

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in Regular Session on Monday, October 7, 2013 at 3:30 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC.

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

Members Absent: None

Call To Order

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

Chairman Poteat announced that there would be two public hearings held today and would be held at the appointed time.

Martha Hicks led prayer.

Robert Wiseman, County Manager, asked that the Board approve amending the agenda to add the joint resolution between Avery, Mitchell and Yancey County regarding funding to Mayland Community College. This is something that is done every year. We all agree to fund Mayland Community College equally. If one county wants to give more than another county then the other counties have to agree to that. There can be a difference in funding. I would like that added to the agenda.

Chairman Poteat stated that it would take a unanimous consensus of the Board to add to the agenda. There was consensus of the Board to add the Joint Resolution for Mayland Community College to the agenda.

Chairman Poteat stated that this item would be placed just before public comment.

Proclamations and Awards

Chairman Poteat requested that a resolution to NC Department of Transportation and Jerry Combs be presented at the next meeting thanking them for the wonderful job on Hwy 194. Chairman Poteat requested that Jerry Combs be invited to the next meeting to receive a resolution of support.

Mayland Community College – Dr. John Boyd

Dr. John Boyd, President of Mayland Community College, announced that Mayland Community College is number nine in the nation for community colleges.

Dr. Boyd explained that the joint resolution is acknowledgement of a difference in funding. The funding has been approved in the budget process. There is a slight differential in Avery County. Chairman Poteat commented that last year Avery County did an across the Board 3% cut and we did not have to do that this year so there is a slight difference and we are honoring the \$10,000 that we could not last year.

Motion by Phyllis Forbes and second by Martha Hicks to approve the 2013 Joint Resolution for Mayland Community College among Mitchell, Avery and Yancey Counties. Motion unanimously approved.

Public Comment

Chairman Poteat stated that there was a time of public comment that would be coming up in a moment when any individual can speak to any issue they so desire. This could be limited according to how many want to speak. If you are here to speak about one of the public hearings, you certainly do not need to speak now and will be recognized during the public hearing time slot. Five people raised their hands to speak in public comment.

Barbara Young, owner of Banner Elk Properties, stated "I personally think an incubator in Avery County is a good idea but after researching incubators I found that never in a downtown district has there been an incubator. Boone incubator is in a B3 district which is a general business. B1 is downtown, B2 is neighborhood businesses and B3 is a business district. I have never seen an incubator in a downtown district. I am going to use Boone as a model. The incubator started small and grew into a larger incubator and did not compete with retail businesses. There is reason for that and it is my understanding that incubators are general businesses and not retail. What organizations are supporting Avery incubator? What is the criteria? Where does the potential business support come from? Can we put massage tables in there? What commercial businesses, i.e., banks will aid in getting business loans for

the startup companies? In closing does Avery County incubator have support systems in place to be able to attract future startup businesses. Zoning in Banner Elk is medical/educational. I am for incubators but it is in the wrong area. This is a subsidy from Avery County. An incubator should be used for retail, rental not downtown businesses. I am against an incubator if you are going to put it in downtown Banner Elk.”

Julia Heinlin, Owner of Antler Realty in Banner Elk, said “First of all I would like to say that I am for entrepreneurship and free enterprise. I am here about the incubator project and that they want to bring more business to town. I did read the criteria for this project and if you look on page 3 under the heading of limited duplication of existing businesses it says ‘entry of new businesses that closely resemble existing AC PRIDE participants will be judged on a case by case basis to rule out potential conflicts. Also, the presence of a significant number of identical similar businesses already in the community may be a limiting factor in allowing a same or similar business into the incubator.’ This is the guidelines that was set up. Right now there are 12 active real estate offices within a 2 mile radius of the incubator. There are a total of 60 real estate offices in Avery County right now and over 200 real estate brokers. I don’t feel the county should be subsidizing a business that is already prevalent in the immediate area with taxpayer money. We have an oversupply of commercial space right now in Banner Elk that should be utilized.”

John Millan, Avery County Coroner, explained that he wanted to revisit an issue that he had approached the Board about a year or two ago about the sign for Lt. Glenn Hicks who was murdered in the line of duty a few years ago. I was able to contact DOT in Raleigh and I pointed out the disparity that they did not list the rank and agency in the sign and the guidelines changed over the years and the state leaves the sign in the condition that the law stated at the time the sign was put in place. The local communities have the option of paying to have an additional strip sign tacked on above it that would give additional information on the officer and that would be in the \$350 to \$500 range. My question is would the county consider paying for that and if they would not would the county be amenable to try to find sources to get additional money in whole or part.”

