

**MINUTES  
BURKE COUNTY BOARD OF COMMISSIONERS  
SPECIAL MEETING**

The Burke County Board of Commissioners held a special meeting on Friday, January 10, 2020 at 3:00 p.m. The special meeting notice, executed by Chairman Carswell, was published on December 31, 2019. The purpose of the meeting was to discuss matters related to tourism and the Tourism Development Authority. The Board met in the Commissioners' Meeting Room, Burke County Services Building, 110 N. Green Street, Entrance E in Morganton, N.C. Those present were:

**COMMISSIONERS:** Johnnie W. Carswell, Chairman  
Scott Mulwee, Vice Chairman  
Wayne F. Abele, Sr.  
Jeffrey C. Brittain  
Maynard M. Taylor

**STAFF PRESENT:** Bryan Steen, County Manager  
Margaret Pierce, Deputy County manager/Finance Director  
J.R. Simpson, II, County Attorney  
Kay Honeycutt Draughn, Clerk to the Board

**CALL TO ORDER**

Chairman Carswell called the meeting to order at 3:07 p.m.

**APPROVAL OF THE AGENDA**

<b>RESULT: NO ACTION TAKEN.</b>
---------------------------------

**ITEMS FOR DISCUSSION**

**BOC - TOURISM DEVELOPMENT AUTHORITY**

Information from the agenda packet:

The TDA (Tourism Development Authority) was created in 2007 by Session Law 2007-265 (HB 78). Due to the age of the current tourism model, new tourism related trends and ongoing LGC (Local Government Commission) findings, a comprehensive review of the Authority is necessary.

Background: On September 5, 2019, the TDA received a "corrective action" letter from Sharon G. Edmundson, Director, Fiscal Management Section, N.C. Department of State Treasurer. After analyzing the TDA's financial statements for the year ended June 30, 2018, the State identified the following areas of concern:

1. Violations of NCGS 159-31(b): The Authority's bank deposits were not properly collateralized in excess of the FDIC limit and the amounts exceeded the FDIC limit during the year.
2. Violations of NCGS 159-28(d)(1): The Authority's checks did not have the required signed certificate on them stating that "This disbursement has been approved as

required by the Local Government Budget and Fiscal Control Act.”.

3. The Authority’s procedure to spend the occupancy tax collected is not in accordance with Session Law 2007-265 House Bill 78.

Another concern mentioned in the letter was the Authority’s failure to submit its required IRS 941 forms by the due dates. The agenda packet also contained an email from Margaret M. Pierce, Deputy Co. Manager/Finance Director and an ex-officio member of the TDA dated November 19, 2019 to the County Manager, Commission Chair and Vice Chair, outlining several financial issues: Director’s failure to understand that all agreements/contracts must be pre-audited, material errors in the Authority’s balance sheet and profit/loss statement, the Authority’s audit firm failure to acknowledge two (2) key weaknesses in the internal controls of the TDA, segregation of duties and financial statements being written by the audit firm, not the TDA.

