

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in Regular Session on Monday, May 2, 2011 at 3:30 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC.

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

Members Absent: None

Call To Order

Chairman Poteat called the meeting to order at 3:32 p.m.

Martha Hicks led prayer.

Chairman Poteat stated that if anyone would like to speak to an agenda item they must sign up on the sheet with the clerk otherwise there is a time of public comment.

Robert Wiseman, County Manager, said that Mr. Jeff Hurd with MB Kahn Construction Management needed to fly out to see his son who is a Navy Seal and would like to be moved up on the agenda.

By Consensus of the Board, the jail update will be moved immediately after 3.2B.

Proclamations and Awards

Mobile Vietnam Wall Unit

Willis Vance explained that fifteen months ago there was a committee formed in McDowell County through the efforts of Randy Hollifield. Mr. Hollifield had a lifelong dream of bringing the mobile Vietnam Wall to McDowell County. May 11-16, 2011 the Mobile Vietnam Wall unit will be in McDowell County. This wall unit is not just for the Vietnam veterans but also for all veterans. The Mobile Vietnam Wall unit will be located at the McDowell YMCA Athletic Fields on W. Henderson St/Sugar Hill Rd in Marion, North Carolina.

Public Comments

There were no public comments.

Banner Elk School – Jeff Hurd

The Banner Elk School Project is nearing completion. It is anticipated that the one piece that possibly could not be completed by July 1, 2011 is the floor in the gymnasium but there will not be an issue of completion because of the gym floor. Teachers are scheduled to return to school on August 2, 2011.

Jail Update – Jeff Hurd

The first, second and third floor slabs are in place. There are 11 tons of rebar in the third floor. Masonry wall on the third floor will begin the week of 5/9/11. The goal is to have Phase I completely dried in by July 1.

Board Appointments

Mayland Community College Board of Trustees

Mayland Community College Board of Trustees has recommended Mr. Sam Ray to be reappointed for a new term of office. His term will expire on June 30, 2011.

Motion by Glenn Johnson and second by Martha Hicks to reappoint Sam Ray to the Mayland Community College Board of Trustees. Motion unanimously approved.

High Country Workforce Development Board

The terms of Sallie Woodring and Truman Robbins will expire June 30, 2011. Both of these individuals have expressed their willingness to continue to serve on this board. Sallie Woodring represents the private sector and Truman Robbins represents the public sector.

Motion by Phyllis Forbes and second by Scott Heath to appoint Sallie Woodring (private sector) and Truman Robbins (public sector) to the High Country Workforce Development Board. Motion unanimously approved.

Avery County Department of Social Services Board

The term of Floyd Townsend, who was appointed to the county board of social services by the county commissioners, expires on June 30, 2011. Mr. Townsend has expressed his desire to be reappointed to the Avery County Department of Social Services Board. This is a three year term.

Motion by Martha Hicks and second by Scott Heath to reappoint Floyd Townsend to the Avery County Department of Social Services Board for a three year term. Motion unanimously approved.

Region D Development Corporation

The Region D Development Corporation requests that the Board of Commissioners appoint four persons to serve as members of the Development Corporation. Of the four members, one shall be a full time employee of a private lending institution (Tena Trice), one shall be a person designated as a local government representative (Robert Wiseman), and two shall be representatives of business and community organizations (Daryl Smith and Tommy

Burleson). All four persons have expressed their willingness to be reappointed to the Board. This term is for one year.

Motion by Scott Heath and second by Glenn Johnson to appoint Tena Trice, Robert Wiseman, Daryl Smith and Tommy Burleson to serve on the Region D Development Corporation for a one year term. Motion unanimously approved.

Avery Airport Authority

Mr. Wiseman stated that there were two gentlemen that have served diligently on the Avery Airport Authority Board but are probably going to tender their resignation in the near future. If anyone knows someone who has an aviation background and would be interested in being on this authority let them know about these pending retirements.

