

Monroe A. Miller Jr.  
2200 Camp Branch Road  
Waynesville, NC 28786  
April 4, 2018

**Subject:** Plan B is on the way for economic development site. Poor quality dirt stalls project. Huh?

David Francis continues to feed Vicki Hyatt, the Mountaineers' Liberal Hack News Editor, pablum. Here is Vicki's latest attempt at damage control for David Francis, James Weaver "Kirk" Kirkpatrick III, and Michael Sorrells (the last two running again for county commissioner).

Vicki's latest attempt at carrying water for this bunch is an article she wrote on 4/2/2018, **Plan B is on the way for economic development site. Poor quality dirt stalls project. Vicki Hyatt, April 4, 2018**

[https://www.themountaineer.com/news/plan-b-is-on-the-way-for-economic-development-site/article\\_80e5fcd8-36f8-11e8-90a7-af72d2574283.html](https://www.themountaineer.com/news/plan-b-is-on-the-way-for-economic-development-site/article_80e5fcd8-36f8-11e8-90a7-af72d2574283.html)

There is so much here, we will dissect some of the glaring errors. Here is the entire article:

A county project fast-tracked in November to take advantage of cheap dirt being moved from the future Publix site in Waynesville is stalled.

Because of the dirt's unsuitability, the county has not taken delivery on a single load of dirt on a 22-acre parcel being eyed as a future site to lure a large industry to the county.

David Francis, who handles special projects for the county, said an alternate plan will be presented on April 16 since it turned out the original dirt under contract to help elevate county property out of the flood plain couldn't be compacted to specification.

The Haywood County Board of Commissioners agreed to pay MAB, the company building the new Publix store on Russ Avenue, \$1 per cubic yard for up to 35,000 cubic yards of dirt.

That cost was far cheaper than the \$4 per cubic yard the county paid the state to cap a long-closed landfill, and well below the standard \$7 to \$8 per cubic yard for dirt, Francis said at the time.

With the prospect of cheap dirt in sight, the county quickly entered a contract with McGill and Associates for \$19,600 to engineer the site and authorized a \$2,650 fee to fast-track the environmental permitting.

The county originally bought the \$1.15 million piece of land to be used for a recreation facility, but those plans never materialized after the economy tanked in the late 2000s and adjoining counties built the sports complexes once being considered in Haywood.

Because a portion of the property is in the flood plain and needs to be elevated if it is to be used for anything other than agriculture, the county moved quickly to take advantage of dirt they thought could be brought in at a cost that was little more than the price of transportation.

Francis told the commissioners in November the Publix contractor wanted the area ready by mid-December.

The engineered plan was to provide a 16-acre, shovel-ready site in the county and an agreement was inked with Haywood Advancement Foundation, a nonprofit organization that assists with economic development projects in the county, provide a \$200,000 loan to be repaid over five years at an interest rate of 2.5 percent.

A \$257,000 development proposal was OK'ed in December, a package that would accept dirt from the Publix site at \$1 per cubic yard and pay Avcon USA, LLC \$167,302 to spread and compact the dirt.

Even though both the funding and the engineering was in place to get started on the project, an unseasonably wet winter, along with the inability of the dirt from the Publix site to be properly compacted, only a small portion of the contract funds were spent.

At Monday's commissioner meeting, Monroe Miller, raised questions about the project, questioning whether the county would be held liable for contracts that hadn't been fulfilled. Miller has done exhaustive research on the project, gathering each purchase order, each contract and every public document he can obtain on the project he alternately refers to as the "David Francis Dirt Spreading Project" or the "James Weaver 'Kirk' Kirkpatrick III Super Duper Sports Complex."

His questions about payment responsibility under both the MAB and Avcon contracts weren't answered at the meeting, but later county officials discussed them.

County Attorney Chip Killian said the county will move forward with the project in an alternate way the uses the work that has been done to date. He said he is in communication with the MAB attorneys about the matter.

"Their lawyer in Chicago said they had no dirt left to deliver," Killian said. "They admitted it was too wet. ... It is clear to us we had to have dirt that was compactible."

Since no dirt was delivered, the county certainly won't be paying MAB under a contract that was never fulfilled, Killian said.

"We haven't paid it and won't pay it," he stressed. "If they want to sue us after they didn't deliver dirt, then let them have at us."

Francis said Avcon has been paid for preparing the site — \$8,900 to remove the vegetation, and another company, Rabbit Skin Enterprises, has been paid \$8,100 to prepare a gravel entrance, install a culvert and put up silt fencing.

Because the contract was written in a way that called for a price per unit payment, the county has no obligation to pay for services not yet provided, he said. The \$167,300 Avcon contract is still in place and will begin once a new source of dirt is under contract.

"You can't do work until you have a unit," he explained, saying that's the standard way government contracts are worded.

Before we begin, here are a portion of my Public Comments at the 4/2/2018 County Commission meeting that triggered this front page article.

