

Haywood County “Toeprints”

September 3, 2013

Vol. #4 Issue #11 (Subject: **Fire Sale! Upset Bidding approved for two county owned private properties.**)

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.

August 19, 2013 County Commission meeting.

This was the best show in town. If you missed it, watch it on the government channel or the county website. It can best be described as similar to the Fukushima Daiichi nuclear meltdown.

David Francis was challenged with multiple unrecoverable issues:

- **Francis** and county loss to the **Property Tax Commission** case with Denny King winning against Haywood County Neighborhood Delineation Rates,
- **Senate Bill 159**, opening door to county revaluation,
- **Francis** requesting commissioners to accept two bids for **private property**'s that the county had purchased a couple of years ago, and are now desperate to unload it [re: item 3 on the agenda under New Business].

Public Comment Period, Neighborhood Delineation.

Several speakers utilized the Public Comment time to bring these matters to the attention of the commissioners.

[**Editors Note:** Prior to this meeting, I hammered commissioners, and a lot of other people, including **Julie Davis**, about these two private properties the county purchased, with two issues of Toeprints, posted only days before the meeting:

<http://haywoodtp.net/pubTP/T130816SE.pdf>

<http://haywoodtp.net/pubTP/T130817SE.pdf>]

Speakers were, myself, Jonnie Cure, Eddie Cabe and Terry Ramey.

Then, unexpectedly, commissioners got hammered by two additional speakers, one regarding harassment from our county building inspection department about the location of a shed he was building, and the second about “[The recent hiring of a new county veterans service officer and a subsequent complaint about the hiring process has triggered an internal investigation into the matter.](#)” [re: Mountaineer, **Vicki Hyatt** Aug 23, 2013. Vicki Hyatt attended the meeting].

Then, still during the public comment period at the August 19th meeting, after I, Cure, Cabe and Ramey had finished, **Swanger** said **Francis** would address these issues.

And do you know what **Francis** did?

He whipped out a **Power Point Presentation!**

How hysterical is that?

They (who knows how many people) must have spent the entire weekend collaborating to put that Power Point Presentation together, so that **Francis** would just happen to have it at the ready during the public comment period, just in case someone spoke out.

The Power Point Presentation attempted to refute the two issues of Toeprints, and clear up any “misinformation” with the Public Comment speakers.

[**Editors Note:** In one of **Vicki Hyatt**'s Hack Jobs of all times, she put out “Taxpayer gouging alleged, refuted”, <http://themountaineer.villagesoup.com/p/taxpayer-gouging-alleged-refuted/1045809>, in undying support of **David Francis** and our Commissioners. See [Dialog with Jessi Stone, Assistant Editor of the Mountaineer. Covers Neighborhood Delineation Rates, PTC case lost by Haywood County, Senate Bill 159, and Hack Job by Vicki Hyatt. 8/23/2013...](#) on www.haywoodtp.net , or <http://haywoodtp.net/pubII/130823Stone.pdf>]

The public comment session lasted 50 minutes! During **Francis**'s rebuttal, he made the following statements [re: transcribed from video of August 19th meeting, www.haywoodnc.net]:

Francis: “As for the Mecklenburg issue, the Mecklenburg law was signed just for Mecklenburg. Um, also be mindful part of that is, well you know you keep hearing that they are going to have to refund money, also Mecklenburg may have to do discoveries as well too, for the, for properties that were undervalued in the revaluation, so their going to send discoveries as well too. That was omitted. And that as just a local deal, that does not affect the other counties in North Carolina.” End Transcript.

Wrong!

Commissioners asked him why Mecklenburg went belly-up, and **Francis** gave a couple of off-the-wall responses, something about multiple story high-rises and neighborhoods being too large.

