

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
OCTOBER 18, 2004**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Grady Hawkins, Vice-Chairman Larry Young, Commissioner Bill Moyer, Commissioner Charlie Messer, Commissioner Shannon Baldwin, County Manager David E. Nicholson, County Attorney Angela S. Beeker, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Karen C. Smith, Budget and Management Director Selena Coffey, Paralegal Connie Rayfield, and Public Information Officer Chris S. Coulson. Deputy Clerk to the Board Amy Brantley was present through nominations.

CALL TO ORDER/WELCOME

Chairman Hawkins called the meeting to order and welcomed all in attendance.

PLEDGE OF ALLEGIANCE

Commissioner Moyer led the Pledge of Allegiance to the American Flag.

INVOCATION

David Nicholson gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Baldwin requested an addition under Discussion Items as "E – Cemeteries/grave sites"

There were no other adjustments.

Chairman Hawkins made the motion to accept the agenda as amended. All voted in favor and the motion carried.

CONSENT AGENDA

Chairman Hawkins made the motion to accept the Consent Agenda as presented. All voted in favor and the motion carried.

Minutes

Draft minutes were presented for the Board's review and approval of the following meeting(s):
September 20, 2004, regular meeting

Tax Collector's Report

Terry F. Lyda, Henderson County Tax Collector, had presented the Tax Collector's Report dated October 18 for the Board's information.

Tax Releases

A list of 64 tax release requests was submitted for the Board's approval.

DATE APPROVED _____

Tax Refunds

A list of 11 tax refunds was submitted for the Board's approval.

Cane Creek District – Extension

Staff had submitted a routine sewer line extension for the Board's information only. No action was required. The applicant (Bagwell Subdivision or Windsor Aughtry) had requested permission to construct approximately 2,452 linear feet of 8" gravity sewer line to serve their 62 lot residential subdivision.

The sewer line extension will connect to an existing CCWSD Sewer Line. Upon completion of the sewer line extension, the applicant will deed the sewer system to Henderson County. The Applicant will bear the entire cost of the project.

The proposed residential development will generate approximately 18,600 GPD of domestic wastewater, which has been approved for treatment by MSD. The wastewater allocation is not part of Henderson County's 1.35 MGD allocation. The allocation will come from MSD's reserve and the applicant will have to pay the MSD facility fees.

The Henderson County Utilities Department recommended approval of this application being conditional upon the following:

Applicant complying with the sewer use ordinances of Henderson County and MSD and the rules and regulations of the Utilities Department.

The sewer line extension is considered routine since the allocation request will come from the MSD reserve, no funding is requested by the applicant, no annexation is involved.

County Manager, David Nicholson, had approved the request.

Transfer Station Expansion

The volume of solid waste being processed currently at the Henderson County Transfer Station has grown since the Transfer Station was constructed in 1997. Data indicates that in 1998 flow was 37,000 tons, while in 2004 flow is estimated to be 63,000 tons. Because the Transfer Station is approaching its maximum capacity, it is time to begin planning for the addition of the second bay.

When the transfer station was originally designed and constructed, the addition of a second bay was anticipated; therefore the Station was designed and placed to accommodate the second bay. Additionally, preliminary design work was done for the second bay at that time.

Staff believes it would be advisable to proceed to negotiate a contract with the engineering firm that originally designed the Transfer Station, Cam, Dresser, and McKee (CDM), as they have already performed the preliminary design work, and collected the necessary data to design the second bay. They are very familiar with the site, and would require much less time to complete the design of the second bay than another firm would. Additionally, they provided excellent service to the County previously.

NCGS 143-64.32 allows the Board to exempt itself from the bidding requirements for design services. A resolution had been prepared to accomplish this exemption, and was presented for the Board's consideration on this project.

Fletcher Fire & Rescue Loan

Fletcher Fire and Rescue is planning to build a sub-station in the Naples area along the Asheville Highway. The department plans to borrow \$1,400,000 to refinance the main station at a lower interest rate, and for construction of the sub-station. First Citizens Bank and Trust Company will provide financing at an interest rate of 3.92% for sixteen years with an annual payment of \$114,000.

The refinance and construction project was discussed with the Fire & Rescue Advisory Committee on June 21, 2004, resulting in a favorable recommendation by unanimous vote.

Fletcher Fire & Rescue respectfully requested the Chairman sign the prepared letter to First Citizens Bank and Trust Company.

Mr. Nicholson recommended that the Board approve this request based on the vote of the Fire and Rescue Advisory Committee's action.