Chairman Poteat stated that he would talk to the manager regarding this issue.

Public Hearing – Rural Operating Assistance Program Application – Deborah Smith

Chairman Poteat read aloud the public hearing notice:

This is to inform the public of the opportunity to attend a public hearing on the proposed Rural Operating Assistance Program application. The Public Hearing will be held on October 7, 2013 at 3:50 p.m. Avery County will provide auxiliary aids and services under the ADA for disabled persons who wish to participate in the hearing. Any requiring special services should contact Debbie Smith, Avery County Transportation Director. The programs included in the Rural Operating Assistance Program application are : Elderly & Disabled Transportation Assistance; Employment Transportation Assistance Program; Rural General Public Program.

Motion by Martha Hicks and second by Glenn Johnson to remove the Board from Regular Session into a time of Public Hearing regarding the Rural Operating Assistance Program Application at 3:50 p.m. Motion unanimously approved.

Debbie Smith, Avery County Transportation Director, stated that she was here to get approval from the County Commissioners for the Rural Operating Assistance Program Application. Ms. Smith said there are three different programs which included the Elderly and Disabled Transportation Program with funding at \$51,223; Employment Transportation Assistance Program with funding at \$5,812; and the Rural General Public Program with funding at \$59,321. That is a total for 2014 of \$116,356.

Martha Hicks stated that Avery Transportation did assist the Veterans with transporting them to Johnson City or other places and provide transportation for their spouses.

Tim Greene said that this funding comes from the state with no local dollars involved in this particular funding.

A citizen questioned how many drivers that Avery Transportation had and how many vehicles? Ms. Smith said that there were 13 drivers and 11 vehicles. The service is available for anyone but there may be a small fee that can be charged if the person does not fit in to one of the programs that is funded.

Ms. Rachel Deal said that we had one of the best transportation departments across the state. This is a wonderful service.

Motion by Glenn Johnson and second by Martha Hicks to close the Public Hearing regarding the Rural Operating Assistance Program Application at 4:00 p.m. Motion unanimously approved.

Motion by Martha Hicks and second by Phyllis Forbes to approve the Certified Statement for 2014 Rural Operating Assistance Program Application for Avery County Transportation. Motion unanimously approved.

Public Comment Continued

Lindsey Lacey, owner of a real estate company in Banner Elk, stated “I am opposed to any type of real estate office going into the incubator. I think it is getting away from the spirit of what is going on there and also getting out of the guidelines. There are already 10 real estate offices in the immediate area and 5 you could throw a stone to. I think we are going backwards by putting something that we have 10 of. I think you are hurting the commercial investors and the commercial space that has been available for so long. I have clients that are waiting for the next business. I think this would be a great thing out in the county. I don’t think we should go down the road in Banner Elk for discounted rates. I think the people involved in the lease that you are going to be discussed later are not new. The one lady has 6 years experience in the area and one of the ladies has 20 years experience and is currently under 3 or 4 felony indictments. This could hurt the realtors that have made it through the bad times.”

Sally Potter, citizen of Avery County, stated “I wanted to give you a slightly different prospective; the prospective of a taxpayer and how important it is to protect all of your existing taxpayers. There is some discussion here about a potential lease for a specific business. I think the whole incubator project is a wonderful project but it is important to take care of your own immediate businesses. There is quite a bit of saturation when it comes to one particular business in the area. If you could think outside the box and bring in new businesses; things that will draw people into Banner Elk not more of the same.”

Lee Wittman, Resident of Beech Mountain and representative of the American Red Cross, said “I want to talk to you about our Avery efforts. We provide three services and provide these services at your request. We respond quite often to the emergency services. The top priority is shelters for community wide disasters. An example of that is we recently signed the YMCA Chapman Center as a shelter in this area, the Beech Mountain Recreation Center and Land Harbor Recreation Center. The last shelter that we feel we need to put in the general area is in Banner Elk. Once we get the shelters established we have to start training people. The second thing we do is Disaster Action Team and we have resources for clients including financial assistance based on their needs. The third is to develop a community wide awareness of the need for self reliance and safety and a good example of this is CPR. I need your help in the way of volunteers, support and to find a Banner Elk Shelter. Also, we are looking for is an extra office in this area.”

