

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
DECEMBER 15, 2004**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 9:00 a.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Shannon Baldwin, Commissioner Chuck McGrady, County Manager David E. Nicholson, Assistant County Manager Justin Hembree, 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, Public Information Officer Chris S. Coulson, Fire Marshal Rocky Hyder, and Finance Director J. Carey McLelland. Deputy Clerk to the Board Amy Brantley was present through nominations.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

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

INVOCATION

David Nicholson gave the invocation.

INFORMAL PUBLIC COMMENTS

1. Richard Waters – Mr. Waters wished to discuss two things with the board. The first was public transit. He has spoken to this issue previously. He expressed displeasure in the fact that he had called Apple Country Transportation on three different occasions to go to various appointments, mainly to the doctor and/or the hospital and for various reasons he didn't qualify. He questioned why Apple Country could take people shopping to Greenville, S.C. or to the Asheville mall. He was told that was different funds. He understood that the funding issue was coming up today. He felt it was very unfortunate that the federal government has fixed it to where they are putting a lot of the financial responsibility on the county folks. He then stated that sometimes Apple Country counts the ridership twice because when riders transfer from the white to the red lines, what happens is those people get counted twice.

The main reason he came to speak was to express his support for the nomination of Norman Miller and Wanda Case, two people who are very interested in preserving the cemeteries in Henderson County. He had a list of 40 cemeteries that are on the so-called endangered list. He found on the list four people from his family tree, one was his great great grandfather. Our ancestors have helped make our county what it is today, basically through hard work. He expressed his support for the formation of a cemetery committee.

2. Ken Gaylor – Mr. Gaylor is an architect and builder and his offices are less than a half block from the historic courthouse. He acknowledged each of the Commissioners for their commitment and

DATE APPROVED _____

leadership to the cause of rejuvenating the courthouse. He asked the Commissioners to keep five things in mind as they proceed with this project:

- The Courthouse is not a common utilitarian building. It is not a structure that exists simply to house certain activities and people. It is the historical and cultural icon of this community.
- Recognizing that the courthouse is by its nature a cultural facility, we can agree that it serves a purpose to return county administration to a part of this building. This will provide a funding stream for the project and will maintain continuity with the building's history. Renovating for county administration is the easy part. The difficult part is determining the cultural accommodations for the building and site and providing the parking and green space to support these functions.
- Because the courthouse plays such a significant role in the cultural life of this community, the community must play a significant role in redefining the building's future. We need to work hard to build and maintain a constituency of citizens devoted to this project. It is this constituency, more than politics that will keep this project on track and keep it moving forward.
- We need to stretch, just as the citizens did 100 years ago when they erected this monument. We need to think big and create something that is better than ordinary and we need to really go for it. If we stretch, this community will give itself a great gift that will uplift our civic and cultural lives for generations to come.
- To stretch and do this right, we will need partners. The courthouse will be far more than a place to conduct county business. It will enliven downtown, attract tourists, educate school children about the history of this community, and it will provide both indoor and outdoor gathering places. Those in the business of enhancing city life, tourism, and education are essential partners for the support and guidance of this project.

In conclusion, Mr. Gaylord stated it is a new day in Henderson County. We have a new commission, we have a new energy to make progress on some longstanding projects, some longstanding needs for this community. He asked for the Board to proceed expeditiously, without wasting a single day but he also asked that the Board not skip any vital steps and that we commit ourselves to achieving a project worthy of this community's history and cultural spirit.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Baldwin requested adding an update on Pending Issues for Asheville, Buncombe, Henderson Regional Water Authority as "F". He also requested adding as "G" – to start a discussion about the County Manager Position.

Chairman Moyer requested that those two items be added to the agenda for the next meeting, to keep the agenda as is for this meeting. He felt these two items would require some background information in order to have a meaningful discussion.

Chairman Moyer made the motion to approve the agenda as presented. A vote was taken which passed three to two with Commissioners Baldwin and Young voting nay.

CONSENT AGENDA

There were no changes proposed to the consent agenda. *Chairman Moyer made the motion to approve the consent agenda as presented. All voted in favor and the motion carried.*

Tax Collector Report

Terry F. Lyda, Henderson County Tax Collector, presented the Tax Collector's Report to the Commissioners dated December 13, 2004.

