

**STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
BOARD OF COMMISSIONERS
REGULAR SESSION – JULY 13, 2009**

ASSEMBLY

The McDowell County Board of Commissioners met in regular session at 5:00 p.m. on Monday, July 13, 2009, in the Commissioners' Board Room, the usual meeting place.

MEMBERS PRESENT

David N. Walker, Chairman; Barry E. McPeters, Vice-Chairman; Dean Buff; Michael Lavender; and Andrew K. Webb

OTHERS PRESENT

Charles R. Abernathy, County Manager; Carrie Padgett, Clerk to the Board; Ashley Wooten, Assistant to the County Manager (Video); and Reporter Wendy McAnally

CALL TO ORDER

Chairman David Walker called the meeting to order. The invocation was given by Commissioner McPeters, followed by the pledge of allegiance, led by Commissioner Webb.

APPROVAL OF MINUTES

Minutes of the June 22, 2009 Adjourned Session and the June 29, 2009 Special Session were presented for approval.

Upon motion by Commissioner McPeters and a second by Commissioner Lavender, the minutes of June 22 and 29, 2009 were unanimously approved as recorded.

APPROVAL OF AGENDA

The County Manager asked if the 6:30 appointed item (DOT Contract on Rain Garden) could be taken off the agenda since proper information had not been received.

Commissioner Michael made a motion to approve the agenda as amended. Commissioner McPeters seconded the motion and the vote was unanimous.

RECOGNITION OF SEARCH TEAM VOLUNTEERS

Chairman Walker recognized Emergency Management Director Terry Young at this time to give an overview of this agenda item. Mr. Young explained that on Thursday, June 25th, McDowell County Emergency Management received a request from the North Carolina Division of Emergency Management for search teams to assist in locating two missing children that were lost while hiking with their family. Nine personnel from four McDowell County Departments assisted in the search which spanned over extremely rugged terrain near the Tennessee State Line. Shortly after noon on Thursday, the McDowell County Search Team located the two missing children who had become lost in the woods overnight. The children were extricated from the wilderness and brought safely to their parents.

Emergency Medical Services Director William Kehler introduced members of the Search Crew as follows:

Marvin Hancock, Old Fort Fire Department and McDowell County EMS
 Jason Lonon, McDowell Rescue Squad
 Shane Kirkpatrick, Nebo Fire Department
 Chris Harris, Nebo Fire Department
 Zachary Hensley, Nebo Fire Department
 Brad Washburn, Ashford North Cove Fire Department
 Nathan Snider, Ashford North Cove Fire Department
 William Tipton, Woodlawn Fire Department
 Mercedes Rose, Woodlawn Fire Department

As each name was called, Vice-Chairman McPeters those present with a “Certificate of Appreciation” on behalf of the Board. Chairman Walker thanked them for a job well done.

SOLAR ENERGY PROPOSAL

Chairman Walker recognized the County Manager at this time for an introduction of those present for this item. Mr. Abernathy introduced Brownie Newman, Director of Project Financing for FLS Energy, and Michael Shore, owner of FLS. Mr. Abernathy explained that he had been exploring the potential of solar energy as an alternative power source for several County buildings and wanted to become familiar with the technology and to take the right step in this direction. He had located a company, FLS Energy Solutions, in Black Mountain with whom he had been working for several months. Mr. Abernathy advised that he and school representatives, including Commissioner Buff, had visited two sites in Asheville where the company is doing business.

The County Manager stated the School System is also enthusiastic about the project and are looking at several of their school buildings for a similar installation. He advised this is a good opportunity to try the use of solar energy, noting that the two buildings best suited for this project are the County Jail and the Senior Center because of

their usage. Mr. Abernathy pointed out there was nothing pressing for approval tonight but that he was ready to have solar energy panels installed.

Mr. Shore spoke briefly and then asked Mr. Newman to proceed with a power point presentation of the process for solar energy installation.

Discussion followed on incentives and tax credits and how this project would benefit the County.

The County Manager advised he would like to have staff bring back a contract for the Board's consideration.

Commissioner Webb made a motion to allow staff to pursue this project and have a contract brought back for the Board to review and consider. Commissioner McPeters seconded the motion and a brief discussion followed. When put to a vote, the motion carried unanimously.

