

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in Regular Session on Tuesday, September 2, 2014 at 3:30 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC. The meeting was changed from Monday to Tuesday because of the Labor Day Holiday.

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.
Reo Griffith led prayer.

Public Comments

Rachel Deal commented that she was proud to be a part of two commissioners getting awards on Friday night Kenny Poteat and Glenn Johnson; these awards were presented by the High Country Council of Governments.

Ryon Calhoun, citizen of Avery County, stated "I have a noise problem at my house. There is a fellow that has bear dogs on county property and I have insomnia and there is no rest at my home. I would like to know what could be done or resolved. The dogs are actually on county property and what I can find out he has no permission to keep them on county property. If he is going to keep dogs, I am going to get mules and keep down there. I don't want to ruffle feathers but it has been this way for 20 years. A car can go buy and they will bark for four solid hours."

Chairman Poteat stated that someone will take a look into that especially when we get a new county manager or an interim county manager.

Town of Crossnore Pedestrian Bridge – Rachel Deal; Ann Baker

Rachel Deal, Crossnore resident, explained that in 1993 the Crossnore Pedestrian Bridge was condemned because overloaded logging trucks kept hitting it and so it had to be taken down. From 1931 until that time the bridge was used for Crossnore School to get children across the highway to Crossnore Presbyterian Church. I have been since that time trying to put another bridge there to help with a trail system in Crossnore which we have already started.

Ann Baker, Crossnore resident, stated that there was a trail system designed in the Town of Crossnore and adopted by the Town Council. Since we have been working with the transportation department, we have kept this foot bridge on their agenda. Department of Transportation has worked nicely with the Town of Crossnore. We had a wonderful meeting which the High Country Council of Governments had in Crossnore where we discussed the procedure of how to get the bridge back. Architectural plans have been drawn up by David Patrick Moses Architects and they are all done by the specifications of DOT. It brings us down to several hoops through which to jump and one is who will be the owner of the bridge. The Town of Crossnore has agreed to be the owner of the bridge as long as they have no financial involvement in it. Rachel and the Town of Crossnore think that we can raise the money which is \$300,000 to put this bridge back. It is not the big bridge we saw in the newspaper several years ago. This is just stone pillars on either side of the road and one of the prefab bridges that lies on top of the pillars. With the Town of Crossnore saying that they would assume ownership, we would like to move forward. We are coming to the county and request that the county be in agreement with us to continue going this route to bring back the bridge to Crossnore. Rachel Deal stated that Hand Made in America voted to help us to raise money.

Chairman Poteat stated it was his understanding that Ms. Deal and Ms. Baker was asking for support but that this support did not include financial obligation for Avery County.

Glenn Johnson said that he was at the meeting and they made it very clear that they had to have a lead agent and the lead agent could not be Avery County. DOT made it clear that even though Crossnore School and Crossnore Presbyterian Church and DOT could not go to them this had to go to the Town of Crossnore. The Town of Crossnore did approve this. The lead agent is Town of Crossnore. This does not obligate Avery County in anyway financially just support.

Motion by Glenn Johnson and second by Phyllis Forbes to grant a letter of support to the Town of Crossnore supporting in principle only said project with no financial obligation to Avery County. Motion unanimously approved.

Strategic Plan Summary NC Cooperative Extension Services – Jerry Moody

Jerry Moody, Agricultural Extension Director, advised that the State has decided that they can only support four people in the county office; one administrative assistant, one person in agriculture and one person in 4H and one FCS agent. In our office we have more than four. With that being said, they are looking at giving us until July 2016 to come up with matching funds to meet their request. If everything goes ok, then we can keep our staff. If the county says they will not pay the 50/50, then the money will pay for however many people it will pay for. It may be one person or two people. If you have an add-on agent the county is responsible for 70% and the state is responsible for 30%. We are looking at a sizeable “chunk of change” that they are requesting. They are trying to save what they can save. It comes down to Avery County could be in the position of losing one or two agents. We have identified five or six options we have when that time happens. I wanted to let you know right now so it can be on everyone’s minds. I will be attending a meeting tomorrow hopefully to get some details.

