

HAYWOOD COUNTY COMMISSIONERS**REGULAR MEETING – January 19, 2016****CALL TO ORDER**

Chairman Mark S. Swanger convened the regular meeting of the Haywood County Board of Commissioners at 5:30 p.m. in the Historic Courtroom at the Haywood County Historic Courthouse, Waynesville, North Carolina, with Chairman Mark S. Swanger, Vice-Chairman J.W. “Kirk” Kirkpatrick III, Commissioners L. Kevin Ensley, Bill L. Upton and Michael T. Sorrells present. Staff members present were County Manager Ira Dove, County Attorney Leon M. “Chip” Killian, III, Finance Director Julie Davis, and Executive Assistant/Deputy Clerk Candace Way.

PLEDGE OF ALLEGIANCE

Chairman Swanger led the Pledge of Allegiance.

INVOCATION

Commissioner Upton offered the invocation.

PUBLIC COMMENT SESSION

Chairman Swanger opened the public comment session. Comments are generally limited to three minutes per individual, unless the speaker is representing a group for which the comment period may be extended to five minutes.

Robert Kuntz addressed the Board. He stated that as the Shadow Woods Homeowner’s Association President, he objects to the proposed shooting range. He stated that 120 homeowners in Shadow Wood are angry because of the fertile land and area surrounding the proposed site being used for the proposed commercial property. He asked the Board to explore whatever options they have to deny the proposed shooting range.

Josie Rathbone addressed the Board. She questioned the safety of the proposed shooting range, the projected costs being enough to safely build to specifications needed to protect the surrounding area and the release of lead pollutants in the soil and air. She feels the residential area is not the place for the range.

Vicky Rogers addressed the Board. She asked for a moratorium to give more time for study and analysis to see if it is an appropriate place for the proposed shooting range. She said that she is not against shooting, but feels that the community is not the place for it. She feels that it is also a danger to the ball park that is nearby. She stated that the group has an attorney who has sent letters to Ms. Lewis and Mr. Morrow addressing their concerns.

Lisa Nelson addressed the Board. She also expressed concern over the close proximity of the proposed shooting range to the ball park and Junaluska School. She believes the potential of an outdoor range will come after the indoor range is completed. She expressed concern over ground and water pollution and stated that it may be time to start looking at a land use ordinance.

Janie Higgins addressed the Board. She spoke in opposition of the proposed shooting range. She said that she lives very close to the proposed site and has her entire life. She does not want to see the area commercialized.

Jim Francis addressed the Board. He expressed concern over the safety of school kids as they walk and bus the road of the proposed shooting range. He stated that it won’t be known who will be coming to use the range, and that history shows most that have committed violent gun crimes have visited a shooting range within two days prior.

Chairman Swanger stated that County Attorney, Chip Killian has an update on the proposed shooting range, and if there were no objections from the Board, Mr. Killian would provide it now instead of under Old Business.

Mr. Killian stated that the County, after a properly noticed public hearing and input from the Planning Board, could adopt an ordinance regulating the location of a shooting range. Such an ordinance must either be part of a uniform zoning or land use ordinance, or pursuant a safety and health issue involving an imminent threat.

He noted that if a proper application for building permit is filed, meeting all the requirements outlined by the Inspection Department, a land use ordinance or moratorium adopted after the date of such filing would be subject to GS 143-755 (giving the applicant what amounts to veto power), unless it was found that there was an imminent threat to public health or safety which needed to be addressed. This would not normally be present where someone is dealing with a mere plan with no current shooting range activity on the premises.

He stated that currently there is no ordinance in Haywood County that would regulate a proposed indoor shooting range, so long as the building is properly sound proofed and the County Noise Ordinance is complied with. The County Noise Ordinance could only be enforced after the fact when the noise could be measured.

He said that the Inspections Office would enforce the NC Building Code which includes requirements for an Indoor Range Design, certain OSHA lead exposure and noise exposure regulations, as well as EPA rules. He advised that before a building permit is issued, a County may adopt a temporary moratorium on any county development for which a permit is required. Except in cases of an imminent and substantial threat to public health or safety, the county commissioners would be required to first conduct a public hearing upon a 7 day notice, and the moratorium could continue for only 60 days. Detailed findings are required following the hearing as part of the moratorium as specified in GS 153A-340(h). Spot zoning is not permitted under law.

He said that this would have to be a public health finding as an imminent threat. It has to be threatening at that moment.

