

Haywood County “Toeprints”

August 4, 2019

Vol. #10 Issue #2 (Subject: David Francis Dirt Spreading Bids, Public Record Requests)

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.

Obstruction within Haywood County Government.

Generally speaking, Haywood County Government has complied with Requests for Public Information, i.e., Public Records Requests. Three (3) recent requests seem to have hit a nerve.

- Bid Submissions by four bidders for the **James Weaver “Kirk” Kirkpatrick the III** Super-Duper Sports Complex, a.k.a. the **David Francis** Dirt Spreading Project,
- Total legal expenses for a year long lawsuit (08CVS51) involving the same property,
- Total expenses since 2008 for the Francis Farm Landfill.

To date, I have finally received the four original bids for the **David Francis** Dirt Spreading Contest, along with a partial indication of how much the county charged for 08CVS51, and some sparse indecipherable documentation relating to expenses for the Francis Farm Landfill.

This issue of Toeprints will focus on the first topic, Bid Submissions by four bidders for the **James Weaver “Kirk” Kirkpatrick the III** Super-Duper Sports Complex, a.k.a. the **David Francis** Dirt Spreading Project.

Public Access to Public Government Records.

Access to Public records are described by Roy Cooper’s handbook,

[NC Guide to Open Government and Public Records - Roy Cooper, NC Attorney General. 12/01/2010...](#)

also -

<https://www.haywoodtp.net/pubII/101201agncpapub.pdf>

and by the Haywood County Ordinance -

<https://www.haywoodcountync.gov/DocumentCenter/View/1050/attach-18-public-records-request-policy?bidId=>

[Editors Note: If a link does not work, copy and paste the text into your Internet Browser.]

Access (or denied access) to Public Records are described in

North Carolina General Statutes:

§ 132-1.3 - **Settlements made by or on behalf of public agencies, public officials, or public employees; public records.**

§ 132.9 -**Access to records.**

(a) Any person who is denied access to public records for purposes of inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders if the person has complied with G.S. 7A-38.3E. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project. ...

“Dirt convoy could be catalyst for J-Creek tract”

An article appeared in the Mountaineer, written by **Becky Johnson** on June 12, 2019, “Dirt convoy could be catalyst for J-Creek tract”.

https://www.themountaineer.com/news/dirt-convoy-could-be-catalyst-for-j-creek-tract/article_5b1f2df4-8c00-11e9-8215-8b66ae936132.html

The article shows a photo of **David Francis** and another individual, presumably from McGill opening these public bids in the historic courtroom. Four bids were received and opened, “ranging from less than \$500,000 to more than \$ 1 million.”

That’s as close as the public got to those bids for nearly 2 months. I attempted to access those bids, and here is where the problem started.

The following is the text from my Public Comment at the June 17, 2019 County Commission meeting:

<http://www.haywoodtp.net/pubII/190617PublicComment.pdf>

My Public comment is regarding perceived Bidding Irregularities with the **David Francis** Dirt Spreading Project.

“Dirt convoy could be catalyst for J-Creek tract”, wrote **Becky Johnson** in the Mountaineer on June 12. There was a public BID OPENING on Thursday, June 6, in this very courtroom by David Francis and another un-named individual, presumably from **McGill Associates**.

“Four contractors bid on a project to haul, spread and compact more than 3,000 dump truck loads of dirt on a 22-acre tract in Jonathan Creek”, she wrote. “Bids were opened last Thursday in the Haywood County historic courtroom with some of the bidders present.”

That was the last time those bids ever saw the public light of day.

Since then, I have made two public record requests from the county, specifically from **Bryant Morehead**, your county manager, to inspect those four bids, and for the Bidding Documents - Jonathan Creek Soil Reclamation Project, which were generated by **McGill**.

I am told that the county does not have copies of the bids. **McGill** has possession of the bids. **Bryant Morehead**, during a meeting with him Thursday, June 13, wondered if those bids were even public documents. I requested that he contact **McGill** and have those documents scanned by **McGill**, sent to Candy Way, and have her send them to me by the close of the business day on Friday, June 14.

I’ve got nothing.

Additionally, when I requested a copy of the Bidding Documents, the document that bidders used to respond to this bid, I was informed that document, which had resided on the **McGill** website, had been taken down. The county did not have a copy of those Bidding Documents, I was told. What?

This bidding process appears to be in total lock-down, orchestrated by **David Francis** and **McGill**, to intentionally thwart any public inspection of these bids.

Why didn’t the county make a copy of the bids prior to handing them to **McGill**? Was this intentional, or simply incompetence?

McGill is presumably analyzing the bids, and will produce a Bid Tab, a bidding tabulation, in which they will determine who the best bidder is. This is in their contract to do this, **Bryant Morehead** informed me. That recommendation will be submitted to county commissioners for approval.

