

Haywood County "Toeprints"

January 1, 2011

Vol. #2 Issue #1 (Subject: \* SPECIAL EDITION \* Released Closed Minutes - HCC, Fairgrounds.)

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What's Happening?

This is a SPECIAL EDITION of Toeprints...

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.

Happy New Year!

[Editors Note: Commissioners released large quantities of closed minutes of meetings that were withheld from the public on December 20, 2010. This SPECIAL EDITION covers closed minutes relating to HCC and the Fairgrounds litigation (Fairgrounds Litigation?). The format presented here will be text copied from the released minutes.]

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Haywood County Board of Commissioners Closed Session Minutes, October 4, 2010, Haywood Community College Solar Panel Contract

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager David Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: none

GENERAL STATUTE: Attorney/Client Privilege §143-318.11(a)(3)

SUBJECT: Haywood Community College Solar Panel Contract

DISCUSSION:

David Cotton, County Manager, presented a confidentiality agreement which the Board has been asked to sign by FLS. County Attorney Chip Killian reviewed the agreement and approved the signing of it. County Attorney Killian stated that the lawyer negotiating the solar energy side of the proposed Creative Arts Building at Haywood Community College (HCC) is Steve Levitas. The closing is scheduled for the morning of October 15th, 2010. Julie Davis, Finance Director, stated that she has not received anything from the tax attorney explaining tax exemptions for the proposed project. Ms. Davis explained that the bank has set aside the money for the project and is waiting for the approval by the State. Commissioner Swanger asked that Mr. Cotton return to Dr. Rose Johnson, President of HCC, and follow up with some questions regarding the contract, specifically anything has changed since the Board of County Commissioners approved moving forward with the project. Mr. Cotton

confirmed that he would follow up with an e-mail to Dr. Johnson. Ms. Davis stressed the importance that the Board signs off on any changes that are made to the proposed Creative Arts Building. Mr. Cotton confirmed that he would clarify details with Dr. Johnson and return to the Board.

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Some questions...

- What does FLS have to hide that they would ask the County to sign a confidentiality agreement?
• What is in the confidentiality agreement?

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Haywood County Board of Commissioners Closed Session Minutes, March 1, 2010, Acquisition - Agricultural and Activities Board.

MEMBERS PRESENT: Chairman J. W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, Mark S. Swanger and L. Kevin Ensley.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager / Clerk to the Board David B. Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis and Administrative Assistant Rebecca Morgan

OTHERS PRESENT: none

GENERAL STATUTE: Acquisition of Real Property §143-318.11(a)(5)

SUBJECT: Acquisition - Agricultural and Activities Board DISCUSSION:

County Attorney Killian stated he had reviewed the legalities of the ground lease with the Agricultural and Activities Board. County Attorney Killian explained that during the meeting with the Agricultural and Activities Board a statement was made that in the event that the Agricultural and Activities Board was unable to pay their debt, the County would be responsible for that debt. However, County Attorney Killian stated that is not true.

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Some Comments...

What?

- Who are these Yahoo's on the Agricultural and Activities Board who think they can spend whatever and then have the county come in and clean up their mess?
• Why was this a closed meeting? This had nothing to do whatsoever with any acquisition of Real Property, §143-318.11(a)(5). It was simply dealing with the bunch that couldn't shoot straight [re: Toeprints, Issue #26, Fairgrounds MOU.]

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**Haywood County Board of Commissioners Closed Session Minutes, September 20, 2010, Potential Litigation - Fair Board.**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager David Cotton, County Attorney Leon M. "Chip" Killian, III, and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: none

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Fair Board

DISCUSSION:

County Attorney Chip Killian explained that in 2003 the Fair Board hired an architect who now claims they owe him \$30,000. County Attorney Killian advised that he should not represent both the County and the present Fair Board. The Board of County Commissioners agreed to review the documents, letters, and contact Sam Smith regarding minutes from past Fair Board meetings. County Attorney Killian stated that the architect hired an attorney. The Fair Board was unable to pay the architect and was unable to use his designs. A reasonable settlement was made between the architect and the Fair Board for \$30,000. The remaining amount owed was \$42,000. David Cotton, County Manager, stated that the County would submit the loan application by the end of this week. The architect was working at the time for McClure Nicholson Montgomery.

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Some comments...

What?

- Who is this architect, and why did he wait seven (7) years before he decided to squeeze money out of the bunch that couldn't shoot straight?
- I'm confused - is it a \$30,000 settlement and an additional \$42,000?
- Why was David Cotton (now gone) going to submit a loan application? Who was going to take out the loan? Was this going to be piling on more county debt without voter approval?
- Why was this a closed meeting? This architect seems to be going after the Fair Board rather than the county. Why did the county claim this was a valid closed meeting under Litigation §143-318.11(a)(3)?

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**Haywood County Board of Commissioners Closed Session Minutes, October 18, 2010, Potential Litigation - Fair Board.**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager David Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: none

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Potential Litigation - Fair Board

DISCUSSION:

County Attorney Chip Killian stated that he discussed with Kelli Hopkins, an attorney who specializes in architect, the circumstances with the Fair Board. Ms. Hopkins believes that the Fair Board has exposure of approximately \$30,000. Ms. Hopkins was provided with copies of several documents from the Administrative Office regarding the Fair Board. Ms. Hopkins stated that the contract for the administrative part would not be paid.

Chairman Kirkpatrick stated that Mr. Pinkston is sending a letter regarding their settlement to County Attorney Killian and to Mary Ann Enloe, current Fair Board Chairman. County Attorney Killian stated that Attorney Bill Cannon agreed he would represent the Fair Board.