Budget Amendment

A proposed budget amendment was presented for the Board's review and approval to place funds back in the departmental budgets as requested by the Board of Commissioners at their October 4 meeting to cover the cost of bonuses to be awarded to employees during the current fiscal year. These funds were originally appropriated in the General Fund Budget (Human Resources Department) to cover the cost of beginning to implement the results of a compensation study that will be conducted in the current fiscal year, but would be deferred for funding until Fiscal Year 2006. Therefore, no new funds are required in the current budget to cover the cost of paying employee bonuses in the current fiscal year.

Deed of Release

The Board was presented with a Deed of Release, releasing the County's security interest in a residential property that was going to be receiving improvements as a part of the Scattered Site Housing Program being administered by the County as part of the Community Development Block Grant. The property owner had indicated that she no longer wishes to participate in the Program and she requested that the Deed of Trust which secures the monies that would have been spent from the Grant be released.

No monies from the Grant have been spent on this property.

The County Attorney had prepared the Deed of Release and requested that the Board approve it. The County Manager also recommended approval.

Request for Extension of Improvement Guarantee for The Homestead at Mills River, Phase I

On March 17, 2004, the Board of Commissioners approved an application submitted by The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC, for an improvement guarantee for Phase I of a subdivision known as The Homestead at Mills River. As required by the Performance Guarantee Agreement for the improvement guarantee, the developer posted with Henderson County a surety performance bond in an amount of at least \$1,807,500.00 to cover the cost of completing improvements in The Homestead at Mills River, Phase I, including earthwork, road construction, installation of erosion control measures and storm drainage work. The actual amount of the bond provided to the County was \$1,886,250.00. The Agreement also required that the required improvements be completed by October 31, 2004. The expiration date on the bond is December 31, 2004.

The Planning Department has received a letter from Scott McElrath, Manager of The Homestead at Mills River, LLC, requesting that the County extend the deadline for completing the improvements specified in the original Agreement by eight (8) months. The proposed new completion date would be June 30, 2005. Mr. McElrath's letter states that wet weather and the need to blast rock have delayed progress in completing the improvements. Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners "upon proof of difficulty" to grant extensions to completion dates for improvement guarantees for a maximum of one additional year, provided that the time between initiation and completion of the improvements does not exceed two years.

If the Board of Commissioners agrees to extend the completion date for the improvement guarantee for The Homestead at Mills River, Phase I, staff had prepared for the Board's consideration a draft Performance Guarantee Agreement which reflects a new improvements completion date of June 30, 2005, and requires submittal of an amendment to the surety performance bond showing an expiration date not earlier than 60 days after such new improvements completion date. The new Performance Guarantee Agreement must be executed by the relevant parties if the Board approves the extension request.

The County Manager expressed that the extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements. Therefore, he recommended that the Board approve the request to extend the completion date for the improvement guarantee for The Homestead at Mills River, Phase I, to June 30, 2005, provided that an amended surety performance bond is submitted in accordance with the new Performance Guarantee Agreement.

NOMINATIONS

Notification of Vacancies

The Board was notified of the following vacancies which will appear on the next agenda for nominations:

1. Apple Country Greenway Committee – 1 vac.
2. Hendersonville Planning Board – 1 vac.

Nominations

Chairman Hawkins reminded the Board of the following vacancies and opened the floor to nominations:

1. **Cable Franchise Renewal Advisory Committee – 6 vac.**

There were no nominations at this time so this item was rolled to the next meeting.

2. **Community Child Protection Team – 3 vac.**

There were no nominations at this time so this item was rolled to the next meeting.

3. **Hendersonville Board of Adjustment – 1 vac.**

There were no nominations at this time so this item was rolled to the next meeting.

4. **Hendersonville Planning Board – 1 vac.**

Commissioner Young nominated Steven Orr. There were no other nominations. *Chairman Hawkins made the motion to accept Mr. Orr by acclamation. All voted in favor and the motion carried.*

5. **Juvenile Crime Prevention Council – 4 vac.**

Chairman Hawkins nominated Doug Jones. There were no other nominations. *Chairman Hawkins made the motion to accept Mr. Jones by acclamation. All voted in favor and the motion carried. ⊕*

6. Library Board of Trustees – 1 vac.

Chairman Hawkins said he had talked with Mr. Tom Orr who is already on two Boards. Chairman Hawkins withdrew Mr. Orr's name from nomination. There were no further nominations at this time. *Chairman Hawkins made the motion that Joy Perry be accepted by acclamation. All voted in favor and the motion carried* (Ms. Perry was nominated on 10/4/04).