[**Editors Note:** For the real reasons Mecklenburg will be starting a revaluation do-over, please see these and other articles from the Charlotte Observer:

<http://haywoodtp.net/pubII/130819CharlotteObserver.pdf>]

The problem for **Francis** here is that Senate Bill 159 is a general bill, and applies to all counties in North Carolina who have had revaluations between 2008 - 2012. Haywood County falls into this range. Sponsors of the Bill have been contacted, and they designed it to be general, and **not** specific to Mecklenburg County. You can search the bill,

<http://haywoodtp.net/pubII/130726NC SB159.pdf>

and you will not find any reference to Mecklenburg County.

Rep. Michele Presnell, who attended the Town Hall Meeting by Mark Meadows at the HCC auditorium, concurred, and told Terry Ramey and I that if the Bill did not contain Mecklenburg County specifically, it applied as a general bill.

The commissioners, as usual, were satisfied with the pabulum spoon fed to them by **David Francis**, Tax Collector, now Tax Administrator.

[**Editors Note:** I think the reaction at the August 19th county commission meeting was the result of multiple brain-drain meetings, and quips like the one **Francis** spued about Senate Bill 159 were actually fed to him by the real people controlling this mess, i.e., **Swanger** and **Kirkpatrick**, and then nod their heads approvingly when he spues this stuff.]

Mark Pinkston, Van Winkle Law Firm.

[**Editors Note:** Astute readers of Haywood County Toeprints will recall the name **Van Winkle** coming up in Public Comments I made at County Commission meetings on Oct. 15, 2012 (where Vice-Chairman **Kirkpatrick** accused me of practicing law without a license), and again on Feb. 4, 2013. All that accusation got **Kirkpatrick** was a grievance filed against him with the North Carolina Bar Association.]

Guess who finally started spilling the beans about **Van Winkle** law firm? **David Francis** at this meeting! [re: transcribed from video of August 19th meeting, www.haywoodnc.net]:

[**Editors Note:** I have underlined and highlighted in bold some key admissions by **Francis**, make a note.]

Francis: “ ... We have been working with the Van Winkle law firm for several years, they have handled all of our bankruptcies since 1999, and it’s been a great program. For us, we don’t have to have a lawyer here, it goes over there, I don’t have to get bogged down going to bankruptcy court over there. Mr. Pinkston, who is a Cant - a Waynesville native who lives in Canton, works at the Van Winkle law firm and has handled foreclosures for us on mortgage style for years. The cost that is different on the in-rem as you have an attorney involved in that. In 2011,

I went back to the in-rem method, which we put the judgement on, we notify, the lien holders, the property owners, the new judgement holders, just as you would a mortgage style foreclosure. All the notification requirements are the same. And when the property does come up to bid, the county’s cost in that is just whatever the cost is and the taxes. And that’s what the opening bid is. No more, no less. And I can’t help who shows up at the bids. Some people show up, some people are very interested in it, some, you know, and we’ve had a couple, you know, throughout my time where we’ve not had any bidders in there. **The county comes the last bidder. There, naturally, because we’ve done the foreclosure. Just the same as if a bank did a foreclosure.** They are the last bidder and the highest bidder if no one bids on it. **And Chris McLaughlin with the Institute of Government says that the county can own the property** and when it’s in the counties name, they can do whatever they want to with that property. Okay. Any questions on any of that?

Commissioners: No questions.” End Transcript.

Here is an admission by **David Francis**, Tax Collector now Tax Administrator, that “ **The county comes the last bidder.**” The county does not come as the last bidder! Has everyone lost their minds and forgotten about **American Jurisprudence (Federal Case Law)**, AMJUR MUNCCORP, § 471, 56 Am. Jur. 2d. Municipal Corporations, Etc. § 471?

"Municipalities may acquire and hold title to real property only for legitimate corporate purposes. Because a municipal corporation or county may not expend public funds for a purpose that is not public, such entities have no authority to purchase and hold property for a purpose not connected with a public use."

[re: pgs 6&7 of <http://haywoodtp.net/pubTP/T130731.pdf>].

Francis believes he and the county are like a bank, and when a bank does a foreclosure and no one bids, the bank gets the property, he can do the same? **Francis** is forgetting that Haywood County is a Corporation and can acquire and hold title to real property only for legitimate corporate purposes.

