

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in a Special Meeting on Tuesday, November 18, 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 discuss and take any action necessary of the following:

1. NC Wireless Previous and New Agreement and Discussion on Access
2. MB Kahn Extended Construction Management Proposal for Courthouse Renovation
3. Purchase an Activity Bus for Avery County School System
4. Economic Development Director Position and Economic Development Budget & Allocations including any Budget Amendments Related Thereto
5. Solid Waste Equipment Repair with Possible Budget Amendment
6. Adopt Resolution in Total Opposition of Ruling on Same-Sex Marriage
7. Sale of Puckett Property Update
8. Newland Business Association's Use of the Square
9. Veteran's Monument Discussion
10. Old Banner Elk School Property Transfer Update

Members Present: Kenny Poteat, Chairman; Glenn Johnson, Vice-Chair; Phyllis Forbes; Martha Hicks; Reo Griffith

Members Absent: None

Call To Order

Chairman Poteat called the meeting to order at 3:30 p.m.

Chairman Poteat stated that this was indeed a special called meeting. There will not be a time of public comment. The only things that will be addressed by this Board of Commissioners are the ten items on the agenda. If you would like to speak to an agenda item you can do so but you must sign up on the sheet with the clerk.

Chairman Poteat led prayer.

NC Wireless Previous and New Agreement and Discussion on Access

Woodie Young stated at the last board meeting, the board agreed to accept the agreement between the Vance's and the county and it be contingent on the fact that the Vance's grandfather in what was on the tower. The only new thing on the tower is NC Wireless. It was alluded to the fact that NC Wireless had obtained access to the tower through the Cartner property with an agreement with Mr. David Cartner and you have the agreement in front of you for NC Wireless to cross the Cartner's property. You also have in front of you the agreement with NC Wireless and the county which they have signed and the county has not signed. This being said and the NC Wireless having access through another way, I would like to ask that the board go ahead and approve the agreement between the Vance's and the county.

Michaelle Poore, County Attorney, stated that she was provided with a document from NC Wireless earlier today. This is not a legal agreement; this is an email from NC Wireless to Mr. Young and to my knowledge there was not an easement agreement with this email. From what I have, I don't have anything that NC Wireless has legal access across the Cartners. It is my understanding that the Board approved that agreement contingent on the Vance's agreeing to allow NC Wireless to access the road solely for servicing the existing 30 or so individuals that have signed up for NC Wireless; grandfather in service for those current individuals. After the meeting it came up that NC Wireless was supposed to have an easement across the Cartners property and to my knowledge NC Wireless has not provided a copy of the easement with the Cartners. If what the board wants to consider is the easement with the Vance's and say that the easement agreement is approved contingent upon NC Wireless having the grandfathered access to the 30 individuals or NC Wireless having access across the Cartner's property. There has not been anything provided to me that NC Wireless has legal access across the property.

Bucky Vance questioned "how did they get to put this on there anyway because you didn't agree to it and I didn't agree to. Whoever that fellow you had here before whenever we was here first crossed my property not the Cartners property and I have two witnesses that will testify that they did not cross the Cartner property, they went through our gate. I am just plain spoken and if he tells you that, he is a liar and I will call him that today, tomorrow or next week. I stood there and talked to him that day. This agreement that you have with us does not give you the permission or grant anyone else to put something on the county tower. This agreement is not with NC Wireless. This needs to be addressed between the county and us because they are going to help maintain this road and they are not going to free load off the county or the taxpayers and I am tired of paying for it and every tax payer should be tired of paying for it. You cannot grant permission for anybody else to be on the county tower, it is in the contract, it is our contract and even if you can cross Cartner's property that contract is with us. The tower agreement is not with anyone else, it is with the Vance's. This is the third time that I have told them and I will prosecute

with criminal trespassing. The man you have got hired from Banner Elk whoever he is stood and told me a lie the day they put the internet up there. I don't like to be lied to and I will not be lied to under no circumstances if it takes bringing them in for a lawsuit we will do that. I am not going to be run over."