Chairman Carswell said this meeting has been called to discuss reports from the Local Government Commission (LGC) regarding the Tourism Development Authority (TDA), and any oversight responsibilities the County may or may not have. Chairman Carswell then turned the meeting over to Vice Chairman Mulwee, who represents the Commissioners on the TDA Board. Commissioner Abele has served on the TDA Board for many years representing the restaurant industry and is a current member of that Board. Vice Chairman Mulwee said a restructuring of the TDA may be in order at a later date, but for today, they are trying to clarify what the TDA should have been doing since its creation in 2007, such as presenting financial reports to the Board. He said in the past, there was probably some miscommunication between the County and the TDA and it was decided that reporting was not needed. He advised that this is not an indictment of anyone and reiterated that the Board is seeking clarity in moving forward with the TDA and to make sure any questions are answered today. Vice Chairman Mulwee commended the TDA, expressed pride in being a member of that Authority and said that TDA Director Ed Phillips does a good job. Going forward, he said some aspects of the TDA may need to be changed to make things easier for the TDA, its Board and the Commissioners to work together. He asked if any of the Commissioners had questions. Commissioner Taylor reviewed the documentation included in the agenda packet and questioned why there has not been more communication from the TDA board on the issues outlined in the LGC letter and what steps/recommendations are they making to address them. He said the Board has done nothing but praise the success of the TDA and tourism in Burke County and that should be kept in mind moving forward. He said he is pleased that no major decisions are being made today and said this meeting could be called a fact-finding session. Commissioner Brittain said as he looked through the information, he is not sure the TDA has been operating in the manner prescribed in the 2007 legislation. He asked if the funds that are supposed to go into three (3) separate accounts for Burke County, Morganton, and Valdese are being allocated and spent as legislated. Commissioner Abele said, referencing page 12 of the agenda packet, that he was never involved in the 2007 “request to approve a resolution to authorize Burke County to levy an additional three (3) percent occupancy tax and to make other administrative changes”, the City of Morganton tried to secretly have the three (3) percent occupancy tax directed to them. He said he and other officials had to travel to Raleigh to amend the potential legislation. Margaret Pierce, Deputy County Manager/Finance Director, answering Commissioner Brittain’s question, said the County remits the total of the funds net of the three (3) percent administrative fee for tax collection to the TDA monthly. She said the TDA director receives the fund distribution information and as she understood prior to the audit findings, worked with the municipalities to distribute the funds. However, the audit stated the funds were not being handled correctly. Ms. Pierce clarified that the County is not involved in the distribution of funds, the County sends the

TDA one (1) check (monthly) and the TDA is supposed to ensure the funds are distributed to the municipalities. In response to a question from Commissioner Brittain, Vice Chairman Mulwee said the accounting has been corrected. Discussion ensued regarding the proper distribution of the TDA funds, as statute requires, to the municipalities. It was noted that any change to the distribution formula would require legislative action. Commissioner Brittain asked what are the duties of the Burke County finance officer which serves as the ex-officio finance officer on the TDA Board. J.R. Simpson, II, County Attorney, stated the finance officer is entitled to any requested information, can have his/her questions answered, and could come to the Board if any problems arise. In response to a question from Commissioner Brittain concerning management of the TDA funds, Attorney Simpson said the County has a responsibility to ensure the funds are utilized as the local legislation prescribes. Chairman Carswell asked how the County is supposed hold the TDA to the local legislation requirements and reiterated his earlier point that he wants to make sure the County has completed its due diligence. Attorney Simpson said once the errors were brought to the County's attention, they were addressed. Commissioner Brittain asked how far the County's responsibility goes in ensuring the LGC's recommendations are met. Attorney Simpson advised that the County has the ability to dictate action, especially once issues are made known by the LGC and that the County is responsible for ensuring that the TDA is addressing the findings in the audit. When asked if the revenues could be withheld from the TDA, Attorney Simpson said the County could withhold funds, although that is not stated in the local legislation, because it would be the County's only recourse for dealing with violations of the local legislation and he would recommend the County do so. Next, Commissioner Brittain asked about the appointment of the TDA chair. Chairman Carswell reported the Board did appoint Ms. Polly Leadbetter as the chair of the TDA Board and asked the Clerk to provide the date. Meanwhile, Attorney Simpson said the main control the County has over the TDA is the appointment of members to their Board and if the County is aware of issues that are occurring that should not be, then the County can withhold funds until the issues are corrected. He further stated it would be in the County's best interest to obtain additional local legislation specifically stating the County can withhold funds if there are uncorrected problems within the TDA. Commissioner Taylor made several comments on financial compliance requirements of the TDA and the County and Chairman Carswell commented that several of the old letters from the LGC went to former TDA Board members that he did not know. Chairman Carswell then asked what is the LGC's role as it relates to tourism authorities. Attorney Simpson said TDAs are local government organizations (a public authority) by enactment of the local legislation and is therefore subject to the Local Government Budget and Fiscal Control Act, subject to Chapter 159, Local Government Finance, and enforcement from the LGC. In reference to an earlier question, Chairman Carswell reported the Board appointed Polly Leadbetter to the TDA and made her chair on August 19, 2014.