Chairman Swanger stated that the County has no zoning or land use regulations, and anything the commissioners would do would have to be lawful. He said that he can sympathize with citizens not wanting any business in their front yard, but the only way to prevent it is to have land use planning or to personally buy the land.

Vice-Chairman Kirkpatrick asked about the process of a moratorium, and Mr. Killian said that a resolution has to be passed calling for a moratorium upon seven days' notice. The County would have a public hearing at that time. There are detailed findings that must be established in order to adopt the moratorium.

Vice-Chairman Kirkpatrick confirmed that it would have to be put on the agenda and notice provided that there is a hearing if the moratorium was even to be discussed. He asked if an application is filed prior to that, could anything be done at that point.

Mr. Killian replied that if a properly filed building application was submitted, then the applicant would have the right to say if they would comply with any ordinance that might come in the future, or they could simply ignore the moratorium. He said that Mr. Morrow has applied for a septic permit at this point, which would not qualify in his opinion.

Commissioner Sorrells stated that after reading on moratoriums and their legalities, he thinks a moratorium would be basically confirming that the proposed gun range meets all criteria; safety etc. and Mr. Killian agreed. Commissioner Sorrells confirmed with Mr. Killian that the County has to make sure they comply with building processes, which they already do through building inspections, however an outdoor range would bring another issue.

Chairman Swanger stated that the County is only working with an indoor range and doesn't believe that an outdoor range would have enough land at the proposed site. He said that no one would see or hear anything from an indoor range. He noted that restrictions of an outdoor range take into account that down range has to have layers of soil that would stop rounds. He has never seen one approved in residential areas because of houses, and he cannot see that as appropriate at all. He noted that a 22 caliber will travel about a mile. He said that he cannot see the danger of an indoor range.

Vice-Chairman Kirkpatrick asked who would regulate the range after OSHA and EPA inspections.

Chairman Swanger responded that all he knows of is in the construction of the facility and Mr. Killian concurred.

Chairman Swanger and Vice-Chairman Kirkpatrick agreed that a facility would have to meet state guidelines for officer training.

Chairman Swanger commented that OSHA does periodically inspect facilities, and possibly the Health Department.

Mr. Killian stated that the Health Department could inspect anything involving public health concerns.

Commissioner Upton noted that a moratorium will not allow the process if a person files before the moratorium is in place, and if it does pass, the study could take some time. He noted that it has been quite a while since land use regulations have been explored.

Chairman Swanger stated that it was a very contentious argument twenty years ago and most spoke in opposition. He noted that many things may have changed since that time. He remarked that this is a real life example of what happens when plans are not made. He said that the Board cannot choose one citizen over another if that citizen is not doing anything illegal. He said that the Board cannot abuse their power in intervening in such a way. He noted that he is not saying that it is appropriate, he is just saying that it may be legal.

Vice-Chairman Kirkpatrick said that the fact is that the County does not have zoning. He said that he can sympathize with everyone making these statements. He said that he is not opposed to putting a moratorium in order to study and discuss the issue, but he does not want to say to other people that they cannot do something with their property. He said that it is unlikely that he will tell someone they can't do something with their property if they are doing something that is legal. This is an issue that needs to be discussed as a County.

Chairman Swanger said that he doesn't know if this was placed on a ballot for land use zoning that it could be lawfully binding, but it could be advisory such as Buncombe County did a few years ago. He said that there is no way to have an election on this that is binding.

Mr. Killian agreed, stating that it is an advisory, non-binding referendum. Public funds cannot be spent by the County. The public can spend as it chooses to advocate for or against it.

Vice-Chairman Kirkpatrick noted that he would encourage people to pursue actions civilly. He asked if there is anything that the Board can do to prohibit the outdoor shooting range because of location in proximity to farmland, schools and homes.

Mr. Killian stated that what he has spoken of concerns an indoor facility, and if it became an outdoor issue, the County would take a hard look at that. He noted that something may possibly be done if it proposes an imminent threat. He noted that there are totally different standards for outdoor ranges.

Commissioner Sorrells noted that with an outdoor range, there are then safety and noise issues, which are not the same with an indoor range.

Chairman Swanger said that a moratorium could give time for a study to determine if there are imminent dangers, and can they be mitigated or eliminated.

Mr. Killian said that at that time, if the concerns cannot be eliminated the County could adopt an ordinance based on health, safety and welfare under the theory that a gun fired outdoors does not have to be seen to be considered dangerous.