Chairman Poteat reminded everyone that if anyone would like to speak to an agenda item that they must sign up on the sheet with the clerk.

Tax Collector Report – Mary Daniels Calloway

Mary Daniels Calloway, Tax Collector, stated that for the month of April 2011 the total collections were \$219,544.68. The collection rate is 94.2%.

Motion by Scott Heath and second by Martha Hicks to approve the Tax Collector's Report for the month of April 2011 as presented. Motion unanimously approved.

Avery County Morrison Library – Dr. Daniel Barron

Dr. Daniel Barron, director of the AMY Regional Library, reported that 50 years ago Ms. Dorothy Thomas pulled together the three counties into a regional library system and for 50 years there has been a contract among the counties and with the town of Spruce Pine. The contract needs to be renewed with each county and the town. There are new state regulations. A draft of the contract has been submitted to Avery County's attorney for approval. The AMY Regional Library attorney has approved this contract. Hopefully the draft will be approved by each county and the town and will come back to Avery County for final approval at the June meeting.

Tax Assessor Report – Phillip Barrier

Real and Personal Releases

Phillip Barrier, Tax Assessor, reported that the Real and Personal Releases for April 2011 are County Tax Release \$502.68; Fire Tax Release \$55.55 for a total tax released of \$558.23.

Motion by Martha Hicks and second by Glenn Johnson to approve the Real and Personal Releases for April 2011 as presented. Motion unanimously approved.

Motor Vehicle Releases

Mr. Barrier reported that the Motor Vehicle Releases for April 2011 are County Tax Release of \$9.20 and Fire Tax Release of \$0.95 as presented.

Motion by Phyllis Forbes and second by Scott Heath to approve the Motor Vehicle Releases for the month of April 2011 as presented. Motion unanimously approved.

Property Sales Statistics

There were 18 sales for the month of April and only 3 foreclosures. There are currently 276 sales for this year compared to the 355 sales from last year.

Board of Equalization and Review

The first meeting of the Board of Equalization and Review was April 11, 2011. Ninety-six appeals have been completed and there are five more appeals to hear.

Smoky Mountain Center-Christy Pruis

Christy Pruis, Regional Director with the Smoky Mountain Center, explained that county funds are used to serve mental health and substance abuse and developmental disability consumers in this county. Those funds come to Smoky Mountain Center and then in turn are given to New River Mental Health. New River continues to have a high volume of service needs. They provide emergency services, psychiatric services, crisis management, intensive in home services, guardianship services, etc. Bob Wilson, Director of New River Mental Health, stated that New River employs 31 people in Avery County. There is partnership with local universities for training and there have been times in the past that they have been hired as employees. There are approximately 700 people who are serviced in Avery County. Growth is in the area of substance abuse. Residents of neighboring counties with insurance are coming to Avery County to get their mental health service. The partnership between Sheriff Frye and his officers continues to be very positive and there have been frequent interactions with him. Staff is sent to the jail for people who are having mental health issues. Sheriff Kevin Frye stated that getting New River to come into the jail situation has been a good service for the inmates. We are going to start some group therapy sessions inside the jail to help with substance abuse. We have been recognized in the southeast region of the United States in having a very good crisis intervention program. Brian Ingham, director of Smoky Center, commented that Mr. Glenn Johnson has done a fine service on the Smoky Mountain Center Board. There will be regional meetings scheduled in the near future and any of the Board of Commissioner members are welcome to attend.

Beer and Wine Referendum

Chairman Poteat stated that there was a very good public hearing held in April regarding this issue. He reiterated that as far as protocol goes for this particular meeting, in order to speak to an agenda item you must sign up on the sheet with the clerk.

Stan McNabb stated “at the last meeting I mentioned that we elected the county commissioners to make the tough decisions for us and I also mentioned that almighty God is against intoxication of any kind and therefore I recommend that if you have a vote on this today that you vote unanimously against having a referendum. Those who are for the referendum, let them go to the county and do the leg work in getting their signatures. I would call on you to vote unanimously no”.