Jerry Moody, Agriculture Extension Director, reported “Basically last year in 2012 we lost \$28,000 at the Avery County Fair due to the weather. Without the commissioners help, we would not have had the fair this year. The \$10,000 you gave us went to the payment on the cattle pens. Since that time we have gotten a grant for \$11,000 which we have put forth for the payment on the cattle pens for 2014. Overall if you take the \$21,000 in grants and gifts we made \$16,000 for the fair. If you take the grants away, we were still in the hole a couple of thousands of dollars. This has to do with interest payments. Mr. Moody gave a handout to the commissioners regarding the fair’s financials. We had a great turnout this year. There were about 4200 people in attendance. We used 3500 gallons of water.”

Avery County Human Service Transportation Coordination Plan Update – Deborah Smith

Deborah Smith, Avery County Transportation Director, requested that the Commissioners adopt the resolution for the Avery County Human Service Transportation Coordination Plan. This was originally adopted May 2010. This today is an update of some changes that have been made. A copy of the changes was included in the Commissioner’s packet. Workshops and survey’s are held to identify the gaps and barriers that we may have.

Glenn Johnson said that he would like to point out some statistics that are a bit staggering. The elderly population above 65 years old in Avery County is 18.9%; the average statewide is 13.8%. The percentage of people with disabilities statewide is 16.9%; Avery County is 25.6%. Persons living below the poverty line is 16.1% statewide; 18.1% in Avery County. The household median income is \$39,184 statewide; \$30,627 in Avery County. We need to be working on these things. People leaving Avery County to go to work from the 2010 census figures were 1800 persons.

Motion by Phyllis Forbes and second by Martha Hicks to approve the Avery County Human Service Transportation Coordination Plan Update. Motion unanimously approved.

Recess

Chairman Poteat called for a brief recess.

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

Public Hearing Regarding Proposed Lease Agreement for Bear Real Estate

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

The Avery County Board of Commissioners will hold a Public Hearing on Monday, 7 October 2013 at 4:30 p.m. in the Commissioners Board Room, Avery County Administrative Complex, 175 Linville Street, Newland, NC. The purpose of this Public Hearing is to discuss the proposed lease agreement to Bear Real Estate for Unit 7, consisting of approximately 630 square footage, located in the Economic Development Project known as AC PRIDE, a business incubator, located on that real property described in Deed Book 460, Page 2313, of the Avery County Registry. The value of the proposed lease is a proposed rental up to three years, with an initial rent of \$350.00 per month, which may increase for subsequent years; the proposed consideration for the lease is \$350.00 per month. It is the intent of the Avery County Board of County Commissioners to approve this lease at the 7 October 2013 meeting, or any subsequent date.

Motion by Martha Hicks and second by Phyllis Forbes to go out of Regular Session and into a time of Public Hearing regarding the Proposed Lease Agreement for Bear Real Estate at 4:30 p.m.

Reo Griffith stated "In North Carolina a notice for a public hearing is sufficient if a notice fairly and sufficiently apprise those whose rights may be affected by the nature and character of the action proposed (Sellers vs. City of Asheville 1977). The notice published fails to meet this standard. First, the notice omits key provisions of the lease which changes the values of the interest to be conveyed. According to NC GS 158-7.1 the notice shall describe the value of the interest to be leased. The notice before the board fails to do this. The notice states that the value of the interest to be conveyed is \$350.00. The notice fails to disclose that the county as the landlord is responsible for utilities except for \$35 which comes out of the \$350.00. Unlike the majority of commercial leases, the landlord and not the tenant is responsible for the majority of the utilities, ultimately the citizens and taxpayers of Avery County will be paying the utilities. If utilities are included as part of the lease, then the value is significantly greater than \$350.00. The notice fails to disclose that some unknown percentage of rental fees from the lease will be used for marketing purposes. The notice does not state how many jobs will be created; what the increase in the tax base will be and other relative factors to assist in evaluating this project. The omission of these key terms and claiming that the value of the rent and the value of the property are equal, when in fact they are dramatically different, does not fairly and sufficiently apprise those whose rights may be affected of the nature and character of the actions purposed. I have copies of five notices from other counties regarding economic development projects under this statute. All of these notices provide the details required by GS 158-7.1. These notices from other counties throughout North Carolina fairly and sufficiently apprise those whose rights may be affected of the nature and character of the actions proposed. Unlike the notice for this hearing, these notices outline costs, the number of jobs to be created and the increases to the tax base that will result from the economic development project. Citizens have called requesting to review the lease and the lease was unavailable for review until mid morning on Friday, October 2, 2013. When the county advised this public hearing, the key document, the lease, had not been prepared. It was impossible to review the public records necessary to determine this project was a good ideal for the county. The commissioners were unaware of the terms of the lease yet the notice stated that the Board's intent was to approve this lease that even the board had not viewed. I would also like to note that this is not the first time on this project where adequate notice was not given. When you combine the key omissions in this notice, lack of documents to review when the notice was published and past failures to provide notice on this economic development project, a court may find that the county has not fairly and sufficiently apprised those whose rights may be affected of the nature and character of the actions purposed. With our notice and our actions, I urge the Board to postpone this hearing and redo the notice."