Vice Chairman Mulwee reiterated that some of these problems have been caused by miscommunication and noted that some LGC letters were mailed to the wrong address and never made it to the County or the TDA. Further, he said the TDA Board has had problems with having enough members present for a quorum and suggested the membership and scope of the TDA be expanded in the future, which would require a legislative change. Another concern Vice Chairman Mulwee mentioned was the findings in the 2019 LGC letter. As a possible solution, he recommended the County consider handling the TDA's bookkeeping at the same cost as the CPA firm. Information from the agenda packet identified the following services to be provided by the County:

- Vendor check processing including required annual 1099 reporting
- Payroll processing including employee payments, Federal and State quarterly and annual reporting, retirement reporting, and W-2s
- Financial data entry including deposits and other journal entries as needed
- Bank reconciliation on all accounts held by the TDA
- Annual state required escheat reporting and processing
- Investment recommendations for idle funds to meet NCGS requirements
- Financial reports for Board meetings and as needed by staff
- Annual financial report creation and working with auditor as needed
- Communication as needed with the NC State Treasurer's Office/LGC and other state agencies on financial matters

By utilizing the County staff, the following audit deficiencies would be alleviated:

- Segregation of duties
- Significant audit adjustments
- Timely filing of payroll reports including Federal 941
- Auditor drafting of financial statements
- Issues with non-compliance of NC General Statutes related to financial matters

However, Vice Chairman noted that the County has no desire to take over the TDA. Commissioner Brittain asked if the County did the accounting for the TDA, would that eliminate their audit and combine it with the County's. Ms. Pierce said no because the TDA is a separate entity from the County, however, they are pulled into the County's audit because they are considered a discrete component unit of the County because the Board appoints the TDA Board. In reference to the numerous letters from the LGC over the years, Commissioner Taylor questioned how many times, if any, have potential solutions/recommendations been discussed or acted on by the TDA Board. He also addressed the TDA's quorum issues and their attendance policy. Vice Chairman Mulwee commented on how difficult it is to find members that meet the restrictive criteria set forth in the enabling legislation. Commissioner Abele said he would like to see the TDA resume giving grants to small communities, a practice which has not occurred in many years. Chairman Carswell asked if any applications were received for seats that have been vacant since 2018. Clerk Draughn said there are a number of applications on file now, which were received recently. Discussion ensued on the number of seats on the TDA Board with seven (7) regular seats being identified in the legislation, plus two (2) ex-officio seats. A general discussion ensued. Topics addressed included the appointment of the TDA chair, whether additional legislation is needed and what the County's fiduciary and oversight role is. Commissioner Taylor suggested before any legislation is changed the Board and the TDA Board need to meet to discuss any changes and get their input. Vice Chairman Mulwee concurred with Commissioner Taylor. Commissioner Abele said it is time to rewrite the legislation and expand the TDA Board membership. Commissioner Brittain suggested researching how other county TDAs operate. Chairman Carswell said Clerk Draughn has already completed that research and the Board should have that information. Chairman Carswell commended Mr. Phillips for his work at the TDA but with the recent financial concerns he wanted to have this meeting to get clarity on the situation and to see how the Board wants to proceed. Chairman Carswell and Commissioner Taylor said they do not want to see another letter from the LGC regarding TDA financial deficiencies. Additional discussion ensued regarding how many members are on the TDA Board. Attorney Simpson said from the legislation it is seven (7) members and two (2) ex-officio members, which are the county finance director and the TDA director. At the request of Chairman Carswell, the TDA Director who was in the

audience, confirmed that the TDA Board has seven (7) members. However, Clerk Draughn said for many years the county has appointed nine (9) members plus the two (2) ex-officio members for a total of 11 members. Note: After the meeting, a resolution adopted by the Commissioners on October 20, 2009 increasing the membership of the TDA to nine (9) was located and provided to the Board as well as the TDA Director. It is included in the meeting minutes for reference.

