

**STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
BOARD OF COMMISSIONERS
REGULAR SESSION – MARCH 8, 2010**

ASSEMBLY

The McDowell County Board of Commissioners met in regular session at 5:00 p.m. on Monday, March 8, 2010 in the Commissioners' Board Room, the usual place of meeting.

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 Reporters Mike Conley, for THE McDOWELL NEWS, and Steve Irish, for THE NEWS BULLETIN OF McDOWELL COUNTY.

CALL TO ORDER

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

APPROVAL OF MINUTES

Minutes of the January 11, 2010 and February 8, 2010 regular sessions were presented for approval.

Upon motion by Commissioner McPeters and a second by Commissioner Lavender, minutes for both meetings were unanimously approved as recorded.

APPROVAL OF AGENDA

Chairman Walker asked if there were any additions to the agenda. With none being made, Commissioner Webb made a motion to approve the agenda as presented. Commissioner Lavender seconded the motion and the vote was unanimous.

At this time, Chairman Walker recognized a guest, James H. "Jimmy" Hines, Jr., the new Director for the Rutherford-Polk-McDowell Health District, and welcomed him

to the meeting. Mr. Hines stated he had been on the job since March 1st, was delighted to be here, and looks forward to working in McDowell County as well as the other two counties. More importantly, he said he looks forward to working with the Board as they seek to make all counties a healthy place to live and this takes collaboration, and together they could work on making it happen.

On behalf of the Board, Chairman Walker said they were glad to have Mr. Hines present tonight and wanted to wish him the very best as he begins his new position, and to feel free to call if they could be of assistance.

BUDGET UPDATE AND AMENDMENTS

Chairman Walker recognized the County Manager at this time for budget related items. Mr. Abernathy said consistent with preceding months, there were budget amendments for approval and asked the Finance Officer to present them at this time. They included:

GF 28 – Appropriates donated revenue and a \$6,000 grant which is for disaster medical supplies and equipment.

GF 29 – Appropriates donations for the Library

GF 30 – Transfers \$1,000 in the Register of Deeds from the supplies line item to travel.

GF 31 – The Juvenile Crime Prevention Council has had their budget reduced and this amendment reflects the recommendation of the Council.

GF 32 – Additional revenue was received from federal funding for Senior Center Programs.

GF 33 – A loan was approved out of the Reserve Fund for equipment for the Old Fort Fire Department. The funds have to be amended out of the Reserve Fund.

GF 34 – Funds are being expended by Soil Conservation for the maintenance of the flood control dams. As funds are spent out of the reserve fund they need to be appropriated.

GF 35 – Pays the adult probation rent and pays for the sales tax audit and the inmate immigration audit that we had performed. The inmate audit cost \$1,196 and returned \$3, 418 and the sales tax reallocation audit cost \$5,648 and returned \$20,000.

REC2 – Appropriates an amount out of the recreation fund balance to fix the drains at the swimming pools to comply with state law.

Discussion followed on amendment #30 (for the Register of Deeds), which raised some concern. Mr. Abernathy pointed out the increase in travel was coming from within the budget, was certification and training related, and was consistent with other departments.

Upon motion by Commissioner Webb and a second by Commissioner Buff, budget amendments #GF28-GF35 and REC 2 were unanimously approved as presented.

Concerning the Nebo Water System accounts (total of six) for which adjustments were requested, Mr. Abernathy advised staff was trying to exercise good judgment in processing these accounts.

A motion was made by Commissioner McPeters to approve the requested account adjustments for the Nebo Water System as presented. Commissioner Lavender seconded the motion. In discussion, the point was made that as the process moves forward and the County gets adjusted with new customers, that there would not be a consistent practice of “forgiving” requests for adjustment for any and all reasons. A question was raised as to the allowance of reasonable time for mail delivery and response. It was noted that mail sent from Nebo with a Marion address was first sent to Asheville and then back to Marion.

When put to a vote, the motion regarding requested account adjustments was unanimously approved.

Next, Mr. Abernathy gave a brief summary of revenues for the year as of January 31, 2010, including current year property taxes, payment in lieu of taxes, sales tax, Building Inspection fees, and interest income. He said overall, the County is in good financial shape and yet it could be faced with a challenge for the remainder of the fiscal year.