Why didn’t the county analyze these bids?, I asked. Well, according to **Bryant**, this is not like bidding for a Dodge Truck, it is too complicated for us.

The problem here is that **McGill** is a vendor, and not subject to a Public Records Request, and the county seems powerless to retrieve these bids and Bidding Procedure from **McGill**.

McGill does a lot of engineering contracts, and could potentially stand to gain depending on which vendor is finally selected, including but not limited to doing engineering work for the selected vendor.

In order to eliminate even the appearance of impropriety, **McGill**, a single source engineering company for the county, should be ordered to produce all four bids, and put the Bidding Documents back on their website.

By the way, the last bidder on the **David Francis** Dirt Spreading Project, **Avcon**, apparently has never been paid. Why is that? An invitation for another lawsuit?

Since **Bryant Morehead** appears either unwilling or powerless to extract copies of these bids from **McGill**, I am now seeking assistance from State authorities to obtain these bids, a procedure I had used in the first bidding process. I’ll let you know what happens.

I appreciate your allowing time for me to express my concerns. Thank you.

After a series of e-mails between **Bryant Morehead** and others, I received a copy of the Bid Documents on June 17, 2019 from **Bryant Morehead**.

<http://www.haywoodtp.net/pubII/190617JonathanCreekAndDennisFarmProject-BiddingDocumentsAndDrawings.pdf>

[**Editors Note:** This was not the final document that was sent to the bidders, as there is an extra line item in the BID SCHEDULE bidders were provided, “6a - Rock Excavation”, that does not exist in the BID DOCUMENT that was provided to me. I have requested, but not received the BID DOCUMENT that was sent to the bidders.]

McGill Recommendation of Award Package.

I received a copy of the Recommendation of Award document written by **McGill** from **Bryant Morehead** on July 29, 2019, which I did not request. The document was dated July 5, 2019. This document was sent to me one (1) week before the August 5 County Commission meeting. This is a tactic employed by various county employees to provide as little time as possible to research issues before it is presented to commissioners for a vote.

I again requested the four (4) bids.

I finally received the four (4) bids from **Bryant Morehead** on July 31, 2019.

Kevin Ensley [RINO] spontaneously sent an e-mail to **Bryant**, saying: “**Thanks Bryant!! As a FYI, The documents were submitted because of timing.**”

Timing of what? It took 48 days to receive these Bid Documents when it should have only taken 10 days.

See the Bid Documents on www.haywoodtp.net

<http://www.haywoodtp.net/pubII/190731GrahamCountyLandCompanyLLC-BidDocuments.pdf>

<http://www.haywoodtp.net/pubII/190731JLS-CompanyLLC-BidDocuments.pdf>

<http://www.haywoodtp.net/pubII/KandT-Construction-CompanyRLLP-BidDocuments.pdf>

<http://www.haywoodtp.net/pubII/NHM-ConstructorsLLC-BidDocuments.pdf>

Rush to get this placed on the agenda.

This approval for this bid recommendation is now on the August 5, 2019 County Commission agenda for commissioners to vote.

3. Request approval to award bid to K and T Construction Company RLLP for the Jonathan Creek Soil Reclamation project in the amount of \$494,238.50 to be paid from budgeted funds – Program Administrator **David Francis** Documents: [attach-15-JC Bid award.pdf](#)

Recommendation is for the bid to go to the low bidder. Tell me **Bryant Morehead** could not have figured this out.

Issues with the Bids.

Unfortunately, county employees only provided a couple of days to analyze these bids, which should have been made available on June 12, 2019. There are several observations thus far...

- Three of the four bids provided by the bidders to not match the table provided in the **McGill** letter of July 5, 2019. There has been no satisfactory reason why.
- Bids range from a half million to a million dollars. Does that raise a red flag for anyone? Why the wide variance?

In an attempt to briefly analyze the data, I calculated three scenarios.

1. What would the bid be if I took every bidders low bid on each line item?
2. What would the bid be if I took every bidders high bid each line item?
3. What would the bid be if I took an average of all four bidders ranges for each of the line items?

Here are the results.

1. \$ 469,113
2. \$ 1,200,386
3. \$ 727,554

Why is the low bidder significantly below what everyone collectively thought would cost more, i.e., three quarters of a million dollars?

Conclusion.

Why the [expletive deleted] are commissioners even considering dumping another half million dollars into this money pit?

Teaser...

Wait until you find out where the money came from to pay Chip, a.k.a. Leon Killian and Reed Hollander of Nelson Mullins during their year long lawsuit over this property.

<http://www.haywoodtp.net/pubII/190208-08CVS51.pdf>

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

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Si vis pacem, para bellum