Commissioner Ensley stated that the Fair Board has money and may be able to negotiate for less than \$30,000.

Vice-Chairman Upton clarified that the new Fair Board inherits the old debt. Commissioner Curtis stated that a minimum they were asking was \$42,000, but at this time we are not sure what is a reasonable amount.

Chairman Kirkpatrick explained that the Fair Board needs to either settle the debt or fight the suit and that the Fair Board would need to ask for the County's help.

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Some comments...

- Who is Kelli Hopkins? A brief check reveals that Kelli Goss Hopkins is an associate in the Raleigh office of Nelson Mullins Riley & Scarborough where she practices in the areas of construction law and government contracts, the same law firm Chip Killian works for. Did she get paid for this?
- What suit? Who is suing who? This seems to be a lawsuit against the Fair Board. So again, why is the county claiming to be able to have a closed secret meeting under Litigation §143-318.11(a)(3)?
- Why did Kirkpatrick say that the Fair Board would need to ask for the County's help? Is this a bailout for the bunch that couldn't shoot straight?
- Still, general confusion between the \$30,000 and/or \$42,000.

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**Haywood County Board of Commissioners Closed Session Minutes, November 1, 2010, Litigation - Fairgrounds Board.**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: County Manager David Cotton, Assistant County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis and Administrative Assistant

Rebecca Morgan.

OTHERS PRESENT: none

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Litigation - Fairgrounds Board

DISCUSSION:

On behalf of the Fair Board, Commissioner Ensley requested that the County help the Fairgrounds Board regarding the settlement of the debt and the law suit. A settlement letter is expected from Attorney James Johnson. County Attorney Killian stated that the Fairgrounds Association could have some liability exposure. There is mention in some of the documents of a \$30,000 settlement amount. Chairman Kirkpatrick stated that he preferred a settlement over having to defend a suit against the Fairgrounds Association of the County. County Attorney Killian stated that if the County goes forward with litigation Bill Cannon would assist the Fairgrounds Board. Commissioner Swanger stated that a settlement letter would go to Mary Ann Enloe, Chairman of the Fairgrounds Board. County Attorney Killian explained that the Fairgrounds Board must negotiate and return to the Board of County Commissioners. Commissioner Swanger suggested reviewing the amount that could be justified and reduce the amount presented to the Board. Commissioner Swanger requested that the Board discuss these issues with Dale Burris, Facilities Maintenance Director, in an effort to review the work plans and the completed work. County Attorney Killian suggested that the Fairgrounds Board negotiate for a settlement and return to the Board of Commissioners if financial assistance is needed. Chairman Kirkpatrick stated that once the letter and the amount that the Fairgrounds Board justifies are received, the Board of County Commissioners would review the information.

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Some Comments...

What?

- Why did the county agree to help the Fairgrounds Board regarding the settlement of the debt and the law suit?
- Are we to believe that this bunch can negotiate anything and return to the Board of County Commissioners, as Chip Killian explained that they must do this?
- Why is Dale Burris getting dragged into this mess?

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**Haywood County Board of Commissioners Closed Session Minutes, November 15, 2010, Fairgrounds Board.**

MEMBERS PRESENT: Chairman J.W. "Kirk" Kirkpatrick, Vice-Chairman Bill L. Upton, Commissioners Charles "Skeeter" Curtis, L. Kevin Ensley, and Mark S. Swanger present.

MEMBERS ABSENT: none

STAFF PRESENT: Interim County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian, III, Finance Director Julie Davis and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: None

GENERAL STATUTE: Litigation §143-318.11(a)(3)

SUBJECT: Fairgrounds Board

DISCUSSION:

Commissioner Ensley stated that at the last Fairgrounds Board meeting, the Fairgrounds Board voted to in favor of the County handling the litigation process regarding the architect who now claims the County owes him \$42,000. Chairman Kirkpatrick inquired as to the actions the Board should take in order to satisfy the direction of the Fairgrounds Board. County Attorney Chip Killian stated that he would contact James Johnson regarding the letter in which the architect requested \$36,400. County Attorney Killian advised the Board to justify the asking amount. County Attorney Killian stated that he would represent the County on limited behalf of the Fairgrounds Board. After discussion the Board agreed to offer approximately \$20,000 in order to settle out of court. Julie Davis, Finance Director, explained that the application for the County to purchase the fairgrounds was submitted October 1<sup>st</sup>, 2010 to Citizen Bank. The County met with the bank and the loan held by the former Fairgrounds Board was extended until October, then to December. The bank has requested a payoff.

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Some Comments...

- "... the Fairgrounds Board voted to in favor of the County handling the litigation process regarding the architect who now claims the County owes him \$42,000. ..." Duh! I can imagine the conversation: We've made a mess in our sandbox, so let's get the county to clean it up for us. The Taxpayers won't mind.
- This is evidently the meeting the board decided to purchase the fairgrounds. If the taxpayers of Haywood County thought this was a good idea to do, then the commissioners should have had no problem putting this matter up for a public vote. Instead, they believe they know better than the Taxpayers of Haywood County and have voted to increase debt without a public vote (again).
- This meeting should have been closed for the reason of Acquisition of Real Property §143-318.11(a)(5), in addition to Litigation §143-318.11(a)(3).

What do you think the percentage is of receiving answers to any of these questions from our County Commissioners?

[Hint: 0%].

Coming up, review of the closed minutes for the purchase of the old Walmart Building.

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