Chairman Poteat said that this issue has been talked about at great length. Mr. Bill Close came before us a few months ago with a resolution. The resolution was for the Avery County Board of Commissioners to pass a resolution in support for a referendum to be held regarding the sale of beer and wine throughout the unincorporated areas of Avery County. He stated that the Board needed to make a decision on this. There is a recourse that can be taken in case the Board decides not to adopt this resolution. The recourse is in the form of a petition. We are very appreciative of all the folks that were here at the public hearing and appreciate all the interest in an issue concerning all of us in Avery County. If there is a motion, the chair will entertain the motion. The chair will call for a second and then there will be discussion and of course after the discussion we will vote on the issue. If there is never a motion made it will remain status quo. If certain parties wanted to go further, they would have to seek a petition to place this on the ballot and the same if there is a lack of a second.

Michaëlle Poore, County Attorney, explained that if a board member desires to make a motion, the motion should state that there would be a written request from the Board of Commissioners to the Board of Elections for an alcoholic beverage election. It is also my recommendation as part of the motion that the request not be sent to the Board of Elections until mid July. That election has to be held within 120 days of when it is sent to the Board of Elections. The goal here was if there was an election it would be held in November with the regular election. If that request is sent earlier, there would have to be a special election held for that purpose.

Motion by Scott Heath and second by Phyllis Forbes for the Board of Commissioners to send to the Board of Elections a written request to hold an alcoholic beverage election and that request be sent on August 1, 2011.

Glenn Johnson stated that he made it very clear where he stands on this issue. He said he was ready to vote on this issue two months ago, ready a week ago and ready today and his vote is “no”.

Martha Hicks said that her vote would be “no”. She said that the Board does need to vote on this issue.

Phyllis Forbes read a statement “when I first ran for commissioner I knew this job would be difficult at times. I made a commitment to myself and the people of Avery County to uphold the laws of our state and nation to represent to the best of my ability the entire populous of Avery County. I do not and have not made decisions to get votes or without much thought or consideration of each side of an issue. With this specific debate I understand and appreciate both viewpoints. I do not believe that approximately 100 people at a public hearing represent accurately the views of over 11,000 registered voters in Avery County. At this point in time I am neither for nor against beer and wine countywide. I do have a respect and belief in our democratic rights that so many men and women fought for. I believe the citizens of Avery County have a right to vote on this issue. I am well aware of the recourse that supporters of beer and wine have and that is a petition, however, I feel that citizens do have a right to cast a vote for or against this issue. Then we, County Commissioners, will have a true picture of what Avery County really wants. Voting is the fair way for our citizens to express their opinion whatever their opinion would be.”

Scott Heath stated “I have stewed on this for a long time and I have tried to break this down to what I think is right and wrong and what is important and not as important. I have a couple of talking points. Number one, I have through the efforts of our clerk and counsel had them find out what can be on a referendum. Citizens have a right to vote on election issues; another issue that can be on a referendum is alcohol sales. There are others with bond referendums and the third category is government structure issues. Just as a point of information, most of these, if not all of them, do not apply to Avery County. The taxation and bond referendums do and the only other one is the sale of alcohol. The state decides what the people can decide and then what we can decide. I asked myself if this is a reasonable request. We had 9 people talk and 6 or 7 are local business people. Avery County was a dry county and now it is not but most retailers at least have the option to sale wine and beer so we have a group of business owners and the landscape has changed and they are asking for the same right as everyone else. I think this is a reasonable request that they want to be on the same playing field as everyone else. The two issues that were at the public hearing; one was morality and faith. I was quoted that alcohol was not the problem but my sinful nature is the problem and I stick by that. Everything in this world is a blessing until I put myself into it and I am the one that messes everything up. To that problem there is only one solution and that is a relationship. I feel that if we talk about moral decline in the community I also do not feel alcohol is the source of the problem. If the community is in moral decline, that is my fault. I believe it is not necessary that we have alcohol in every nook and cranny of Avery County. On the economic side, I feel that this is a reasonable request. These folks are asking for fairness. Across the board this is not going to be an economic windfall. I have been going back and forth with this. The main sticking point is the problem with the democracy side. The question to us is not whether we believe or agree with alcohol sales. The question to us is do we allow the people to decide. In this democracy, the people govern and they