Chairman Poteat stated that these were points well made by Mr. Griffith.

Chairman Poteat questioned Michaelle Poore, County Attorney whether the public hearing should be held today. Ms Poore answered that she is not sure of the notices for which Mr. Griffith is speaking. The terms regarding jobs created and tax generated do not apply in our case because we are looking at a lease that Mr. Gardella indicates is for fair market value and whatever the lease is for fair market value the Board does not look at those factors. That may be a question of fact that the Board wants to consider after the hearing but the factors are not included in the notice because they are not part of these terms.

Chairman Poteat stated "in layman's terms, is there enough information in this public hearing to conduct a public hearing under these premises?" Ms. Poore answered that the information in the public hearing is what is required in the statute.

VOTE: FOR: Kenny Poteat; Glenn Johnson; Phyllis Forbes; Martha Hicks

AGAINST: Reo Griffith

Motion passes 4 to 1.

Chairman Poteat reminded the public and Board that this public hearing is to discuss the proposed lease agreement for Bear Real Estate.

Glenn Johnson questioned Mr. Griffith what individual, group of individuals, attorney or organization is the author of this document and also the previous document that we have in our packet? Mr. Griffith answered "Mr. Johnson with all due respect, I answer to the voters of Avery County I do not answer to you." Mr. Johnson questioned the County Attorney if this was something that would need to be forthcoming under the public records law or the Freedom of Information Act. Ms. Poore said the letter that was included in the information section in the agenda packet and the one just read would not apply to the public records law. Mr. Johnson said to Mr. Griffith "I guess you are refusing to make this Board aware of who the author is of these documents." Mr. Griffith said "With all due respect, I do not answer to you."

Chairman Poteat explained that each speaker in the Public Hearing would have 4 minutes to speak.

Jack Anderson owner of Resort Real Estate said "I would like to know where you come up with the price \$6 per square foot when I am getting \$10 and it is not enough to cover the expenses and pay taxes and insurance on the property. The second thing is who thinks they can operate a business for \$35.00 a month for electricity, heating, water, sewer, telephone and internet. Have you given any thought to this? The average for internet only is \$30.00; for a business it is \$80.00. My electric bills on my units are a lot more than that. The lighting alone for my warehouses runs more than that. I don't see where you are coming up with this. How much did it cost the county school system to operate this building for one year? The school system bought \$70,215 in fuel; electricity was \$24,000; water and sewer was \$7800; internet was \$1200; yard maintenance \$2760; trash removal \$360; total bills just to maintain it was \$106,355. Total rental fees is \$74,688 dollars. The county is going to have to put out of their pockets somewhere between \$32,000 to \$39,000 if the entire building is rented. Second of all there is a situation where some of the rent goes for advertising. Are you going to pay to advertise for my office or any other real estate office or any other business, you are not? Why are you going to subsidize another business that is existing and has a legal address for their business? There are 38 real estate companies that have Banner Elk addresses. There are 19 sales people in Banner Elk listed by the NC Real Estate Commissions. How many new full time employees will there be? I have in my office 12 full time residents of Avery County working. The income for a broker or real estate sales person comes from sales and they are considered an independent contractor. They are not a full time employee."

Chairman Poteat informed Mr. Anderson that his time was up to speak. Mr. Anderson said that this was a public hearing and there was nothing in the public hearing that says I am limited to a certain amount of time. Chairman Poteat questioned the County Attorney if the time limit can be dictated by the Chairman prior to going into the public hearing. The County Attorney stated that it could. Chairman Poteat asked Mr. Anderson to please step down. Another citizen in the audience yielded their 4 minutes to Mr. Anderson.