Tax Refunds

A list of 9 refund requests was presented for review and consent approval by the Board of Commissioners.

Tax Releases

A list of 57 tax release requests was presented for review and consent approval by the Board of Commissioners.

Tax Discoveries

A list of 477 tax discovery requests was presented for review and consent approval by the Board of Commissioners.

Water Line Extension for Fox Glen, Phase I, and Leoni's Mountain Lake Homes

The City of Hendersonville requested County comments on two proposed waterline extension projects. The first project was for a waterline extension to serve Phase I of the proposed Fox Glen planned residential development. Fox Glen will be located on Howard Gap Road, across from Fletcher Elementary School. The other project was for a waterline to serve the proposed Leoni's Mountain Lake Homes planned unit development, to be located on South Lakeside Drive, across from Lake Osceola.

FY 2005-06 Budget Calendar

A proposed Budget Calendar for the FY 2005-06 budget process was presented for the Board's consent and information. The budget calendar can be revised by the Board at any time.

Request for Improvement Guarantee for Brock Creek Subdivision

William C. Trimarco had submitted an application for a subdivision improvement guarantee for a proposed minor subdivision he and others are developing known as Brock Creek. The improvement guarantee is proposed to cover the cost of remaining road and drainage improvements within the subdivision.

Pursuant to Section 170-38 of the Henderson County Code, a developer may, in lieu of completing all of the required improvements prior to Final Plat approval, post a performance guarantee to secure the County's interest in seeing that satisfactory construction of incomplete improvements occurs. One type of permitted guarantee is cash or a certified check. The developer intends to deposit with the County cash or a certified check in the amount of \$36,187.50 that includes the cost of the remaining improvements (\$28,950.00) as well as the required 25% contingency (\$7,237.50). The proposed completion date for the improvements is August 1, 2005.

A draft Performance Guarantee Agreement was included for the Board's consideration. If the application is approved, the developer must deposit with the County the cash or certified check in accordance with the terms of the Agreement. Once the funds are submitted for deposit, the (Assistant) County Attorney must certify the Agreement as to form prior to its execution by the Chairman and the developer.

Mr. Nicholson recommended that the Board approve the application for an improvement guarantee for Brock Creek subdivision, subject to the developer depositing with the County cash or a certified check in accordance with the terms of the draft Performance Guarantee Agreement.

Purchase of Property from NCDOT

Bat Cave Fire and Rescue inquired with the North Carolina Department of Transportation (NCDOT) regarding the acquisition of .38 acre of property adjoining property owned by Bat Cave Fire & Rescue Inc., along Red Anderson Road near Highway 64-74 in Bat Cave, NC. NCDOT replied through a letter to the County Manager, stating department policy prohibited conveyance of NCDOT property to private non-profit agencies; however the letter further suggested the option of the county purchasing the property on behalf of the fire department. The members of Bat Cave Fire & Rescue respectfully request the Board to express their intent to adopt a resolution to approve this transaction at the January 19, 2005 meeting.

Mr. Nicholson recommended approval by the Board.

NOMINATIONS

Notification of Vacancies

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

1. Land of Sky Regional Council Advisory Council on Aging – 1 vac.
2. Nursing/Adult Care Home Community Advisory Committee – 12 vac.

Nominations

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

1. Apple Country Greenways Commission – 1 vac.

Chairman Moyer nominated Helen Colleti to the Greenway Commission. There were no other nominations. *Chairman Moyer made the motion to appoint Ms. Colleti by acclamation. All voted in favor and the motion carried.*

2. Cable Franchise Renewal Advisory Committee – 6 vac.

Chairman Moyer suggested placing this item as a major item on the next agenda, to review the Charter and composition of that committee and be prepared to make some nominations/appointments at that time. Commissioner Young has expressed an interest in serving as the Commissioner on this committee.

Commissioner McGrady nominated John Crook, Dusty Rhodes, and Matt Matteson to this committee.

3. Cemetery Advisory Committee – 9 vac.

Commissioner Baldwin nominated Norman Miller, Jay Jackson, Wanda Case, Dr. George Jones, Rev. Anthony McMinn, John Boyd, Jenny Giles, Ken Youngblood, and Richard Waters.

Chairman Moyer stated that Dr. Jones had called him stating that he has a great interest in this and will help, he cannot serve on the committee because he already serves on two boards which he would like to continue with. Commissioner Baldwin withdrew Dr. Jones' name.