elect us as their representatives. In the state of North Carolina, this state allows the people to decide. It has occurred to me that it should not be whether I am for or against alcohol. I have absolute faith and confidence in the people of Avery County. If I deny their right to be able to vote on this issue, it is me saying that I don't trust the people of Avery County to make this decision. As far as the petition goes, I do not feel that to be an option; it is a recourse."

Glenn Johnson stated that he agreed with most everything that Commissioner Forbes and Commissioner Heath said. Mr. Johnson said that it had been said in the paper by several people that it is all about letting the people vote. He said that the petition enables them to vote on whether or not to put this on the ballot. Why not let the people vote through the petition process whether or not it is on the ballot.

Martha Hicks stated that she believed that the Board needed to vote on this matter.

Scott Heath said he felt strongly that if this did go to ballot that it would not pass.

Chairman Poteat stated that he intended to vote on this issue. In this democracy, there are periods of recourse in most arenas. If this Board votes not to place this on the ballot, there is recourse. The question was posed to the State Board of Elections the reverse of this. Is there recourse for the public for 4070 voters to ask for this NOT to be placed on the ballot? The answer was no, there is no recourse. In North Carolina currently there is truly only one dry county and that is Graham County. There are currently a total of 40 counties including Avery that are "dry". Some of those surrounding us are Ashe, Burke, Caldwell, Madison, Mitchell, McDowell, Watauga and Yancey.

**VOTE: In favor: Scott Heath; Phyllis Forbes. Against: Kenny Poteat; Martha Hicks; Glenn Johnson
Motion failed to carry (3-2).**

County Manager Report – Robert Wiseman

Broadband

Robert Wiseman, County Manager, reported that the trek of the "middle mile" had changed to go up Brushy Creek Road and follow the natural gas pipeline up to 221 just north of the parkway overpass at Linville Falls. That would put a lot of regions out of reach.

Mr. Wiseman said that it would appear that the grant application with the Appalachian Regional Commission for the fifty percent funding for the asset inventory looks very promising.

Economic Development Director

There have been 32 applications received for the Economic Development Director position. There are telephone conferences set up. The hire date is scheduled for July 1, 2011.

Town of Newland Tag Office

Mr. Wiseman advised that he had been in contact with Brenda Pittman, Town Manager, at the Newland Town Hall and she has requested some dialogue between her counsel and the Board of Commissioners regarding the Tag Office. The Town of Newland is in a quandary as to whether or not the Town of Newland will be able to continue to operate the tag office because they are going in the "hole" operating that office. Avery County has subsidized that operation \$10,000 a year. The argument is that this is not a town operation but that this office serves a number of citizens in Avery County.

Banner Elk School Property – Rick Owen

Ted Silver, member of the committee to try to save Banner Elk School, commented that part of Rick Owen's presentation is going to be a request for the commission to consider the town a right of first refusal in the event that bids are placed and there is some offer you are looking at to accept prior to any other methods. The town has considered stepping in some fashion and through a right of first refusal match the existing offer.