**A RESOLUTION CLARIFYING THE APPOINTMENT AND MEMBERSHIP OF THE BURKE COUNTY TOURISM DEVELOPMENT AUTHORITY**

WHEREAS, on October 16<sup>th</sup>, 2007, the Burke County Board of Commissioners adopted a Resolution creating the Burke County Tourism Development Authority, AND

WHEREAS, that Resolution provided for the Appointment and Membership of the Authority, AND

WHEREAS, the Burke County Board of Commissioners desires to clarify that Resolution as it relates to the appointment and membership of the Authority;

NOW THEREFORE BE IT RESOLVED, The Burke County Tourism Development Authority shall consist of nine (9) members. One-third must be individuals who are affiliated with businesses that collect occupancy tax in the County, and at least one-half must be individuals that are currently active in the promotion of Travel and Tourism in the County. Of the total membership, one (1) member must represent the City of Morganton, one (1) member must represent the Town of Valdese, and one (1) member must be a County Commissioner, AND

BE IT FURTHER RESOLVED, THAT, the appointment of Authority members shall be made by the Board of County Commissioners in such a manner as to create a system of staggered terms whereby either four (4) members terms or five (5) members terms will expire in any given year. All Terms shall expire on December 31<sup>st</sup>.

In order to establish such a staggered schedule, the Board of Commissioners shall appoint four (4) individuals to terms expiring December 31, 2010 and five (5) individuals to terms expiring December 31, 2011. Subsequent appointments shall be for two (2) year periods, except for the County Commissioner member whose term shall always be one (1) year. All other provisions of the October 16, 2007 resolution remain unchanged and continue in full force and effect.

Duly adopted this 20<sup>th</sup> day of October, 2009

Signed Ruth Ann Suttle  
Ruth Ann Suttle, Chair of the Burke County Commissioners

Attest: Doris S. Smith  
Doris S. Smith, Clerk to the Board



In response to a question from Chairman Carswell, Clerk Draughn reported all the seats have

one (1) application on file. County Manager Steen reminded the Board that if someone is not meeting expectations and not doing their job, then the Board does not have to reappointment them to the TDA Board. Attorney Simpson suggested making the appointments at the next regular Board meeting which would allow for more time for additional applications to be submitted. Discussion ensued on how quickly a meeting with the TDA would be needed and what the timeline would be for any legislative changes. Chairman Carswell asked the Clerk to add the TDA appointments or reappointments to the January agenda. Vice Chairman Mulwee said if the Board made the appointments at the next regular Board meeting (January 21, 2020), and then the legislation was re-written, could the Board then appoint a completely new TDA Board. Attorney Simpson said as long as that was stated in the legislation. Chairman Carswell asked Vice Chairman Mulwee to lead the effort to work with the TDA and find the language that both parties can agree to moving forward.

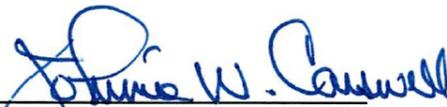
**RESULT: NO ACTION TAKEN.**

**ADJOURN**

**Motion: To adjourn at 4:10 p.m.**

**RESULT: APPROVED [UNANIMOUS]**  
**MOVER:** Maynard M. Taylor, Commissioner  
**AYES:** Johnnie W. Carswell, Scott Mulwee, Wayne F. Abele, Sr., Jeffrey C. Brittain and Maynard M. Taylor

Approved this 19<sup>th</sup> day of May 2020.

  
Johnnie W. Carswell, Chairman  
Burke Co. Board of Commissioners

Attest:

  
Kay Honeycutt Draughn, CMC, NCMCC  
Clerk to the Board