

# Haywood County “Toeprints”

August 5, 2010

Vol. #1 Issue 11 (\* **SPECIAL EDITION** \* The “**RULE**”, **Carmine Rocco, Health Board, Lynise Paschke**)

[www.haywoodtp.net](http://www.haywoodtp.net)

## What’s Happening?

This is a **SPECIAL 4 PAGE EDITION** of Toeprints...

The purpose of this newsletter is to inform Haywood County Taxpayers of what transpires at the bi-monthly County Commission Meetings **and Carmine Rocco’s Health Board**. This newsletter will be written from the perspective of a casual observer, myself. Any opinions expressed will be mine.

## The “Rule”.

This is an extremely complex issue and very difficult to understand and explain. In addition, there are things happening here that I cannot get straight answers or understand why things are happening the way they are, consequently, there appears to be some level of deception.

Suffice to say that all hell finally broke loose at the August 2, 2010 County Commission Meeting. The courtroom was nearly packed, and Public Comments lasted about an hour. Practically everyone was against the “Rule”, except for three (3) people:

- **Mark Swanger** County Commissioner
- **Kirk Kirkpatrick** Chairman, County Commission
- **Chip Killian** County Attorney

Characteristically, Commissioner **Upton** sat like a stone throughout the period other commissioners were making their comments on what had transpired during the public comment session.

When the video of the meeting is posted on [www.haywoodnc.net](http://www.haywoodnc.net), or when broadcast on the cable channel,

## **Watch It!**

**Hint:** Pay particular attention to Chairman **Kirkpatrick’s** behavior when Terry Ramey speaks relating to constitutional issues. We are going to come back to this...

## What is the Rule?

The “rule” is a document that originated in 1970, amended a couple of times, lost for a while, rediscovered early last year, and is currently being revised by the current Health Board. Concurrently, the Board of Health, headed by **Carmine Rocco**, is drafting a “Policy and Procedure” to implement the “rule”, and plan to pass both at the next Health Board meeting on August 10<sup>th</sup>.

I have posted several documents relating to the “rule” on [www.haywoodtp.net](http://www.haywoodtp.net). They include:

- Most recent versions of the “Rule” and “Policy and Procedure”, as supplied by **Carmine Rocco**,
- Changes to Health Department "Rule" and "Policy and Procedure" (Easier to decipher) 7/30/2010...
- "My thoughts regarding the Solid Waste Rule" - Denny King 7/31/2010...
- Applicable sections of the North Carolina General Statutes referenced by **Carmine Rocco’s** “Rule” and “Policy and Procedure”.

## What is the “Policy and Procedure”?

I had asked **Carmine Rocco** this question, and received this answer from him on July 13<sup>th</sup>, 2010 (the day of the last Health Board meeting):

“**Mr. Monroe**,

The Board wanted to explore the development of a policy and procedure to address public health risks related to solid waste issues. The policy statement further indicates the intent of the Board of Health related to the Board of Health rule, public health risks and solid waste as well as provides further guidance to the health department. The procedure is an internal department document providing steps staff will take to implement the Board of Health rule and policy, if approved. Further discussion regarding these draft documents will take place at the meeting this evening. Thank you for your interest, **Carmine Rocco**”.

Why the urgency to pass this thing come hell or high water at the August 10<sup>th</sup> Board Meeting? No one knows for sure at this point, excepting I feel, of course, **Carmine Rocco, Mark Swanger, Kirk Kirkpatrick, Bill Upton and Chip Killian.**

## **Lynise Paschke, Chair of the Health Board.**

From my Public Comments at the 8/2/2010 commission meeting: “... the woman that chairs the board meetings, **Lynise Paschke**, is very defensive. She had exploded in a previous meeting. It is obvious that **Paschke** was freaked out at the last meeting, and to avoid a similar re-occurrence, she advised Denny King via an e-mail on July 29<sup>th</sup>, that there will be no Public Comment at the August 10<sup>th</sup> meeting. **Carmine Rocco** would do well to consider replacing **Paschke** as the Chair of the meeting with someone with a more even temperament.”

The e-mail to Denny King on July 29<sup>th</sup> is as follows:

“Mr King, Thank you for your e-mail. As you may know the Board of Health operates under different regulatory NC statutes than the Board of Commissioners. **There is no requirement for Public hearings at Board of Health meetings.** We have had 6 opportunities for public comment with the board and some with county attorney since January of 2010. As chair of the board and in consultation with the board, county attorney and School of Government at UNC-Chapel Hill, **it has been decided not to have a period of public comment at the meeting prior to the vote.** We do encourage, as we have all along, you may submit any comments in writing to the health department for distribution to the board members. Thank you for your time and interest in the health of the citizens of Haywood County. Sincerely, **Lynise Paschke**”.