WATER SYSTEM CONTRACT

The County Manager explained this document corresponds with the Water Agreement and Enterprise Fund Amendment. He introduced Mr. Ken Deaver, owner of Kace Environmental, Inc., who would be working with and advising the County on operational duties for the McDowell County-Nebo Water System, particularly for testing purposes, etc. Mr. Abernathy noted that since the County does not have a certified person on staff, we would operate under Mr. Deaver's certification, and his services will run a little over \$7,000 per year. Mr. Deaver will be available for services when needed.

Commissioner Lavender made a motion to authorize the County Attorney to draft a proposal for Mr. Deaver's services. Commissioner Buff seconded the motion and the vote was unanimous.

TRANSPORTATION BUDGET PUBLIC HEARING/RESOLUTION

Chairman Walker declared the Board in public hearing and called Joy Shuford forward for her presentation.

Mrs. Shuford, representing the McDowell County Transportation Planning Board, Inc., advised she was present to discuss the Elderly and Disabled Transportation Program and the Work First Transportation Program grant that would be received through the North Carolina Department of Transportation. The amount of the grant is \$94,594 and will be utilized for elderly and disabled transportation at the Senior Center, at Foothills Industries, and for Work First clients at the Department of Social Services.

Chairman Walker opened the floor for questions/comments from the public.

With none being heard, upon motion by Commissioner McPeters and a second by Commissioner Webb, the Board voted unanimously to close the public hearing.

Commissioner Lavender then made a motion to approve the grant allocation in the amount of \$94,594. Commissioner McPeters seconded the motion and the ayes carried unanimously.

WATER AGREEMENT/ENTERPRISE FUND AMENDMENT

The County Manager advised the County's Director of Facility Maintenance, Terry DePoyster, would be the contact person as the County assumes operation of the new water system in the Nebo area and starts serving 235 to 240 customers. He pointed out the County was undertaking a different responsibility and certainly a significant step in taking over the role of service director as a water provider.

Mr. Abernathy proceeded to give a general overview of the *Agreement for Purchasing Water for the Nebo Water System*, noting revisions made since the previous document was presented. He said there was one additional change remaining to be made which would be language to address drought restrictions, noting it was only fair that the County participate by asking customers to conserve water. Mr. Abernathy pointed out the Agreement allows the County considerable flexibility in the setting of rates, in contracting, in selling water, among other business aspects. He said the document was being recommended for adoption.

A general discussion followed on the areas to be served, looping of lines, etc. in relationship to placement of the meter, during which Commissioner Webb advised that he and Mr. Abernathy and Commissioner Buff had discussed how they could work a process out through Stacy Hill and north of U.S. 70 to make sure they are served. He stated the City officials who were present during the discussion had shown no indication that this would be an issue in making sure the County has a chance to loop and that we do not end up with an area that is not served because it is west of the meter. Commissioner Buff was in agreement with this observation.

Mr. Abernathy pointed out this issue had been previously raised but as yet no answer had been received, therefore it could not be incorporated into the document tonight. However, he recommended that they continue pushing that question for an answer so that the issue could be incorporated as the document is completed. Commissioner Webb asked that this to be incorporated into the minutes as a reminder.

A motion was made by Commissioner Buff to approve the *Agreement for Purchasing Water for the Nebo Water System*. Commissioner Lavender seconded the motion and the ayes carried.

Mr. Abernathy continued by addressing the responsibility of County staff in this new endeavor, the need for establishment of an Enterprise Budget, and addressed revenues and expenditures in the amount of \$89,800, as well as a proposed fee schedule. He noted that a policy for disconnects and reconnecting water for failure to pay would need to be developed and that staff was researching and would need to purchase software for the billing and meter reading. He pointed out the major issue would be wasted water and that this would be a problem until lines are looped and the loss of chlorine in the lines is worked out.

The Facility Maintenance Director pointed out he had requested from McGill Associates the updated maps for pipe sizing and that he had the detailed drawings in order that he will be able to stock couplings, taps, etc. and have those various parts available in the event of breaks within the system. He said he was very close to having a local contractor in the Nebo community with a 24/7 commitment any time they are needed. Commissioner Webb asked if there should be a reserve for future expansions. Mr. Abernathy agreed there should be one.

