

## MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
MARCH 9, 2005

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 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, Acting County Attorney Russell Burrell, and Deputy Clerk to the Board Amy Brantley.

Also present were: Planning Director Karen C. Smith, Budget and Management Director Selena Coffey, Public Information Officer Chris S. Coulson and Finance Director J. Carey McLelland. Planner Autumn Radcliff was present for the Public Hearing.

### CALL TO ORDER/WELCOME

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

### PLEDGE OF ALLEGIANCE

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

### INVOCATION

David Nicholson gave the invocation.

### INFORMAL PUBLIC COMMENTS

1. Nyoka Harris – Ms. Harris spoke in favor of utilizing the Tuxedo school property for a park and library setting.

2. Katherine Taylor – Ms. Taylor also spoke in support of the County using the Tuxedo school property for a local park.

3. Fielding Lucas – Mr. Lucas discussed the School Board's planning process for school building plans. He read a report prepared on classroom and school size and made the following recommendations:

- Make sure everyone understands the 10% class size cuts would require an additional elementary school be built and operated at the County's expense
- Required the School Board to look at the Dana plans. Why, if a school will be held to 600 students must it have a core area for 731 students.
- "One data point does not a trend make". If the schools will not use simple regression analysis which would improve the quality and confidence in building plans, the Board could pay to have it done.
- If the choice is made to follow the LEA's current class and school size policies, a new school must be built as quickly and economically as possible.
- Move the Joint School Facilities Meetings to the Commissioner's meeting room and televise.

### DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer requested the addition of Discussion Item "F" regarding an update on the Legislative Conference. Commissioner Baldwin recommended that a written report on the conference be issued. Chairman Moyer stated that he would be glad to share the information he had received at the conference. *Chairman Moyer made the motion to approve the agenda with the one addition. All voted in favor and the motion carried.*

### CONSENT AGENDA

*Commissioner McGrady made the motion to approve the Consent Agenda. All voted in favor and the motion carried.*

DATE APPROVED: \_\_\_\_\_

The Consent Agenda items were:

### **Minutes**

Draft minutes were presented of the following meetings for the Board's review and approval:

- November 1, 2004 - regular meeting
- January 12, 2005 - special called meeting
- February 7, 2005 - regular meeting

### **Tax Collector's Report**

Terry F. Lyda, Henderson County Tax Collector, presented the Tax Collectors' Report dated March 4, 2005, for the Board's information.

### **Financial Report – January 2005**

#### **Cash Balance Report – January 2005**

These reports were presented for the Board's information and consent approval.

The YTD costs in the General Fund Non-Departmental line item is the annual property/liability and workers compensation insurance premiums paid to the NCACC Insurance Risk Pools for FY2005. The remaining costs will be allocated out to departmental budgets.

The YTD deficit in the CDBG-Scattered Site Housing Project, the CDBG-Howard Gap Waterline Project, the Mills River Watershed Protection Project and the Mills River Sewer Capital Project are all temporary due to timing differences in the expenditure of funds and the subsequent requisition of Federal and State grant funds to reimburse these expenditures.

The Human Services Building Project deficit is due to architectural fees, demolition/abatement and utilities relocation work completed for this new facility. It is anticipated that these costs will be recouped from financing proceeds for the project before the end of the current fiscal year.

### **Henderson County Public Schools Financial Report – January 2005**

The Schools Financial Report for January was presented for information only.

### **Valley Hill Fire and Rescue Lease Purchase Agreement**

At the February 8, 2005 Fire and Rescue Advisory Committee meeting, Battalion Chief Tim Garren of Valley Hill Fire and Rescue presented a proposal to order a new, 3500 gallon water tanker. This truck represents a new concept in portable water supply for the fire service, having the potential to dramatically improve the capacity and capability of tanker shuttle operations. The total price of the new tanker is \$170,000. Valley Hill will make a down payment of \$85,000, financing the remaining \$85,000 through Kansas State Bank at a rate of 4.2% with a yearly payment of \$31,000 for 3 years.

A motion to approve the purchase was made by Richard Barnwell and seconded by David Johnson. The motion passed with unanimous approval. Valley Hill Fire and Rescue respectfully requested the Chairman sign a prepared letter of support to Kansas State Bank.

### **Resolution Supporting Accreditation of Local Public Health Departments**

On January 4, 2005, the Henderson County Board of Health passed the following resolution in support of accreditation of local public health departments. Boards of Health and Boards of County Commissioners were being asked by the NC Association of Local Health Directors to support this resolution to seek legislative support and funding for establishing a benchmark for measuring the capacity of local public health departments to perform core public health functions and deliver essential services in their communities.

The Health Department believed that our health department should have no problem meeting the public health accreditation standards, and that it too should go through the process to provide this documented

assurance. They requested the Board support the resolution and urge our State Legislature to pass legislation on public health accreditation.

