

Haywood County “Toeprints”

October 23, 2010

Vol. #1 Issue #22 (Subject: **\$2.9M Overbid for Renovation, Forga - Art. 6 - Sec. 9, HCC Board Meeting**)

What’s Happening?

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

Public Hearing - Proposed Animal Ordinance Changes.

A considerable number of people spoke regarding the proposed changes, mostly folks with hunting dogs concerned about having to be required to build kennels rather than having dogs tied. It was generally conceded that the folks that were present were the people that took good care of their animals, and the ordinance changes were aimed at those that don’t.

Kirkpatrick inquired about Animal Service Officers entering homes to check for the security of doors and windows. Jean Hazzard indicated they would ask to check first, and if refused, would obtain an administrative search warrant.

Jean Hazzard was also open to having ordinary citizens participate with future decisions, which would be in addition to the animal rights groups that had been providing input thus far. The commissioners will presumably approve the draft ordinance at the next meeting.

HCC - CAB Construction Company approval.

Rose Johnson asked the commissioners to approve a contractor, Miles McClellan Construction to build the Creative Arts Building. Remember, we own the building now, along with the land, which was transferred to the County when they approved the \$11.1 Million loan on September 7th.

That was the meeting where **Rose Johnson, Mark Bumgarner** and **Donna Forga** all stood shoulder to shoulder and told the commissioners the Board of Trustees unanimously approved this project, with that portion of the meeting **transcribed verbatim** into the minutes.

The Board of Trustees, to this day, **has not approved** the Solar Thermal portion of this project. The original vote was 6 to 5, but Randy Herron has since resigned, and the vote now will presumably be 5 to 5, with **Bumgarner** being the tie breaking vote. But, who knows how this is going to go when they vote this coming Wednesday at the regularly scheduled Board of Trustees meeting [re: agenda item #XI].

If I would have been allowed to speak to the commissioners during this agenda item, I would say: “Suppose I am the boss of Miles McClellan construction, and you approve Miles McClellan with this motion today. My question to you would be: How am I to proceed with the Solar Thermal portion of this project? Do I start digging solar water line trenches and ordering construction material to begin solar thermal integration?”

Perhaps the common sense approach, **this time**, would have been to wait to approve the contractor until after the Board of Trustees has had a chance to vote and made a decision on the solar thermal project.

By the way, **Rose Johnson** still has the design of the solar thermal project in complete lock-down through an impenetrable layer of lawyers, by interweaving the design with the contract which is now cleverly shielded by General Statue 143-318.11. It’s still impossible to get any information at all about the FLS solar thermal design.

The Old Walmart Building.

I hadn’t seen anything in the newspapers or anywhere that the commissioners closed on the building last Monday. I would have thought that they would be sounding sirens.

Item 3 under old business at the county commission meeting Monday [re: Adaptive Renovation Project for Haywood Department of Social Services, Health and Central Permitting Offices - **Scott Donald**, Padgett and Freeman Architects...] went quietly. Commissioners calmly called for redesign and another bid for renovating the old Wal-Mart Building.

What really happened...

Bids came in **\$2,897,200 over the base bid of \$5,800,000!** No one bothered to mention this number at the meeting. The architect, **Scott Donald**, said most bids were clustered around this number, so there didn’t appear to be any error among the bidders. The error was with **Scott Donald**, who needs to go back to Architect Construction Bid Estimation School again along with **Michael Nicklas** (who did the same thing for the HCC Creative Arts Building [re: Toeprints Issue #14, www.haywoodtp.net]), significantly underestimating what actual bids were going to be.

This re-bidding process will delay the project for another month or two. But don’t worry, the architect said they were not going to change the outside appearance or facade of the building. That means that they have to take **\$2,897,200** out of the inside of the building, and they will be left with about half of what they promised to Haywood County Taxpayers [re: Over Bid by \$3M??? Original estimate for renovating the old Walmart building 4/5/2010 (Power Point Presentation) 10/15/10... www.haywoodtp.net], a gutted building.