At the public comment period, I stated:

“I think that you, Chairman **Kirkpatrick**, and you, Commissioner **Upton**, need to reserve a smoke filled back room and pull **Carmine Rocco** in and have a chat. If this thing gets rammed through, this could be another potential ½ Million Dollar **Marc Pruett** fiasco ready to explode on the taxpayers of Haywood County. You will need to let **Carmine Rocco** know that this could be your necks that are on the line come November when you attempt to retain your elected seats on this board.”

On August 3, 2010, 7:59pm, Denny King again received an e-mail from **Lynise Paschke**:

“Due to the continued desire of the public for time to speak, there will be a strict 30 minute period of public comment scheduled before the vote. Thank you, **Lynise Paschke**”.

Looks like **Kirkpatrick** and **Upton** found that smoke filled back room and read **Carmine Rocco** the riot act.

**Who are the Health Board Members?**

Board members are:

<b>Mark Swanger</b>	Commissioner
<b>Lynise Paschke</b>	Pharmacist, Chair
<b>Vicky Gribble</b>	Public Member, attorney
<b>David McCracken</b>	DVM
Kristel Causby	O.D.
<b>Martha Cicchinelli</b>	Public Member
<b>Judy Covin</b>	RN, Vice Chair
<b>Robert Knoedler</b>	P.E.
<b>Eric Morrison</b>	DDS
<b>James Weaver</b>	M.D.
<b>Carmine Rocco</b>	Director
<b>(Chip Killian)</b>	County Attorney

**A little history.**

[Editors Note: The Health Board evidently used audio recorders to record meetings. Attempts were made to access some of these recordings, but were told they were “Not Available”. “Recordings are used to create minutes, and then become “Not Available”. These recordings are public property, and **Carmine Rocco** would do well to start changing some procedures with his personnel to take care to insure recordings do not become “Not Available”.]

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**The following is from the March 1, 2010 Board of Health Workshop [re: transcribed from recording]:**

**Lynise Paschke:** “We just wanted to do a brief history and background of how we got to here today, for the benefit of our new board members and a refresher for all of us.

**Early last year the fact that the Board of Health had a rule on the books resurfaced. Prior to that point, with the exception of the well rule, that we temporarily put in place from that January to July when the State rule took place, we were not aware as a board that we had any current rules on the books that we were responsible for.**

When that knowledge became apparent we then had a rule that was enforceable however it was no longer practicable or applicable in its current state, due to the fact that it was last amended in 1989.

So time had passed, as well as the county had adopted a Solid Waste Ordinance and some other things that made provisions of the rules really not appropriate any longer. So, because of that the Board decided to form a Task Force to look at it due to the amount of time it would have taken at individual board meetings to address this. So the Task Force met three times, we had three meetings to come up with a proposed amendment which we all have in front of us.

Based on the two sessions of public comment, we're going to look at that proposed amendment and decide if we need to make any further amendments to that. At this point really the only options we have is to

- amend what we have in front of us,
- vote what we have in front of us currently prior to any action today although there won't be any official action today into place.
- or repeal it.

But what stands on the books today, can't stand on the books in its current form, because parts of it are not applicable anymore so we need to take some action.”

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Some comments:

- This rule was lost in time for God knows how long, and re-discovered around last May.
- “**When that knowledge became apparent we then had a rule that was enforceable...**”. Exactly what part of the rule was enforceable?
- Why not repeal it?

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**Comments made by Mark Swanger at the August 2, 2010 County Commission Meeting responding to citizens public comments [re: transcribed from my audio recorder.]:**

“Yeah, I’ve got a couple of comments, people need to understand that the rule being discussed has been in existence for 40 years. Since 1970. The reason that it is being amended now, because there are sections of that rule that are obsolete. In reality, the rule, the scope of the rule, is being reduced. For years, we’ve had this rule, it has nothing to do with the nuisance matter that was discussed, that would require that we be able to engage in time travel and go back 40 years. That’s just no so. And in those 40 years, there was a lot of talk about jail and fines, no one in 40 years of this rule has been in existence, has been put in jail. No one. To my knowledge, no one has been fined.