Commissioner McGrady nominated Vanessa Mintz and Michael Arrowood.

There was some discussion about the proposed size of the committee, that maybe it should be a smaller group. Commissioner Baldwin withdrew Ken Youngblood's name so that there would be only nine nominees so that they could all be appointed at this time.

Commissioner Young made the motion to appoint the nine nominees by acclamation. All voted in favor and the motion carried.

The nine appointees were: Norman Miller, Jay Jackson, Wanda Case, Rev. Anthony McMinn, John Boyd, Jenny Giles, Richard Waters, Vanessa Mintz, and Michael Arrowood.

Discussion followed about the timeframe. Chairman Moyer reminded everyone that the Board has already approved the formation of the committee, they took David's initial 6 month period and said that at the retreat in January the Board would tie this project in with the rest of the projects and come up with a schedule at that time.

Commissioner Baldwin made the motion that along with the charge to the committee from the Board of Commissioners, to have the work completed by a maximum of 18 months. If they choose to get it done before that time then the Board can certainly take it and move on it but not to exceed 18 months.

Discussion followed, including that any piece the Board would be responsible for would be woven into their work schedule.

All voted in favor and the motion carried.

4. Community Child Protection Team – 1 vac.

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

5. Criminal Justice Partnership Act Task Force – 4 vac.

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

6. Henderson County Zoning Board of Adjustment – 4 vac.

Nominated at the last meeting were Anthony Engel, Keith Shelley, Dale Caldwell, Kenneth Martin, Gary Griffin, and Eric Goodman.

The Clerk polled the Board with the following results:

Commissioner Baldwin:	Engel, Martin, Griffin, and Goodman.
Commissioner McGrady:	Engel, Caldwell, Griffin, and Goodman.
Chairman Moyer:	Engel, Shelley, Caldwell, and Griffin.
Commissioner Messer:	Engel, Shelley, Griffin, and Goodman.
Commissioner Young:	Shelley, Caldwell, Griffin, and Goodman.

The three high vote getters were Engel, Griffin, and Goodman. Shelley and Caldwell tied with three votes each. Ms. Corn polled the Board again to break the tie and get the fourth appointee:

Commissioner Baldwin:	Caldwell
Commissioner McGrady:	Caldwell
Chairman Moyer:	Caldwell
Commissioner Messer:	Caldwell
Commissioner Young:	Shelley

The four appointees were Engel, Griffin, Goodman, and Caldwell.

7. Henderson County Planning Board – 1 vac.

There were two nominations at the last meeting for this position: Stacy Rhodes and Kim Pheffer.

The Clerk polled the Board with the following results:

Commissioner Baldwin:	Pheffer
Commissioner McGrady:	Rhodes
Chairman Moyer:	Rhodes
Commissioner Messer:	Rhodes
Commissioner Young:	Rhodes

The appointee was Stacy Rhodes.

8. Hendersonville Board of Adjustment – 1 vac.

Chairman Moyer nominated Joe Cox to fill the vacancy. There were no other nominations at this time. *Chairman Moyer made the motion to accept Mr. Cox by acclamation. All voted in favor and the motion carried.*

9. Hospital Corporation Board of Directors – 4 vac.

There were six nominees for the four positions: Priscilla Strickland, Cam Boyd, Jack Swanson, Bill Blalock, John Bell, and Grady Hawkins.

The Clerk polled the Board with the following outcome:

Commissioner Baldwin:	Hawkins
Commissioner McGrady:	Strickland, Boyd, Blalock, and Bell.
Chairman Moyer:	Strickland, Boyd, Blalock, and Bell.
Commissioner Messer:	Strickland, Boyd, Blalock, and Bell.
Commissioner Young:	Strickland, Boyd, Swanson, and Hawkins.

The four appointees were Strickland, Boyd, Blalock, and Bell.

10. Juvenile Crime Prevention Council – 2 vac.

Commissioner McGrady nominated Blair Lamb to the under 18 years of age position. There were no other nominations. *Chairman Moyer made the motion to accept Ms. Lamb by acclamation. All voted in favor and the motion carried.*

11. Library Board of Trustees – 1 vac.

Commissioner McGrady had indicated an interest in serving on this Board. The Board will look at a fuller list of Commissioner appointees a little later.