Ms. Poore stated it was her understanding that what the board has is the proposed lease agreement with NC Wireless. I did not get a copy and I am not sure what the date is. The lease was signed March 15, 2013 by NC Wireless. As I recall, the Board had approved this contingent upon the issue of the access being worked out by the county attorney and county manager so that issue is still pending.

Reo Griffith stated if it would be proper I think this needs to be tabled until further information is brought to us because apparently there is limited information and information provided at the eleventh hour that the county attorney has not reviewed.

Motion by Reo Griffith and second by Martha Hicks to table this issue until further information can be obtained.

Glenn Johnson stated that he had asked Doug Gragg to be here to state the importance of NC Wireless not to get into contracts or whatever. Doug is currently selling their service. They are in an expansion mode as we speak. I wanted Doug to clarify how many customers they have and the need for the service.

Doug Gragg stated "there are 35 people on the Hawshaw Tower and there are some people in the Squirrel Creek area that we are to get another repeater to service. I have 15 or so to go on there. I sell Dishnet, Carolina West and Light Leap and Light Leap is the better value for the money. This has worked well with me. The main thing that I know they wanted to do is put a different antenna on the Hawshaw Tower because they have come to capacity on that particular antenna. This is a valuable service to the county. Mr. Johnson said that in the contract with NC Wireless the county will get 5% of the gross monthly revenue after \$1000.

Bucky Vance said "I thought that this internet was for the school and school only. The way it was brought to us it was for the school system. That is where the misunderstanding was."

Chairman Poteat commented that he appreciated the relationship that the county had with the Vance's.

VOTE: Motion passes 4 to 1.

**FOR---Kenny Poteat, Phyllis Forbes; Martha Hicks; Reo Griffith
AGAINST---Glenn Johnson**

MB Kahn Extended Construction Management Proposal

Nick Montanez said the services of MB Kahn contract was terminated in 2014. We have continued to work for the county October and November to try to facilitate the retirement of Robert Wiseman and Mr. Young. There are some continued proposals that have been requested by the county/staff that will take that project into December. We have requested that I make myself available to the county at a per hour basis for whatever the county might deem necessary on the project. I have outlined a scope of work that I have anticipated.

Chairman Poteat stated that basically what MB Kahn was expected to do and paid to do will end November 30, 2014 but because the work will extend beyond November 30th there is a proposal to continue the services through the month of December or longer on a prorated basis. Martha Hicks asked what needed to be completed on the finishing of the courthouse. Mr. Montanez said that the exterior portion of the building needs to be completed along with the grounds dressed up. The second part within the building and in going through the building there has been some discussion on the judge's bench area because of sight lines and those are areas that could not have been identified until the structures are in place. I think Judge Ginn will be participatory in that discussion. We have been asked to look at the public restrooms on the first floor for renovation and the center stairwell was asked to be addressed to give it a facelift. That should pretty much take care of most of the items that are outstanding. The concern that we have since there has been retirement of Mr. Wiseman and Mr. Young coming on board and new board members coming on is the ability to have someone on the project that has been on the project since the first day should any issues arise and to address the issues on behalf of the county.

Ms. Hicks questioned if there would need to be more documents and change orders signed. Mr. Young's last day will be November 30th. Mr. Montanez stated we do ask that a county representative be identified that can function on behalf of the county commission to exercise some services and acting on behalf of the county to sign off on change orders, pay applications, closeout documents, etc.

Chairman Poteat questioned if there would be monies in the budget to cover these expenses. Mr. Greene answered that yes there is money in the courthouse project ordinance that would cover that.

Chairman Poteat stated that we have felt that construction management was important through 95% of the project so why would we quit now since money has been allotted.

Motion by Martha Hicks and second by Phyllis Forbes to approve the Construction Management Proposal for the Courthouse Renovation and Addition until the project is completed.

Reo Griffith stated "we have a very competent inspection department that we pay a good salary to and if the project was just starting it would be one thing but coming near completion I don't see the need of the construction management. We have county inspectors. I don't see the need of it."

Martha Hicks said even though we have county inspectors you have judges involved in this that is telling you about this. Mr. Griffith said if the judge ordered that the bench be 6 inches higher or lower Tommy Burleson understands plain English.