Chairman Kirkpatrick and Commissioner Sorrells. I am here to give you an update on the Publix dirt. Publix has moved out almost all the dirt from their new building site. There has not been a single dump truck load dumped at the David Francis Dirt Spreading Project. Why don't you ask David Francis Why. See if we are still on the hook to pay MAB \$25,000 to truck the dirt and Avcon \$167,000 to spread the dirt, since they both have valid PO's. ...

Here we go ...

- David Francis, who handles special projects for the county, said an alternate plan will be presented on April 16 since it turned out the original dirt under contract to help elevate county property out of the flood plain couldn't be compacted to specification.

This is a typical David Francis MO (modus operandi). Get the county pregnant with a project, and then cover his mistakes by saying that we have already spent so much on this project, we just have a little bit more to go, so here is a revision.

- The Haywood County Board of Commissioners agreed to pay MAB, the company building the new Publix store on Russ Avenue, \$1 per cubic yard for up to 35,000 cubic yards of dirt.

Vicki can't even get this right. The PO 180547 specifies 25,000 CY of dirt, not up to 35,000 CY of dirt. See the PO at the end of this piece.

- With the prospect of cheap dirt in sight, the county quickly entered a contract with McGill and Associates for \$19,600 to engineer the site and authorized a \$2,650 fee to fast-track the environmental permitting.

The county also entered a contract (PO 180546) with BLE, the company in bed with David Francis and McGill that was supposed to do the compaction testing. See the PO also at the end of this piece.

- The county originally bought the \$1.15 million piece of land to be used for a recreation facility, but those plans never materialized after the economy tanked in the late 2000s and adjoining counties built the sports complexes once being considered in Haywood.

The county had already put in over \$1.6 Million into this property.

<http://haywoodtp.net/pubTP/T160130.pdf>

Now we are dumping another quarter of a Million Dollars for about 8 acres of 22 acres that you can build a building on. Can anyone do the math to see how much 8 acres divides into \$2,000,000 and come up with a per acre cost?

- Even though both the funding and the engineering was in place to get started on the project, an unseasonably wet winter, along with the inability of the dirt from the Publix site to be properly compacted, only a small portion of the contract funds were spent.

The unseasonably wet winter had nothing to do with anything. Another Francis lie. Contractors initially indicated to Terry Ramey that this dirt was not compactible, and it would be at least mid-summer before anyone could think about compacting this dirt.

- "Their lawyer in Chicago said they had no dirt left to deliver," Killian said. "They admitted it was too wet. ... It is clear to us we had to have dirt that was compactible."

It is not the responsibility of a trucking company to determine if dirt was too wet or if it was not compactible. This was the job of BLE. Killian is blowing stuff out his [expletive deleted].

- “We haven’t paid it and won’t pay it,” he stressed. “If they want to sue us after they didn’t deliver dirt, then let them have at us.”

If I had a valid PO from the county for hauling dirt, and MAB had done, which did not specify where the dirt was to be delivered, and Killian is refusing to pay, you are darned right I would sue the county.

- Because the contract was written in a way that called for a price per unit payment, the county has no obligation to pay for services not yet provided, he said. The \$167,300 Avcon contract is still in place and will begin once a new source of dirt is under contract.

In an e-mail by Christy Brown of McGill Associations on 12/14/2017 (James Weaver “Kirk” Kirkpatrick III approved this project at the 12/18/2018 county commission meeting) to Kris Boyd and David Francis (attached at the end of this piece), Brown states:

“Attached are the Contract Documents for your review. Please note that the contractor used an old version of the bid form which states 60 days to substantial completion and 75 days to final completion, but identified that they received and read the Addendum #3 which changed this to 90 days to substantial completion and 110 days to final completion. In addition, the agreement that they will sign states 90 days to substantial completion and 110 days to final completion. If the attorney has an issue with this please let me know.”

110 days after the contract was signed on 12/18/2017 is **April 7, 2018**, three (3) days from now. It is not Avcon’s fault there is no dirt for them to spread! Avcon gets \$167,300!

- “You can’t do work until you have a unit,” he explained, saying that’s the standard way government contracts are worded.

It appears Chip, a.k.a. Leon Killian III was kept out of the loop on this David Francis / Kris Boyd / Christy Brown e-mail exchange, just as Donna Corpening, Purchasing Manager was kept out of this whole David Francis Dirt Spreading Project.

You can’t make this stuff up.

James Weaver “Kirk” Kirkpatrick III was the county official who signed off on the MOU. Both Kirkpatrick and Sorrells can’t be trusted to run county business any longer. Let’s all get together and vote these two guys out.