Martha Hicks requested that Mr. Moody keep reminding the Board during the budget process about the situation.

Reo Griffith stated that he thought it would be a good idea to be on the agenda for the January meeting when the new board members came on the Board.

Chairman Poteat requested that the agenda be rearranged so that the “Disposition of the Old Banner Elk School” follows 3.2D. This was adopted by consensus of the Board.

Public Hearing—Waive July Rent for AC PRIDE Occupants

Motion by Phyllis Forbes and second by Martha Hicks to go into a time of Public Hearing regarding Waiving the July Rent for AC PRIDE Occupants at 4:00 p.m. Motion unanimously approved.

Chairman Poteat called for a temporary recess to go into a time of Closed Session.

Motion by Reo Griffith and second by Glenn Johnson to go out of Regular Session and into a time of Closed Session at 4:00 p.m. regarding Attorney/Client privilege G.S. 143-318.11 (a)(3). Invitees will be the County Attorney, Clerk, Board and Finance Officer. Motion unanimously approved.

Chairman Poteat declared the meeting to be back in a time of Public Hearing after a brief time of Closed Session. During closed session, no vote was taken.

Chairman Poteat read aloud the notice of public hearing which states:

The Avery County Board of Commissioners will hold a Public Hearing on Tuesday, September 2, 2014 at 4:00 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC. The purpose of the public hearing is to receive public comment In regard to waiving the July 2014 rent for AC Pride; a business incubator, located on certain Real property owned by County of Avery at 185 Azalea Circle; specifically not to charge rent to Bear Real Estate Mountain Property Corporation in the amount of \$350.00; Bailey Drapery & Design, LLC in the amount of \$400.00; and Highland Pro Clean in the amount of \$350.00, all being the rent amounts due for the month of July 2014, in consideration of the temporary closure of AC Pride during the month of July 2014.

There were no public comments.

There were no commissioner comments.

Motion by Reo Griffith and second by Phyllis Forbes to go out of the time of Public Hearing and back into Regular Session at 4:23 p.m. Motion unanimously approved.

Motion by Martha Hicks and second by Glenn Johnson to waive the July rent for Bear Real Estate in the amount of \$350.00; Bailey Drapery and Design in the amount of \$400.00 and Highland Pro Clean in the amount of \$350.00 for the rents due for the month of July 2014 for those tenants in the AC Pride. Motion unanimously approved.

Disposition of the Old Banner Elk School

Chairman Poteat stated that everyone had in their possession the particulars of the agreement but that there had been a revision because of a date. Michaelle Poore, County Attorney, explained that the first revision change is in paragraph 1g and 1i to 2015 instead of 2014. The second revision which you received added a paragraph #15 which is on page 6.

Michaelle Poore, County Attorney, read aloud the revision with the addition of paragraph #15, page 6 of the contract: “ Buyer Possession Before Closing; The buyer should take possession of the property on October 1, 2014 prior to closing and shall be allowed to occupy the property until closing or until such

time that the contract is terminated in accordance with the terms and conditions of this agreement. The buyer shall assume all operations of the property including the operation of the incubator and any related activities on the property and shall conduct all maintenance on the property prior to closing, reasonable wear and tear excepted. The buyer shall be responsible for all utilities for the property after October 1, 2014 until the date of closing or the termination of the agreement whichever is sooner. The seller authorizes the buyer to make reasonable operations to the property prior to closing so long as such operations do not adversely affect the overall value of the property.”