Glenn Johnson stated that he sees this like switching horses in midstream. Mr. Johnson gave several examples of the work that construction management had done for Avery County.

Phyllis Forbes called for the question.

VOTE: Motion passes 4 to 1.

**FOR---Kenny Poteat, Glenn Johnson, Phyllis Forbes, Martha Hicks
AGAINST—Reo Griffith.**

Ms. Poore, County Attorney, advised that the county would need to name a representative.

Motion by Phyllis Forbes and second by Martha Hicks to appoint Tim Greene as the County Representative to sign documents, change orders, etc., related to the Courthouse Renovation. Motion unanimously approved.

Purchase an Activity Bus for Avery County School System

Chairman Poteat explained that the request for a new activity bus for the Avery County School System was not a request by David Burleson, Superintendent, but that was what he felt needed to be done. The County Commissioners was doing pretty well in 2004 when we bought a 72 passenger bus which now has 177,000 miles on it. In 2008, Avery County bought the newest activity bus which now has 95,000 miles on it. We had talked about getting a replacement schedule for the activity buses but that has not happened. We know the importance of the children and safety. It has been seven years since there was a new activity bus purchased for the Avery County School System.

Chairman Poteat stepped down as Chairman and Glenn Johnson, Vice-Chair took over as Chair.

Motion by Kenny Poteat and second by Phyllis Forbes to expend \$89,900 to buy a new activity bus for the Avery County Schools and the monies come through the form of a budget amendment.

Martha Hicks stated that she is not against buying a new activity bus but she felt this should be tabled until next year's budget and not do a budget amendment at this time.

Vote: Motion passes 4 to 1.

**For-----Kenny Poteat; Glenn Johnson; Phyllis Forbes; Reo Griffith
Against-----Martha Hicks**

Glenn Johnson relinquished the Chair back to Kenny Poteat.

Economic Development Director Position and Economic Development Budget & Allocations including any Budget Amendments Thereto

Phyllis Forbes stated that Avery County did sell the old Banner Elk School and there was money in that budget. There is a dire need for heating assistance for the citizens of Avery County because the state has cut this program by \$150,000.

Motion by Phyllis Forbes and second by Glenn Johnson to take the money from the Economic Development fund in the amount of \$21,600 and \$42,000 from the operational fund for a total of \$63,600 and transfer that amount to the Department of Social Services budget to be used for energy assistance for the citizens of Avery County and that the Department of Social Services use the same state guidelines they have used previously to disperse the funds.

Glenn Johnson stated that he had been a large proponent of economic development and the reason for that is because we have a declining population in Avery County. Our young people are leaving and never

coming back. In the last election some of those that ran made it very clear that they intended to do away with economic development and I think that is very sad. In fact, Mr. Griffith stated that the county had no business spending money on economic development. Obviously, some of the people coming on intend to do away with economic development so why not use the money that is already in the budget for a good cause. It would appear that a majority of the new board sees no need for economic development and no need to change anything in Avery County so that is the reason I seconded the motion and will vote for it.

Martha Hicks commented that Joe Trivette's budget had been dipped into and that he needed some money in his budget so she proposed to take \$15,000 and put back in the budget for Public Buildings and Grounds.

Reo Griffith stated that he proposed that we absolutely need to help the needy people of Avery County. I would say use the money for 60 and over recipients and assure Ms. Martha that there is money elsewhere to help with the Public Buildings and Grounds budget.

Phyllis Forbes stated that we are limiting ourselves by saying 60 or over. What about the people that apply with small children, I don't want them to go without.

Don Benfield, Department of Social Services, advised that if the money is appropriated for the month of December it could be targeted to the 60 and over citizens and then if there were funds available then it would be opened up to anyone that would qualify.

Maxine Laws said "Glenn Johnson just said that we ran to do away with economic development growth but I never said that. I did say some other things that I do stand behind."

VOTE: Motion unanimous.