Rick Owen, Town Manager of Banner Elk, stated there is a group called the Friends of Historical Banner Elk School that is trying to raise funds in the interest of trying to save the school for community use. Prior to that, the Board met with the Banner Elk Town Council to discuss their interest in trying to preserve the Banner Elk School. The Banner Elk Town Council is not in a position to make some type of financial obligation to purchase the building at this time and also the price has not been determined yet. My concern is that at some point in time we lose out having a discussion with the Board of Commissioners on obtaining the building. The Friends of Historical Banner Elk School approached the Town Council of Banner Elk at the last meeting and asked them to take a step to secure a conversation about the future of the school. What they asked the council to do was to approach the Board of Commissioners with a lease proposal similar to the Beech Mountain School but the council was unwilling to do this. The council elected not to go that route but what would be the most beneficial would be a right of first refusal to enter into with the county. At the joint meeting with the Board of Commissioners and Banner Elk Town Council with some of the school board members present, the impression was that there was some type of right of refusal but this was not reflected in either set of minutes. I would like to have something more in writing so that is where the request is coming from.

Scott Heath said that in a recent workshop the right of first refusal had been discussed. This is a minimum of what we should be doing because this does not encumber the property. This would ensure that the town has the ability to get the school and pay for it. If an offer comes in at whatever it is and we are settled on a number and the town can pay that number then it is theirs.

Chairman Poteat stated that at the previous joint meeting with the Town Council of Banner Elk there was conversation regarding this but no official documents of right of first refusal were drawn up.

Michaëlle Poore, County Attorney, advised that a couple of weeks ago there was discussion about doing a bid process that incorporated an upset bid provision. A right of first refusal is something to look at more when there is a private sell of property. An upset bid process would essentially accomplish the same thing as a right of first refusal.

Rick Owen advised that the Town of Banner Elk does not want to be involved with upset bid. We are looking for a relationship with the county. We realize that if you go to bid process if we have the money we can get the property but we don't want be involved with the upset bid process but we want to continue the dialogue. I am not asking for a decision today but we just want to keep the dialogue going.

Chairman Poteat said that the County Attorney needed to research this and see what is the best recourse. The majority of this Board would like for Banner Elk Community to get this property. Mr. Heath stated that the Board needed to get "nailed down" on how the property was going to be sold.

There was discussion regarding the bidding process. Mr. Wiseman suggested that legal counsel draft a document for the Board to look over and consider the right of first refusal. A special meeting will be held June 2, 2011 at 2:00 p.m. regarding the Banner Elk School Disposition.

Resolution Opposing the Loss of County School Construction Dollars

Martha Hicks stated that this was a Resolution that the Board needed to send in because of the loss of funds. There are other counties that have enacted this Resolution.

Motion by Martha Hicks and second by Phyllis Forbes to adopt the Resolution Opposing the Loss of County School Construction Dollars.

Chairman Poteat stated that the state is looking for every possible penny they can squeeze because of the state's inadequacy.

Phyllis Forbes said that the state expects the counties to be timely and fiscally responsible and at the same time the rules do not apply to them.

Motion unanimously approved.

Finance Officer Report – Tim Greene

The Department of Social Services has received an additional allocation for the Crisis Intervention Program in the amount of \$21,476. This is 100% Federal money.

Motion by Martha Hicks and second by Glenn Johnson to adopt a Budget Amendment of \$21,476 for the Crisis Intervention Program with a debit of \$21,476 to Crisis Intervention (106800.6090) and a credit of \$21,746.00 (103634.0000) to County Welfare. Motion unanimously approved.

County Attorney Report – Michaëlle Poore

No report.

Approval of Minutes

Motion by Martha Hicks and second by Phyllis Forbes to approve the March 7, 2011 Regular Meeting; March 11, 2011 Board Retreat; March 11, 2011 Joint Meeting with the Board of Education. Motion unanimously approved.

Agenda Consent Items

The Friends of the Historical Banner Elk School document will not be adopted in the agenda consent items.

Upcoming Meetings

The next regular meeting will be held Monday, May 16, 2011 with a Budget Workshop immediately following the regular meeting. A budget workshop will be held May 19, 2011 at 5:00 p.m. with the Fire Commission, Sheriff, and Board of Education.

Adjourn

Motion by Scott Heath and second by Martha Hicks to adjourn this meeting at 6:00 p.m. Motion unanimously approved.

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

ATTEST: _____
Cindy Turbyfill, Clerk