7. Mountain Area Workforce Development Board – 1 vac.

There were no nominations at this time so this item was rolled to the next meeting.

8. Planning for Older Adults Block Grant Advisory Committee – 2 vac.

There were no nominations at this time so this item was rolled to the next meeting.

SOLID WASTE ADVISORY COMMITTEE (SWAC) REPORT

Bill Ramsey, Chairman of the SWAC, presented their annual report to the Board. He stated that the Committee had worked very effectively with the County Engineer, Gary Tweed. They have met quarterly. Many of their members are completely dedicated to the betterment of our solid waste situation in Henderson County.

Mr. Ramsey started by reviewing their two principal objectives determined for them by the Board of Commissioners:

1. Identify and consider technically feasible and economically viable new technologies for solid waste disposal.

They have explored websites and publications on the topic. They met with Land of Sky representatives on the topic. To date, their search has yet to offer any answers for Henderson County.

Worldwide, only a few waste-to-energy technologies are being tested. The technology is proving difficult as related pollution issues and the economies must be satisfied. If and when a technology emerges, as it appears likely it must, the available waste stream in a rural county like Henderson is not likely to support the investment required to use it. The committee will continue to search for answers.

Conclusion – It is unlikely that any non-traditional method of solid waste disposal will be available to Henderson County over our long-term planning horizon.

2. Reduce litter countywide and seek enforcement of existing laws.

SWAC has communicated with and encouraged its registered Adopt-A-Highway member organizations to participate twice a year in the North Carolina Clean Sweep drives. Reports from the DOT indicate that participation in these events has increased the twice a year pick-up volume. Mr. Ramsey thanked those who have participated and stated they would seek to add more participating groups to the program.

The closing of the Stoney Mountain Corrections facility permanently eliminated the most effective and available litter pick-up labor. We lost approximately 120 full man-days of monthly litter pick-up with that closing.

Committee members have had contact with law enforcement agencies and have been informed that other law enforcement priorities and the difficulty of actually catching anyone in the act of littering severely limits enforcement effectiveness. Rarely are littering tickets written. Our best hope is to

inform and inspire the public. If the public curtails littering, we will enjoy a dramatic reduction in the need for pick-up.

Conclusion – The County is likely to see litter persist at the level now evident.

Mr. Ramsey briefly reviewed some additional SWAC objectives and conclusions:

Prospects for Regional Co-Operation.

Conclusion – Henderson County must solve its own solid waste disposal problem. Transfer to South Carolina landfill location(s) is the only obvious answer for the next several years.

Enterprise Economics.

Conclusion – Henderson County needs to revise or replace the Enterprise approach.

Recycling Needs and Economics.

Conclusion – The County Engineer has a plan for improving the recycling capability and reducing operating expense. We should consider that plan. Henderson County should promote the establishment of a regional MuRF. We must reduce our operating and hauling expenses if recycling is to survive.

Facilities Needs.

Conclusion – We need a second scale to handle the needs of those exiting the site. We need a second transfer bay to keep up with the projected growth in tonnage. We could make these improvements at the present Stoney Mountain location; however, we should also consider creating a second transfer location in the southern part of the county. A new location would make disposal trips shorter for waste haulers and reduce Stoney Mountain highway and site congestion.

Franchising of Waste Haulers.

Conclusion – The County should study the regulations of haulers and consider revisiting the franchising issue. Those services that do not operate appropriate equipment should be required to do so.

Public Education.

Conclusion – We need to organize an active effort to educate the public. Unless this effort is successful, the waste generating public will not understand the existing program or be ready to adapt to and fund needed changes in the future.

Mr. Ramsey stated that for the time being we appear to be alright but there are many things that could go wrong and it's probably time to start looking at alternatives.

WORK FIRST BLOCK GRANT PLAN

Patti Leonard reminded the Board that in accordance with the State biennial planning schedule, Henderson County Department of Social Services had prepared a recommended Work First Block Grant Plan for FY 2005-2007. The State requested the plan be submitted on or before November 1, 2004.

Henderson County's Work First Planning Committee had worked on and reviewed the plan. The Board of Social Services plans to review the plan at their meeting on October 19, prior to it being submitted.

Certification of the Board of Commissioners' majority approval of the plan, with the Chairman's signature, was what was requested.

Mr. Nicholson stated that the plan must be submitted to the State by November 1, 2004. The Board of Social Services will not review it until Tuesday, October 19, 2004. He suggested that the Board approve the Plan contingent on the final approval by the Board of Social Services. He also suggested that the Board give the Board of Social Services some flexibility should they wish to make some minor changes, as long as it doesn't change the basic Plan.