Solid Waste Equipment Repair with Possible Budget Amendment

Buddy Norris, Director of Solid Waste, stated that last week an engine failed in one of the garbage trucks. It is a 2001 truck and certainly worth fixing. The truck needs to be towed to Caterpillar and rebuilt which by doing this it will carry a 3 year unlimited mileage warranty on the repairs. The repairs would be in the neighborhood of \$18,000.

Chairman Poteat commented that the Solid Waste budget took a hit every year. I think this is a worthy request and is much needed.

Reo Griffith questioned if Solid Waste budget was cut any? Buddy answered that there was some reductions. Mr. Griffith stated that last year solid waste came under budget greater than \$100,000. Are you sure you don't have the \$18,000 in your budget to cover as a line item transfer? Buddy answered that the money was there but it would leave nothing to operate on. Tim Greene, Finance Officer, stated that we manage the budgets so that the departments will be under budget at the end of the year. Mr. Griffith stated that he felt like there were sufficient funds in the budget to get his truck on the road without a budget amendment.

Martha Hicks stated that this was a big thing and she felt that this needed to be done through a budget amendment.

Motion by Martha Hicks and second by Glenn Johnson to approve a Budget Amendment in the amount of \$18,000 for repairs to the Solid Waste truck.

VOTE: Motion passes 4 to 1.

**FOR-----Kenny Poteat; Glenn Johnson; Phyllis Forbes; Martha Hicks
AGAINST----Reo Griffith**

Recess

Chairman Poteat called for a brief recess.

Chairman Poteat declared the meeting to be back in order after a brief recess.

Adopt Resolution in Total Opposition of Ruling on Same-Sex Marriage

Chairman Poteat stated that he felt that Avery County should adopt the Resolution in Total Opposition of Ruling on Same-Sex Marriage. Michaelle Poore, County Attorney, advised that the Resolution was in the Agenda Consent Items in a previous meeting and it would be appropriate to have a formal adoption.

Motion by Martha Hicks and second by Glenn Johnson to adopt the Resolution in Total Opposition of Ruling on Same-Sex Marriage.

VOTE: Motion passes 4 to 1.

**FOR----Kenny Poteat; Glenn Johnson; Martha Hicks; Reo Griffith
AGAINST----Phyllis Forbes**

Phyllis Forbes commented that her vote had nothing to do with her personal beliefs or opinions but that she didn't think county government should make a stand in state issues like this.

Sale Of Puckett Property Update

Woodie Young, Interim County Manager, reported that on November 7, 2014 the power was turned on to the Puckett property; a county maintenance worker was present at that time. Mr. Williams had an inspector there to inspect the property and the inspector found three places where asbestos was present. Mr. Williams is asking if the county would pay for the asbestos to be removed. There is a company that is willing to remove the asbestos for \$2647.00. If the county will pay for the removal of the asbestos, Mr. Williams is willing to close immediately.

Michaelle Poore, County Attorney, stated that this would be a modification to the purchase contract because it was not provided in the original contract regarding removal of asbestos. The main issue is that this is related to the sale of the property and tied to the purchase price so it would require a new notice advertised.

Reo Griffith suggested that the county pay for the asbestos removal of \$2647.00 and ask the purchaser to pay a third down. Ms. Poore stated that Mr. Williams had paid the 5% down which was the minimum by state statute. Ms. Poore also stated that if the earnest money was changed then there would need to be a new purchase contract signed and the procedures followed after that.

Tim Greene, Finance Officer, said there was enough money in a special appropriations fund to cover the \$2647.00 without doing a budget amendment.

Motion by Martha Hicks and second by Glenn Johnson to pay for the asbestos removal and/or remediation of \$2647.00 for the Puckett Property. Motion unanimously approved.

Newland Business Association's Use of the Square

Mr. Young stated that he had letters from the Newland Business Association requesting use of the Newland Square for a couple of dates in November and December. They also wanted to construct a fire pit which was a concern because of liability issues. They have provided a copy of their liability insurance and letters from the business association and Town of Newland releasing the county from any liability. Martha Hicks suggested that anyone that wanted to use the Square needed to contact the County Manager's Office because the county did own this piece of property.