Chairman Swanger said that a moratorium for an outdoor gun range would require a public hearing and notice. It would require the Board to suspend the rules to allow for a public hearing at the morning commissioner's meeting.

Vice-Chairman Kirkpatrick agreed, stating that he wants to protect private property rights, but at the same time wants to be proactive to prevent an outdoor shooting range on the proposed property.

Chairman Swanger said that it would allow time to plan for the possibility of an outdoor range and would give someone proposing the range an opportunity to have a forum and a place for a dialogue to explain how they would prepare for it safely. If it is concluded that the threat was not eliminated, it would give time for an ordinance to be crafted to prevent it.

Mr. Killian noted that the public notice by statute requires a seven day notice, not ten.

The Board agreed to hold the public hearing on February 1, 2016 at the 9:00 a.m. commissioners meeting in the Historic Courtroom of the Historic Courthouse.

Commissioner Ensley asked if an outdoor range applied to someone shooting with other people on private property.

Mr. Killian responded that this pertained to a commercial sporting business.

The Board took a recess at 6:16 p.m. and reconvened at 6:23 p.m.

CONSTITUENT CONCERNS

There were no constituent concerns.

ADMINISTRATIVE/AGENCY REPORTS

There were no administrative/agency reports.

DISCUSSION / ADJUSTMENT TO AGENDA

Chairman Swanger explained there was one adjustment to the agenda to move the Old Business item concerning the update on the proposed shooting range to follow public comments.

CONSENT AGENDA

Commissioner Sorrells made a motion to approve the consent agenda as presented. Commissioner Upton seconded, the motion carried unanimously.

1. Approval of January 4, 2016 regular meeting minutes.
2. Approval of December 2015 Refunds, Release, Amendments and Discoveries – David Francis, Tax and Solid Waste Administrator
Mr. Francis reported that there was nothing unusual to report this month.
3. Approval of December 2015 Tax Collections update – Mike Matthews, Tax Collector
Mr. Matthews stated that collections were \$29,053,076.39 which is \$2,113,000 up from last year. Delinquent taxes are \$588,000. The collection rate is 75.72%.
4. Budget Amendment – Julie Davis, Finance Director
 - a. General Fund – Health & Human Services Agency - \$34,950 – Health -
Ms. Davis explained that this is the grant funding from the North Carolina Coalition Initiative to reduce substance abuse in Haywood County.

HAYWOOD COUNTY
SUBJECT TO BUDGET AMENDMENT
FISCAL YEAR 2016-17

FBI# _____
JUL _____

BE IT CERTIFIED by the Board of Commissioners of Haywood County that the following amendments be made to the budget/ordinance for the fiscal year ending June 30, 2016:

Section 1. To increase General Fund expenditures as to be changed as follows:

Department	Account Number	Current Budget	Proposed Decreases	Revised Budget
Health Services	11011 01000000		34,950	0.00
Health Services	11011 01000000		0.00	34,950
Health Services	11011 01000000		0.00	34,950
Health Services	11011 01000000		0.00	34,950

which will result in a net increase of \$ _____ in the expenditures of the General Fund.

To provide the additional revenue for the above, the following revenues are to be increased as follows:

Revenue	Acct. No.	Current Budget	Proposed Increase	Revised Budget
Health Services	11011 01000000		34,950	34,950

Section 2. Copies of this budget amendment shall be delivered to the Budget Office and the Finance Office for their division.

Approved this 1st day of January 2016.

ATTEST: *[Signature]*
Clerk to the Board

[Signature]
Haywood County Board of Commissioners

- d. General Fund – Non-departmental across departments - \$1,214,946
Ms. Davis explained that this allocates money to individual departments for merit/COLA, salaries and benefits. This is done annually.

HAYWOOD COUNTY
BUDGET ORDINANCE AMENDMENT
FISCAL YEAR 2015-2016

BE IT ORDAINED by the Board of Commissioners of Haywood County, that the following amendments be made to the budget ordinance for the fiscal year ending June 30, 2016:

Section 1. To amend the General Fund, the expenditures are to be changed as follows:

Department	Account Number	Current Budget	Increase (Decrease)	Amended Budget
General Fund				
Personnel Expenses	400-0000	30,000,000	1,214,946	31,214,946
Information Systems	400-0000	1,000,000	(1,000,000)	0
Information Systems	400-0000	1,000,000	(1,000,000)	0

which will result in a net increase of \$ _____ in the expenditures of the General Fund.

