

# Haywood County "Toeprints"

March 30, 2011

Vol. #2 Issue #13 (Subject: \* **SPECIAL EDITION** \* **Owner/Contractor Agreement for Arena Building.**)

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

## 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.

## My 3 Minute Public Comment on February 21, 2011.

"Who owns the Haywood County Fairgrounds Arena Building, Haywood County or the Haywood County Fairgrounds, Inc.?" The reason I ask, is that I find that there are several conflicting views and opinions, and I am confused. So who would be better to get a direct answer from than you. You see, on the one hand,

- From the perspective of **Mary Ann Enloe**, the chairman of the Fairground Board, **the County owns the Buildings** when she said in the Fairgrounds Board minutes of September 9, 2010:

"... that when Haywood County commissioners took over the financial responsibility for the fairgrounds properties, the new board was established as a public board to act as the fiduciary conduit through which large amounts of public monies flow from the Board of County Commissioners for the management of the Fairgrounds. **Fairgrounds property and buildings belong to the taxpayers of Haywood County, and not to a private corporation.** Loans being applied for are backed by taxpayer dollars.", and

- From the "feasibility drawing" you commissioned at the County Commission meeting on August 16, 2010, and paid \$22K for Padgett & Freeman to create, called the **Haywood County Fairgrounds Toilet Facilities and Accessibility Ramp** Project, the owner of the building is listed as Haywood County, with Dale Burris's telephone number as the contact person.

From this Architectural Drawing, one could also infer that **the County owns the Arena Building.**

On the other hand,

- From the MOU, the Haywood County Fairgrounds Memorandum of Understanding you created and signed on December 20, 2010, the **Haywood County Fairgrounds, Inc. owns the structures**, not the county.

The MOU, as you recall, was when you dipped into the General Fund and pulled out \$337K and transferred it to the Fairgrounds Board, who in turn, paid off First Citizens Bank to prevent foreclosure on the Fairgrounds Buildings.

The MOU said, in part:

"NOW, THEREFORE, the County does hereby agree to lend to the Fairgrounds an amount that will cover the principal 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 sells the structures and other leasehold improvements on the fairgrounds property to the County**, thereby terminating the ground lease between the Fairgrounds and the County".

So you see my confusion - I have no clue who owns the Fairgrounds Arena Building. So I'll restate my original question: **Who owns the Haywood County Fairgrounds Arena Building, Haywood County or the Haywood County Fairgrounds, Inc.?"**

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## Minutes of 2/21/2011 County Commission Meeting.

From the released minutes of the 2/21/2011 meeting [re: [www.haywoodnc.net](http://www.haywoodnc.net)]:

Monroe Miller inquired if the Haywood County Fairground Arena Building was owned by Haywood County or the Haywood County Fairgrounds, Inc. Mr. Miller read from a Memorandum of Understanding, (MOU), signed on December 20th, 2010, "Now, therefore, the County does hereby agree to lend to the Fairgrounds an amount that will cover the principal 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 sells the structures and other leasehold improvement on the fairgrounds property to the County, thereby terminating the ground lease between the Fairgrounds and the County."

Chip Killian, County Attorney, explained that the MOU was entered into at the time money was loaned to the Fairground Board by the County in order to pay off the loan. **There is an agreement** for the leasehold improvements to be transferred to the County when the County is able to find permanent financing. Then the County would buy those leasehold improvements from the Fairground Board. County Attorney Killian stated at this time the County owns the land, **and the Fairground Board owns the improvements until completion of the transaction.**

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Translation: **Chip Killian** [D] responded - **The Fairground Board owns the Buildings.**

This, of course, is the point where I asked - "What Agreement?". This, now infamous agreement - not yet executed (transacted), is posted on [www.haywoodtp.net](http://www.haywoodtp.net), Pending Fairgrounds Agreement referred to by Chip (a.k.a. Leon) Killian at the County Commission Meeting on 2/21/2011. 2/25/2011...

**AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect.**

**Dale Burris** [U] and The County were listed on the "feasibility drawing" referenced in my 3 Minute Public Comment on 2/21/2011 as being the "Owner".

I requested to inspect the Standard Form Agreement Between Owner and Architect, the AIA Document B101-2007 [re: now posted on [www.haywoodtp.net](http://www.haywoodtp.net)]. Who do you think is listed as the "Owner" on that Agreement?

Haywood County Government  
**Dale Burris**, Director  
Facilities and Maintenance Department  
215 North Main Street  
Waynesville, NC 28786

Who signed off on this Agreement? None other than **Kirk Kirkpatrick** [D], then Chairman of the Haywood County Commissioners, and **Scott T. Donald** [?], the Architect from Padgett & Freeman.