Commissioners have already closed on the building, and now they and we own it. They can’t increase the loan amount, because that has already been approved from the USDA. They would have to raise taxes for next year, two weeks before an election to fulfil their original promises - **not happening!** Another reason to show **Kirkpatrick** and **Upton** the door November 2nd (i.e. broken promises).

Outstanding County Employee.

From time to time, I have used this space to bring to your attention county employees who I feel perform outstanding work. Thus are, these have been:

- Rebecca Morgan Admin. Assistant to County Mgr.
- Julie Davis Head of Finance Department
- Marty Stamey Assistant County Manager
- Judy Hickman Assistant Tax Assessor

I'd like to add Sherri Rogers, Registrar of Deeds, to this list. Sherri, as the others above, has bent over backwards to answer any questions I have had, and made me feel like the most important person in the world when I ask questions. In addition, after she was appointed last year, she has brought the time it took to register a deed from a month down to a day or so, among other improvements. She also trains her employees to the point to be able to take over her job, an characteristic I feel that is important and easily recognized. Nice work.

Article 6, Section 9, North Carolina State Constitution.

A recent situation occurring now in Buncombe County brought to my attention Article 6, Section 9 of the North Carolina State Constitution. It states:

ARTICLE VI SUFFRAGE AND ELIGIBILITY TO OFFICE

Sec. 9. Dual office holding.

(1) Prohibitions. It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. **No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.**

There are several instances where this might actually be an issue in this county. The first that came to mind was this possibility at HCC and the Board of Trustees, namely **Donna Forga**, the Vice Chair. I sent **Donna Forga** two (2) correspondences, dated October 17th and 18th, with the second asking her about the NC article and section. I noted:

“It was brought to my attention that being a lawyer with a business is a place of trust [an officer of the court, with fiduciary responsibility to the general public]. You were appointed as a trustee to HCC, a place of trust. Can you tell me how it is that you can hold these two offices and not be in violation of Article 6 Section 9 of the North Carolina State Constitution?”

Instead of getting a direct reply, I was handed a letter by Pat Smathers at the Board of Trustees meeting on 10/20/2010 at about 5:15pm, who indicated he was able save a stamp by handing his letter directly to me. [See both letters posted on www.haywoodtp.net].

He indicated:

“Please be advised I represent Haywood Community College and its Board of Trustees, one of which being Donna Forga. I am responding to your letter to Donna Forga questioning her ability to serve as a trustee while also being an attorney.

I have reviewed your letter and am of the opinion that her being an attorney and serving as a trustee does not violate the NC Constitution and have so advised her.

If you are aware of a statue, case, or Attorney General's advisory opinion different that my conclusion, please let me have the same and I will reevaluate my position.

Patrick U. Smathers.”

I thank Pat Smathers for his letter, but have the following comments and/or questions:

- **Donna Forga** is a lawyer, why didn't she respond directly?
- Who paid for Mr. Smathers to create the letter, **Donna Forga** or HCC?
- It's unfortunate that Mr. Smathers only provided his opinion, rather than citing any rulings or legislation from the NC General Assembly to back up his opinion.

One thing that I have learned over the years, lawyers give opinions, judges make the rulings.

FYI - There is another lawyer on the HCC Board of Trustees. His name is **Michael McConnell**. Same applies.

Update: HCC Board of Trustees Meeting, 10/20/2010.

A regularly scheduled Board of Trustees meeting was held at HCC at 4:00pm on Wednesday, 10/20/2010. The meeting actually started at 4:20pm. **Peggy Melville** was not at the meeting, rather phoned in on a teleconference/speaker call.

[**Editors Note:** Evidently, there is some kind of rule that a Board of Trustee member has to be within a certain physical distance of the actual meeting in order to cast a valid vote. It is not known if **Peggy Melville** was within that physical distance when on the phone on the teleconference call.]

