

Haywood County "Toeprints"

August 21, 2011

Vol. #2 Issue #26 (Subject: Informal Complaint, KMD Award, Legal Fees, Released Closed Minutes)

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.

Informal Complaint.

An informal complaint against **David Francis**, Haywood County Tax Collector, and the **Five County Commissioners** has been submitted to state agencies to determine if the advancement of a new countywide reappraisal is warranted.

KMD Arbitration Award.

KMD Construction (contractor for the Old Courthouse renovation) won an arbitration award from both Haywood County and PBC-L (Pearce, Brinkley, Cease and Lee, P.A.) for the amounts of \$713,057.06 and \$234,425.21, respectively, [re: <http://haywoodtp.net/pubII/110802KMDFinalAward.pdf>].

The arbitrators found that KMD Construction, in part, "...carried its burden of proof on its allegations that PBC-L fell short of the standard of care of an architect under similar circumstances in the community and was professionally negligent in responding to unforeseen project conditions requiring redesign and in PBC-L administration of the KMD construction contract for the Project, financially damaging KMD. This claim of KMD against PBC-L is GRANTED in the amount of \$200,000.00".

The county commissioners, **Swanger, Kirkpatrick, Upton, Ensley and Sorrells**, are now contemplating a lawsuit against PBC-L [re: County considers options in arbitration award, Discussion with architect is next step, By Vicki Hyatt, Aug 17, 2011, The Mountaineer],

"The commissioners are still considering whether to seek compensation to help defray that cost from the project architect, PCB+L, the entity that advised commissioners to terminate KMD. Among other things, the arbitration board ruled the contractor had been wrongfully terminated.

Kirkpatrick confirmed the board is reviewing all available remedies against the architect and will open discussions with the firm on the issue.

"After that, we will determine whether to proceed with any type of action against them," he added."

What? Another Damned Lawsuit?

Who are these brilliant commissioners going to select to represent the county this time?

[**Editors Note:** Even though all five (5) of the current commissioners are culpable in taking responsibility for this loss of Haywood County Taxpayer funds, as they have all been attending these closed session meetings since the past election, it appears that **Kirkpatrick** and **Swanger** are driving this boat, and **Upton, Ensley** and **Sorrells** are hanging on for the ride.]

Will the county commissioners consult with **Chip Killian**, the county attorney? **Chip Killian** will then consult with **Leon Killian**, who works for Nelson Mullins, to see who the next partner from Nelson Mullins is who can "assist" the county.

As you recall, the county selected a partner from **Leon Killian's** law firm, Nelson Mullins to represent the county in the Cameron Lawsuit. His name was:

Reed Hollander

Nelson, Mullins, Riley & Scarborough, LLP

Glen Lake One Suite 200

4140 Parklake Avenue

Raleigh, NC 27612

He lost, and cost the county over **a half Million dollars**.

Another partner, who has since appeared to start his own law firm, **Robert A. Meynardie**,

EXPERIENCE

- The Meynardie Law Firm, PLLC (2008-Present)
- Nelson Mullins Riley & Scarborough, LLP (2003-2008)

also lost, and cost Haywood County -

\$713,057.06 + \$578,000 + 241,000 = \$1,532,057.06

[re: "The settlement award doesn't include the \$578,000 in legal fees paid to date or \$241,000 in engineering consultant fees incurred by the county that's over and above the \$7 million project.", **County considers options in arbitration award, Discussion with architect is next step, By Vicki Hyatt, Aug 17, 2011, The Mountaineer**].

So these guys from Nelson Mullins who **Leon Killian** might refer don't seem to have such a good track record in winning cases, but they do have a good record in gobbling up massive amounts of Haywood County Taxpayer dollars.

So Pleeeeeeeeeeeease, county commissioners, Don't Ask **Chip Killian** to ask **Leon Killian** for advice on your next lawyer!

Suggestion to **Kirkpatrick**: Why don't you take the case? You are a lawyer.

There is an opinion piece, kind of a 'letter to the editor' regarding the KMD award, posted on www.haywoodtp.net [re: <http://haywoodtp.net/pubII/110819DavisOpinion.pdf>]. It will provide a viewpoint and new information that you are not likely to read in any of the local newspapers.