12. Mountain Area Workforce Development Board – 1 vac.

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

13. Nursing/Adult Care Home Community Advisory Committee – 1 vac.

Commissioner McGrady nominated Tracy Clemo to fill this vacancy. *Chairman Moyer made the motion to accept Ms. Clemo by acclamation. All voted in favor and the motion carried.*

14. Planning for Older Adults Block Grant Advisory Committee – 3 vac.

Commissioner Messer nominated Karen Smith to fill position #7. *Chairman Moyer made the motion to accept Ms. Smith by acclamation. All voted in favor and the motion carried.*

15. Solid Waste Advisory Committee – 1 vac.

Chairman Moyer nominated John Thornton. There were no other nominees. *Chairman Moyer made the motion to accept Mr. Thornton by acclamation. All voted in favor and the motion carried.*

16. Travel and Tourism Committee – 2 vac.

Commissioner Young had expressed an interest in continuing to serve as the Commissioner on this Committee. One vacancy remains. There had been two nominees for that vacancy: Lucy King and Kathy Griffin. Ms. Corn polled the Board with the final results:

Commissioner Baldwin:	Griffin
Commissioner McGrady:	King
Chairman Moyer:	King
Commissioner Messer:	King
Commissioner Young:	Griffin

Lucy King was the appointee.

17. Water and Sewer Advisory Board – 1 vac.

Chairman Moyer nominated Bill Lapsley to this position. There were no other nominees. *Chairman Moyer made the motion to accept Mr. Lapsley by acclamation. All voted in favor and the motion carried.*

18. Western Highlands LME – 1 vac.

Commissioner Messer nominated Abigail Karroubi to fill the spot designated for a clinical professional in the mental health field. *Chairman Moyer made the motion to accept Ms. Karroubi by acclamation. All voted in favor and the motion carried.*

Commissioners serving on Board and Committees

Chairman Moyer had distributed a list to all the Commissioners about appointments to Boards and Committees. He stated that there was one adjustment to the list. Commissioner Young had stated that he would be willing to serve on the Solid Waste Advisory Committee (SWAC). *Chairman Moyer made the motion to accept the list of appointments to the Board and Committees and to advise the various Boards of the Commissioner who will be serving as liaison to the Board.*

There was discussion about Commissioners asking another Commissioner to attend a meeting for them when they cannot, especially if it is an important or special Board or Committee meeting.

A vote was taken and the motion carried unanimously.

MILLS RIVER BRANCH LIBRARY

Bill Snyder, Library Director, informed the Board of a request from the Town of Mills River for Henderson County to establish a branch library within their community. The request was approved by the Library Board of Trustees on December 7, 2004 as a third level service library. Included for the Board’s review were the letter from the Town of Mills River and the response from the Library Board and staff as well as the Branch Library Extension Policy.

Mr. Snyder explained that we have never exercised our option to establish a third level library before but in 1993 the Library Board recognized the possibility that we might want to extend library services to areas that are closer than a 10-15 minute drive from an existing library. It was always the Library Board's goal to put the bulk of the citizenry within about a 15 minute drive of a library. With our current main library and four branches we have achieved that goal. Under the Branch Extension Policy the Library would be responsible for providing library materials, furnishing the facility, and training and guiding volunteer workers who will operate the library. The Town of Mills River has agreed to the extension policy, has found a location for the library and they are willing to provide volunteers and pay the utilities. The goal would be to open the Branch in April of 2005.

Mr. Nicholson recommended that the Board approve the request to establish this third level library in Mills River.

Following discussion, *Commissioner Messer made the motion to approve the recommendation to provide a third level library in Mills River. All voted in favor and the motion carried.*

PUBLIC TRANSIT FUNDING ANALYSIS FOLLOW-UP

Justin Hembree informed the Board that this item was a follow-up to the Board's discussion and action concerning FY 05/06 funding for the local public transit system. Based on the short turnaround time since the last meeting, the consultant working on the formal funding analysis/plan had not had time to completely finish the report prior to packing this agenda packet. We expect a final copy that will include a detailed funding strategy and an implementation schedule reflecting the Board's December 15 action concerning this issue in the very near future. It is possible the final report could be available on December 15.