Mr. Anderson continued "How much more money does the county plan to spend on making improvements to the old Banner Elk School? This money is coming from the taxpayers of Avery County. These are not new businesses. If you bring someone into the county that is going to open a new business, I don't have a problem. You do not compete with the existing businesses in Avery County. I own two real estate companies and I don't appreciate this. Also what do you plan to get out of tax revenues? You do not get a percentage of the commissions. The only thing that this county gets is the tax on stamps on the deed. That is the only money you get. The second thing is are you going to renew these leases and have public hearings for each renewal and what is the criteria? Why would you pick one business over another in this county? Is this new lease better than my people's leases? You are going in competition with the businesses that exist and been existing for years. I cannot work anymore now because I was out fighting a war. You are going to come in and go against my son that is going to take over my office. Did the Town of Banner Elk approve this in a public hearing? Was the zoning changed in Banner Elk? In the counties around here, Alleghany, Ashe, Burke, McDowell, Mitchell, Yancey, none of them have an economic development person working for them. How many of you have ever been in real business struggling every day?"

Kim Hyatt, owner of Bear Real Estate, said "Banner Elk is a great place for rumor mongering which is shocking to me. There is no way a felon worked for my company. There are three real estate offices near Bear Real Estate not 10. There are a total of 6 realtors. A lot of people have called me and said they would not come and support the people who are against Bear Real Estate having an office. Our business plan is to give 80% of the commission to the sales person. We have based my business plan on the Keller Williams business plan. We thought we would be in the incubator in August. We are ready to hit the ground. We have spent over 120 hours renovating that room already."

John Wright, Attorney in Banner Elk who represents Bear Real Estate, stated "we are here to try to get a lease going so Ms. Hyatt can get into that building. You are landlords, you have county property which you are in charge of and we need to get that county property working and working for the county. You have determined the lease terms which are fair for my client. Once that building gets full it will be a proper place. All the improvements that you can put in the building will stand for themselves."

Dereka Plyler, owner of real estate agency at Sugar Mountain, said "this building is not the site for a competitor. This is a tax funded building and should not be used in the way of competition. I don't have a problem with Bear Real Estate that is not the point. I have a problem with my taxpayer funds subsidizing another business that is in competition with me. I have worked very hard for what I have."

Chairman Poteat said that he would publicly apologize to Mr. Anderson but that there needed to be a time limit on the speaking.

Reo Griffith said "Subsidies have been mentioned and of course we have hashed the law over for months now G.S. 158-7.1. If there was no subsidy, no you do not have to create or show a number of jobs, but there is a subsidy. We are renting or proposed to rent in the lease at \$6.67 per square foot. Can we say that no subsidy is going for renting 630 feet for \$350 dollars and \$35 going for utilities? Is there any possible way that we cannot say that this is a subsidy? A gentleman said to me this is not business as usual. It is not buying an ambulance, not buying a new patrol car, not putting a roof on school building, etc. We are going into the landlord business. We have to be protected and have to go by the general statute. I respect each board members opinion; that is democracy. We had better make sure every "i" is dotted and every "t" is crossed."

Martha Hicks stated "If we can't trust our lawyer to do the work that we need to do then why do we have her. I respect our attorney and she has done numerous researches regarding this."

Michaëlle Poore, County Attorney, said "I appreciate your comments Ms. Hicks but I do want to make the Board aware that I did not do any research in the amount of the rent. Mr. Gardella gave those figures to me and I prepared the lease based on the figures that he gave me. I have not researched whether or not \$6 a square foot is a market rate."

Bret Gardella, Economic Development Director, stated "I called a couple of the commercial property renters and retail property renters who are in the immediate vicinity; one of them was John Turchin who owns the Glove Factory and is renting out property. I have spoken with Angelo Acceturo and he says he is renting for \$6 to \$9 for retail space and recently rented a commercial space for \$5 a square foot. The reason I did this was at advice of counsel. As you recall a couple of years ago, it was \$10 to \$12 but counsel had suggested that I review the market again and the market had gone down. Counsel had a real estate agent who has property over there and I called her and it broke down to \$6 a square foot. Regarding the question of utilities, the only utilities that we cover are the water, sewer, and electric in the facility. We don't cover phone, internet or cable. That is what we are covering currently because not each individual space can be metered on its own. We feel that the number that is there per business will help cover these."

Ms. Poore said "Whenever Mr. Gardella provided me with the figures for rent they were a couple of years old and I told him he would have to check and see what the current rate of rental was and I didn't know if it had gone up or gone down. Ray Howell had owned space in Banner Elk and that was the only person that I knew who owned space in Banner Elk and I had told Mr. Gardella that and he had contacted Brenda Sparks."

Chairman Poteat stated "We are a body of elected officials, not experts in this area but we entrust our employees, attorney, etc. and if we find out we are getting false information and led astray on our decision making that would change. We base our decisions on the information we have been given."