The original Agenda sent out on 10/13/2010 had an agenda item as follows:

XI. Chair's Report - **Mark Bumgarner**

For Action - Approval of Solar Lease Agreement and Purchase Agreement, followed by a Closed Session.

The revised agenda handed out at the meeting had been changed to move the Closed Session **prior to** the Approval of Solar Lease and Agreement.

I was excused from the meeting when the closed session started (as I was handed the letter from Pat Smathers on the way out). During the closed session, **Lynne Barrett** left the meeting around 6:31pm.

Open session resumed about 7pm, immediately with a motion. Evidently, **Johnson** did not have the votes at the meeting to pass/approve the Solar Lease and Agreement, so a motion was made to have an electronic vote by all trustees and to make the vote before a deadline of Friday, October 29th at 5:00pm.

Bumgarner opened the motion up for discussion...

An absolutely astounding thing happened! It was like the Board of Trustees were handing out a silver platter [re: audio recorded in open session] describing the culmination of their feelings prior to casting their votes.

[**Editors Note:** I'll intentionally omit direct references to some of the Board of Trustees names, as I am still not positive of the association of faces and names, but will identify only those I am sure of].

[**Editor's Note:** As I sat astounded and dumbfounded by this portion of the meeting, I couldn't help but draw the parallel to how divided this board was split on this issue as to how our county is currently split on nearly the same issues. This event was like a microcosm of what our country is facing in the November 2nd election].

First, a review of who the Board of Trustee members are:

Who are the Board of Trustees for HCC?

Mark Bumgarner , Chair	CPA
Donna Forga , Vice-Chair	Owner/ Lawyer
Lynne Barrett	Licensed Psychologist
Charles Boyd	Owner/WNC Landscaping
Neal Ensley	Owner/Arrowhead Engineering
Richard Lanning	Owner/R. Lanning Contractor
Dean McMahon	Retired/First Citizens
Michael McConnell	Lawyer
Peggy Melville	Retired/Home Trust Bank
Robert Morris	Owner/Blue Ridge Glass
Steve Sorrells	Owner/Cold Mountain Nursery
Nicole Owen	Pres. HCC Student Association

and, how did these Trustees vote on the Solar proposal? [re: Mountaineer, HCC moves ahead with solar panels, July 22, 2010 by Vicki Hyatt]

Mark Bumgarner , Chair	[No vote, Yes if tie vote]
Donna Forga , Vice-Chair	Yes
Lynne Barrett	Yes
Charles Boyd	No
Neal Ensley	Yes
Richard Lanning	No
Dean McMahon	No
Michael McConnell	Yes
Peggy Melville	Yes
Robert Morris	No
Steve Sorrells	No
Nicole Owen	[No vote?]
[Randy Herron]	Yes [Seat now vacant]

The first board member to speak reminisced that he wished that he had heard from someone that felt confident that the system would work, as he has heard from a lot of people who felt that it wouldn't work. He would then feel better about voting **for** the agreement.

Donna Forga (who is running for District Court Judge in November) indicated that Senate Bill 668 originally tied their hands, and therefore the government was telling them how they must vote. **Donna Forga** indicated that the vote was made 6/5 early on to move forward with the Solar Design, and now the only thing in her mind was to now decide to approve or not to approve the agreement [re: recording].

[**Editors Note:** But they never had a design review! Steve Sorrells indicated later that the first time board members ever received any concrete definitive information in terms of numbers about this project was September 27th, well after the original 6/5 vote was taken. I sat there, wondering to myself, "Suppose **Donna Forga** was sitting as a judge on a bench. Would she be so inflexible as to not change her mind on new evidence in a case that was submitted after original opening statements were made, and simply disregard new information as it became presented?"]

Another board member reminded **Donna Forga** that Senate Bill 668 had been taken out of the equation and was no longer a factor in any decision now.

