

**STATE OF NORTH CAROLINA  
COUNTY OF AVERY**

The Avery County Board of Commissioners met in a Board Workshop on Monday, August 8, 2016 at 9:00 a.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC. The purpose of the workshop was to discuss and take any action necessary on the following items:

1. Property beside the Avery County Courthouse (Kelly Johnson Property)
2. Leadership Avery County Meeting August 22, 2016
3. Avery County Fair Board Lease Revision.
4. Budget Amendment regarding the transferring of money from the Recreation Department to the Inspection Department for a vehicle.
5. Current Swimming Pool and Parking Lot
6. Swimming Pool Project and Agricultural Building Project
7. Approve Administrative Contract on the Commerce Fellows Grant with High Country Council of Government
8. Dangerous Dog Committee

Members Present: Martha Hicks, Chair; Maxine Laws, Vice-Chair ; Faith Lacey; Blake Vance

Members Absent: Reo Griffith

**Call To Order**

Martha Hicks called the meeting to order at 9:05 a.m.

Tim Greene led prayer.

**Property beside the Avery County Courthouse (Kelly Johnson Property)**

Faith Lacey stated that she was going to recuse herself from the discussion and would leave until the discussion is over. Mr. McKinney stated that caused a problem with a quorum because there would not be enough here to continue the meeting. Mr. McKinney stated that he thought there might be a problem with Faith participating. Faith Lacey said we have to go by the law. Mr. McKinney stated that the Board could talk about the other business and maybe another commissioner will come in. Blake Vance questioned if the entire property involved Faith or just that piece? Mr. McKinney stated just that piece. Faith Lacey said she was not going to do anything that she shouldn't do. Chair Hicks stated we are not going to talk about the part that you own. Blake Vance said the other property per statute if there is not a direct financial interest, and there is not, then you can. Mr. McKinney said you must consider whether or not you want to excuse her and the rest of the board has to act on that. Martha Hicks said if we talk about the other part then you would be excused. Blake Vance says there has to be a majority of the board to recuse you, you can't recuse yourself. Ms. Lacey said she could be in trouble criminally if she sit in and I am just not going to. Mr. McKinney said

that the letter fairly well laid it out. As a general rule, you can't vote if you have a financial interest in the property and it is more if you are the owner but could it benefit you financially and the board is to weigh three factors in trying to do it. One is how many people would this decision affect. The more people this decision affects the less likelihood she has direct financial interest. Here is about 4-5 owners on that block that would be in the same position. The other thing is what is the extent of the interest. Here the way I see it if you don't decide on the part that is owned together it can still affect the value. Third is how likely is it that it would affect the value of their property. Those are the things you are supposed to consider and vote whether she has a financial interest in it taking that off the table.

Maxine Laws entered the meeting at 9:10 a.m. These are the factors that you are supposed to consider. Martha Hicks said we are just talking about this property now. So you are saying, Gerald, that it is fine to talk about the property or you want us to take a vote on whether.... Mr. McKinney said I think you need to take a vote on whether Faith can participate in the meeting or vote. Chair Hicks asked for a motion to accept Faith Lacey into the business of the county or excuse her.

Blake Vance said he was not going to make a motion but offer an opinion. I think she certainly should be recused from talking about her property. Blake Vance questioned the County Attorney, "give me an opinion on how it is going to effect the value of the lot if you can"? Mr. McKinney said this is my own opinion it would seem to me that it would make sense that the county own the whole strip up through there and that it would not make sense to not own all the way out there and in particular it can provide access to the lot as well. This is not lawyer opinion just my own opinion. Mr. McKinney said one thing you look at with value is if you have a big piece and you need a little piece to make it a whole it would go up in value.

Chair Hicks said that she and the County Manager had talked with Mr. Kelly Johnson and he said that he would throw his part of this little piece in. That leaves Faith to say whether she would sell to the county or not. Mr. McKinney said in my mind that could even further affect the value because she is the only one that can decide that. Maxine Laws said but she is a county commissioner and she took an oath to serve this county. I think she should set in on the discussion and I think she should have a vote because she is a county commissioner. Faith Lacey said it is criminal for me to sit in on the vote because I have a financial interest; it is criminal. Blake Vance said he agreed with Gerald that if we buy this property then it would affect her value and my opinion is we need a price from Faith and we need to recuse her from voting. Faith Lacey said she did not know what she was going to do but she knew at this point that she needed to be recused. Chair Hicks said we need to vote to excuse her or not. Maxine Laws said she is a commissioner and we are not talking about her part, I think we are talking about the property that Kelly has got and has offered to sell and I think she needs to have a voice and need to serve her position as county commissioner on this one piece. We are not talking about the other piece, we are discussing this piece and then if we decide to go back to the other piece then she can recuse herself but we are not discussing that piece. We are discussing Kelly Johnson's Property not Faith and Kelly's.