Glenn Johnson questioned the County Attorney if she was comfortable with the lease, that the county is protected, all bases are covered, and the legalities are there for Bear Real Estate. Ms. Poore said that she would answer that in two parts. As far as the contents of the lease I feel good about the county being

protected and everything being in there that the county wants. It has been reviewed by the attorney for the Town of Banner Elk and he has indicated that it is agreeable to the Town of Banner Elk as well. I would again remind the Board that I have relied on information that I have received from other parties specifically the rent amount in coming up with figures for the lease. This lease is based on that being a market rate rent. If it were the case that the county was subsidizing space it would be correct that the county would have to make specific findings for jobs created, taxes generated and several other factors. It would be a different document altogether than the one that is currently in front of the Board. It can be, if the Board has specific questions regarding the legal implications, discussed in closed session.

Rick Owen, Town Manager of Banner Elk, stated that the attorney for the Town of Banner Elk has reviewed the lease. The Town of Banner Elk's larger concern was the educational component and that this be spelled out in the lease.

Mr. Johnson said that any business going in there has to meet the educational/medical requirement. We know how that is met in that they are required to take classes and mentor other businesses. It is not my job to know everything that there is to know about a given issue. It is my job to know a little bit about each and every one of these things and depend on the key people that have expertise in that field.

Mr. Griffith questioned Ms. Poore "under a conditional use permit which we have agreed to, can the conditions in that conditional use permit be changed without the governing boards voting on it?"

Ms. Poore questioned what the specific question was. Mr. Griffith said "in the conditional use permit it says that the people coming into the incubator will be at a 60% of fair market value for the first year." Ms. Poore said she asked the Town of Banner Elk that question and spoke with Ms. Buchanan and I have email correspondence with the attorney for the Town of Banner Elk indicating that is not a problem and is less concerned about the rent but they want to make sure that any business that comes in there meets the education requirements. The business will be required to follow certain educational requirements and those were incorporated in the discussions with Banner Elk. Mr. Griffith questioned "where do we stand legally when we have voted on a binding document that says we will do this, this and this and that is not what is happening?" Ms. Poore said as long as the Town of Banner Elk consents to the proposed lease then there is not a problem and this has been approved by the Town of Banner Elk.

Motion by Phyllis Forbes and second by Martha Hicks to go out of the time of Public Hearing regarding the proposed lease agreement for Bear Real Estate and back in Regular Session at 5:24 p.m. Motion unanimously approved.

Motion by Martha Hicks and second by Glenn Johnson to enter into the lease agreement made and entered into this the 7th day of October 2013 by and between the County of Avery, herein after referred to as "Landlord" or "County" and Bear Real Estate Mountain Property Corporation, a North Carolina corporation, hereinafter referred to as "Tenant" or "Company".

Reo Griffith stated "Today you have had 8 people speak concerning the Banner Elk project. Ms. Barbara Young spoke against, Ms. Julia Heinlin spoke against, Mr. Lindsey Lacey spoke against, Ms. Sally Porter spoke against and Mr. Jack Anderson spoke against; Ms. Dereka Plyler spoke against, Ms. Kim Hyatt spoke for and Mr. Wright spoke for. What public hearings are for are to hear the public comments; are we to be in the will of the public?"

Glenn Johnson said "Just to clarify something, real estate is not educational nor would any other business such as a bakery be but what they must do is meet the educational element in that they must take business classes through Mayland Community College and Lees McRae. The whole goal is to make any business coming in successful. Most small businesses that open up fail. That is what the incubator means you are incubating those businesses."

Barbara Young said the thing that bothers her the most is the zoning. You need to rezone this. If you are going to put retail shops in, it needs to be rezoned. You are in the wrong district for what you are applying for an incubator. Incubators go in industrial parks. I think the problem is I am not understanding medical/educational. There is no real estate office in the incubator in Boone. I think no real estate office fills the shoes of medical/educational zoning.

**VOTE: Kenny Poteat; Glenn Johnson; Phyllis Forbes; Martha Hicks ----FOR.
Reo Griffith----AGAINST
Motion passes 4 to 1.**

Tax Administrator Report – Phillip Barrier

Tax Collection Report

The total tax collection for the month of September 2013 is \$2,199,216.00.

Motion by Martha Hicks and second by Phyllis Forbes to approve the Tax Collection Report for the month of September 2013 as presented. Motion unanimously approved.