Commissioner Webb asked if all the “in lieu of taxes” revenue was statutorily required to go to the public schools. The Finance Officer advised that a certain percentage was to go to the public schools but a portion of this revenue goes toward fire protection in the national forest (about \$20,000).

FEMA REIMBURSEMENT RESOLUTION

Emergency Management Director Terry Young came before the Board to request approval of a resolution for designation of the applicant’s agent with the North Carolina Division of Emergency Management. The resolution is needed as authorization for reimbursement of costs incurred by emergency services associated with the recent snow storm. Mr. Young advised he, as EMA Director, was being submitted as the “primary” agent and Mavis Lavender, EMA Administrative Assistant, as the “secondary” agent. The reimbursement would also involve some reimbursement costs for the fire departments and Rescue Squad.

Upon motion by Commissioner Lavender and a second by Commissioner McPeters, the *Resolution Designation of Applicant's Agent* was unanimous approved as presented.

Chairman Walker thanked Mr. Young and the staff for their work during all the recent winter storms.

LIBRARY ANNUAL REPORT

Library Director Jean Krause and her assistant Elizabeth House came before the Board to give an annual report on the Public Library. The presentation titled “Respecting the Past, Recognizing the Present and Anticipating the Future” was a very informative report showing the diversity of activities and programs and demonstrating that the demand for Library services still exists. The Library Director presented slides showing a total of 24,280 card holders, book circulation of 90,997 for adults and 42,359 for children, a video circulation of 37,117, audio of 13,161, and computer use of 51,655 in 08/09 with a total of 32 computers. The total circulation was shown at 188,974. The total value of library services in McDowell County was shown at \$3,789,985. Mrs. Krause advised the return on investment to the taxpayers regarding local funding is \$11.44 per capita.

A general discussion followed, during which the Commissioners and County Manager expressed their appreciation to Mrs. Krause for the excellent job she and her staff do. Mr. Abernathy noted that Mrs. Krause would be leaving the Library soon and plans were underway for naming her replacement.

NEBO WATER UPDATE

The County Manager gave an update on matters related to the water system since the workshop held a year ago with the engineer, Duke Energy and Crescent to review issues of Lake James serving as a water source, at which time the engineer’s report concerning a different intake point was received. He noted Crescent had been in bankruptcy and he had waited for those issues to clear up and now felt they were resolved and everyone could get back on track. Mr. Abernathy then presented a letter he had drafted to Duke Energy Carolina, LLC to formally initiate the process for the intake site if the Board was in agreement that it be sent. Mr. Abernathy said he would want to bring the engineer back for any additional questions from the Board and then within 60-90 have a contract ready for consideration.

Commissioner Buff made a motion, seconded by Commissioner Lavender, to send the letter as drafted to initiate the process. The motion carried by unanimous vote.

IBT SETTLEMENT

The County Manager advised this item was on the agenda last month and the Board had raised two questions that needed to be answered prior to any action being taken. The first question asked was what would be the effect of McDowell not signing the settlement Agreement and formally agreeing to drop the appeal on the remaining partnership members and the legal status of the Agreement for the remaining members. In other words, would an Agreement exist for the remaining members or does the agreement need to be unanimous. Mr. Abernathy pointed out that although the answer to this question was somewhat vague, the opinion of the attorney was that there would probably not be a problem but he could not guarantee that Concord and Kannapolis would agree to the Settlement Agreement without all members signing off.

The second question involved what would be the effect on McDowell specifically if we do not sign the Agreement but agreed to formally dismiss the appeal. The answer to this question was that McDowell County would no longer be a party to the Agreement and we would lose all rights related to the Agreement. If there was a future grievance or legal action, we would not be a part of this action and would essentially lose the partnership legal participation privilege. Mr. Abernathy pointed out this would not occur because the members would not allow it but rather occur because we would not be a party to the Agreement. In addition, we would not be part of the monitoring or enforcement mechanism.