Commissioner Webb made a motion to accept from staff the establishment of the Enterprise Fund Budget and fees as presented. Commissioner Buff seconded the motion and a brief discussion followed. When put to a vote, the motion carried unanimously.

ANIMAL CONTROL ORDINANCE

First, Chairman Walker thanked the public for their input regarding this issue and for the professional way in which they assisted staff and the Planning Board throughout this process.

The County Manager advised the underlined sections of the Ordinance identified those changes made based on the Board's workshop and that the section addressing fines and penalties was changed to be consistent with the County's other ordinances. He said the only other change made was in Section 4 (B) Civil Penalties, which had gone from five steps down to four. He pointed that an ordinance can be amended at any time and that if something had been overlooked, this would be brought back for review and/or amendment.

A general discussion followed.

Mr. Abernathy asked that the Board think on an appropriate effective date. Commissioner Webb suggested giving ample time to allow staff to do a news release and to get the Ordinance placed on the County's website, as well as having it available for public viewing, etc. for everyone to be aware of what is taking place. He suggested giving at least 30 days for implementation, or longer as the Board deemed necessary.

Commissioner Lavender said he had no problem giving 30 days before the effective date of the Ordinance and expressed his appreciation to the Planning Board, the Commissioners and others who had provided input in drafting the Ordinance. He pointed

out he was not against the Ordinance because he thought the substance was basically good, but he just still had some issues with parts of it.

Commissioner Webb asked for clarification on three items of the Ordinance and a brief discussion followed.

A motion was made by Commissioner Webb to accept the *McDowell County Animal Control Ordinance* with the stipulation to authorize staff to change the wordage where *shelter* would be the responsibility of the County, *enforcement* would be the responsibility of the Sheriff, that on page 12, item 4 Penalties, item (B) V be deleted, and that the Ordinance become effective 30 days from today. Commissioner Buff seconded the motion and the motion carried by a vote of 4-1 with Commissioner Lavender casting the opposing vote.

MA FIRE RESOLUTION

The County Manager stated the Board had directed some months ago the establishment of a Marion Area *Fire* Advisory Board of Directors to advise the Board on issues that arise in the Marion Area, such as fire issues. He had recopied the *Resolution Creating a McDowell County Marion Area Fire Advisory Committee* as presented at the June 8th meeting. He advised the resolution had been copied to the City of Marion at the Utility Committee meeting and that the only issue the City had was to suggest not naming a current fireman.

Commissioner Webb pointed out, as he understood from discussion and from the staff's recommendation, that the process of service for this committee (or advisory board) would be the same as with any other committee engaged in service with the County. He said he would like to be consistent with this one.

Commissioner Lavender said he still had some reservations as to whether this would accomplish the overall results that are expected. As each of the other Commissioners made general comments as well, there was agreement that *committee* should be changed to "board of directors".

Commissioner Buff then made a motion to form the McDowell County Marion Area *Fire* Advisory Board of Directors, to consist of five members who will inform the Board of Commissioners on issues as discussed, by adoption of the **McDOWELL COUNTY RESOLUTION CREATING A McDOWELL COUNTY MARION AREA FIRE ADVISORY COMMITTEE**. Commissioner McPeters seconded the motion.

In further discussion, a suggestion was made of having a permanent resident to serve on the board. By consensus, the Board concurred.

When put to a vote, the motion carried by a vote of 4-1 with Commissioner Lavender casting the opposing vote.

The resolution was adopted as follows:

**McDOWELL COUNTY RESOLUTION
CREATING A McDOWELL COUNTY
MARION AREA *FIRE* ADVISORY COMMITTEE**

WHEREAS, the McDowell County Board of Commissioners contract with the City of Marion for Fire Protection services, and

WHEREAS, substantial financial resources are allocated through the County general fund and the Service District Tax, and

WHEREAS, the Board of Commissioners is periodically asked to address significant issues affecting the Marion Area Fire Response Area, and

WHEREAS, the Board of Commissioners desires to form a Marion Area *Fire* Advisory Board to confer and advise on important matters affecting the service area.

NOW, THEREFORE BE IT RESOLVED, that the McDowell County Board of Commissioners hereby directs that the Marion Area *Fire* Advisory Board be created and that the board be charged as follows:

The Advisory Board will constitute five members. The members shall be appointed by the Board of Commissioners.