Even though the report was not complete, staff was prepared to move forward with this issue based on the following Board approved actions:

1. The County commits to funding the local public transit system no more than \$65,603 for FY 05/06 and request that NCDOT continue to fund costs associated with the operation of the Blue Route.
2. The County agrees to participate in the 5307 Program.

Mr. Hembree explained that we have heard from the municipalities although none have taken action except Fletcher. Fletcher decided this week that they could not commit to funding that would be required to continue operations of the Blue Route.

Staff recommended that the Board approve the general outline and content of the draft letter that was submitted. This letter will be the basis of a cover letter that will be forwarded to NCDOT, prior to January 1, 2005, along with the final funding analysis.

Following discussion, *Commissioner McGrady made the motion that the Chairman communicate to NCDOT that the County commits to funding the local public transit system at no more than \$65,603 for FY 05/06 and request that NCDOT continue to fund the costs associated with the operation of the Blue Route and that the County agrees to participate in the 5307 Program. All voted in favor and the motion carried.*

Commissioner Young stated he would like to see some figures associated with the Mass Transit System, not only the riders but the amount of revenue that is being generated from the riders. We need to find out if there is a duplication in counting the number of riders, as mentioned in Informal Public Comments this morning.

UPDATE ON THE CAPITAL IMPROVEMENTS PROGRAM

Chairman Moyer stated that we have a very ambitious capital improvements plan (CIP) ahead of us for the next five years but certainly for the next two years. We have a substantial financial burden ahead of us that we know will cause tax increases. He stated that we need to find alternate means of financing some of these capital needs.

Chairman Moyer proposed moving to study putting County Administration in the Historic Courthouse with a historical and cultural component and that we revise our plan to do so. That will enable us to reduce the size of the Human Services Building on the Spartanburg Highway, saving considerable money which then can be applied to the Historic Courthouse and hopefully pay for that project without any additional expenditures.

Mr. Nicholson had provided the Board copies of the County's current 5-year Capital Improvements Plan for their review and discussion.

There was much discussion, some quite heated regarding the Human Services Building, the Historic Courthouse, the old Jail Building, and the use of this building for the Sheriff's Department.

Chairman Moyer – “ I think the Committee that was established plus this Board, of course Mr. McGrady was not on it but, has indicated their desire to restore the courthouse and we want to do it, I think, in the most efficient way. One of the issues that has come up over the years and continues to be a major issue is what we do about the jail. We have an unsightly building sitting out there. We've now had the courthouse sitting there for 10 years and how long are we gonna have the jail sitting there empty, before something is done and I personally think we need to move and move aggressively on the courthouse and the human services building. Whether I like it or not, we own the spot on the Spartanburg Hwy. We have to move on that and make the best use of that building. It is now too late to abandon that site and I think we just have to move forward and do the best we can.

With respect to the jail, it has been my position for a long time that we ought to move to tear down that jail and clean up that site in the back. There are some structural issues with respect to doing that and some questions with respect to party walls, if I can use that term – it's not the best term, the wall between the annex and the jail. And I think then the use of the building. The committee talked about the importance of having and Ken talked about having a cultural and historical component of that building which I think is extremely important. But I think we also are looking at trying to reduce the costs of the building – need to see if there's a way where we can guarantee the money for the project and provide an on-going stream of money so that we don't end up with a project half-way through that's not done, not financed and we end up sitting four years from now not much further than we are and I am proposing that we move to study putting administration, county administration, not all of the county operations by any stretch, but county administration into the historic courthouse with a historical and cultural component and that we revise our plan to do that. That will enable us to then reduce the size of the building on Spartanburg Hwy... but we'll be able to reduce the size of the building out there saving considerable money which then can be applied to the courthouse and hopefully pay for that without any additional expenditures. I think some of us have raised concerns with respect to the parking at the human services building. Commissioner Young has raised repeated concerns with respect to having adequate room for growth. I think if we move administration and some other things out of there we can solve both of those

problems and provide a long term facility with adequate room for growth and I think move these projects along, which I think we're all committed to do in a very expedited fashion. And with that David I'm gonna ask you to make some comments

Commissioner Messer – *“I would make that in a motion to go ahead and get Mr. Nicholson and staff to get those plans out and go back – you know come back to us, to make an initial motion to tear the jail down.”*

Much heated discussion continued.