Chairman Hawkins made the motion to approve the Plan (with date amendment as indicated by Ms. Leonard) contingent on approval by the Board of Social Services at their meeting. All voted in favor and the motion carried.

INFORMAL PUBLIC COMMENTS

1. Edward Vogel – Mr. Vogel spoke about the Hwy. #25 North Study. He stated that there are 10 different zones proposed for the study area. The business owners along that road are furious. C2P is proposed for his property (22 acres) which is supposed to be used in “designated historical areas”. He stated that there are no designated historical areas in Mountain Home.

He likened the Planning Board of Henderson County to a benevolent dictatorship. Mr. Vogel asked the Board to please hear the people and not destroy their properties, do this county a favor and increase the tax base.

2. Michael Arrowood – Mr. Arrowood addressed the issue of cemeteries. He is a member of the Sons of the Confederate Veterans. He referred to NCGS 65-1 through 65-3 regarding abandoned cemeteries, which outlines the duties of County Commissioners in this regard.

In recent months they began a project to locate for purposes of memorials all the Confederate Soldiers graves in Henderson County. In addition to that they decided to add in all the Union Soldiers that they discovered in the course of that work.

When they got to the field and began doing the research on the cemeteries, they discovered a much larger problem due primarily to the condition of the cemeteries and the abandoned state of many of them.

Mr. Arrowood stated that they realize this is primarily a private property issue and a family issue and that many of these cemeteries are in fact on private land. In Henderson County we have 67 church-maintained cemeteries and 112 family cemeteries. The biggest problems are in the family cemetery areas. Not only is this a family responsibility but they feel it is a county responsibility that needs to be brought to the attention of the Board of Commissioners.

As a result of their findings, Mr. Arrowood read three proposals for the Board of Commissioners: “In light of the deplorable conditions of cemeteries found in the course of SCV survey efforts and the responsibility outlined in GS 65-1 through 65-3 we hereby request that the County Board of Commissioners take the following steps: 1. Designate a specific county agency and individuals to assume responsibility for the registration and preservation of cemeteries and note that responsibility in those agencies’ and individual’s written job descriptions; 2. Create a registry of all cemeteries in Henderson County and note the locations of those cemeteries on deed plats and in the county’s geographical information system (GIS); 3. Monitor the condition of cemeteries and assign county

employees as necessary to clean or to mark the boundaries of those cemeteries that are endangered or in a state of abandonment.”

3. Norman L. Miller – Mr. Miller stated he is also with Sons of the Confederate Veterans. He has been doing much of the field work that Mr. Arrowood just spoke of regarding cemeteries. He stated that there are now four cemeteries that are no longer deplorable but are now nonexistent. He asked who would be responsible for moving of markers or graves without family permission.
4. Barbara L. King – Ms. King is a decendent of the Long John McCarson family. She is concerned with the status of cemeteries. She stated that she left the McCarson Cemetery about 2 ½ hours ago, stating that it is in terrible disarray. She said her main concern is that the access road to get to the cemetery has now been planted with trees. She stated that there is no way to get to the cemetery without going on someone’s private property. She stated that there is a toilet, garbage, and trash surrounding the cemetery, stating that it looks like a garbage dump. She is concerned not only for this cemetery but for any others that exist in our county.

One of the male speakers regarding cemeteries came forward to add an addendum to what he had previously said. He stated that they also have a Camp in Yancey County, the John Palmer Camp in Burnsville. They have been doing cemetery work for a number of years. Their men have gone out and located the boundaries of all the existing cemeteries with the GPS system, which has enabled them to find the exact boundaries. Yancey County now has a database that allows them to physically locate every cemetery so there is no dispute. He would like to see that done in Henderson County as well with our GIS.

ONE NORTH CAROLINA FUND APPLICATION

Scott Hamilton addressed the Board on this issue. The Henderson County Partnership for Economic Development had requested that Henderson County apply for a One North Carolina Fund grant for Raflatac, Inc. A copy of the Fund’s guidelines and Procedures and the Local Government Development Form was included for the Board’s review and information. The Fund requires that a local government apply and then administer this grant. This program requires a local match. They plan to use the funds that Henderson County had already pledged to Raflatac as an Economic Development Grant.

Mr. Nicholson informed the Board that this program was changed a few years ago and now requires that Henderson County apply and administrate the grant (the county that is home to the industry). They will be using our grant to match funds from this State account. He recommended that the Board approve the filing of this application.