Chairman Poteat stated that the Board would be entertaining a motion concerning disposition or sale of the old Banner Elk School Property to the Town of Banner Elk. For many years, I have felt the rightful and best owner of that property was the Town of Banner Elk. The purchase price is \$1,000,000 with an interest rate of 0%; paid as follows beginning July 15, 2015 \$83,333.34 and each successive July 15th \$83,333.33 for a total period of 12 years until the purchase is paid in full. The amount under this finance agreement may be paid in full or any part without penalty. In addition, the Town of Banner Elk shall pay to the Avery County Board of Education a sum equal to the water and sewer bills included at the new Banner Elk Elementary School for the first 25,000 gallons of usage per month. This amount shall be paid within 30 days following the assurance of the water bill by the Town of Banner Elk. The payment to the Avery County Board of Education will be for a period of twelve years irregardless of early payoff or not and shall commence with the water and sewer usage for the month of June 2015.

Chairman Poteat also read from paragraph 3, page 6 which states: “Existing incubator leases: The Town of Banner Elk agrees and covenants to maintain the parts of the property presently being used as an incubator for the purpose of an incubator for a period of at least three years from the original signing of any incubator lease of the property.”

Reo Griffith questioned if Banner Elk was on the agenda for the Local Government Commission. Mr. Owen answered that there had been preconference conversations with them but they could not get on the agenda until later.

Motion by Reo Griffith and second by Martha Hicks to adopt the Intergovernmental Agreement for Sale of Real Property between Avery County and the Town of Banner Elk. Motion unanimously approved.

Glenn Johnson said that there was one thing that concerned him with the town taking over October 1, 2014 that leaves the economic development director in the building which will belong to the Town of Banner Elk. I would hope that you would consider allowing him to remain in that building at least for a couple of months. Charles VonCanon, Banner Elk Town Council member, stated “we hear what you are saying.”

Michaelle Poore, County Attorney, stated that the resolution does include language that it is intended for the sale to be pursuant to 160A-274 and authorizes the Chairman to execute the Intergovernmental Agreement for Sale of Real Property together with any deed to the Town of Banner Elk and any other documents that are necessary to complete the closing of this transaction.

Motion by Martha Hicks and second by Glenn Johnson to adopt the Resolution Authorizing the Sale of that Property known as the Old Banner Elk School as written. Motion unanimously approved.

Subdivision Approval – Eagles Nest North (Phase II) – Tommy Burleson; Elliott Harwell

Tommy Burleson, Director of Inspections and Planning, stated that the Waterfront Group was a land development group who bought Eagles Nest that was in bankruptcy. The property is so large that it is put into phases to develop it. Total area of this phase is 88.02 acres, total number of lots to be approved is 25 lots, minimum lot size is 2 acres. The main entrance of the subdivision is on Hwy NC 194. The Fall Creek Fire Department has signed off on this subdivision. The maximum grade of the road is 17.8%. The Planning Board has approved this subdivision. Eagle’s Nest North is in compliance with all Avery County Ordinances.

Motion by Phyllis Forbes and second by Martha Hicks to approve the Eagles Nest North Phase II Subdivision. Motion unanimously approved.

Recess

Chairman Poteat called for a brief recess so that he could sign the final plat for Eagles Nest North Phase II Subdivision.

Chairman Poteat called the meeting back to order after a brief recess.

Avery County Growth Rate – Tommy Burleson

Mr. Burleson reported that the Avery County Comprehensive Transportation Planning Committee obtained information from the NC DOT traffic counts and numbers from the census to compile the Avery

County growth rate. It is being requested that 0.7% be adopted as the official growth rate for Avery County. This does affect future funding.

Motion by Martha Hicks and second by Glenn Johnson to approve the 0.7% growth rate for Avery County. Motion unanimously approved.

Tax Administrator Report – Phillip Barrier

Tax Collections Report

The Total Tax Collections for the month of August 2014 is \$3,223,552.89.

Motion by Phyllis Forbes and second by Reo Griffith to approve the Total Tax Collections for the month of August 2014 as presented. Motion unanimously approved.

Regular Releases

The Regular Releases for the month of August 2014 is \$13,248.52.

Motion by Glenn Johnson and second by Martha Hicks to approve the Regular Releases for the month of August 2014 as presented. Motion unanimously approved.

Real Property Sales

For August 26- 30th, 2014, there were 22 sales for that week and that is the most we have had since December 2013 when we had 19. I am very encouraged with that number.