Commissioner McGrady – *“I have a question – Mr. Messer, your motion is to uh - the motion is not to tear down the jail, the motion is to authorize staff to um present us with plans to do that, is that right?”*

Following additional discussion, a vote was taken on the motion and it passed three to two with Commissioners Baldwin and Young voting nay.

Commissioner McGrady moved that the County Manager and staff present a plan by the January 19 meeting to locate the County Administration in the Historic Courthouse while providing space for cultural activities and exhibits or events which highlight the county's history and preserving the historic features of the Historic Courthouse. Furthermore, the County Manager and staff shall consult and involve the Board of the Historic Courthouse Corporation in the development of the plan to be presented to the County Commission.

Discussion followed.

A vote was taken and the motion carried three to two with Commissioners Baldwin and Young voting nay.

Mr. Nicholson briefly updated the Board on the status of the Animal Shelter. The Architects are finishing their design work. They are working in conjunction with a local architect and will be providing Mr. Nicholson with a new update with a cost estimate for that facility shortly. About February we will plan to go out to bid for that facility. He will continue to update the Board as he receives more information.

Commissioner McGrady made the motion that the County Manager and staff modify the plans for the County Services Building to provide space for only two departments, the Health Department and the Social Services Department with adequate parking for those departments, employees and clients and space for growth over the next 10-15 years with a report to the Board of Commissioners at it's January 3 meeting. Additionally at that meeting, the County Manager should recommend where the Elections Department and the Departments presently located in the Land Development Building should reside.

More heated discussion followed.

A vote was taken and the motion carried three to two with Commissioners Baldwin and Young voting nay.

School Capital Projects

Mr. Nicholson stated that he had been meeting fairly regularly with the school folks as well as the financing folks, our underwriter on this project, and has even had some discussions with our bond counsel on this issue. Dana is proceeding on as the schools most important project. They have indicated and provided a proposal of some dates for us of when they would be out to bid, in the late March timeframe. They have started drafting a

calendar for that financing and will hopefully be in a position to coordinate the other financings associated with that project to try to save some administrative costs.

Option

Chairman Moyer reminded the Board that when we sold our sewer system in the southern end of the county one thing we got was an option on the piece of property where the Hendersonville Water Department offices are. He asked staff to consider what it would take to exercise that option and come back to the Board at the next meeting with respect to the procedures the Board needs to follow to have the Board consider the use of that property and whether we should move forward with exercising that option.

Chairman Moyer made the motion to request the County Manager to explore exercising the option on the property where the Hendersonville Water Department offices are, come back with a plan as to its possible use and the advisability of exercising the option. A vote was taken and the motion carried unanimously.

Chairman Moyer made the motion to request the County Manager to do an update of the Capital Improvement Program (CIP) to reflect the other changes that have been discussed. A vote was taken and the motion carried three to two with Commissioners Baldwin and Young voting nay.

Solid Waste Transfer Station

Mr. Nicholson informed the Board that the plans are proceeding along. Gary Tweed is meeting today with the engineer on that project. Hopefully we will be in the position to bid that project out fairly soon.

Tennis Courts

Mr. Nicholson informed the Board that the new tennis courts at Jackson Park have been completed and are very nice.

Community College Proposals – Classroom Building and Gymnasium

Commissioner McGrady stated that it was his understanding that the community college is interested in setting up some sort of joint facilities committee similar to what we have with the School Board.

Mr. Nicholson stated that he had been waiting until the community college gets a little further along with their plans. They have now hired an architect. Mr. Nicholson asked them to keep him informed of their progress.

Animal Shelter

Commissioner Young asked the County Manager if we had gotten the property rezoned yet? Mr. Nicholson answered that it is scheduled for the first meeting in January. The plans are being finished up and they are working on a new cost estimate. As Mr. Nicholson receives the updated information he will share it with the Board.

SCATTERED SITE HOUSING/STAFF

Selena Coffey informed the Board that we will again this year receive the 2005 Community Development Block Grant (CDBG) for Scattered Site Housing. Our last one was in 2002 and we are in the process of wrapping that one up with a total of eight homes that have been rehabbed. The Scattered Site Grant is used to improve the housing conditions of low income residents within the county.

Staff had made a proposal to hire a housing planner to administer this and other housing grants as well as to assist with the housing efforts described within the County Comprehensive Plan (CCP).