The Advisory Board will be charged with drafting a set of bylaws that will be presented and approved by the Board of Commissioners.

The Advisory Board will decide the manner of selecting their Chairperson.

The Advisory Board will serve the purpose of reviewing and advising the Board of Commissioners on all substantive matters affecting the Marion Fire Response Area. This will include advising the Board of Commissioners on future property tax increase requests.

It is understood that McDowell County contracts with the City of Marion for the provision of the service. The creation of this committee is not intended to impede the operational control of the Marion Fire Department. The operational control and direction for the service will be provided by the City of Marion and the Marion Fire Department.

The Advisory Board can request reports and financial information in their role of advising the Board of Commissioners consistent with the Agreement for Services in the Marion Area Fire Department.

The Board of Commissioners will receive feedback on changes recommended to this Resolution and the composition and charge of the Marion Advisory Committee after a six-month period.

ADOPTED this the 13th day of July, 2009.

(Note: The word *fire* was added in this particular item as a correction to the minutes when approved on October 12, 2009.)

INDUSTRIAL PARK SHELL BUILDING

The County Manager presented a draft proposal for the construction of a shell building in the Industrial Park, along with a map of the property and building specifications. He recommended approaching this project the same as with the Cobia Building by asking construction companies to erect the building and enter into an agreement on the sales price or a lease price. The company would not be able to sell the building without the County's approval; however, the County can sell it with the only stipulation being the price. The County would agree to purchase the building at an agreed price at the end of two years if the building does not sell.

Mr. Abernathy asked that County staff be authorized to draft a request for proposal to receive prices on construction of a shell building as proposed.

In discussion of the proposal, Commissioner Lavender recommended making the offer available to a wider area than usual.

By consensus, the Board agreed to proceed with the project as presented.

VOTING DELEGATE

Commissioner Lavender recommended Commissioner Buff as the County's voting delegate to the Annual Conference of the North Carolina Association of County Commissioners, if he would accept. In a brief discussion, Commissioner Buff agreed to accept that designation.

Commissioner Lavender then made a motion to appoint Commissioner Buff as the voting delegate for 2009. Commissioner Webb seconded the motion and the vote was unanimous.

BOARD APPOINTMENTS

The Board considered vacancies for the Library Board, TDA and the Planning Board. While there were no applicants for the Library Board and only one for TDA (Barbara J. Brown), there were six for the Planning Board. They were:

Chris Revis
 Samuel R. Dotson
 Marc Cook
 Frank G. Kissell
 Dan Thornton
 William Carroll

Commissioner Lavender made a motion to suspend policy and move Alternate Vance Caudle up to regular member status on the Planning Board and then fill the two alternate vacancies from the current candidates. Commissioner McPeters seconded the motion and the vote was unanimous.

A brief discussion followed on the TDA Board, how often they meet, etc. The Board then voted to fill the vacancy on TDA and the two alternate vacancies on the Planning Board. When ballots were tabulated, the Clerk read results as follows:

Unanimous vote for **Barbara J. Brown for TDA**

Unanimous vote for **Samuel R. Dotson and Dan Thornton for the Planning Board**

The Library Board vacancy will continue to be advertised.

TAX MATTERS

The usual listing of tax releases and refunds were presented for approval. In summary, they were:

Releases under \$100.00	Released amount of \$1,813.84
Releases over \$100.00	Released amount of \$9,830.17
Motor Vehicle Releases under \$100.00	Released amount of \$727.11
Motor Vehicle Releases over \$100.00	Released amount of \$850.39
Release Refunds	Refunded amount of \$4,199.38

Upon motion by Commissioner McPeters and a second by Commissioner Lavender, the tax releases were unanimously approved as presented.

PROPOSED ADDITION OF BERNICE STREET, SR 1597 EXTENSION

Chairman Walker advised the Department of Transportation had received a request to add Bernice Street (SR 1597 Extension) to the state system.

Commissioner McPeters made a motion to approve the request to add Bernice Street to the state system as presented. Commissioner Lavender seconded the motion and the ayes carried unanimously.