The tax value amount is lower than the sales price.

Mr. Barrier reported that according to the NC Court of Appeals Grandfather Mountain is now taxable. They will have to pay taxes for 2013 and 2014 if they do not appeal to the Supreme Court of NC.

County Manager Updates

Chairman Poteat stated that Mr. Robert Wiseman's last day was August 29, 2014.

Glenn Johnson stated "I usually don't read my motions. I think this one warrants a little bit of explanation, little bit of thought, little bit of information to the public about what has gone on. After I make my motion and if it gets a second, I know you will open up for discussion and as the maker of the motion I have first rights to discuss.

My motion is as follows: Whereas, Avery County's Manager retired on August 29, 2014 and whereas a majority new board will be taking office on December 1, 2014 and whereas it would be presumptive for the majority of this board to know what the majority of the new board might wish to do about a county manager and whereas Avery County has a county manager style of government with important decisions to be made and functioning without a manager is a bit like a ship without a captain, therefore Mr. Chairman, I nominate you, Kenny Regan Poteat, for the position of interim county manager for the ensuing three month period of September, October, and November; interim period to end on November 30, 2014.

Motion seconded by Phyllis Forbes.

Glenn Johnson stated that we know that in Mr. Wiseman's absence lately due to multiple health problems that many duties have fallen on our clerk and on our finance officer. Tim Greene is technically the assistant county manager but there have been many decisions lately, people asking questions of the Clerk to the Board and Mr. Greene that they cannot answer. I believe that Mr. Poteat has his "head around what is going on" almost better than anyone in the organization. Certainly in our county manager's absence, some of the questions coming up to Mr. Greene and the Clerk have had to be referred to the chairman. By state statute, we are a county manager style of government. That means that we really need a county manager in place. We have three months until the new Board comes. I don't think we want to hire a county manager right now. It would not be fair to the new board and would not be fair to any lady or gentleman we might hire. I believe we need a county manager in place at all times. This is perfectly legal and being done in other counties. It has been done in Avery County in the past.

Phyllis Forbes stated that she had a copy of the general statute GS 153A-84 that speaks to interim county manager. "Whenever the position of County Manager is vacant, the Board of Commissioners shall designate a qualified person to exercise the powers and perform the duties of manager until the vacancy is filled. The Board may designate the chairman or some other member as interim manager. For the interim, the chairman or member shall become a full time county official and the Board may increase his/her salary pursuant to GS 153A-2A." The chairman may serve as the chairman and interim county manager; it is perfectly legal. Glenn is right we do need a captain of this ship. "

Reo Griffith stated "the process of beginning to search and accept applications and hire a county manager is going to be a long drawn out process. If we have a full time county manager on board when

we go into budget we will be flying. As per our county policy, the finance officer is the assistant county manager and with that being said I know there is a motion on the floor and I don't know if you can put a motion on the floor when there is a motion. Really for some amount of compensation and I have spoken with Mr. Greene briefly, just give him the authority and then he can give the answers. Right now he does not have the authority to give the answer as the county manager. Let Mr. Tim Greene serve as the interim county manager. Certainly Mr. Greene could say yes or no."

Glenn Johnson stated the clerk and finance officer has enough to do. If Mr. Greene were serving in this capacity he is being paid a salary and not really being compensated for assistant county manager or interim county manager. I think we have overloaded both our clerk and finance officer. I know that to be true.

Phyllis Forbes said that we do have ongoing things that need the attention. I know Tim is perfectly capable of doing the county manager things but I don't want to overwhelm him. Tim has no help himself.

Martha Hicks stated "I talked to Mr. Greene this afternoon about this. He pointed out to me that we had said that we were going to get him an assistant to help him in his job and we have not done that yet. If he needs an assistant and here we are talking about putting more on to him. I really had that in mind today to ask him to take this interim job until we could get someone but then after I talked to him it is not good to overload your staff. They can start getting a negative attitude and the first thing you know they will be hunting another job. I have been a supervisor and seen that happen. We have a big decision here to make. I have talked to Cindy and she has a lot of papers on her desk that needs someone to sign. They have laid on her desk for about a month or more. It was put to me and Mr. Griffith that we are to get a board together and start hunting for a county manager, taking applications and doing the process. Here we are juggling three or four things at one time. What do we do here today? That is our job to make decisions for the county and make them wisely. We have a motion on the floor."