Regular Releases

The Regular Releases are \$5,035.81 for the month of September 2013.

Motion by Phyllis Forbes and second by Martha Hicks to approve the Regular Releases for the month of September 2013 as presented. Motion unanimously approved.

Motor Vehicle Releases

The motor vehicle releases for the month of September 2013 is \$278.38.

Motion by Martha Hicks and second by Glenn Johnson to approve the Motor Vehicle Releases for the month of September 2013 as presented. Motion unanimously approved.

New Motor Vehicle Tax System Refund

The total refund tax on the new motor vehicle system for September 2013 is \$284.88. These four individuals bought a new vehicle and went to get a new tag on that vehicle the address did not match so it put in a default address which puts them at 200 Montezuma St. They had to pay the bill and we owe these people the money back.

Motion by Phyllis Forbes and second by Reo Griffith to approve the Motor Vehicle Refunds for the month of September 2013 as presented. Motion unanimously approved.

Real Property Sales

September foreclosures slowed down a little bit.

Schedule of Values

The schedule will be presented and the submittal will be published in the newspapers. There will be a copy of the Schedule of Values at the Tax Assessor's Office and Clerk to the Board. The public hearing for the Schedule of Values will be November 4, 2013 at 3:50 p.m. After this occurs, we will adopt the schedule of values. The notices will be sent out at the end of January or first of February.

Subdivision Approval – Tommy Burleson

The Waterfront Group, Inc. is requesting that the Eagles Nest North (Phase 1) Subdivision be approved as a major Residential Subdivision located in the rural boundary of Avery County. The total area of this subdivision is 145.78 acres and will contain a total of 36 building sites. The Waterfront Group has presented Eagles Nest North to the Avery County Planning Board and received their approval at the September Planning Board Meeting. The Fall Creek Volunteer Fire Department has visited the site and concur with the engineer and surveyor that the roads are constructed to meet subdivision standards. The smallest lot size is .98 acres. Avery County Subdivision minimum lot size is .75 of an acre. The development also has a 50 acre common area and hiking trails through out. Also, there are a few estate lots of five acres or more in this phase.

Motion by Martha Hicks and second by Phyllis Forbes to approve the Final Plat of the Eagles Nest North (Phase I) Subdivision. Motion unanimously approved.

Recess

Chairman Poteat called for a brief recess.

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

County Manager Updates – Robert Wiseman

Courthouse Renovation

Robert Wiseman, County Manager, stated that there had been some snags or two in the project at the courthouse. The project is a week behind schedule and I say that with respect to the projection that we could be through on the second floor in 6 months. When you are dealing with a building built in 1911 that takes on a whole new perspective.

Avery Humane Society Reimbursement

Mr. Wiseman stated that in the agenda packet is an agreement between Avery County and the Avery Humane Society. The execution of this agreement is a reimbursement of \$4020. The Avery Humane

Society incurs the cost, the finance officer sends in for reimbursement and it comes back to Avery County and then is sent to the Avery Humane Society. This will be addressed again in the Finance Officer's Report.

Joint Resolution of the Avery County Board of Commissioners and the Avery County Board of Education regarding Purchase and Installation of Synthetic Turf for the Softball and Baseball Fields at Avery High School – David Burleson

Mr. Wiseman explained that he had been to the baseball and softball fields and that it was amazing with just a small amount of rain how muddy the fields still were. This resolution is between the Avery County Board of Education and the Avery County Board of Commissioners to facilitate the funding for the placing of Astroturf on the ball fields. It is about \$228,000 before the interest is added in.

David Burleson, Avery County Schools Superintendent, stated that as you know many of our young people are put at a disadvantage because we don't have a lot of outside activities and not a lot of field space to do that. Many times our baseball and softball teams go and play and they have never practiced outside. We are able to work with a leasing company and a turf company that will allow us to enter an agreement that if we forfeit the agreement they will come and get the turf. We are getting the money at a little bit less than 4% interest. We will be paying this out of our funds that come from the county. We are not asking for an increase we just want to appropriate some monies that we get and also that we will raise over time. Our plan is to have some tournaments in the summer that will bring people to Avery County and our hope is that it will give us some funding to help repay this expense but also will impact travel and tourism in our county. We hope this will be an ongoing time that people will come to Avery County and participate in the athletic opportunities. We are creating opportunities for the young people in Avery County. We are asking that this Board of Commissioners allow the Board of Education to enter into a lease agreement and not asking for additional funding but will do that out of our own source of money and a little bit we have saved.

