

## Community Calendar

### Hot Springs Health Program To Consider Expansion

The Hot Springs Health Program membership will consider a resolution to expand service to the Mars Hill area at a hearing to be held tonight at 7 p.m. at the Laurel Volunteer Fire Dept. station.

The program currently serves the Marshall, Walnut, Hot Springs, Spring Creek and Shelton Laurel sections of Madison County. Members were notified of the hearing last week by mail.

The program's board of directors have already endorsed the expansion to provide medical services in the Mars Hill, Beech Glen and Ebbs' Chapel communities.

### County Commissioners Meet Monday

The Madison County Board of Commissioners will hold their regular monthly meeting on Jan. 6 at 1 p.m. in the Madison County Court House. The commissioners are expected to discuss the repair project to restore the courthouse during Monday's meeting.

### Mars Hill Aldermen Meet Monday

The Mars Hill Board of Aldermen will meet on Jan. 6 at 7:30 p.m. in the Mars Hill Town Hall.

### Hot Springs Board Meets

The Hot Springs Board of Aldermen will meet on Jan. 6 at 7:30 p.m. in the Hot Springs Town Hall.

### School Board Meeting Jan. 8

The Madison County Board of Education will hold its monthly meeting on Jan. 8 at 10:30 a.m. in the Madison County Court House.

# DOT Board Postpones Spring Creek Road Plans

The Martin administration has placed three Madison County road projects on the back burner according to a report released by Speaker of the House Liston B. Ramsey. The three projects include improvements to U.S. 25-70 from the intersection of N.C. 208 to Hot Springs, U.S. 25-70 from Hot Springs to the Tennessee state line and a new road to be built from Marshall to the Spring Creek area.

The three local road projects are among 150 projects approved by the administration of former Gov. James B. Hunt Jr. which were postponed in the current year by the new ad-

ministration.

Information on the postponements was included in a report to the House Speaker prepared by Thomas L. Covington, director of the fiscal research division of the General Assembly's Legislative Services Office.

Ramsey requested the report concerning the Transportation Improvement Program (TIP) after the Martin-appointed board changed the Hunt administration's program.

The proposed road from Marshall to Trust was one of the big losers among the postponed road projects. Originally planned for a 1985 starting

date, the project was tabled until 1985 by the Martin administration, with no completion date for the project. The plan approved by the Hunt administration called for completion of the road in the 1987 fiscal year.

The proposed Spring Creek road is also the project which federal investigators probed in obtaining mail fraud indictments against former transportation board member Zeno Ponder and members of his family. Ponder has donated right of way to the state for the proposed road.

The Martin administration also set back both U.S. 25-70 projects several years in approving the new TIP plan.

Work from N.C. 208 to Hot Springs, originally approved for 1985, has been rescheduled to 1987. Improvements to U.S. 25-70 from Hot Springs to the state line, originally approved for a 1983 completion date, have been set back to 1990 according to the report.

The report also indicated that the Martin-appointed transportation board has cancelled some 18 projects costing an estimated \$13.2 million that were previously approved during the Hunt administration. None of the cancelled road projects are in Madison County.

# Federal Judge Refuses To Dismiss Charges Against Ponder

U.S. District Court Judge David Sentelle refused to dismiss charges of mail fraud against Zeno Ponder, Marie Ponder, Leonard Ponder and Marshall Kanner during a Monday hearing in Asheville.

Attorney Herbert Hyde asked the court to dismiss the indictments handed down on Dec. 4 by the federal grand jury. Hyde told the court that the indictments did not satisfy re-

quirements of the mail fraud statutes because it was not clearly demonstrated that any false promises were made.

The indictments charge Ponder, his wife Marie, nephew Leonard Ponder and business associate Leonard Ponder with six counts of mail fraud in connection with land purchases made between 1982 and 1984.

The first count of the indictment

charges that Ponder and the others formed a trust to speculate in Madison County real estate in 1982. The indictment charges that Ponder, as a member of the state transportation board, had inside information on future road improvements planned for the county.

In presenting his argument to the court, Hyde said that the law does not require land purchasers to inform

buyers that the state is expected to improve the property. He added that the indictment fails to allege that Ponder violated his trust as a member of the transportation board.

Ponder maintains that he purchased the property in order to give the state a free right-of-way for the proposed Spring Creek-Marshall road.

In 1984, a state investigation of the land purchases cleared Ponder of wrongdoing.