Blake Vance questioned what percentage that Faith owned of that small lot with Kelly. Ms. Lacey stated  $\frac{1}{2}$  and that she owned another lot across from that. Blake Vance says he thinks that Ms. Lacey has a financial interest in this.

Blake Vance made a motion to recuse Faith Lacey from this discussion. I think we need to look at buying the whole strip. Chair Hicks stated I don't see that buying right now this whole piece from Kelly and Sue Johnson and him willing to throw his half in if we talk about this Ms. Lacey can make her own decision and own price but if she decides she doesn't want to sell hers we still will have this whole piece. I am saying we can vote and Ms. Lacey can stay and vote on Kelly's part. Maxine Laws said that is the discussion; we are not discussing Ms. Lacey's part. Blake Vance questioned if there is a dividing line on the property that Ms. Lacey and Mr. Johnson owns together. Mr. McKinney said no. Blake Vance said that is what complicates that for me. Maxine Laws said we can tell Kelly what we are offering for the lot, not talking about the lot you own with Faye; you have full access from three sides to that. In the future if you want to go back to Kelly and Faith then you can. I honestly think that when you become a commissioner you have to make these decisions. Ms. Lacey said that she thinks she cannot make that decision but that she knew what her decision is but because no matter what you do about that lot it still affects my property because it is too close. Ms. Lacey said it is criminal. Maxine Laws said not to vote on Kelly's property but on yours. Chair Hicks said the purpose of the meeting today was to discuss Kelly Johnson's piece of property. Maxine Laws said when you became a commissioner that you would do these things, we are not voting on yours. On down the road they can decide to buy yours or not buy yours. Faith Lacey said that she would defer to Gerald McKinney and do what he says.

The clerk reminded the Board that there was a motion on the floor. Blake Vance rescinded his motion at this time.

Gerald McKinney said that the statute says that no public officer who will derive a direct benefit from a contract may deliberate or vote on a contract or attempt to influence any person involved in making or administering the contract. The issue becomes what is a direct benefit and the courts seem to give you as commissioners deference into what you think that constitutes a direct benefit and you weigh these factors out; how many people does this affect and how much of a benefit or interest so it doesn't have to be that her name is on the property being sold necessarily, is it impacted that it is worth more or less; the argument is that it could have a direct impact.

Chair Hicks called for a brief recess.

Chair Hicks declared the meeting to be back in session.

Gerald McKinney stated that the three of you all need to decide whether or not if we are talking about strictly taking off the table the property Ms. Lacey owns together then decide whether or not if she can be excused from participating and voting to enter into a contract.

Chair Hicks said so we need to make a motion on whether to have Faith excused or not. Maxine Laws said she didn't think we could take a vote at this meeting. Chair Hicks said that the notice did say we could take any action necessary on the items. Maxine Laws said she thinks that Reo needs to be in on this also. We can discuss and decide to vote at the next meeting. Chair Hicks said we need to decide on whether Faith should participate or not.

Chair Hicks entertained a motion that Ms. Lacey be excused or not be excused from participating or voting. Blake Vance asked if Ms. Lacey had a vote in that. Mr. McKinney said I don't think that she does. Blake Vance said I want your straight legal opinion if you were sitting in a commissioner's chair. Mr. McKinney said if I was sitting in that chair I would think she has a financial interest but a court is not going to disagree on whichever way that you would go. My resources are saying that. It could look like she does if she participates and votes but number two you have a quorum anyway. It is not going to keep you all from doing business. This lot is right next to this one.

Chair Hicks said if we wait until our next meeting to discuss this and Reo is not there what are we going to do then. Mr. McKinney said if you have a quorum you can conduct business. Chair Hicks said what is the difference in voting now or voting in a meeting. Mr. McKinney said none. Faith Lacey asked for a brief recess.

Chair Hicks called for a brief recess.

Chair Hicks declared the meeting to be back in session.

Chair Hicks said we are going to vote whether to excuse Faith Lacey or not to excuse. Everyone in favor of excusing Faith Lacey raise your hand.

Blake Vance raised his hand to excuse Ms. Lacey.

Maxine Laws and Chair Hicks raised their hands against excusing Ms. Lacey.

Chair Hicks said so we can go ahead and discuss this and there would be discussion only on Kelly Johnson's property.

Maxine Laws asked Chair Hicks to wait before discussing. She said that she was going to vote back with Blake Vance on to excuse her and I will tell you why later.