Motion by Reo Griffith and second by Phyllis Forbes to allow the Newland Business Association the use of the Square. Motion unanimously approved.

Veteran's Monument Discussion

Martha Hicks stated that she had traveled with Georgia Henry, Veteran's Officer, to Elizabethton, Marion and Morganton to look at different Veterans Monuments. The committee met and discussed several things. David Patrick Moses and Joel Shipley met with us also. We need to have an architect to do some plans but we will need to have a survey of the town square done before we can do anything. The survey will cost between \$5000 and \$7500. Also, the architect fee will be around \$7500; the architects have agreed to donate \$2500 back to the monument. There are about 1000 names to be put on this monument. A rough estimate to construct the monument and fix up the Square would be between \$250,000 to \$300,000. I think that we should earmark up to \$300,000 from the Courthouse Renovation project ordinance for the Veteran's Monument.

Tim Greene, Finance Officer, stated that the architects could not come up with a design without a survey. The project ordinance would not be closed out for a while so the survey can be done and the design drawn up and then the new board can decide how much they want to do. It will cost \$15,000 to do the survey and design.

Reo Griffith stated that the cost of freedom is not free. We do have figures in front of us. We want a nice memorial for our nearly 1200 veterans in Avery County. I think we should proceed with getting the design and then go from there.

Motion by Reo Griffith and second by Martha Hicks to proceed with the survey of the Square property up to \$8000 and the design of the Veterans Monument by the architect up to \$5000. Motion unanimously approved.

Martha Hicks stated that she felt we still needed to earmark some money out of the courthouse renovation for this project because if it goes back into the other funds then it can be used for something else. We do not have to use all of that. You need to have things in order because if it gets cut out it will be lost. Tim Greene stated that project ordinance is already set. Chairman Poteat said he felt it would be appropriate for the new board to address any additional monies for this project besides the \$13,000 that we just did for the survey and design. Ms. Hicks said her concern was that it was not written up in the contract when we did the courthouse. We were told that it was to be done but when it came down to being in the contract it was not in the contract. Here we are planning a project and a certain amount was not planned for that. Mr. Greene said that everyone knew that we were going to replace the monuments but no one knew where or to what extent and we were going to address that at the end of the project. Reo Griffith said the money is not going anywhere. Ms. Hicks stated that the reason we are not doing it like it was at the courthouse because those names that were engraved had a piece of glass over it and the sun faded out the names until you could not read them and that is why we wanted to go with something that would be permanent and everyone would be proud of.

Glenn Johnson said once we close this project out the excess funds will roll over into capital fund balance and at that time basically a new board could do whatever they wanted to do with those monies. Hopefully they would use some of them for this monument. Martha would like to assure that up to \$300,000 be designated toward that project in order to assure that would occur.

Motion by Martha Hicks and second by Glenn Johnson to earmark up to \$300,000 for the Veteran's Memorial Park. Motion unanimously approved.

Old Banner Elk School Property Transfer Update

Michaelle Poore, County Attorney, reported to the Board that Banner Elk got the financing from the LGC so we are ready to proceed with the closing. The Board had previously approved this and had already authorized the Chairman to sign those documents. I anticipate that by the end of the week we will have the documents worked out and everything closed.

Glenn Johnson stated that Banner Elk had paid \$500.00 for the rent for the Woolly Worm Festival ahead of time and that Banner Elk took over the old school before that time.

Reo Griffith stated that this had nothing to do with the school property transfer.

Michaelle Poore stated it is relative to the transfer but it is not on the agenda for the board to take any action. The Board can accept the information.

Rick Owen, Banner Elk Town Manager, said that originally the Kiwanis paid the County for the Woolly Worm Festival and Banner Elk took possession of the building October 1, 2014. There was some conversation about the rent coming back to the Town of Banner Elk. I believe you could consider it at any time.

He also thanked the county officials, staff and attorney for working with the Town of Banner Elk on this project.

Adjourn

**Motion by Martha Hicks and second by Glenn Johnson to adjourn this meeting at 6:39 p.m.
Motion unanimously approved.**

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

ATTEST: _____
Cindy Turbyfill, Clerk