by Phyllis Forbes and second by Martha Hicks to go out of the Public Hearing at 4:20 p.m. Motion unanimously approved.**

Chairman Poteat stated that each board member had a Resolution regarding AC PRIDE Highland Pro Clean, Inc and an ensuing lease agreement. I would like for the record to reflect that the dates need to be changed in the resolution to reflect the correct date and on the back page entitled duly adopted it eludes to a regular session and it should be changed to a special session. The lease agreement contains blank spaces and needs to be filled in appropriately.

**Motion by Martha Hicks and second by Glenn Johnson to approve the Resolution and lease agreement for Highland Pro Clean to be admitted to the incubator.**

**VOTE: For---Kenny Poteat, Glenn Johnson, Phyllis Forbes; Martha Hicks**

**Against---Reo Griffith**

**Motion passes 4 to 1.**

Chairman Poteat stated that there was also a resolution regarding AC PRIDE/Custom Designs. The dates will need to be changed to the appropriate dates and under duly adopted it will be changed to a special session instead of regular session. In the lease the correct dates need to be inserted in the blank spaces.

Chairman Poteat questioned Mr. Harrison "In your opinion, Custom Designs has 10 days to get you proper documentation concerning the confidentiality or trade secret affidavit and if they fail to do so within the 10 days the records will be public record." Mr. Harrison stated that was correct.

**Motion by Glenn Johnson and second by Phyllis Forbes to approve Custom Designs Resolution and Lease agreement contingent upon that the owner Pilar Harding submit proper documentation to prevent the release of her financial records.**

**VOTE: For---Kenny Poteat; Glenn Johnson; Phyllis Forbes; Martha Hicks**

**Against---Reo Griffith**

**Motion passes 4 to 1.**

Commissioner Griffith stated "A request had come concerning distressed businesses. Forbes Magazine refers to a distressed business as one that is unable to meet its financial obligations."

**Motion by Glenn Johnson and second by Martha Hicks to adjourn this meeting at 4:28 p.m.  
Motion unanimously approved.**

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

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