Chair Hicks asked the county attorney if the board could do that. Mr. McKinney said that he thought the board could vote to reconsider it.

Chair Hicks said everyone that is for letting Ms. Lacey be excused raise your hand. Maxine Laws voted for Ms. Lacey to be excused and Blake Vance voted not for her to be excused. Chair Hicks had not voted. Blake Vance moved to table this issue until there was a full board because there was an impasse. Chair Hicks said our attorney says that it won't make any difference to do it today than a regular meeting. That is what we pay him for is to be our attorney. Chair Hicks made the motion to go forth with

discussing. All in favor of doing this raise your hand. Chair Hicks, Blake Vance, Maxine Laws voted in favor of discussing. Blake Vance said he would like to put an asterisk beside his vote because he thought that Ms. Lacey needed to be excused from this but that we needed to get on with business but my conscience says she needs to be excused.

Faith Lacey said well can I leave the meeting. Mr. McKinney said that is your choice on whether you want to stay or not. Maxine Laws said we are going to be discussing this. Faith Lacey said she can do whatever she chooses. Chair Hicks said you can either make a decision to stay and hear the discussion or you can leave. Mr. McKinney said the board says it is fine if you choose to stay. Faith Lacey said I had hoped that legally you all would realize that I can't. Maxine Laws says it is your choice.

The clerk said is the board agreeing that she can leave because if the board does vote your vote will be counted as an "aye". Faith Lacey said she knew that. Chair Hicks said if you leave and we vote you will be counted as a yes vote unless the board excuses you. The clerk said the board can excuse her. Faith Lacey said since she was not excused she would stay.

Chair Hicks asked if everyone had the information from the tax office. We are just going to discuss the property of Kelly Johnson. Maxine Laws said now when we come back to vote on this are we going to have to decide whether Ms. Lacey votes on this. Mr. McKinney said no what was decided was for participation and voting.

Chair Hicks said the prior appraisal on Kelly Johnson's property is \$349,700. Mr. Johnson has offered the property for \$300,000. Right now I am not going to comment on it. I have done some research. I am going to start with Maxine.

Maxine Laws said the land is worth \$31,000.

Chair Hicks said so the total amount is \$304,500. Faith Lacey said are you buying the building to tear it down? Chair Hicks said yes it will have to be torn down. Ms. Lacey said "so you are buying the land really"? Chair Hicks said you are buying the land and the building because you can't move the building. Ms. Lacey no but you are going to tear it down. Chair Hicks said how are you going to make a parking lot if you don't tear the building down, are you going to store them in the building? Ms. Lacey said you are buying this to have the land to make a parking lot.

Chair Hicks said she had some information that she had obtained this morning.

Mr. McKinney interjected that he thought he had read this before that cities have the provision if you are present and do not vote and haven't been excused then your vote is considered a yes. The county statute does not contain this provision. The clerk said that the board policy speaks about that. Mr. McKinney said statutorily it does not say that. The clerk read the board policy from Section 5.6 which states "if a member abstains from voting without having been excused by the majority of the remaining

members as called hereinabove and pursuant to NCGS 153A-44, the abstention shall be counted by the Clerk to the Board as an affirmative or "aye" vote."

Chair Hicks said that there are 31 days in this month and take off 8 days which is Saturday and Sunday so you have 23 days. This information came from the clerk's office. We are to have court 16 days this month and sometime in that 16 days we will be using two courtrooms. 16 days out of 23 that only gives you 7 days that we don't have court. Last Tuesday I called the clerk and asked her to send out an email if anyone was in the Town of Newland to please come and look at the parking at the courthouse because there was no parking anywhere. You could not find a place to park. These employees at the courthouse when they are having court won't go and eat lunch because they are afraid of losing their parking space and when they come back to resume court that evening they don't have anywhere to park. I asked Kelly at least 3 or 4 years ago if he ever considered selling that lot would he give us an option and he said he would. We have tried to figure out somewhere else to make parking. Robert tried to figure it out and he wanted to try to take some of the square and go up to the upper end and make some parking over there and he talked to the state and said it would be too dangerous on the side of the post office. The state said there was no way of making that as a one way. We have a chance here to help the employees at the courthouse and the taxpayers. The reason those places are marked off for hour parking is so people can get in the courthouse. The hour parking is used for court. When we did the square Tommy Burlison told us we had to fix four handicapped parking spaces. Joe had to mark two at the upper end and that took four more parking spaces. I thought maybe when we done the swimming pool that we might be able to use this out here for parking but according to that grant it has to be used for recreation. If we try to do some parking down here, how are you going to ask some of these old people to park down here and walk to the courthouse. Maxine Laws said she thought that Blake had talked to some people that said we could get that grant off of the old swimming pool and done away with. Blake said that they said it would be easier to fulfill it by putting up a picnic shelter and some picnic tables and grills. We can use some parking and still it is not enough. There are only so many pieces of property that are next door to the courthouse. When is the last time we had an opportunity to buy a piece of property next door to the courthouse? It is not proper or accurate to say that the land is worth \$31,000 and that is all the property is worth. If there was a company come in here to put a business in they wouldn't say well the land is only worth \$31,000 and that is all we are going to give you. There is a building sitting on the property and that is what the property is worth. Anyone that is going to buy that property is going to pay for the building. Regardless of what we plan to do with it, you can't say well the land is only worth this much. It is not like we are looking at a piece of property out in nowhere.