County Commission Meeting, August 1, 2011.

Summer is here, not too much happening at this meeting, nothing remarkable. Please review the minutes and video.

County Commission Meeting, August 15, 2011.

Is summer over? All hell broke loose!

Public Comment Period. Vicki Hyatt attended this portion of the meeting and filed the following in The Mountaineer [re: County considers options in arbitration award, By Vicki Hyatt, Aug 17, 2011],

“John Meinecke with the Haywood County Republican Party, asked when the final facts and figures would be available regarding the issue, whether there were plans to take a more realistic approach to addressing legal costs by using a local attorney, why local contractors weren't used for county projects and whether it is true that KMD wasn't involved in meetings prior to making her comments, Waynesville resident Jonnie Cure announced she would exceed the 3-minute limit, and Commission Chairman Mark Swanger indicated the limit needed to be adhered to.

Cure proceeded to outline the history of the issue, including the contract termination vote just 40 days before the originally scheduled completion date, verbiage in the termination letter noting the action was being taken at the recommendation of the architect, and how the surety company took over the project only to rehire KMD to complete the job, and how the arbitration board had agreed with KMD that the termination had been wrongful. The decision, she recounted, resulted in not only a \$713,000 award to be paid by taxpayers, but in attorney fees as well.

When Swanger informed Cure her the time was up, she continued speak until Swanger interrupted her several times. Cure said she would ask to be on the agenda next time so she could continue to ask questions that needed to be asked.”

Mary Ann Enloe followed Jonnie Cure inviting commissioners to attend an event at the Fairgrounds.

What really happened [re: video, www.haywoodnc.net]...

Jonnie Cure announced she would go over the 3 minute time period. **Swanger** reminded her she had 3 minutes. After about 4 minutes, **Swanger** called for time, and Jonnie Cure simply elevated her voice and spoke over him. A back and forth session began, with each person trying to talk over each other, and it became nearly impossible (due to the abysmal audio system and acoustics in the courtroom) to hear what Jonnie Cure was saying. Finally, a Sheriff's Deputy got up and walked down to the podium and was about to grab Jonnie Cure's arm, so she immediately concluded her public comment.

There are rules for public comment, and are even printed on each agenda:

Citizens must sign up for public comment prior to 5:20 p.m. and are limited to three (3) minutes. Audience members may not address the Board at any time during deliberations unless recognized by the Chairman.

The problem here is that **Swanger** is **selectively enforcing this rule**. I have been observing county commission meetings for well over two years, [backed up by videos of these proceedings], and when a person during the public comment period is speaking about something that the commissioners are receptive to, they will pretty much get as much time as they want. Those people who are criticizing the commissioners are put on a short leash. That is human nature. Jonnie Cure was put on a short leash, while the next speaker, **Mary Ann Enloe**, who gushed with praise, could have spoken for as long as she wanted.

Swanger (the ex-FBI guy) needs to be removed and voted from the position of Chairman, and replaced with another county commissioner that can equitably exercise the time limits for all Haywood County Taxpayers. **Kirkpatrick**, in my opinion, actually did a better job of administering this than **Swanger** is currently doing.

Legal Fees for KMD Arbitration.

Legal fees spent to date by the County are \$578,000. Julie Davis is able to report how much has been paid, but does not include pending invoices, or invoices that have not even been turned in.

KMD, on the other hand, spent less than half that amount on their legal fees [re: KMD], **and they won!**

Does anyone see a problem here?

Where in the hell is all this money going? Something really stinks here in Haywood County. We could use an explanation from **Kirkpatrick and both Killian's (Chip and Leon)**.

When it's your money (as KMD spent on their own lawyer), you want to get the most bang for the buck, versus the county commissioners, who don't really care because it is not their money, it is Haywood County Taxpayer money. There is no accountability.

Release of Closed Minutes, August 15 Meeting.