The County Manager explained that the CDBG program provides Henderson County with \$400,000 every three years. He stated the he felt the current program was very successful and it helped to improve the lives of many elderly and handicapped low income persons. In 2002, we contracted with a firm to provide the administration of this program. The original contractor went bankrupt and eventually their contracts were taken over by another firm. Henderson County has the legal and financial responsibility for this and other housing grants such as the Home Program. Mr. Nicholson recommended that a position be established that would administer these housing grants and assist with other housing projects.

Commissioner Messer made the motion to approve the CDBG request as presented. All voted in favor and the motion carried.

COUNTY ATTORNEY POSITION

Chairman Moyer stated that at the last meeting the Board started this discussion because the Board will lose the current County Attorney due to resignation. The Board had requested Ms. Beeker (current County Attorney) to provide a recommendation on the organization of the Legal Department. Mr. Nicholson had already provided the Board with a recommendation on the organization of the Legal Department and recruitment of a County Attorney.

Chairman Moyer thanked Ms. Beeker on behalf of the Board for the many contributions and valuable advice to the county and wished her the best in her new endeavor.

Mr. Nicholson had suggested that the County Attorney's position be separate from the rest of the Legal Department, and the Legal Department report directly to him.

Ms. Beeker reviewed her recommendation with the Board as follows:

Two of the primary roles of the County Attorney are:

1. To serve as primary legal counsel for Henderson County, and in that capacity, to be ultimately responsible for the provision of all legal counsel that is given.
2. To serve as a check and balance for the County, helping to ensure compliance with applicable laws in the day-to-day business of County government.

In her opinion, these roles are best performed if the County Attorney is a full-time position which supervises the provision of all other legal services to the County because:

1. A full-time County Attorney has only ONE client, the County. All thoughts, energy and focus are devoted to the County. A retained County Attorney has multiple private clients in addition to the County. The mindset of an attorney representing a public organizational client is entirely different from an attorney representing private individual clients.
2. A full-time County Attorney has the time and resources to become an expert in the field of County Government law. With a retained County Attorney and full-time staff attorney, the staff attorney ends up having the time and resources to become the "expert". In her opinion, the "expert" should be providing legal services to (and should report directly to) the Board of Commissioners.
3. A full-time County Attorney can more easily practice "preventive law" because he or she has a better understanding of the day-to-day operations of County government, and is more "in the know" regarding day-to-day occurrences. A retained County Attorney has less of an

- opportunity to practice “preventive law” because they are not there on a day-to-day basis, but are only made aware of issues when they are called upon.
4. A full-time County Attorney can devote the time necessary for an issue, without worrying about what the billable hours are going to cost the County in terms of dollars and cents. Most of the County’s legal work will likely fall on whoever is full-time due to the fixed cost and availability of a full-time attorney. With a full-time staff attorney, the natural inclination is to rely primarily on that person, rather than the County Attorney, for work that really should be performed by the County Attorney.
 5. A full-time County Attorney can ensure that consistent legal advice is given, and that there is less opportunity for internal conflict over which legal advice is “correct”. With a retained County Attorney and a full-time staff attorney, there will be times when the advice given the County Manager and his staff versus the advice given to the Board of Commissioners will differ.
 6. With a full-time County Attorney, all legal advice given is supervised by someone who reports directly to the Board of Commissioners. In this way, all legal advice given to the County Manager and County staff is given independently.

In Ms. Beeker’s opinion, the expenditure of additional funds for legal services is inevitable. With regards to DSS, the increased case loads prompted the Board to approve an additional attorney’s position to be devoted solely to DSS. With the number of upcoming projects and ordinances to be addressed in the County’s comprehensive plan, significant additional legal services are going to be necessary. These additional dollars would be best spent by going back to the organizational model that was approved initially when the legal services were consolidated into one department. The full-time County Attorney, full-time Assistant County Attorney and full-time Human Services Attorney (which supervises the new DSS attorney) would provide an adequately staffed and indispensable resource with the capability to provide the full range of legal services that County Government is going to demand. This would enable the full-time County Attorney to take a global view of the legal service demands for the County, and appropriate legal department resources in a manner to meet them.

Discussion followed regarding both recommendations.