To provide the additional revenue for the above, the following revenues will be increased as the money has been received:

Revenue	Acct. No.	Current Budget	Increase (Decrease)	Amended Budget

Section 2. Copies of this budget ordinance shall be delivered to the Budget Officer and the Finance Officer for their attention.

Adopted this 17th day of July, 2015.

ATTEST: *[Signature]*
Clerk to the Board

[Signature]
Haywood County Board of Commissioners

OLD BUSINESS

Report from County Attorney regarding proposed gun range was moved to follow the public comment session with Board consensus.

NEW BUSINESS

Request approval of assignment and amendment of lease agreement between Haywood Christian Emergency Shelter, Haywood Pathways Center, Inc., and County of Haywood

Chairman Swanger recognized County Manager Ira Dove. Mr. Dove explained that this assignment and lease agreement was made and entered into in November 2014 for the homeless shelter. The groups involved have decided to form the new group, Haywood Pathways Center, Inc. and this one organization will operate the campus for all three entities. The amendments state that Haywood Pathways Center Inc. will take on the utilities directly. This approval gives permission for the County Manager to sign for the change.

Chairman Swanger confirmed with Mr. Dove that these have already been signed by the other entities.

Commissioner Ensley commented that his wife has served on this board, and all seems to be going well. They have served a lot of different homeless people and performing the intended purpose of the organization.

Commissioner Ensley made a motion to authorize the County Manager to sign the assignment and amendment of lease agreement between Haywood Christian Emergency Shelter, Haywood Pathways Center, Inc., and County of Haywood and Vice-Chairman Kirkpatrick seconded. The motion passed unanimously.

Request award of contract to John Burgin Construction, LLC based on the lowest, responsible, responsive bid for the Haywood County Emergency Medical Services/Emergency Management Base

Mr. Burris explained that the Board received all the bid documents for the project. He said the lowest was John Burgin Construction which was over \$2 million. He said that he worked with Mr. Burgin to get the cost down to reach the \$1,990,000 goal, and was able to do so with a little left to work with. This will not change anything with the structural integrity of the facility. He noted that both Mr. Pressley and Mr. Shuping have no issues with the additional cuts that have been made to bring it to the \$1.9 million budget.

Commissioner Ensley commented that it was good to see a local contractor awarded the bid.

Commissioner Sorrells said that it is nice to see it come in close to where the anticipated costs are, and he appreciates the hard work of Mr. Burris and Mr. Burgin to bring them to where they need to be.

Mr. Burris noted that he will request to bring the contract back to the February 1 meeting for approval.

Commissioner Upton made a motion to award the contract to John Burgin Construction, LLC based on the lowest, responsible, responsive bid for the Haywood County Emergency Medical Services/Emergency Management Base not to exceed \$1,990,000, exclusive of architect fees and contingency. Vice-Chairman Kirkpatrick seconded. The motion passed unanimously.

Chairman Swanger commended the hard work of Mr. Burris, Ms. Davis, Emergency Services and the Sheriff's Office on this project.

Request approval of re-appointment of four (4) members to the Health and Human Services Agency (HHS) Board

Commissioner Swanger recognized County Manager, Ira Dove. Mr. Dove reviewed the applications of the HHS board members, Murat Yazan, consumer/public member; Martha Teater, consumer/public member; Dr. Matthew Holmes, psychiatrist member; and Dr. Kristel Causby, optometrist member, for consideration of re-appointment. He noted that some of these are statutorily required members.

Chairman Swanger stated that he sits on the board and the HHS board has concurred and recommended them all for re-appointment for four year terms.

Commissioner Sorrells made a motion to approve the re-appointments of the four members to the Health and Human Services Agency Board and Commissioner Ensley seconded. The motion passed unanimously.

CLOSED SESSION

Vice-Chairman Kirkpatrick made a motion to enter into Closed Session for:

- Attorney/Client Privilege – G.S. §143-318.11(a)(3)
- Personnel - G.S. §143-318.11(a)(6)

Commissioner Ensley seconded and the motion carried unanimously. Commissioner Upton left the meeting.

The Board returned from Closed Session.

ADJOURNMENT

Chairman Swanger asked if there was any further business.

With no further business, Commissioner Sorrells made a motion to adjourn the regular Board meeting. Commissioner Ensley seconded; the motion carried unanimously.

The time of adjournment was 8:19 p.m. The DVD is attached by reference to the minutes.

CLERK

CHAIRMAN

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