# SBI Director Criticizes U.S. Attorney's Handling Of Zeno Ponder Mail Fraud Case

By TODD COHEN  
The News and Observer

In August, 1984, two state prosecutors ended an investigation of Zeno H. Ponder by announcing they had insufficient evidence to indict the Madison County Democratic leader on a charge of misusing his position on the state Board of Transportation.

On Dec. 4 almost 16 months later, a federal grand jury in Asheville indicted Ponder, 64; his wife, Marie; his nephew, Leonard Ponder; and business associate Marshall Kanner on six counts each of mail fraud.

The separate state and federal investigations focused on the same 19.5-acre tract in Madison County that Ponder bought in 1982 while on the transportation board. The purchase was negotiated less than two months before the board approved the construction of a long-promised road through the property.

Ponder bought the property through his attorney, Larry Leake, from O.C. and Jane Davis of Madison County. He later gave the state free use of 2.5 acres for right of way for the road. The road would connect the western part of Madison County with Marshall, the county seat.

The federal indictment accuses Ponder and the three others of sending deeds through the mail as part of a scheme to buy land in Madison County on which or near where they knew the state would build or improve roads.

Ponder said recently by telephone that he was not guilty and that the federal indictment had been politically motivated. U.S. Attorney Charles R. Brewer, chief federal prosecutor in Western North Carolina, is a Republican.

He said that Republican U.S. Sen. Jesse A. Helms, who recommended Brewer to be a U.S. attorney, has announced during his re-election campaign last year that he wanted the U.S. Attorney's office to observe Ponder closely.

"I charge that that is political harassment," said Ponder, who was appointed to the transportation board by Democratic Gov. James B. Hunt Jr. Helms' 1984 opponent. Ponder, who served on the board from 1981 to 1984, is the brother of Madison County Sheriff E.Y. Ponder and a former chairman of the county Democratic Party and the county Board of Elections.

Brewer denied Ponder's accusation and said he had obtained "a good, legitimate indictment."

He said that while both investigations had focused on the same property, federal prosecutors developed the case "outside of anything the state had done."

"We did not take anything the state gave us and use it as a basis of a federal indictment," he said.

Brewer would not comment on the state's investigation or compare the difficulty of obtaining an indictment under

federal and state law.

The indictment was based on the federal mail fraud statute, which makes it a crime to use the mail as part of a scheme to defraud. That law is not available to state prosecutors.

A violation can occur without someone having actually gained or lost something as a result of a fraud, Brewer said. Merely scheming to defraud, he said, might be enough to obtain a conviction, as long as the mails were used to advance the scheme.

The state investigation was headed by Wake County District Attorney J. Randolph Riley, a Democrat, and District Attorney James T. "Tom" Rusher of Boone, a Republican whose district includes Madison County. They began their probe at the request of a legal adviser to Hunt.

Hunt's office made the request in June, 1984 after learning that the transportation board had approved construction two years earlier of the road that will pass along the 19.5-acre tract.

Riley said he was not familiar with the federal indictment or federal mail fraud law, or with how evidence gathered by federal investigators may have differed from evidence obtained by the state.

But he added that it was "not uncommon for a given set of facts to provide a basis for prosecution under the

statute of one jurisdiction but not of another."

Under one state statute considered in the state investigation, prosecutors would have had to find evidence that Ponder had profited from his position on the transportation board or had engaged in a land transaction with the Dept. of Transportation while he was a board member.

Under another state statute, which makes it a felony to obtain property or services with intent to defraud, prosecutors would have had to show that an intentional misrepresentation of a fact on which someone had relied in disposing of property.

Brewer said federal prosecutors, to obtain a conviction, will have to show a "general intent to have a scheme and artifice to defraud somebody."

Riley said that simply attempting to obtain property by false pretenses also might constitute a state crime under common law established by state courts. Prosecuting such a violation would require at least "some substantial evidence of preparation to follow through with that crime," he said.

Rusher and Riley ended their investigation in August, 1984 without seeking an indictment.

They said Ponder's gift of the right of way to the Department of Transportation did not amount to the sale

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# Lawsuits May Change Nuclear Dump Site Schedule

By MONTE BANGALL  
The News and Observer

With a decision expected next month on whether North Carolina will remain in the running for the nation's first high-level radioactive waste burial site, some environmentalists are worried that the government might open the repository earlier than originally planned.