Chairman Poteat read key portions of the Resolution which says "the Board of Education to pay the total cost of the project; out of the existing budget; this is not an obligation to the County of Avery; said funds shall be a part of and not in addition to the regular appropriations made."

Motion by Phyllis Forbes and second by Martha Hicks to approve the Joint Resolution of the Avery County Board of Commissioners and the Avery County Board of Education regarding the purchase and installation of synthetic turf for the softball and baseball fields at Avery High School. Motion unanimously approved.

Finance Officer Report – Tim Greene

Budget Amendment #

Avery County is eligible to receive reimbursement for the direct costs of a spay/neuter surgical procedure for a dog or cat owned by a low-income person as defined in G.S. 19A-63(b). The County will enter into an agreement with the Avery County Humane Society, Inc to provide these services. The contract period will be from July 1, 2013 to December 31, 2013. The total amount paid to the Humane Society during the contract period shall not exceed \$4,020.

Motion by Martha Hicks and second by Glenn Johnson to adopt the Budget Amendment regarding the spay/neuter program for Avery County Humane Society with a debit of \$4,020 to Spay-Neuter Program Expense and a Credit of \$4,020 to Spay-Neuter Program Income. Motion unanimously approved.

Budget Amendment #

The Avery County Department of Social Services has received a \$5,053 grant from the NC Community Foundation to provide assistance to Duke Energy Progress low-income customers.

Motion by Reo Griffith and second by Phyllis Forbes to adopt the Budget Amendment regarding a grant from the NC Community Foundation to the Avery County DSS with a debit of \$5,503.00 to NC Comm. Foundation Grant E (106800.6015) and a credit of \$5,503 to NC Comm. Foundation Grant R (103649.0000). Motion unanimously approved.

Budget Amendment #

The Avery County Economic Development Department has received a \$3,500 grant from Mountain Electric Cooperative to pay for the signage at the business incubator. The signage included the street side sign and the sign above the front door.

Motion by Martha Hicks and second by Glenn Johnson to adopt the Budget Amendment regarding the donation from Mountain Electric Cooperative to the Avery County Economic Development Department for the signage at the business incubator with a debit of \$3500.00 to Advertising (104900.2600) and a credit of \$3500.00 to Donations (103345.0000). Motion unanimously approved.

Budget Amendment #

The Avery County Sheriff's Office has received \$750.00 donation from the Holy Cross Church to be used to purchase a bullet proof canine vest.

Motion by Phyllis Forbes and second by Martha Hicks to adopt the Budget Amendment of \$750.00 regarding the Avery County Sheriff's Office donation from Holy Cross Church with a debit of \$750.00 to Uniforms (105100.3600) and credit of \$750.00 to Donations (103345.0000). Motion unanimously approved.

County Attorney Report – Michaelle Poore

Michaelle Poore stated that there was one matter scheduled for hearing at the Property Tax Commission in October; November there are five hearings scheduled.

Approval of Minutes

Motion by Martha Hicks and second by Glenn Johnson to approve the Special Meeting Minutes August 1, 2013; Regular Session Minutes August 5, 2013; Special Meeting Minutes August 6, 2013; Special Meeting Minutes August 15, 2013; Regular Session Minutes September 3, 2013. Motion unanimously approved.

Agenda Consent Items

Agenda Consent Items adopted by consensus.

Upcoming Meetings

The second monthly meeting may be cancelled. The next meeting will be Monday, November 4, 2013.

Reo Griffith stated "you made reference to a resolution going to the Department of Transportation but I would like to personally thank all of the men and women who worked 24 hours a day and 7 days a week to repair Hwy 194. This road is vital to the citizens and businesses of Avery County. When the landside happened on July 16, 2013, I would never imagine that within two months the road would be reopened. As we have always done and continue to do the people of Avery County rallied to overcome a difficult situation. I would like to recognize the Avery County firms and individuals whose hard work and determination caused the road to be reopened; Ralph Burleson and sons Tony, Randy and Todd; Jerry Combs and DOT staff; Bob Garland and Teaberry Construction; and Curtis Robbins. Also I want to recognize the following firms and individuals from Mitchell and Watauga Counties: Mason Ledford; John Hodge; Roscoe Millsap; and Tommy Mast. Again, I want to thank everyone who worked on the road. This work is a testament of what people of Avery County can accomplish."

Motion by Martha Hicks and second by Glenn Johnson to adjourn this meeting at 6:35 p.m. Motion unanimously approved.

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

ATTEST: _____
Cindy Turbyfill, Clerk