And where does **Francis** get the authority to override Federal Case Law? Why Chris McLaughlin of the Institute of Government, naturally? No disrespect for Chris McLaughlin, but who is likely to win out here?

- Fully annotated Federal Case Law, or
- Some guy’s opinion from the Institute of Government.

This admission is all on video. This is your county government at it’s best. Law Enforcement Officials, please take note.

Unloading Private Property.

We are not finished. These people were so rattled going into this meeting, they are falling all over themselves attempting to prop everyone else up. We finally get to Item 3 on the Agenda, under New Business, **Francis** attempting to unload the private property he purchased back in 2010-2011.

More transcribing from the video of the meeting.

[**Editors Note:** I have underlined and highlighted in bold some key admissions by **Francis** and **Killian**, make a note.]

Francis: I can't control the bids, or who makes the bids, I have to present, I have to present to the commissioners, you know, what somebody bid. You know, I don't have any control or say so, you know, somebody else can come in and bid 50 bucks, and another person can come in and bid, you know, \$5,000. I don't have any control over bids. The mechanism after this, is the commissioners accept the bids, and it is advertised in the Mountaineer for ten days. At that point, any body can come in and upset the bid at that point if they are interested in the property. So there is a mechanism there, this is not the final bid there. The commissioners, you also have the opportunity to reject all bids as well.

Upton - [... some diversionary nonsense discussion about septic systems on the property and being a meth house...]

Swanger: Anyone in the United States could have bid on these, correct?

Ensley: So if somebody want to bid on em, When the ad comes out in the paper, on whatever day, I guess Friday, maybe,

Francis: Correct.

Ensley: ... they have 10 days to upset this bid, and buy it if they want to.

Francis: Correct.

Ensley: If they wanna pay, whatever the, what is it, 5% more,

Francis: Correct.

Ensley: Whatever these bids are (pointing to current bids) they can bid on. Anybody in this county or United States, anywhere.

Francis: Correct.

Swanger: Chip?

Killian: So the method you've used, of course you could, you can have a, at the very git-go, you can have a public offering and try to have a sale that way by competitive

bidding, but what you did, in this case, was you accepted an offer from someone who you've probably contacted because they were a neighbor as the only person you thought would be interested. You accepted that offer subject to upset bids. So now, it will be published in the newspaper, anyone can upset the bid.

Francis: Correct. End Transcript.

There is almost too much stuff to cover here.

- **Francis** implied that these properties had been advertised in the Mountaineer. I haven't seen these advertisements for these two properties. Can someone show me where these two properties were advertised in the Mountaineer?
- **Killian** attempts to prop up his pal **David Francis** by reviewing the method he has chosen to steer these two sales through **Francis's** pal's **Clarence Dickson** and **Gavin Brown**. Did **Clarence Dickson** and **Gavin Brown** know that these bids were accepted subject to upset bids? I'll bet they are both a little steamed now. Upset Bidding is supposed to happen in the 10 days following the original bid. **Clarence Dickson** indicated the bid was made on August 6, 2013, and upset bidding was closed 10 days after that, on August 16, 2013, three (3) days before this county commission meeting. It looks like **Killian** just joined ranks with **Julie Davis**, **Mark Pinkston** and **June Ray** propping up **David Francis** in this meltdown. Their three legged stool just became a four legged stool. As we shall see, **Marty Stamey** is going to join in... We are going to need a multi-legged bench here, so that everyone can hold up a leg on this.

These two properties were private property obtained by Haywood County during a foreclosure process. Legal Aid of North Carolina, Inc., lists a general **Sale Procedure** for sale of foreclosed property. The concept of upset bids is automatic, not "subject to" as **Killian** stated, in sales like this, and a partial section is provided here.