Because of lawsuits filed by states under consideration to be the first site, concerns have been raised that the government might make the second site the first.

By mid-January, some sources say Jan. 16 the U.S. Dept. of Energy will name 15 to 20 sites in four to six states for further study as possible locations of the second underground repository, state and federal officials said recently.

North Carolina officials have speculated that the Beboville pluton, a granite deposit underlying much of western Franklin and Vance Counties, may be just the kind of crystalline rock body that federal officials are

looking for. The pluton is a deep, massive underground deposit of granite that stretches for miles, part of which could be hollowed out for a repository.

In all, 236 sites in 17 states in the Southeast and upper Midwest are under evaluation for the second repository. All those sites have massive underground formations of crystalline rock such as granite, quartz and gneiss; 60 of the rock bodies are completely or partially in North Carolina.

No state wants to be named the site of a repository because spent fuel rods from atomic reactors and waste from the production of nuclear bombs would be stored there for thousands of years while they slowly lose their lethal radioactivity.

Three Western and South-Central sites are under consideration to be the first repository, but the states involved have filed lawsuits challenging the selection process, and the energy department has decided to re-evaluate the way those sites were chosen.

Plans call for the second repository to begin accepting high-level waste by the year 2000. A final list of three possible sites would be selected by

the mid-1990s.

By then, according to current timetables, the first site will have been chosen. The first repository is scheduled to begin operation in 1988, the year in which the federal government is under contract with electric power companies to begin accepting their high-level waste.

But some environmentalists are worried that the pending lawsuits, combined with the government's need to have a repository in operation in time to fulfill its contracts, could prompt federal officials to rearrange their plans.

The energy department was supposed to narrow the list of possible crystalline rock sites last month, but postponed the decision.

Janet M. Hoyle, who heads a North Carolina group called the Blue Ridge Environmental Defense League, is worried about what the postponement might mean for North Carolina and the other 16 states in this round of the selection process.

"It may be happening because the Department of Energy is trying to decide whether to make the second repository the first," she said in a telephone interview.

Mrs. Hoyle of Ashe County said she first had heard the speculation last year, and that it also had been discussed during a recent meeting in Boston of groups representing residents of all 17 states that are part of the crystalline rock evaluation.

The rationale for such a move, she said, is that the energy department may be bogged down by lawsuits over its search for the first site. In addition, the federal law authorizing the search for high-level repositories, the Nuclear Waste Policy Act, "has been followed more closely in the second round than in the first," she said.

That means what has been the search for the second site could better survive a court challenge and proceed with fewer impediments, she said. She said time was important because the government was contracted to accept some utilities' high-level wastes by Jan. 31, 1986.

"There is nothing implicit in the act that says that the first repository will be in the West and the second in the East," Mrs. Hoyle said.

Brian J. Quirke, an energy department spokesman in Argonne, Ill., said that while officials had no plans now to shut down and choose one of the crystalline rock bodies as the site of the second repository, nothing in the law would keep them from doing so.

"There is nothing that prevents our

using all the crystalline sites in the nomination process for the first repository, but we don't intend to do that," Quirke said.

"Our plan right now, and our intent, is to follow through with the first repository search and then go about looking for the second repository."

In 1983, federal officials began evaluating nine sites in six states—Louisiana, Texas, Washington,

Nevada, Mississippi and Utah—for selection as the first repository. Three of those sites—in Texas, Washington and Nevada—remain in the running.

Each of those six states has sued the government to avoid being picked as a repository, challenging the guidelines used in the selection process.

Quirke acknowledged that the screening process for the second site had "much more closely conformed to the intent and letter of the law."

The reason is that all the selection process guidelines had not been worked out when evaluations began for the first repository, he said.

Quirke said the energy department has not yet decided whether to open a repository in Nevada, New Mexico or Utah.

again, applying more sophisticated techniques than had been used before.

He said the energy department has "a fair amount of confidence" that the new screening would yield the same three sites. He also said that "we do not expect lengthy delays through court action."

Sites that are not selected for the first repository could be considered for the second repository along with

the crystalline rock bodies, Quirke said.

It is not yet certain that a second repository will ever be built in crystalline rock in North Carolina or any other state because of unanswered questions about whether that kind of rock is appropriate.

"We have some very basic understanding of working with crystalline rock, but no one by any means is saying that we know it all, and no one is saying we have all the information we need to site a repository in crystalline rock," Quirke said.

Energy officials plan to accept