

Haywood County “Toeprints”

January 15, 2011

Vol. #2 Issue #3 (Subject: **HCC Update, Fairgrounds, MOU, Old Walmart Debt Service**)

www.haywoodtp.net

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.

HCC Update.

I submitted some open questions to HCC regarding the Solar Thermal Design and other issues. I would like to thank the following people for putting a lot of time and thought into the responses (dated 1-6-11).

- Teresa Starrs,
- **Rose Johnson** [U],
- **Mark Bumgarner** [D].

The format here will be my question (signified with a little bullet), followed by the HCC response.

- Why hasn’t the General Contract been signed off yet? I didn’t even know about a “General Contract”, and why it was necessary to sign that first prior to signing the FLS contract?

Response 1-6-11: The “General Contract” is the construction contract with the general contractor for the Creative Arts Building. That contract content is now being finalized with the company approved by State Construction as the low bidder - Miles McClellan. The contract with the General Contractor for the Creative Arts Building must first be signed and then approved by the State Construction Office because the solar contract is contingent upon the construction of the Creative Arts Building.

- Copy of the **FLS** design plans for the Creative Crafts Building.

[Previous Response: The design plans are not yet complete. It is my understanding that once the contracts are signed with **FLS**, the general contractor and **FLS** will work together regarding the design.]. **[Editors Note:** I take this as I will not be getting anything from HCC. It appears this design is still in total **lock-down** by **Rose Johnson**, President of HCC.]

Response 1-6-11: The FLS design is not yet available. (Same reason as previously explained, see above.)

- Why hasn’t it been signed? The board of trustees approved the contract on October 29th. Does the impenetrable layer of lawyers have something to do with this?

Response 1-6-11: The contract with the General Contractor for the Creative Arts Building has now been signed and submitted to the State Construction Office for approval. The solar contracts are in the process of being signed and they can be executed only after the contract with the general contractor is executed. The goal is to have both contracts executed about the same time.

- If it hasn’t been signed, how can construction begin on this project which incorporates the heavily integrated Solar Thermal design? Are materials being ordered now, to stay on a project completion date, or are they being postponed, which could delay the project?

Response 1-6-11: Construction has not begun on the Creative Arts Building. Construction can’t begin until the contract is signed by all parties and approved by the State Construction Office (SCO). A notice to proceed with construction will be issued by SCO to Miles McClellan for construction to begin.

- The county (you and I) own this building, and the county (you and I) are responsible for the loan payments. So who is responsible for watching the day to day construction activity of this project?

Response 1-6-11: This is a shared responsibility between Miles McClellan (contractor), the architect and the College’s Capital Projects Coordinator (Debbie Trull). SCO also requires special inspections and commissioning on a project of this size. The special inspections will be done by MACTEC and the firm doing commissioning is Reece, Noland McElrath. There will be a monthly construction meeting which will include the State Construction representative, architect, contractor, subcontractors, and the college. Haywood County representatives may attend as desired, along with HCC Trustees.

- Why the rush to have the Board of Trustees do an electronic vote by October 29th to approve this project and contract when the design hasn’t even been completed? Why hasn’t **FLS** presented a complete design? Don’t they know how to do it?

Response 1-6-11: There was definitely no rush to have the Board vote on the solar agreements. The Board has been involved in development of the agreements for the past five months and voted at its October 20, 2010 meeting to take a written vote by electronic means on October 29, 2010 so that it would have time for one final review prior to voting. As to the design, same answer as in #2 above.

- Why is there an additional \$400,000 floating around in the \$11.1M loan that the county has borrowed?

Response 1-6-11: Please see the attached budget detail, which was approved by the County Commissioners on November 1, 2010. Based on information provided to us from Julie Davis, the \$11.1 was the amount originally requested and approved from the bank. Any monies remaining after the construction is final will be paid toward the debt service.