Phyllis Forbes called for the question.

Michaelle Poore, County Attorney, stated for the record the chair may want to acknowledge that he is recusing himself from this vote.

Chairman Poteat recused himself from voting.

VOTE: 2 to 2

For: Glenn Johnson, Phyllis Forbes

Against: Reo Griffith; Martha Hicks

The vote is deadlocked therefore we have status quo.

Phyllis Forbes stated "if you are voting against it then what is the solution. I don't want to overload Tim Greene."

Motion by Reo Griffith and second by Martha Hicks that Mr. Tim Greene, Finance Officer, work on an Interim basis as the County Manager at least until the first Monday in December with Chairman Poteat working out some extra compensation or whatever would be necessary for his duties.

Vote: 3 to 2. Motion fails.

For: Reo Griffith; Martha Hicks

Against: Kenny Poteat; Glenn Johnson; Phyllis Forbes

Chairman Poteat stated "I will not assume the load and responsibilities of county manager. I will continue my duties as the chairman as I have always done and always will for the next three months but don't look to me to answer and solve all of these problems."

Glenn Johnson said "We as county commissioners as Ms. Hicks pointed out very well, we are charged with making important decisions and folks I don't know of any more important decision than this right now. This is just asinine in my opinion that we sit her as county commissioners and we can't get an interim county manager appointed for three months. Are we going to continue to spin our wheels? We have been spinning our wheels for weeks and even months in one way or another. We can go on and on spinning our wheels. We have some decisions that has to be made in the next three months and these people coming on board has got some big decisions coming on with not only a county manager but these decisions go on and on and on. I am going to try this motion one more time."

Chairman Poteat stated "two examples surfaced today. Mr. Ryan Calhoun is a very legitimate concern and is managerial. Ms. Rachel Deal has a special request concerning the bridge and that is managerial. These things arise daily in this business."

Glenn Johnson stated "I will not read the entire resolution again."

Motion by Glenn Johnson and second by Phyllis Forbes to nominate Kenny Regan Poteat, for the position of interim county manager for the ensuing three month period, September, October, November; interim period to end November 30, 2014.

Ms. Hicks stated "when I ran for county commissioner I knew what was expected out of me. We have a five member board and the people of Avery County voted us in for one purpose and that purpose was to make decisions for the county. I feel like if our board up here cannot make decisions for the next three months there is something wrong and that is why I have not voted. I feel like it is my responsibility to help carry on the county's business for the next three months. I don't think there is one of us here that cannot come up here to this office or be called on the phone and told what needs to be taken care of and that is why I am not voting for an interim."

Chairman Poteat recused himself from voting on this issue.

Phyllis Forbes said "Martha, I agree the people did elect us to make decisions for the county, however, it is a county manager form of government. None of us as individuals can sign off on the things the county manager needs to sign off on. None of us has the authority as individuals to do that. We have authority as a five member board. The county manager is our representative that can do that and unless we have one person designated to handle some of these matters I see us spinning our wheels. I think that Reo and you need to start ASAP looking for someone for December. If you wait until budget time you are going to be in deep. We have to get it going too, we need somebody. Kenny is the most qualified person. "

Chairman Poteat stated "Reo and Ms. Martha I think you will agree with what I am about to say is correct. Some few weeks ago I had impressed upon Martha and Reo the importance of beginning a manager search. I even alluded to the fact to use one of the commissioner's elect. I would have hoped that they would have already started that process. We do need a manager, whomever that person would be."