Seller invites offers. Generally the creditor is the only bidder. **If there are no more upset bids.** (Upset bid is a bid for a higher price than the prior upset bid).

a. Within five (5) days following the sale to the highest bidder, the person exercising power of sale must file a preliminary report.

b. Rights of the parties to sale become fixed if no upset deposit is filed with the clerk by close of normal business hours on the tenth (10th) day after filing preliminary report of sale. ...

This is an example of what happens with a foreclosure. North Carolina General Statutes state in great detail the process of Upset Bidding (i.e., NCGS § 45-21.27 and much more) which was not followed here. So when **Francis** only notified neighbors of the adjoining property of these bid opportunities [re: "...but what you did, in this case, was

you accepted an offer from someone who you've probably contacted because they were a neighbor as the only person you thought would be interested. ...", **Chip Killian** with **Francis** acknowledging], he lied earlier when he said " And I can't help who shows up at the bids.", he knew damn well who was going to be bidding on this, steering these sales to his pals **Clarence (Chuck) Dickson** and **Gavin Brown**.

Suppose it comes time to sell the old Hospital or any other property the county owns, what will **Francis** do? Steer the bidding to neighbors of the property and ignore the upset bidding process again?

By the way, the Sales Procedure from Legal Aid of North Carolina, Inc. lists an additional step:

d. Clerk audits the account.

June Ray, Clerk of Superior Court, has never audited (or has failed to provide the audits she was supposed to have completed via Request for Public Information) the two private properties **Francis** recently purchased (Case files 12M167 and 12M208). Those are the two properties that **Julie Davis** failed to pay the Affidavits of Publication invoices to the Mountaineer. So how can **June Ray** complete an audit on these two cases, if **Julie Davis** stiffed the Mountaineer on the billing and the cases are still open.

Public Notices in the Mountaineer for Upset Bidding.

This story just gets even better. Commissioners, caught with their pants down, decided to compound their problems. They told **Marty Stamey** to get some public notices in the Mountaineer to get Upset Bidding back into the picture. The following are the two public notices that appeared in the August 30, 2013 Mountaineer.

[**Editors Note:** These notices were scanned, then read with an OCR (Optical Character Recognition) program.]

NOTICE OF NEGOTIATED OFFER FOR SALE OF REAL PROPERTY ADVERTISEMENT FOR UPSET BIDS

PLEASE TAKE NOTICE that pursuant to the Haywood County Bid Procedures for Property Acquired by Foreclosure approved by the Board of Commissioners (the "County") at its regular meeting on April 15, 2013 authorizing the sale of certain real property owned by the County, and also pursuant to GS 160A-269 and GS 10S-376 ©, the County at its August 19, 2013 regular meeting, accepted a bid offer for parcel number 7687-04-4513, property located off Braves Knob Road, Smokey Shadows Estates. The bid offer amount is One Thousand Five Hundred Dollars (\$1,500.00) and is accompanied by the required deposit of five percent (5%) of the bid ("Current Offer"). Within ten (10) days of o the date of publication of this Notice, a person may raise the bid by not less than ten percent (10%) of the first one 'thousand dollars (\$1,000) and five percent (5%) of the remainder. Upset bids must be accompanied by a bid deposit in the form of a certified check made payable to Haywood County in the

amount of 5% of the upset bid. A copy of the Current Offer can be obtained from, and other inquires directed to, Marty Stamey, County Manager, Haywood County Courthouse, 215 North Main Street, Waynesville, North Carolina 28786. This the 27th day of August, 2013. s/Marty Stamey. Marty Stamey, County Manager No. 31662 August 30, 2013.