Chair Hicks said it is like the property at the recreation property; when the Wright's decided to sell they didn't say well we have two houses on there and that makes it cost more they said give us a lump price. I was not a commissioner at that time but I was attending the meetings. There was no negotiating. Look what we are looking at in the city limits of Newland. It might not be as big as that rec property.

Blake Vance said Kelly Johnson could have asked more for the property because he thought the county would be in a pinch. He is asking below the tax value of the property. I think it is very fair. I have heard some numbers going around 1.5 million dollars an acre, \$16,000 a parking space. We are not looking at buying an acre of land we are looking at buying a lot that is \$300,000. You can't do a per acre price if you are buying a lot and anyone that is saying \$16,000 a parking space has just made that up. We have not had a surveyor look at that property. The false information going around needs to stop.

Chair Hicks said I am not going around behind the board's back because Robert asked me when he was manager if I would go to Martha Guy and talk to her. Her land comes right up against Kelly Johnson's building. He asked me to ask Martha if she decided to sell that property would she offer it to the county. Out of Martha Guy's heart she said the only thing I ask of you is to keep the potholes fixed and I will let you use it if you have court. She says it is the Guy Estates property.

Chair Hicks and Blake Vance said that they have had several people tell me that they were strongly in favor of more parking at the courthouse.

Mr. McKinney said when the jury is there it is terrible and when administrative court is going on there are about 200 cases and there are other days for criminal court. You have jury once a month for about 3-4 days you have a huge number of people.

Maxine Laws said I don't think we need to consider what was paid for that little piece of property over there; the rec property at \$750,000. I don't think we need to discuss that in conjunction with this. I agree when you buy this you have to take the building. The building is not going to be worth 50 bucks to us so I think we need to try to get Kelly to consider that and if we are going to buy this that the building has no value to us would he work with us on the price. We are going to have to spend more money to get the building down. I am not saying it is not needed. When you look at the whole thing, you can't just go with the land value but I don't think we need to pay full value for something that we are 10 days later going to pay someone to get rid of. He has knocked off \$4,500 of tax value. The building is going to be a bigger cost than what is on this paper. It is going to cost a lot of money to get the building torn down and hauled away.

Chair Hicks said so you are saying we need to get Tim to go back and speak to Kelly Johnson on our behalf and explain to him this and see if he will negotiate.

Faith Lacey said that is expensive parking.

Chair Hicks called for a brief recess.

Chair Hicks declared the meeting to be back in session.

Tim Greene, County Manager, stated that he spoke with Mr. Johnson on the telephone and that Mr. Johnson would have to talk with his wife and get back to him the next day.

Blake Vance said that he would like to reiterate that this is the only property adjacent to the courthouse that he could think of and Mr. Johnson was in a very advantageous position. I think he is fair in his approach to it.

Faith Lacey said she thought it was too expensive for parking. We are not buying the building; it will be torn down. Chair Hicks said what do you think should be done with the building if we were to buy the property? Ms. Lacey said we are not buying the building we are buying the property. Ms. Lacey said she had nothing else to say. It is too expensive.

**Motion by Blake Vance and second by Maxine Laws to table until we have more information from Kelly Johnson and allow the County Manager to be our voice in negotiating and bring us back what they have negotiated at the August 15, 2016 meeting. Motion unanimous with those in attendance (4-0).**

#### **Leadership Avery County Meeting**

Mr. Greene said that there is a group of leaders across the county that discuss various things and see how the county operates and what is going on in the county. The prior meetings have been on tourism, healthcare, nonprofits and school system. They have been to Cannon, Lifecare, RAMS Rack, Habitat for Humanity, School System, Mayland Community College, and Lees McRae. This month it is on law enforcement and county government so they are going to do a presentation at the courthouse and they would like to do something regarding county government. You can instruct the chairman and the manager to do some kind of presentation or whatever you would like to do. They would like to know the long range vision for the county, things you would like to accomplish. I can certainly get things together. We can discuss projects that have been approved. Is that something that an entire board would like to do? We will notice this as a special meeting.