**Scott Donald**, you might recall, is the same architect who created the design for the old Walmart Building that when originally bid out, "Bids came in **\$2,897,200 over the base bid of \$5,800,000!**" [re: Toeprints, Issue 22], and the whole thing had to be redesigned and re-bid.

**Reprint From Toeprints, Issue 22, October 23, 2010...**

**The Old Walmart Building.**

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](http://www.haywoodtp.net)]), significantly underestimating what actual bids were going to be.

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**Kirk Kirkpatrick** is a lawyer, in addition to being the Chair of the County Commissioners at that time, and should have known better to sign that agreement, knowing that the County did not Own the Fairground Arena Building.

**Scott Donald** gets a pass for this one, as he was presumably told to put down **Dale Burris's** name as the Owner.

**AIA Document A101-2007, Standard Form of Agreement Between Owner and Contractor** (where the basis of payment is a Stipulated Sum).

B. Allen Construction was awarded the bid for the Toilet Facilities & Accessibility Ramp construction for the Fairgrounds Arena Building. The original bid was \$433K [re: [www.haywoodtp.net](http://www.haywoodtp.net), Single and Multi Prime Contract Work Bids for Fairgrounds Arena Building, Awarded to B. Allen Construction. 3/17/2011. 3/22/2011...].

A letter from **Scott Donald** to B. Allen Construction on March 22, 2011 confirms a renegotiated price of \$415K [now posted on [www.haywoodtp.net](http://www.haywoodtp.net)].

The Agreement between the "Owner" and the Contractor, dated March 22, 2011 is now also posted on [www.haywoodtp.net](http://www.haywoodtp.net).

Guess who was listed as the “Owner” of this project.

Yep! You guessed it - no surprise here. Haywood County Government!

Who signed this contract?

**Mark Swanger** [D], Chairman, Haywood County Commission.

Who has been designated at the “Owner Representative”? **Dale Burris.**

No pass for **Scott Donald** on this one, who presumably created this document. He should have been paying attention to the MOU floating about and **Chip Killian’s** response to my 3 Minute Public Comment at the 2/21/2011 County Commission Meeting. Perhaps, in addition to going back to Architect Construction Bid Estimation School again, he should start watching the on-line video recordings of the County Commission Meetings.

**Let’s ask Chip (a.k.a. Leon) Killian...**

Let’s pretend, and imagine if we were to ask both **Chip Killian** and **Leon Killian** about our conundrum here. The imaginary question would be: Explain to me why this is a valid contract, with the Owner being listed as Haywood County Government, and not the Fairground Board?

Imaginary response from **Chip Killian** -

He would quote himself from what he said that had been recorded in the approved meeting minutes of the 2/21/2011 County Commission Meeting. “**Chip Killian, County Attorney, explained that the MOU was entered into at the time money was loaned to the Fairground Board by the County in order to pay off the loan. There is an agreement for the leasehold improvements to be transferred to the County when the County is able to find permanent financing. Then the County would buy those leasehold improvements from the Fairground Board. County Attorney Killian stated at this time the County owns the land, and the Fairground Board owns the improvements until completion of the transaction.**”

Now, an imaginary response from **Leon Killian** -

“Potatoes - Potato’s, What difference does it make? They are both my clients [re: [www.haywoodtp.net](http://www.haywoodtp.net), **ABUSE OF POWER**, “We represent...“The County” & “The Fairground Board” ...”]. This is business as usual. What’s the problem?”

[**Editors Note: Chip Killian and Leon Killian** are one in the same person. No use asking **Chip** or **Leon**, as they appear to be both struggling with a Conflict of Interest].

So, someone else will need to explain to me why the Agreement between the “Owner”, Haywood County Government, and the Contractor, B. Allen Construction, is valid. **Kirk Kirkpatrick**, would you like to take a shot at responding? You are a lawyer. Oops - I forgot, you signed off on the first agreement. I can already guess your answer. Anyone else?

By the way, Haywood County Taxpayers are still looking for that second MOU (Memorandum of Understanding) for the \$415K the County Commissioners dipped into the General Fund for work to be done on the Fairground Board’s Arena Building. Don’t forget to add the sentence as the first MOU stated: “...at such time that the Fairgrounds sells the structures and other leasehold improvements on the fairgrounds property to the County, ...”

**Day Counter for Mountaineer and SMN.**

This new feature shows the days since 3/30/2011 since either The Mountaineer or the Smoky Mountain News will have anything to say about the Haywood County Fairgrounds Arena Building Contract fiascos.

- The Mountaineer 0 days
- Smoky Mountain News 0 days

**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.]

Monroe A. Miller Jr.,  
Haywood County Taxpayer  
19 Big Spruce Lane  
Waynesville, NC 28786  
[www.haywoodtp.net](http://www.haywoodtp.net)