A copy of the Resolution is attached hereto and incorporated as a part of the minutes.

### **Corporate Banking Resolution**

A banking resolution from Carolina First Bank required approval by the Board to authorize those persons listed in the resolution to conduct banking business not limited to making deposits, withdrawals, borrowing funds and investing idle funds on behalf of the County with the bank.

A copy of the Resolution is attached hereto and incorporated as a part of the minutes.

### **Improvement Guarantee for Cummings Cove Golf & Country Club, Phase II, Sections 4 and 5, Mountain Crest-Cummings Cove Company, LLC, Owner**

Mr. William R. Buie, P.E., on behalf of Cummings Cove Company, LLC, owner and developer of Cummings Cove Golf & Country Club, has submitted a request for an improvement guarantee for Phase II, Sections 4 and 5 of the Mountain Crest section of that development. Henderson County Planning Department staff granted conditional approval of Development Plans for Phase II, Sections 4 and 5 – Mountain Crest, in July of 2002. The County Planning Board granted a one-year extension of such approvals in July of 2004. The requested improvement guarantee is proposed to cover required grading and road, water and sewer construction in both Sections 4 and 5 as well as construction of a booster station and water tank.

Pursuant to Sections 170-38 and 170-39 of the Henderson County Code (the Subdivision Ordinance), 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 an irrevocable letter of credit. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$1,719,031.25 to cover the cost of the improvements (\$1,375,225.00) as well as the required twenty-five percent (25%) contingency (\$343,806.25). The proposed completion date for the improvements is March 1, 2007. The Subdivision Ordinance allows a developer using an improvement guarantee a maximum of two years between the time of initiation and completion of required improvements.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer must submit the irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the relevant parties must execute the Agreement.

### **Improvement Guarantee for Pinnacle Falls, Phase I-Section I (Meadows)**

Mr. Luther E. Smith, on behalf of Pinnacle Falls, LLC, owner and developer of Pinnacle Falls subdivision, has submitted a request for an improvement guarantee for Phase I, Section 1 (Meadows) of Pinnacle Falls. Pinnacle Falls will be located on the south side of Pinnacle Mountain Road, between Pinnacle Mountain Road and Cabin Creek Road. The Henderson County Planning Board granted conditional approval of a Development Plan for Phase I of Pinnacle Falls on February 15, 2005. The Planning Board is also considering a request for a variance from certain subdivision standards for Phase I (which will eventually require consideration by the Board of Commissioners), however, according to A.J. Ball, Manager of Pinnacle Falls, LLC, the cost estimate for the requested improvement guarantee is based upon the conditionally approved Development Plan. The improvement guarantee is proposed to cover required road and water system construction within Phase I, Section 1 (Meadows) of Pinnacle Falls.

Pursuant to Sections 170-38 and 170-39 of the Henderson County Code (the Subdivision Ordinance), 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 an irrevocable letter of credit. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$340,595.00 to cover the cost of the improvements (\$272,476.00) as well as the required twenty-five percent (25%) contingency (\$68,119.00). The proposed completion date for the improvements is March 1, 2007. The Subdivision Ordinance allows a developer using an improvement guarantee a maximum of two years between the time of initiation and completion of required improvements.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer must submit an irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the relevant parties must execute the Agreement.

**Request for Modifications to Improvement Guarantee for The Homestead at Mills River, Phase I**

On March 17, 2004, the Board of Commissioners approved an application by The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC, developers of The Homestead at Mills River, for an improvement guarantee for Phase I of the subdivision. As required by the Performance Guarantee Agreement for the improvement guarantee, the developers posted with Henderson County a surety performance bond ("bond") in an amount of at least \$1,807,500.00 to cover the cost of completing earthwork, road construction, installation of erosion control measures and storm drainage work in The Homestead at Mills River, Phase I. The actual amount of the bond provided to the County was \$1,886,250.00 (\$78,750 more than required). The original agreement also required that the required improvements be completed by October 31, 2004. The expiration date on the bond was December 31, 2004.

On October 18, 2004, the Board of Commissioners approved a request by the developers to extend the deadline for completing the improvements specified in the original agreement to June 30, 2005. The developers and the Board of Commissioners entered into a new Performance Guarantee Agreement that specified the new completion date for the improvements. The developers provided a rider to the existing bond, which extended the bond's expiration date to August 31, 2005.

On January 18, 2005, the Henderson County Planning Board conditionally approved a revised Master Plan and a revised Phase I Development Plan for The Homestead at Mills River. The revised plans showed the addition of land to the north of the previously approved Phase I. Such addition of land resulted in the redesign of some roads and the lot layout in the northern portion of Phase I. One of the conditions of approval was that the developers apply to the Board of Commissioners for an amendment to their existing improvement guarantee (which had allowed them to record a final plat for Phase I).