Blake Vance said he would like to do a power point presentation on questions that has been posed to us regarding being a commissioner.

#### **Avery County Fair Board Lease Revision**

Mr. Greene said the whole idea of the lease revision was since we want to put an ag. building at Heritage Park was that going to be a problem with the current lease. Mr. McKinney looked at it and we have totally redone the lease. We know what the county wants to do is put a building up there and the fair board wants to use it as a fair. We will let the county attorney work up a rough draft and the commissioners look at it and then we will send to the Fair Board and their attorney and see if they are ok with how it is written. We want both parties protected. We want to make sure that we have a lease that does not hinder us from putting a building up there.

Mr. McKinney said that he had taken the old lease and kept the same format but make changes that we were looking for. Mr. McKinney discussed the changes.

The County Manager was instructed to present the draft of the lease to the Avery County Fair Board. Both boards will have to approve this lease.

### **Dangerous Dog Committee**

Gerald McKinney, County Attorney, stated that there were time deadlines for an appeal for a dangerous dog determination. The Board of Commissioners can do this but I don't see the need to do it. As it stands right now, we reconstituted the current board to be the Board of Appeals. The Board has a lot of flexibility on who they want on the board. You would need an odd number of people 3 or 5 would be my suggestion. We talked about the County Manager being on there because there needed to be an administrative person on there.

Tim Greene, County Manager, stated that you would want the office not just naming a specific person.

Faith Lacey said you would want someone from the humane society on this committee.

There was discussion on the composition of the board. The board would be a standing board and would follow the board policy for committees.

### **Consensus of the Board for the composition of the Dangerous Dog Committee to be:**

1. Emergency Management Director
2. Health Department Director or Designee
3. County Manager
4. Local Police Chief
5. High Country Sportsman Coalition; The Bear Club; Hunters Helping Kids (County Manager will pick one of those clubs and let them designate the person)

### **Budget Amendment regarding Transferring of Money from the Recreation Department to the Inspection Department for a Vehicle**

Mr. Greene stated that after further investigation, the Inspections Department needed an extended cab truck.

**Motion by Blake Vance and second by Maxine Laws to approve the Budget Amendment regarding transferring money from the Recreation Department to the Inspection Department for a Vehicle with a debit of \$28,500 to capital outlay-Vehicle (106400.7410) and a credit of \$28,500 to capital outlay-vehicle (106200.7405). Motion unanimous with those in attendance (4-0)**

### **Current Swimming Pool and Parking Lot**

Chair Hicks stated that she thought that the County Attorney needed to investigate the grant on the current swimming pool. I think we should have the County Attorney write a letter to see if we can get that dropped. Mr. Greene stated that he had spoken with Lou

Ann Bryant and Pete Armstrong and that they had said that property would have to be used for recreational purposes.

**Consensus by the Board to instruct the County Attorney to investigate getting the grant released from the current swimming pool property.**

**Swimming Pool Project and Agricultural Building Project**

Mr. Greene stated that the RFQ's are due back August 10, 2016 for both projects. We will go over the RFQ's on Monday. The Selection Committee for the Swimming Pool project will meet on Monday, August 15, 2016 at 8:30 a.m. and the Selection Committee for the Agricultural Building Project will meet Monday, August 15, 2016 at 1:30 p.m. The Selection committee is doing the leg work for the board of commissioners. The Board does not have to take the selection committee's recommendation, though.

**Administrative Contract—Commerce Fellows Grant with High Country Council of Government**

The contract for the Commerce Fellows Grant for \$50,000 that Avery County was awarded needs to be approved and authorization given to the County Manager to sign. This grant will pay for classes, room, meals and travel for different people to take courses. On this grant the best course in this grant is the county/municipal course and typically this is the one that the county managers take. This is a 7 months course that meets once a month for 4 days at Chapel Hill and the course itself would cost \$2950.

**Motion by Maxine Laws and second by Blake Vance to approve the Administrative Contract for the Commerce Fellows Grant and authorize the County Manager to sign. Motion unanimous with those in attendance (4-0).**

**Adjourn**

**Motion by Blake Vance and second by Maxine Laws to adjourn this workshop at 11:08 a.m. Motion unanimous with those in attendance (4-0).**

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**Martha Hicks, Chair  
Avery County Board of Commissioners**

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