- When and how many trees in the pristine section of now county owned property where the Creative Crafts Building will be constructed will be cut down to insure that there will be enough sunlight for the Solar Thermal panels of **the design that is not yet completed?**

Response 1-6-11: Debbie Trull specifies that there are trees which will come off the site for construction of the building but to her knowledge no trees will be taken out specifically for the solar component.

- In addition, I would still like to know the answer to the question I had asked about the "electronic vote" due October 29th. In other Board of Trustee votes, I had understood that a Board members vote did not count if they were over a specified distance from the actual meeting where the vote was occurring. I'd like to know if that applied to the electronic vote, and how it is that the location of the board member was known at the time the SEND button was pressed. Please send me the clause in the By-Laws or other ruling document which specifies the details and validity of "electronic votes" by Board of Trustee members.

Response 1-6-11: Please contact Pat Smathers at 648-8240.

[**Editors Note:** I called Pat Smathers. He indicated that Trustees may vote electronically per a NC Statue, but couldn't recall the number. All ballots were sent to Pat Smathers, and Trustees validated the ballots at the next meeting. My primary concern for my inquiring about the "electronic vote" was to insure the integrity of the vote withstood questions from someone like myself and the Trustees were protected.]

- In an e-mail sent to you on 12/14/2010, [re: Ethics] It would appear to me that G.S. 160A-83, -84 may override what may be contained in the By-Laws, if indeed the HCC Board of Trustees fall under these statues. If so, then the By-Laws need to address the five (5) primary considerations as pointed out by Fleming Bell. Also, these statues require two clock hours per year of class. It probably would not hurt to run this by Pat Smathers if you have any doubt.

Response 1-6-11: Mr. Donny Hunter, Executive Director of the North Carolina Community College Trustees, contacted Mary Shuping, Education Officer/Attorney NC State Ethics

Commission. Ms. Shuping informed Mr. Hunter that Community College Trustees are not covered under this particular statue and therefore are not required to address the five primary considerations.

Fairgrounds Update.

Too soon for a comprehensive update, although many of the questions that are surfacing relate directly with the **Fairgrounds Arena Building**. It's been really challenging to get answers.

See the related topic - "**Abuse of Power**" under Interesting Stuff on www.haywoodtp.net .

Who is on the Fairgrounds Board?

- **Nancy Davis,** [D], Waynesville
- **William Holbrook,** [D], Waynesville
- **Mary Ann Enloe,** [D], Waynesville
- **Terry Rogers,** [D], Clyde
- **Mike Gordon,** [D], Waynesville
- **Kevin Ensley,** [R], County Commissioner

Padgett Freeman Design for Fairgrounds.

Do you remember back to August 16th, 2010 [re: Toeprints Issue #12], a new agenda item was added during the meeting (i.e. it did not even appear on the agenda) regarding the Fairgrounds. From Toeprints Issue #12:

New Haywood County Fair Grounds Debt Proposal.

A new agenda item was added during the meeting - Haywood County Fairgrounds update. Commissioner Ensley indicated a new Fairgrounds board was in place. Dale Burris presented a potpourri of "stuff" the Fairgrounds needs to have happen to make it desirable for future events. They included:

- Rest Rooms,
- Parking Areas,
- Concession Area,
- Kitchen Renovations,
- Etc., etc., etc....

All of this for a mere **\$856K + \$27.5K** Architect's fee. It was noted that the Fairgrounds is paying Interest Only to the bank right now, but that will change at the end of the year, so the County Commission needs to consider this now. This **\$856K** will be in the form of a loan the County will take out as **New Debt**, with no intention of the Fair Ground Board having a plan to ever repay it. So enjoy your new Fair Grounds, because this will be more debt that your county commissioners are taking on **Without a Public Vote**.

Several things are worthy to note here:

- The total project expenses were estimated at that point by **Dale Burris** [D] to be \$856K,
- An Architect's fee was broken out separately at \$27.5K

As it turns out, an architect **was** selected, and has already created a new architectural design for the Fairgrounds. The architect is Padgett Freeman (the same architect chosen for the old Walmart Renovation project).