Glenn Johnson said "I have known Kenny Poteat since we were about 5 years old and I am 67 years old. I think everybody here would agree that you would not find a more honest person than Kenny Poteat. He has been elected 20 consecutive years. That did not happen because he was a crook, it happened because people put a lot of confidence in him. I can assure you that Kenny Poteat will not be doing this job for the money. I believe he is doing it to help this county and this board through this trying time without a county manager. Make no mistake about it, Kenny Poteat has no ulterior motive. He did not seek this job. He has multiple people come to him, multiple from this board came to him and asked if he could be interim county manager and now we are in a deadlock."

VOTE: Motion deadlocked 2 to 2. We will continue without a county manager or interim at this time.

**For: Glenn Johnson; Phyllis Forbes
Against: Reo Griffith; Martha Hicks**

Finance Officer Report – Tim Greene
Budget Amendment #

The Conservation and Development department received a Community Conservation Assistance Program grant to be used to correct drainage problems at the Wright property that was purchased for a recreational facility. This is a 100% reimbursement grant.

Motion by Martha Hicks and second by Reo Griffith to approve a Budget Amendment in the amount of \$2,772.00 with a debit of \$2,772.00 to Conservation/Development (106190.3410) and a credit of NC Soil & Water Conservation (103695.0000). Motion unanimously approved.

Budget Amendment #

The Department of Social Services has received a \$5,595.00 Family Reunification allocation for the 2014/15 fiscal year. This is 100% reimbursement monies.

Motion by Martha Hicks and second by Reo Griffith to approve a Budget Amendment in the amount of \$5,595.00 with a debit of \$5,595.00 to Reunification – Foster Care (106800.6080) and a credit of \$5,595.00 to County Welfare (103634.0000). Motion unanimously approved.

County Attorney Report – Michaelle Poore

Grandfather Mountain Exemption Case—that was addressed earlier by Mr. Barrier.

New River Lawsuit is still pending. The attorney who is representing the plaintiffs in the case passed away unexpectedly last week.

The Chapman lawsuit is still pending. Mediation has been rescheduled for the end of October.

Before the property tax commission, we have four cases still pending.

For the tax collections that have been turned over, there are 142 accounts and out of the 142 accounts approximately \$180,000 has been collected in back taxes. We have 38 foreclosures filed as of this date.

Ms. Poore stated that she did receive an email from Lees McRae and this is a good time for me to ask the Board how they wish for me to proceed. Lees McRae is advising if the board would like to lease the old Banner Elk Property to them. Is there anything the Board would like to direct me to do in that matter?

Chairman Poteat asked if anyone would like to speak to this issue. No commissioner spoke. Chairman Poteat said not to take any action at this time.

Glenn Johnson said going back to the Lees McRae issue. Did they indicate a figure as to what they might be willing to pay in a lease agreement? Ms. Poore stated that they have requested that the county set a lease price. They had previously indicated that perhaps the county would do a minimal lease perhaps \$1 a year.

Mr. Johnson said this is another one of those incidences that Robert Wiseman had been working on this. This is another incidence that we need a county manager in place to execute these contracts or leases. We have beat this around and beat this around. Lees McRae is very important to this county. The economic driver of Lees McRae in this county is huge. Are we going to sit here like five "dunces" and do nothing for a huge economic driver in this county or are we going to do something? What are we going to do? I hope this is not a sign of things to come. If it is we are going to be the laughing stock of this state."

Approval of Minutes

Motion by Martha Hicks and second by Reo Griffith to approve the July 7, 2014 Regular Session. Motion unanimously approved.

Agenda Consent Items

Adopted by Consensus.

Chairman Poteat said for whomever makes this decision, there is a letter from Dr. Barron concerning his aspirations that we would help with the legislative goals and continue with the funding for the libraries as it was a few years ago. I hope someone will pick up with that and run with it.

Upcoming Meetings

Next meeting will be September 15, 2014.

Adjourn

Motion by Martha Hicks and second by Reo Griffith to adjourn this meeting at 5:50 p.m. Motion unanimously approved.

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

ATTEST: _____
Cindy Turbyfill, Clerk