The Health Department seeks to enforce rules and statues through education and through assistance to folks who are perhaps [unintelligible]. It’s not in the interest of the Health Department to try to put anybody in jail. That’s why the last 40 years, it hasn’t happened.

And we talked a little bit about some concerns about entering peoples properties without a warrant. That hasn’t happened in the last 40 years either. In fact, this new, I believe, revised portion of the rule, states that unless there is an imminent hazard, which means an immediate threat to life health, that the only way you can enter a property is with the consent of the property owner, or through the issuance of an administrative search warrant. That’s in the proposed amended rule.

Now, what more could anyone ask for? That is the standard. You get permission or you get a warrant. You can get warrants based on some anonymous information. There has to be a finding of probable cause by a judge. There has to be some substance to the allegation.

Now, What is an imminent hazard? We might talk about Mosquitoes or stuff - that’s nonsense. An imminent hazard, for example, would be on a truck with nuclear waste on I-40 that passes through our county. What if Saturday night at 1:00am, a truck driver falls asleep, and that truck runs off the road, past the DOT’s right of way, and into private property. Can’t find the owner, the courthouse is closed, what would you expect health authorities to do? I would certainly hope that the Health Department, Law Enforcement, Emergency Services, try to eliminate that threat so that we don’t have a bunch of people dying.

You know, I see some people smirking - [Swanger flustered] You know if this was your back yard, you might wish they would come in and help. It takes that time, given a hazard, for the Health Department, Law Enforcement to act [unintelligible] in that fashion. And state law gives that authority specifically to county government. Now I don’t know a state in the country that doesn’t have the same type of emergency preparedness through that type of [dispatching? - unintelligible].

So, those are just some of the things that, in terms of, Mr. Chairman, - now I want to say one thing about the Class I misdemeanor. The statues that govern this, 130A (19) and (20) that were referred to earlier, and they are Class I

misdemeanor’s, by law. Haywood County can’t change that, this board can’t change that, Health Board can’t change that. The only entity in North Carolina that can do so is the State Legislature. If you feel strongly that those sections of that statue should be changed, then that’s your course of action, the State Legislature. It is not this board that will help you. Thank you.”

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Some Comments:

- Perhaps **Swanger** missed the March 1<sup>st</sup>, Health Board Meeting, where the rule had been lost, and only rediscovered last year. His argument that no one has ever been fined or jailed in 40 years just crashed.
- “**In reality, the rule, the scope of the rule, is being reduced**”. Someone will have to explain to me why increasing the criminal penalty from a Class III misdemeanor to a Class I misdemeanor is reducing the scope.
- “...this new, I believe, revised portion of the rule, states that unless there is an imminent hazard, which means an immediate threat to life health, that the only way you can enter a property is with the consent of the property owner, or through the issuance of an administrative search warrant”. Unfortunately, what **Swanger** left out was that **IF THEY FEEL THERE IS AN IMMINENT HAZARD**, they can freely enter your property without a warrant. **This is an abuse of power.**
- A citizen during a Health Board meeting asked **Rocco** point blank what he thought an Imminent Hazard would be. **Rocco** replied “Mosquitoes”. So, **Swanger’s** eloquent example of scaring people to death with an example about a nuclear waste spill might seem to challenge the equipment locker **Rocco** would have stocked for his designees. Instead of having radiation retardant Haz-Mat Suits, they would only have their mosquito netting suits to save the day.
- “...now I want to say one thing about the Class I misdemeanor. The statues that govern this, 130A (19) and (20) that were referred to earlier, and they are Class I misdemeanor’s, by law”. Unfortunately, **Swanger** must have forgotten about the clause that was added that makes this the most stringent of any of the three “Rules” in existence in three (3) of 100 counties in North Carolina. Guilford County has a “Rule” with a maximum penalty of \$500 and 30 days in jail, and Rockingham County has a “Rule” that has a maximum penalty of \$50 and 30 days in jail, both Class III misdemeanors. Haywood county would be the first to have it’s “Rule’s” have a minimum penalty of six (6) months in prison and \$10,000 fine. The clause added by the Health Board that **Swanger** forgot is:  
**SECTION VI-PENALTY AND ENFORCEMENT**  
A. Any person who violates **these rules** adopted by the Haywood County Board of Health shall be guilty of a **Class 1 criminal** misdemeanor, pursuant to Section 25 (a) of Chapter 130A **and Section 3(a) of Chapter 14** of the General Statues of North Carolina.