Chairman Walker gave each Board member opportunity to give his opinion. Commissioner Buff noted that the IBT started out at 35 million gallons and is now down to ten. He said the partnership had accomplished some things and we (McDowell) cannot fight alone and needs the coalition. Commissioner Lavender agreed with Commissioner Buff on several points, but he mentioned the “watchdog” (Catawba Riverkeepers) that also agrees. Commissioner McPeters said he wished the situation was different but it is not and we must move on. Commissioner Webb said he still has some deep concerns and noted the ones who still fight the issue. He made reference to his past position and said he would stick to this, but said he did respect the other member’s comments. Further, Commissioner Webb noted the Water Park and made reference to a group of appointed people who carry a lot of power in some major issues. He said he could not support the signing of this Settlement Agreement.

A motion was made by Commissioner Lavender to approve both the Settlement Agreement and, in addition, to send a resolution indicating the Board’s dissatisfaction with the Settlement. Commissioner McPeters seconded the motion.

In discussion, Chairman Walker said he too was dissatisfied with the Agreement and that all members had brought up valid points. He said he was totally against our water leaving our basin to go toward anyone that purchases and he felt there had been somewhat improper management downstream.

When put to a vote, the motion carried by a vote of 4 to 1 as follows:

In favor: Commissioners Buff, Lavender, McPeters and Walker

Against: Commissioner Webb

FOOTHILLS PILOT PLANT UPDATE/GANT

Chairman Walker asked the County Manager to give an update on the Foothills Pilot Plant Project. In a general summary, Mr. Abernathy noted the grant received from Golden Leaf in the amount of \$118,000 that will assist with the operation of the facility after construction as well as those grants on hand that will cover the construction. The facility will be self-sustaining, therefore fees will be charged; however, he stressed the importance of making those fees modest and affordable so users will be attracted to the facility while at the same time having fees that will make the facility sustainable without being excessive. Mr. Abernathy advised the project is almost ready for the formal bidding process but USDA was reviewing the contract documents and design, therefore he could not proceed until they have signed off on the documents. Mr. Abernathy anticipated this occurring in March with perhaps 30 days being allowed for the receipt of bids. It was his understanding that both USDA and the Board of Commissioners would sign off as the bid is awarded but was not totally sure about this. Concerning the legal documents, via email from Smithson Mills last week, he was informed that an attorney was drafting those documents for execution by the Economic Development Association in relationship to how the entity will function. Mr. Abernathy noted the previous plan of having a separate entity created within the MEDA Board that would actually run this operation and be responsible for it, noting also that this legal arrangement and the related corporation papers would have a bearing on when the operation would start.

In discussion, a question was asked as to who will hold title to the property. Mr. Abernathy said MEDA would hold title to the building and property. On a question of reversion, Mr. Abernathy said the property was still in the County's possession, that it had not been transferred, but he would think that legal entity would need to be created and then the County would actually transfer the land, but he would expect a reversion clause on the real property in respect to the County should something happen.

Commissioner Lavender made a motion, seconded by Commissioner Buff, to approve receipt of the Golden Leaf grant along with execution of related documents. By unanimous vote, the motion carried.

A brief discussion followed.

CEDS APPROVAL

Concerning Item D under "old business", the County Manager said this issue was an update to the economic development plan that is required for the County to participate in EDA grants. He said this could go on the April agenda or that it could be approved subject to receipt of the document.

Upon motion by Commissioner Lavender and a second by Commissioner Webb, the Board voted unanimously to table the item for the April agenda.

HOUSING UPDATE

Concerning the housing coalition, the County Manager advised there would be a presentation given next month along with an announcement of some of the activities occurring in May. Mr. Abernathy advised the office had been open for a week and applications were being taken (about 15 already), two of which were being processed. Weekly meetings are being held, primarily with staff. The Volunteer Office had issued a press release and was establishing a resource list. Alan Vess, who was previously in the Building Inspection Office, is handling inspections and is the one visiting the home and compiling an assessment and price estimates. Concerning the committee, Mr. Abernathy said it should be named soon with the Board giving direction as to terms, slots, whether home builders, etc.

In discussion, the question was raised as to whether anything had been placed on the cable channel yet and whether the County should recruit a grant writer for this project. Mr. Abernathy responded by saying nothing had been placed on the channel yet but that access to the public should be available soon. Concerning a grant writer, Mr. Abernathy said this was being handled internally although this task was becoming more difficult for staff with so much money involved.