NOTICE OF NEGOTIATED OFFER FOR SALE OF REAL PROPERTY ADVERTISEMENT FOR UPSET BIDS

PLEASE TAKE NOTICE that pursuant to the Haywood County Bid Procedures for Property Acquired by Foreclosure approved by the Board of Commissioners (the "County") at its regular meeting on April 15, 2013 authorizing the sale of certain real property owned by the County, and also pursuant to GS 160A-269 and GS 105-376 ©, the County at its August 19, 2013 regular meeting, accepted a bid offer for parcel number 8608-76-2254, property located at 447 Sunshine Cove Road, Waynesville. The bid offer amount is Two Thousand Dollars (\$2,000.00) and is accompanied by the required deposit of five percent (5%) of the bid ("Current Offer"). Within ten (10) days of the date of publication of this Notice, a person may raise the bid by not less than ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder. Upset bids must be accompanied by a bid deposit in the form • of a certified check made payable to Haywood County in the amount of 5% of the upset bid. A copy of the Current Offer can be obtained from, and other inquires directed to, Marty Stamey, County Manager, Haywood County Courthouse, 215 North Main Street, Waynesville, North Carolina 28786. This the 27th day of August, 2013. s/ Marty Stamey Marty Stamey County Manager No. 31663 August 30, 2013.

Notice the first sentences of each.

“...that pursuant to the Haywood County Bid Procedures for Property Acquired by Foreclosure approved by the Board of Commissioners (the "County") at its regular meeting on April 15, 2013 authorizing the sale of certain real property owned by the County, ...”

What the [expletive deleted]?

They are attempting to slip this delinquent and invalid public notice in using as the primary basis a policy adopted by your county commissioners! North Carolina General Statues trump any ordinance or policy adopted by these guys unless they are in comportment with the General Statues.

Remember the stupid policy they adopted to hinder Requests for Public Information, channeling all requests through David Teague, the Information guy? That policy still remains on the county website [re:

http://haywoodnc.net/downloads/public_information/Public_Information/PublicRecordsRequests%20_Final_.pdf], even though it was blown back to the stone age by a Buncombe County Superior Court ruling, [re: <http://haywoodtp.net/pubII/120803-99cvs03497.pdf>.]

I have never seen so many blunders at a single county commission meeting in my life!

Now that you have a little background in understanding what really went on at this meeting, you are encouraged to watch the meeting again on the Government Channel, or on www.haywoodnc.net ,

http://haywoodnc.net/index.php?option=com_content&view=article&id=1513:news-bocccvid081913&catid=1:latest-news.

Vicki Hyatt at the Mountaineer had yet to print a single word about this whole issue of **David Francis** and the County Commissioners purchasing and selling private property from foreclosure sales. The Smoky Mountain News is visiting another planet and hasn't printed a single word about anything.

Waynesville Civilian Police Academy.

The Waynesville Police Department offers something unique called the Waynesville Police Department Civilian Police Academy. I took the course offered last April - May, a course that lasts eight (8) weeks, one night a week. I took the course as I happen to deal a lot with county stuff, and have had the opportunity to become acquainted with personnel and operations with the County Sheriff's Office (both Sheriff's Suttles and Christopher), but never the Police Department. The Waynesville Police Department had been pretty much a black hole, and thought it useful to become a little more familiar with them.

The course topics over the 8 weeks included:

- Overview of Police Department
- Officer selection, communications, Internal Investigations
- K-9 units, Special Response Teams
- Special Projects Unit, SRO/DARE
- Domestic Violence, Drug Abuse
- DWI Detection, MADD (Ellen Pitt)
- Criminal Investigation Unit, Crime Scene Processing
- D/A **Michael Bonfoey**

There was also a day allocated when attendees fired police weapons at the police firing range.

Graduates are offered an opportunity to perform volunteer work at the police station.

I was impressed with the depth that each class offered. Everything was laid out on the table as far as what individual's responsibilities were, and operational aspects of the department. I would encourage everyone in the county (not just the city of Waynesville) to consider taking this course the next time it is offered. [Class size was about 18 or so, last time.]

Worst Foreclosure?

Francis made a comment during the meeting that this was the worst foreclosure he has ever gone through (the private property with the meth house). **Francis** will come to regret that statement, as the worst is yet to come - the Ramey foreclosure.

Legend: If any name is in **bold**, it can't be a good thing.
[RINO] Republican In Name Only (i.e. **Kevin Ensley**, **Mitchell Powell**).

[**Editors Note:** Who is **Mitchell Powell**?]

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