Bob Morris indicated that this project was "not free" to the college (as must have been presented), referring to an amount of \$600K. It is **our** money, referring to federal tax incentives which is taxpayers money used to be able to support this project. It is **our** federal tax dollars, which is ultimately **our** money.

Mark Bumgarner took the approach that the government was offering an incentive to promote this type of business and project.

[**Editors Note:** This is kind of the entitlement mentality that is currently crippling our country. If this type of project were economically feasible, it would stand on it's own without requiring government incentives].

Multiple charts had evidently been supplied to board members. One member indicated that there was no level of comfort in what he saw from those charts.

Donna Forga interjected “Government put us in this position...” [re: recording].

[**Editors Note:** Evidently unable to let go of the concept that Senate Bill 668 was no longer a factor in the decision].

Bob Morris indicated that “The numbers don’t work”.

Another board member asked: “Does the contract protect the institution? Is there enough guarantees? Is it a risk worth taking?”

[**Editors Note:** What Risk?].

[**Editors Note:** It was interesting sitting back and wondering what would have happened if there was actually a vote this evening with the trustees present at the meeting. It wouldn’t have passed. No wonder it was delayed!]

Neal Ensley indicated that the architect oversold the project.

Some numbers...

The annual energy bill to HCC was projected to be in the range of \$16K to \$18K (**with** the solar thermal equipment).

The solar thermal equipment (everything) was only designed to provide **60% of the energy requirements of the building**. The remaining 40% would have to be supplied by conventional equipment.

[**Editors Note:** One of the worst case scenarios mentioned was that if none of the solar thermal equipment worked, then 100% of the energy load requirements of the building would have to be supplied by the conventional back-up equipment. That means that the conventional back-up equipment would have to be designed to run 100% of the load, rather than only 40% of the load. You figure how economical that would be].

The solar designer (presumably FLS, but now evidently **FLS Solar 20 LLC**) was/is going to put in **\$1.8M**. **FLS Solar 20 LLC** is evidently not the same FLS company division that is renting the space on the roofs for the solar voltaic panels.

Steve Sorrells indicated that they finally got numbers about this project on September 27th.

Johnson indicated that they (board members) got bits and pieces of numbers before that.

[**Editors Note:** There didn’t seem to be any convinced faces on board members when she made that statement].

Johnson volunteered that **Michael Shore** (CEO for FLS) would entertain any direct question and answer session with any board member.

[**Editors Note:** Board members earlier in the meeting, including **Donna Forga**, indicated they were not experts in the field, so why on God’s Green Earth would **Johnson** think it would result in any productive outcome if a board member had a meeting with **Michael Shore**. It would make sense, however, if there were some kind of public design review. That would have answered the first question in this absolutely astounding discussion: “**The first board member to speak reminisced that he wished that he had heard from someone that felt confident that the system would work, as he has heard from a lot of people who indicated that it wouldn’t work. He would then feel better about voting for the agreement.**”]

Charles Boyd indicated he would not vote for the agreement. His general feeling was when you start to get into “platinum green” territory, watch out!

Donna Forga kept reminding board members that she was doing what the government wants them to do [re: recording].

Summary.

As you can see, the board of trustee members have major diverging views on approving and not approving this solar thermal project contract, i.e., **they are not unanimous** (as **Johnson, Bumgarner** and **Forga**, standing shoulder to shoulder, led commissioners to believe at the September 7th County Commission Meeting).

These are all high horsepower people in the community that are doing what they were appointed to do, and that is to act in the best interest of Haywood Community College. We’ll await with interest to see how this turns out after the electronic vote has been cast.

[**Editors Note:** Does the rule which implies that a voting board member has to be within a certain distance of the meeting still apply when they cast their vote electronically?]

Commissioner Voting Guide.

I recommend that you **only vote for two (2) candidates**.

Toeprint Seal of Approval Not Approved



Denny King
David Bradley

Kirk Kirkpatrick
Bill Upton
Tom Freeman

Note: Michael Sorrells name has been removed from the Toeprint Seal of Approval list.

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