UPDATE ON STATE STREET PROPERTY

The County Manager pointed out there were more people and/or offices involved than what he had stated in his memo to the Board (9 or 12). Again, he explained the new offices would house the Probation Offices, thus freeing up space in the Courthouse for other uses (a handicap restroom, an assembly room, etc.). Mr. Abernathy suggested when the Probation Offices move, that the Elections equipment be stored in some of the remaining space. He said he had met with the Elections Board and they seemed agreeable with this arrangement. Plans are to have the work completed by April.

ADDITION OF STATE ROAD TO SYSTEM

The County Manager explained the Department of Transportation had received a request to add Edwards Drive Extension (SR 1814 Extension) to the State system. Upon their investigation, DOT recommends that this addition be approved and was requesting a resolution of approval from the Board of Commissioners if they were in support of the request.

A motion was made by Commissioner Lavender and seconded by Commissioner Webb to submit the resolution of approval as requested. The motion carried by a unanimous vote.

OFFER TO PURCHASE NORTH COVE PROPERTY

Chairman Walker asked the County Manager to lead this discussion.

Mr. Abernathy stated Paige Gibson, who owns the Old North Cove School building, had called to ask about purchasing a piece of County owned property (1.94 acres) located on North Cove School Road. The property was purchased by the County in the early 1980's to be used for a dumpster site and, with the consolidation of some of those sites for convenience center sites, this piece of property is no longer being used. Mr. Gibson is interested in purchasing the property, listed on the County's books at a value of \$15,000. He has offered \$12,000 for the property. Mr. Abernathy said he could not foresee a use for the property although the Board might view this differently.

Concerning a clear title, closing costs, and survey as mentioned by Mr. Gibson, Mr. Abernathy stated the County had typically handled such matters without a survey and without providing title insurance or extensive legal work. Therefore, he would ask that the Board should decide what process they would want to use in this case.

A general discussion followed with several points being raised. These included whether there indeed *is* a use for the property, the legal costs, whether the value should perhaps be higher, and the fact that the property is in the floodplain, but still could have some use. Another consideration was to make sure this case is handled in the same way that other properties are handled (as with a private or individual property owner). A suggestion was made that possibly this item should be tabled and put on the agenda for April.

Commissioner Lavender then made a motion, seconded by Commissioner McPeters, to table until the April agenda. The motion carried by a unanimous vote.

TAX MATTERS

The usual listing of tax releases and refunds were presented for the Board's approval. In summary they were:

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|---------------------------------------|--------------------------------|
| Releases Under \$100.00 | Released amount of \$1,172.46 |
| Releases Over \$100.00 | Released amount of \$7,951.98 |
| Motor Vehicle Releases Under \$100.00 | Released amount of \$712.62 |
| Motor Vehicle Releases Over \$100.00 | Released amount of \$52,764.92 |
| Release Refunds | Refunded amount of \$485.29 |

A motion was made by Commissioner McPeters to approve the tax releases and refunds as presented. Commissioner Lavender seconded the motion and the vote was unanimous.

BOARD APPOINTMENTS

Chairman Walker noted vacancies for the Marion Area Fire Advisory Board of Directors which was showing some progress with three applicants having been received. Also there was still a vacancy for the Board of Adjustment and Planning and Zoning for the Town of Montreat.

Concerning the latter, the County Manager stated the law calls for an appointment, that Planning Administrator Ron Harmon could serve, and that there are some obligations and responsibilities related to the appointment. He asked if Mr. Harmon's name could be submitted for consideration.

By consensus, the Board agreed to consider Mr. Harmon in filling the vacancy for the Town of Montreat.

REPORTS AND COMMUNICATIONS

Commissioner Lavender noted the NCACC webinar, scheduled for Thursday, March 25th, to be held in conjunction with the City of Marion. The session will be ethics training and is required for all elected officials.

CITIZEN COMMENT

Chairman Walker noted that no one had signed up to speak for this item.

ADJOURNMENT

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

DAVID N. WALKER, CHAIRMAN

CARRIE PADGETT
CLERK TO THE BOARD