Commissioner McGrady made the motion for the County to proceed to fill the County Attorney position soon to be vacated by Angela Beeker with the understanding that the County Attorney will represent both the Board of Commissioners and the County Manager and will be supervised by the Board of Commissioners and will generally supervise the county’s legal department.

More discussion followed. A vote was taken and the motion carried unanimously.

When asked by the Board about her job description, Ms. Beeker stated that she had recently up-dated it. Chairman Moyer suggested asking Mr. Nicholson and Ms. Beeker to work together to start the process of advertising for a County Attorney.

Commissioner Young made the motion that Mr. Nicholson and Ms. Beeker start the process of advertising for a County Attorney. All voted in favor and the motion carried.

UPDATE ON PENDING ISSUES

Electronic Communications

Mr. Nicholson updated the Board, stating that he felt there were some benefits to providing things to Commissioners electronically. He plans to start by setting up a website where memos to the Board can be stored for access by the Board. Staff is already working on this and the Board should be able to access it in a matter of days.

Staff hopes to be in a position very soon to have the entire agenda packet in electronic format. Mr. Nicholson will keep the Board updated on that issue.

Animal Control

Mr. Nicholson asked the Board to consider transferring our Animal Control Department from the Public Health Department back to general County government and place it under his authority. He had several reasons for making the recommendation including the fact that we are facing a number of changes with this program including a new facility and the Board's goal of greatly enhancing our animal program. He thinks that we must have a much stronger organizational structure in place to address the areas of concern addressed by both the Board and the community. The Public Health Department's employees are governed by State Personnel regulations that just doesn't allow for the level of management needed to take this program forward. Mr. Nicholson had spoken to Tom Bridges, Public Health Director, who concurred with his recommendation and will be very happy to allow him to take on the headaches of animal control.

Should the Board approve the County Manager's recommendation, his plans would include reclassifying the position of head officer that the Board approved in the current budget to a department head level person with managerial abilities. This position would be responsible for the future development of the Animal Services Ordinance and to develop the internal structure necessary to carry out the Board's wishes for this program.

Mr. Nicholson also recommended that the Board establish an Animal Services Advisory Committee. This advisory board would provide the Commissioners and staff with recommendations concerning the operation of the program and hear dangerous dog appeals.

Mr. Nicholson reminded the Board that several years ago he proposed a separate enforcement division. Should the Board concur with his recommendation concerning the transfer of Animal Control, he is planning to resurrect this plan and ask the Board to provide the resources that he believes will be necessary to develop a stronger and a better coordinated enforcement effort throughout County government.

There was much discussion including but not limited to the need for increased enforcement of our ordinances and the need to strengthen the Animal Control Ordinance as well as support for the move.

Commissioner McGrady made the motion that effective February 1, 2005 the Animal Control Department be transferred from the Public Health Department to report directly to the County Manager and that the County establish an Animal Services Advisory Committee whose charge shall be proposed by the County Manager at the Board meeting on January 3, 2005. Furthermore, the County Manager shall present a plan to the Board of Commissioners as to how county ordinances including specifically any ordinances relating to Animal Control, might be enforced through a separate Enforcement Division by our second meeting in January. All voted in favor and the motion carried.

NCACC Update

Commissioner Messer serves on the Board of NCACC (North Carolina Association of County Commissioners). They have had several meetings with respect to legislative goals and other things. Chairman Moyer asked Commissioner Messer to update the Board on this issue.

Commissioner Messer attended a meeting last Wednesday in Raleigh at the NCACC offices. Next month they will meet with County Commissioners from the whole State to talk about the goals. This year there are about 40-50 goals on the list but three primary goals:

1. Medicaid Relief
2. Revenue Options
3. School Construction Bonds

Others include impact fees, sales tax, sales tax exemption, etc.

He invited the other Commissioners to attend the meeting in High Point next month where legislative goals will be discussed.

CANE CREEK WATER & SEWER DISTRICT – no business

CLOSED SESSION

Chairman Moyer made the motion for the Board to go into closed session as allowed pursuant to NCGS 143-318.11 for the following reason(s):

1.(a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to a claim:

Appeal of Clifton J. Shipman
Henderson County 03-PTC-580

All voted in favor and the motion carried.

ADJOURN

Chairman Moyer adjourned the meeting.

Attest:

Elizabeth W. Corn, Clerk

William L. Moyer, Chairman