Following some discussion, *Chairman Hawkins made the motion that the Board approve the filing of the application as requested. All voted in favor and the motion carried.*

UPDATE ON PENDING ISSUES

Emergency Communications Charter

Staff had drafted a charter and included it for the Board’s review and consideration.

Mr. Nicholson suggested that the Board consider this as a “Notification of Vacancy” tonight so staff could draft letters (for the Chairman’s signature) to the agencies to ask for their representative for the committee. Hopefully we would have those responses back for the next Commission meeting.

There was much discussion about the organizational structure of the E-911 center and who they should report to, as well as politics and continuity of services.

Following discussion, *Chairman Hawkins made the motion to approve the proposed Charter as presented. A vote was taken and the motion carried three to two with Commissioners Moyer and Messer voting nay.*

Public Transit Study

In a memo from Mr. Nicholson to the Commissioners dated October 12 it states – “Today, County staff met with Mr. Brian Piascik. Mr. Piascik is a Senior Project Manager with URS Corporation. URS Corporation has contracted with the French Broad MPO to complete a public transit plan that will provide the Board of Commissioners various options in terms of operations and funding for our local public transit system. Henderson County must submit a plan that details the County’s plans for the future of the public transit system to NCDOT no later than December 31, 2004.

As part of the planning process, Mr. Piascik has scheduled a workshop to assist him in understanding our local needs and priorities for public transportation. Twenty to twenty-five stakeholders will be invited to participate in the workshop. The agenda for the workshop will cover: 1) the benefits of the local public transit system and jurisdictional structures of the local transit system. The workshop will be held from 9 am until 1 pm on Friday, November 5th in the Commissioners’ Meeting Room.

Mr. Piascik has asked that County staff along with a County Commissioner participate in the workshop. It is requested that one Commissioner be appointed to represent the Board at the workshop.”

Chairman Hawkins asked if Commissioner Moyer might be willing to attend the workshop since he has been very active with transportation issues.

CEMETERIES/GRAVE SITES – this was an add-on by Commissioner Baldwin

Commissioner Baldwin informed the Board that he has gone out and looked at a number of cemeteries. He revisited the cemetery in Hooper’s Creek with several people including Mr. Miller, Mr. Arrowood, and Dr. George Jones. He named several cemeteries they visited.

Commissioner Baldwin stated that many of them are not well kept. Visiting these cemeteries makes you realize that the decedents of most of these people have been scattered. Many of these graves are from the original settlers that settled Henderson County.

During some of these visits, Commissioner Baldwin was made aware of the legislation on the books in North Carolina that warranted review by the Board of Commissioners.

Commissioner Baldwin stressed that the immediate need was to try to maintain what we have or try to stop some of the destruction. The second phase would be to maintain and improve and the third phase would be doing something creative and creating a history trail throughout the county. He stated that our history is rich and is deep. Not only is it about Appalachian culture but it is also about Southern culture as well.

He expressed that there were some good ideas in Mr. Arrowood’s proposal. He stated that we need to clearly understand the law. He also felt that the Board could do something this evening to begin the process.

Some discussion followed from several Commissioners. It was suggested that the County Attorney research the statutes and find what the Board’s responsibilities are and make a recommendation to the Board.

The County Attorney and/or the County Manager will report back to the Board of Commissioners at the next Board meeting with legal responsibilities and an action plan.

IMPORTANT DATES

Chairman Hawkins discussed the setting of the mid-month November meeting. Due to several other obligations, Thursday, November 30 seemed the better date for Commissioners to have their second meeting of the month. *Chairman Hawkins made the motion to set the second meeting in November for Tuesday, November 30 at 6:00 p.m. All voted in favor and the motion carried.*

There was the need to set the meeting with Leadership Development of Henderson County. This consists of high school students. They have requested November 18 as the date. There were three Commissioners who committed to being at the November 18th meeting, Bill, Charlie, and Larry. The meeting was tentatively set for November 18th, with the time to be set later.

Angela Beeker discussed her recently submitted resignation from Henderson County Government, effective January 3, 2005. She read her resignation letter, announcing her resignation publicly.

The Board was reminded of a special called meeting for Wednesday to hold a Quasi-Judicial proceeding.

Commissioner Messer discussed the need for a Cane Creek Water and Sewer Advisory Board meeting. He will inform the Board of the date and time once the meeting is set.

CANE CREEK WATER & SEWER DISTRICT – no business

CLOSED SESSION – none

ADJOURN

There being no further business to come before the Board, Chairman Hawkins adjourned the meeting at 7:49 p.m.

Attest:

Elizabeth W. Corn, Clerk to the Board

Grady Hawkins, Chairman