LEASE AGREEMENT – MENTAL HEALTH BUILDING

The County Manager presented a document entitled *Memorandum of Agreement between McDowell County and New River Behavioral HealthCare* outlining the lease arrangement that he had outlined briefly during the current year budget process. The lease space would be in the County owned building located at 486 Spaulding Road, and the lease would begin as of the 1st day of July, 2009 and remain in effect until the 30th day of June, 2010 unless terminated by mutual agreement by either party. The lease would be at an annual rate of \$16,000, with a monthly payment of \$1,333.33 made and coordinated with the McDowell County Finance Department.

Continuing, Mr. Abernathy said the County would agree to pay building insurance, alarm systems, water, sewer and the power bill for the building, and would provide cleaning and yard maintenance, as well as dumpster service for the facility. For purposes of this Agreement, the value of the in-kind services is \$11,120 annually. The estimated annual cost for the utility, alarm, insurance and custodial supplies are \$16,150. New River Behavioral HealthCare would agree to benchmark its current utility payments and establish a goal of reducing the utility costs by 5% consistent with reduction goals for other county buildings. These utility costs would be evaluated after one year and the lease rate would remain unchanged for the following year if the reduction goal is met.

Commissioner Buff made a motion to approve the Lease Agreement for New River Behavioral HealthCare for \$16,000 annually as presented. Commissioner McPeters seconded the motion.

A brief discussion followed with Commissioner Lavender requesting to abstain from voting due to the fact that he sits on the Mental Health Board. By consensus, the Board agreed to grant his request.

When put to a vote, the motion carried unanimously by a vote of 4-0.

USDA GRANT

As an update, the County Manager said he and his Assistant had met with Mr. Marvin Hutchinson of USDA this morning, they had received the grant documents, and hopefully the County would be receiving a \$65,000 grant for a sewer line to the pilot poultry plant on 226 South. However, Mr. Hutchinson had informed them that in 20 years of doing this program, he had never issued a letter of intent without having the funds on hand. Mr. Hutchinson had agreed to issue the letter of intent but wanted it to be understood that the funds were not there.

Mr. Abernathy said Mr. Hutchinson was very adamant about making sure all aspects of the Civil Rights Act are complied with for each project. Therefore, he presented the following items for compliance with this project:

Mr. Abernathy pointed out that he is delegating a lot of the work with this project to Ashley Wooten and Smithson Mills. He said Chuck Hamrick, the architect for both the Marion Senior Center and the Old Fort Nutrition Site, had been chosen to do the pilot poultry plant. However, Mr. Hamrick had backed out of the project saying that while he appreciated the confidence placed in him for the project, he is not qualified to do it. Mr. Mills had then chosen another architect, Mr. Francisco, who does have the qualifications to do the project.

Discussion followed on what will be accomplished with this sewer line and the other opportunities it will present as well.

Mr. Abernathy recommended that the Board authorize the USDA grant in the amount of \$65,000, agree to comply with the five items and approve the architect.

A brief discussion followed.

A motion was made by Commissioners Lavender to approve acceptance of the USDA RBEG grant; that the Board acknowledges they are complying with the RD 400 Equal Opportunity Agreement Rural Development Instruction 1942-G, certification regarding disbarment suspension and other responsibilities; the drug-free workplace requirements and civil rights act of 1964; further, that we are authorizing staff to enter into an agreement with Mr. Franceshi, Architects of Charlotte, to be the new architect of record on this project with a fee of \$42,000 plus and up to an additional \$10,000 depending on whether he has to design the refrigeration system. Commissioner McPeters seconded the motion and the vote was unanimous.

CITIZEN COMMENT

Since no one had signed up to speak, Chairman Walker advised the Board would forego this item.

REPORTS AND COMMUNICATIONS

Concerning the meeting with the Muddy Creek Partnership which the Board had previously agreed to hold, the County Manager advised he could foresee next month's agenda being quite lengthy, therefore he would ask if the Board could meet at 4:00 p.m. for the August meeting.

Commissioner Lavender said he would have to miss the August meeting.

In discussion, the Board agreed to move the August meeting up to 4:30 p.m. and to schedule the meeting with Muddy Creek Partnership for 6:30 p.m.

ADJOURNMENT

There being no further business to transact at this time, upon motion by Commissioner McPeters, a second by Commissioner Webb, and a unanimous vote, the meeting was adjourned.

DAVID N. WALKER, CHAIRMAN

CARRIE PADGETT
CLERK TO THE BOARD