- Chapter § 14.3 (a) states:  
Except as provided in subsections [b] and [c], every person who shall be convicted of any misdemeanor for which no specific classification and no specific punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.
- **Rocco** can create anything he pleases if he feels that it is an Imminent Hazard, and there will likely be nothing in the State Statutes that will cover it, i.e., Mosquitoes, so it becomes an automatic Class I misdemeanor. **This is an abuse of power.**

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**Comments made by Chip Killian at the August 2, 2010 County Commission Meeting responding to citizens public comments** [re: transcribed from my audio recorder.]:

**Kirkpatrick:** Mark was referring to Section 130, is that the catch all, when there is not does not specify a Class I misdemeanor in the statutes, when there's not there's not a misdemeanor class set out, basically it sets out a class [unintelligible - "that is furnished"?].

**Killian:** It is true, it is true, initially, that I did not realize that this was the result. I thought we could put in there what class designation we wanted to. I didn't - **I learned from this process.** A lot of people learned from this process. Everything I believed at the beginning is not, not necessarily true. BUT, violation of health rule, [unintelligible - "defined by this board of health?], it is a Class I misdemeanor, **there is nothing we can do about that.** So that's in our law. [unintelligible "we are elected?"] what folks need to understand is the board of health neither define nor impose criminal penalties, that's up to the judge to decide what sort of penalty is imposed, if any penalty is imposed could be far less than the maximum, and could be as little as nothing. As you know, Chairman **Kirkpatrick.**

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 Some Comments:

- What? "It is true, it is true, initially, that I did not realize that this was the result. I thought we could put in there what class designation we wanted to. I didn't - **I learned from this process.**" Our County Attorney is being paid the big bucks for on-the-job learning? My problem here is how can the poor lemmings [re: Toeprints, Issue #10] on the Health Board distinguish what is to be believed in this process while amending this "Rule" if the County Attorney is busy learning on the job?
- "...it is a Class I misdemeanor, **there is nothing we can do about that.**" There certainly is something that you can do about that! You can remove the reference to § 14-3 (a) in the proposed "Rule"! You see, this is one of the things I simply cannot understand. The opportunity was there to make the change when they struck "**Class I**" and replaced it with **criminal**. Why are they bent on leaving § 14-3 (a)?

Of all of the issues I have been involved with since last August when I began attending Haywood County Commission Meetings, (I was not involved with the nuisance ordinance), this appears to be the most volatile and insane. Based on the last several (private) meetings held on this topic and having observed the intellectual level and sincerity of the concerned citizens, I believe that there is a critical mass of people that are now capable of eliminating this "**Imminent Hazard**" that is being posed by **Carmine Rocco** and his Health Department Board.

I believe the County Commissioners would be well advised to start looking for another Director for the Health Department. I would look to current members of the Health Board first for Candidates, and would start with David McCracken, DVM, as he was the only individual seated at the table at the last Board of Health meeting that actually demonstrated a voice of reason.

**Purchase and Sale Agreement - Fiduciary Responsibilities.** The Closing Date of July 31<sup>st</sup> for the purchase of the old Wal-Mart building has expired. A letter from Pamela Hysong of the USDA to **Kirkpatrick** on July 27<sup>th</sup> indicated "**This letter is not to be considered as loan approval or as representation to the availability of funds**".

The commissioners did considerable hand waving when Julie Davis, under old Business, presented resolutions and applications, which the commissioners happily approved and **Kirkpatrick** was to sign and get them back to Washington that very day.

The problem is the County has not secured satisfactory financing. I asked Julie Davis during half-time (video media being changed), "Had the county secured the loan?" She indicated it had been approved in Washington. I asked again, "Had the county secured the loan?" She said, "No".

It seems that the commissioners **failing their fiduciary responsibilities** by not supplying a revised "**Purchase and Sale Agreement**", which currently says that they should be spending their time now executing Section 4 (b), which states: "Buyer shall have the option to postpone the Closing for a period not exceeding ninety (90) days from the Closing Date ... **should the Buyer be unable to secure satisfactory financing from the USDA**, for the purpose of securing alternative funding from a commercial lending source".

If I were a businessman looking to do business with the county, and I observed how they were dealing with the Terms and Conditions of the "**Purchase and Sale Agreement**", I think I might want to take my business elsewhere.

**Board of Health Meeting Tuesday, August 10<sup>th</sup>, 2010.**  
 Everyone is invited and should attend.

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