“Two sets of closed session minutes were released last evening, but neither had anything to do regarding KMD” [re: Rebecca Morgan]:

HAYWOOD COUNTY BOARD OF COMMISSIONERS
CLOSED SESSION MINUTES, JULY 18, 2011
MEMBERS PRESENT: Chairman Mark S. Swanger, Vice-Chairman J.W. "Kirk" Kirkpatrick, Commissioners Bill L. Upton, L. Kevin Ensley and Michael T. Sorrells.
MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board Marty Stamey, County Attorney Chip Killian
OTHERS PRESENT: Finance Director Julie Davis, Facilities and Maintenance Director Dale Burris, Sheriff Bobby Suttles and Administrative Assistant Rebecca Morgan
GENERAL STATUTE: Attorney/Client Privilege §143-318.11(a)(3)

SUBJECT: Property

DISCUSSION: Sheriff Bobby Suttles explained that adjoining property to the Law Enforcement Center (LEC) could be leased by the County. Sheriff Suttles estimated that the facility could house as many as 128 inmates. The Board discussed the possibilities of the potential lease of the property and operating expenses. The property is 2.2 acres. County Attorney Killian stated that he would draft a resolution stating the purpose of the facility and the property. The resolution would be presented to the Board for review. Julie Davis, Finance Director, inquired as to the ratio of jailers to inmates. Dale Burris, Facilities and Maintenance Director, stated that the facility is 22,000 square feet.

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MEMBERS ABSENT: None

STAFF PRESENT: County Manager/Clerk to the Board Marty Stamey, County Attorney Chip Killian, Tax Administrator David Francis, Finance Director Julie Davis, Facilities and Maintenance Director Dale Burris and Administrative Assistant Rebecca Morgan.

OTHERS PRESENT: none

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

SUBJECT: Francis Farm Landfill

DISCUSSION: David Francis, Tax Administrator, presented a map of the Francis Farm area indicating properties around the landfill that use Waynesville water lines and those that use well water. Also presented was a letter from Department of Environmental and Natural Resources (DENR) from 2009 describing what precautions should be taken to avoid water contamination. McGill Associates has been working with the County in an effort to resolve some concerns mentioned in that letter. Mr. Francis explained that samples of the water from surrounding properties were tested for contaminants. A meeting with all property owners in the vicinity will be held August 16, 2011. Mr. Francis shared how three more monitoring wells will be added to the landfill. Ratcliff acts as a natural barrier. The twenty-one methane vents will be connected and we will evacuate gallons of leachate into the Town of Waynesville sewer system. Marty Stamey, County Manager, stated that all area properties should be using water from the Town of Waynesville.

There were no released minutes from the KMD fiasco!

Why? The legal action is done, the arbitration ruling is final. There is no reason not to release these minutes, release will not frustrate future efforts against KMD because there won't be any. If Kirkpatrick and these commissioners want to jump into another lawsuit, the most we can do is fire them at the next election (or perhaps some kind of recall). In the meanwhile, failure to release these close minutes makes it appear commissioners are hoping this whole thing will blow over, so when they finally decide to release these closed minutes, everyone will have forgotten about it. Will it take more prodding to the Attorney General's office to get these minutes released?

Landslide Hazard Mapping.

This was under new business, August 15th commission meeting. [Editors Note: I failed to capture ATTACHMENT 14 when it was posted on the county website, and now it is gone/purged. I have made a request for public information to get a copy of this attachment]. Gordon Small along with a small contingent of people in his group, came hat in hand to the commissioners because they are now out of a job [re: NC General Assembly killed funding]. They now want a new home and attach themselves to **Marc Pruett's** Erosion and Sediment Control Department. **Marc Pruett**, as you recall, cost the county over **a half million dollars** when he trampled on the Cameron's due process rights.

Gordon Small indicated this migration to **Pruett's** department would not cost the county any money, as he would search for grant money to exist. As Small should be well aware, grant money is drying up.

It seems to me that the General Assembly eliminated this project for a reason. Why have another government entity create more rules to impose on citizens of this state, and now they have migrated and landed right here in Haywood County?

Gordon Small and his small contingent are now on the short list to monitor to see if the county spends a single penny on these people.

Day Counter for Mountaineer and SMN.

This 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 144 days
- Smoky Mountain News 144 days

Legend: If any name is in **bold**, it can't be a good thing.

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