The county had budgeted \$27.5K for this work, and has thus far paid Padgett Freeman \$22,000 for the design. These drawings and plans are currently being reviewed in Raleigh.

[Editors Note: How do I know all this stuff? I ask! It never hurts to ask, well, maybe it does according to **Chip Killian** [D] and **Kevin Ensley**. They have both indicated my requests for information have been unreasonable.]

This is the same Padgett Freeman that provided drawings to the county for the old Walmart renovation that when the initial construction companies bid, the lowest bid was **\$2,897,200 over the base bid of \$5,800,000!** [re: Toeprints, Issue 22]. Padgett Freeman had to go back to the drawing board and downsize the project to get it back into budget. The county presumably did not pay Padgett Freeman to perform this downsizing.

There could be a problem here. General Statue § 143-64.31 says projects like this can be awarded without public bidding if the cost is under \$30K. It would be prudent to look at the Padgett Freeman contract with the county to insure this is the entire price Padgett Freeman intends to charge for this project, rather than this simply being an initial portion of the project, like a feasibility study, for example. If it were not the complete project as intended, the project would have to go to open bidding, per the statue. Architects generally charge 7 - 9 % of the Cost of Construction, which would typically be about \$60K in this case.

Did you know?

The Haywood County Agriculture & Activity Center Arena has been operating under a Temporary Certificate of Compliance / Occupancy since 6/1/2006? That's correct, for nearly 5 years. **Bruce Crawford** [D] of the Haywood County Building Inspection Department indicated that there is no set date for a Temporary Certificate of Occupancy to expire, and it can be extended indefinitely. The certificate states: "A final certificate of compliance / occupancy will be issued upon completion of the rest room facilities". There was no mention about completing any of the ADA (American Disabilities Act) components (you know, wheel chair access and stuff like that).

I guess my question is, why would anyone bother to ever get a Certificate of Occupancy, when they can simply get a Temporary Certificate of Occupancy and have the Building Inspector sign off on it year after year?

The funds for the rest room facilities will come from your tax dollars when the county commissioners sign off on giving the Fairgrounds Association \$856K, because the Fairgrounds

Association does not have any money.

MOU.

The \$337,111 to bail out the Fairgrounds Association (a Non profit Corporation) came out of the General Fund. The MOU, the **Memorandum of Understanding**, stated that the terms of the loan were: [re: MOU - www.haywoodtp.net]

NOW, THEREFORE, the County does hereby agree to lend to the Fairgrounds an amount that will cover the principle due to First Citizens Bank by December 25, 2010 at an interest rate equivalent to the county's rate earned on available operating funds, to be repaid to the County at such time that the Fairgrounds sell the structures and other leasehold improvements on the fairgrounds property to the County; thereby terminating the ground lease between the Fairgrounds and the County.

What does this mean? The Fairground Association was about to be foreclosed on and needed the county to bail them out (with taxpayer money). I missed the part in the MOU that requires the Fairground Association to make any periodic payments back to the county.

It seems to me that there are a lot of taxpayers that might also be near a foreclosure situation. Where does the line start that these taxpayers can go to get the same sweetheart deal from the county that the Fairground Association got?

Old Walmart Building Debt Service.

The \$12.5M loan taken out with the USDA for the purchase and renovation of the Old Walmart Building was split into two loans: \$9M and \$3.5M. The yearly payment (debt service) for each is:

| | |
|---|--------------------------|
| | \$427,940 |
| + | \$170,315 |
| | \$608,255 / year. |

That's almost 1% increase [every year for the next 40 years] of the County's \$66M budget. That's going to make it extremely challenging for Marty Stamey [appointed new County Manager] and Julie Davis to reduce the tax rate for next year.

[Legend: If any name is in **bold**, it can't be a good thing. Brackets following a name in **bold** with [D], [R], or [U] denote the individuals party affiliation, **D**emocrat, **R**epublican or **U**naffiliated. re: Haywood County Election Office - all voters 11/18/2010.]

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