Monroe A. Miller, Jr.  
Haywood County Taxpayer



#10

# Purchase Order

Fiscal Year 2018 Page 1 of 1

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.  
 Purchase Order # **00180547-001**

**B I L L T O**  
 ADMIN  
 HAYWOOD COUNTY ADMINISTRATION  
 215 N MAIN STREET -THIRD FLOOR  
 COURTHOUSE  
 WAYNESVILLE, NC 28786

**V E N D O R**  
 0  
 MAB-RGA WAYNESVILLE LP  
 525 N TRYON ST  
 STE 1600  
 CHARLOTTE, NC 28202

**S H I P T O**  
 ADMIN  
 HAYWOOD COUNTY ADMINISTRATION  
 215 N MAIN STREET -THIRD FLOOR  
 COURTHOUSE  
 WAYNESVILLE, NC 28786

Vendor Phone Number 334-462-8851		Vendor Fax Number 919-882-8023		Requisition Number		Delivery Reference J CRK SOIL RECLAM PRJ-HAULIN	
Date Ordered 01/08/2018		Vendor Number 35153		Date Required		Freight Method/Terms	
						Department/Location ECONOMIC DEVELOPMENT	
Item#	Description/Part No.	Qty	UOM	Unit Price	Extended Price		
1	JONATHAN CREEK SOIL RECLAMATION PROJECT-HAULING  ADMIN J CRK SOIL RECLAM P HAYWOOD COUNTY ADMINISTRATION 215 N MAIN STREET -THIRD FLOOR COURTHOUSE WAYNESVILLE, NC 28786 Phone: 828-452-6625 FAX: 828-452-6715	1.0	EA	\$25,000.00000	\$25,000.00		
	48 -4920-519205-18JCK				\$25,000.00		
	48 -4920-519205-18JCK				25,000.00		

**Purchase Order Total**  
**\$25,000.00**

PURCHASING COPY



# Purchase Order

Fiscal Year 2018 Page 1 of 1

THIS NUMBER MUST APPEAR ON ALL INVOICES, PACKAGES AND SHIPPING PAPERS.  
 Purchase Order# **00180546-001**

**B**  
**I**  
**L**  
**L**  
**T**  
**O**

ADMIN  
 HAYWOOD COUNTY ADMINISTRATION  
 215 N MAIN STREET -THIRD FLOOR  
 COURTHOUSE  
 WAYNESVILLE, NC 28786

**V**  
**E**  
**N**  
**D**  
**O**  
**R**

0  
 BUNNELL-LAMMONS ENGINEERING, INC.  
 6004 PONDERS COURT  
 GREENVILLE, SC 29615

**S**  
**H**  
**I**  
**P**  
**T**  
**O**

ADMIN  
 HAYWOOD COUNTY ADMINISTRATION  
 215 N MAIN STREET -THIRD FLOOR  
 COURTHOUSE  
 WAYNESVILLE, NC 28786

Vendor Phone Number		Vendor Fax Number		Requisition Number		Delivery Reference	
864-288-1265		864-288-4430				SOIL COMPACTION TESTING	
Date Ordered	Vendor Number	Date Required	Freight Method/Terms		Department/Location		
01/08/2018	7321				ECONOMIC DEVELOPMENT		
Item#	Description/Part No.			Qty	UOM	Unit Price	Extended Price
1	JONATHAN CREEK SOIL RECLAMATION PROJECT - SOIL COMPACTION TESTING, CONTRACT #P17-1060			1.0	EA	\$14,799.00000	\$14,799.00
	ADMIN SOIL COMPACTION TE HAYWOOD COUNTY ADMINISTRATION 215 N MAIN STREET -THIRD FLOOR COURTHOUSE WAYNESVILLE, NC 28786 Phone: 828-452-6625 FAX: 828-452-6715						
	48	-4920-519920-18JCK				\$14,799.00	
	48	-4920-519920-18JCK				14,799.00	

**Purchase Order Total**  
**\$14,799.00**

PURCHASING COPY

**David Francis**

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**From:** Christy Brown <christy.brown@mcgillengineers.com>  
**Sent:** Thursday, December 14, 2017 2:18 PM  
**To:** Kris Boyd; David Francis  
**Cc:** Mark Cathey; Scott Burwell  
**Subject:** Jonathan Creek Contract Documents  
**Attachments:** Contract Documents - Jonathan Creek Soil Reclamation Project.pdf

Kris and David:

Attached are the Contract Documents for your review. Please note that the contractor used an old version of the bid form which states 60 days to substantial completion and 75 days to final completion, but identified that they received and read the Addendum #3 which changed this to 90 days to substantial completion and 110 days to final completion. In addition, the agreement that they will sign states 90 days to substantial completion and 110 days to final completion. If the attorney has an issue with this please let us know.

If the documents are acceptable, please execute the notice of award which we can insert into the documents when printing for review and signature by Avcon.

Please let me know if you have any questions.

Thank you,

**Christy Brown, PE**

*Project Engineer*



55 Broad Street | Asheville, NC 28801

Phone: 828.252.0575 | Fax: 828.252.2518

Email: [christy.brown@mcgillengineers.com](mailto:christy.brown@mcgillengineers.com) | Website: [www.mcgillengineers.com](http://www.mcgillengineers.com)

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