The developers are therefore requesting to amend the improvement guarantee for Phase I to reference the approval of the revised Development Plan and a revised cost estimate for the improvements in Phase I of The Homestead at Mills River based upon the revised plan. The cost estimate has been reduced by \$11,000.00, from \$1,446,000.00 to \$1,435,000.00. The new cost estimate, plus the required 25% contingency amount would reduce the required amount of the bond posted with the County to \$1,793,750.00. The bond (as previously amended) on file with the County is for \$1,886,250.00. It therefore appears that the only change that would be needed to the existing bond is a reference to the revised Development Plan for Phase I of The Homestead at Mills River and its approval date.

If the Board of Commissioners agrees to revise the improvement guarantee as presented above, staff has attached for the Board's consideration a draft Performance Guarantee Agreement which reflects the necessary modifications and requires submittal of an amendment to the existing bond that acknowledges the revised Development Plan, and its approval date, for the project. The relevant parties must execute the new Performance Guarantee Agreement if the Board approves the extension request.

**Modification of reimbursement resolution (Dana Elementary School)**

A reimbursement resolution previously adopted for the project needed to be updated to provide for reimbursement of the most recent expenditures for the project from anticipated financing proceeds. The resolution also separated the financing of this project from the reimbursement resolution regarding the Hillandale Elementary Project.

Bond counsel for the County had reviewed and approved the resolution.

A copy of the Resolution is attached hereto and incorporated as a part of the minutes.

**Settlement of Lawsuit**

Henderson County had been defending the following lawsuit:

DAN TONEY, Plaintiff,

v.

HENDERSON COUNTY, NORTH CAROLINA, Defendant (Henderson County Clerk of Court file number 04 CVS 772) on behalf of the Henderson County Parks and Recreation Department.

A tentative settlement has been reached whereby the North Carolina Association of County Commissioners' Risk Management Pool is to pay the sum of \$16,000.00 in full and final settlement of all claims against Henderson County and Henderson County Parks and Recreation Department, and the employees of the County.

N.C. Gen. Stat. § 143-318.11(a)(3) requires that a settlement of a claim against the County be publicly reported and entered into the Board of Commissioner's minutes within a reasonable time after the settlement is concluded. The Board was requested to confirm this settlement and enter it into the minutes of today's meeting.

**Resolution-Newspapers in Education Week**

The Times News requested that the Board proclaim the week of March 7-11, 2005 as Newspapers in Education Week and adopt a Resolution to that effect. A copy of the Resolution is attached hereto and incorporated as a part of the minutes.

**Amendment to Personnel Resolution**

The following was a proposed change to the Henderson County Personnel Resolution:

“Section 7.5.2 Failure in Personal Conduct

An employee may be suspended, demoted or dismissed without prior warning for just cause relating to personal conduct detrimental to County service.

The following causes relating to failure in personal conduct are representative of those considered to be adequate grounds for suspension, demotion, or dismissal.

- (a) Fraud in securing appointment;
- (b) Conduct unbecoming a public officer or employee, whether on or off duty;
- (c) Conviction of a felony or of a misdemeanor that would adversely affect performance of duties, or entering a plea of "no contest" to either;
- (d) Misappropriation of County funds or property;
- (e) Falsification of County records;
- (f) Reporting to work under the influence of alcohol or narcotic drugs or partaking of such things while on duty or while on public property where prohibited, except that prescribed medication may be taken within the limits set by a physician so long as medically necessary, which are not disruptive to the employee's regular duties and/or job performance and which have been approved by the Department Head or the County Manager;

- (g) Willful or grossly negligent damage or destruction of property;
- (h) Willful or grossly negligent acts that would endanger the lives and property of others;
- (i) Acceptance of gifts or favors in violation of the ARTICLE 5, Section 5.1 of this Personnel Resolution;
- (j) Incompatible employment or conflict of interest;
- (k) Violation of political activity restrictions;
- (l) Violation of safety rules of major significance; and
- (m) Other serious reasons.

If a Department Head deems disciplinary action appropriate for an employee's failure in personal conduct, he shall initiate the disciplinary process as follows. The Department Head shall conduct an investigation of the personal conduct incident, gathering enough evidence to determine the facts that are involved. The Department Head shall then notify the Human Resources Director in writing that disciplinary action is necessary for the employee.

The notice shall recommend to the County Manager a proposed disciplinary action to be taken, and shall include facts and documentation supporting the recommended disciplinary action. The Human Resources Director shall meet with the Department Head to discuss the proposed disciplinary action and shall then proceed in accordance with the procedures outlined in Section 7.5.3 below.”

#### **Medicaid Resolution**

The Board was requested to approve a “JOINT RESOLUTION OF BUNCOMBE AND HENDERSON COUNTY COMMISSIONERS IN SUPPORT OF STATE ASSUMPTION OF COUNTY SHARE OF MEDICAID COSTS.” A copy of the Resolution is attached hereto and incorporated as a part of the minutes.

#### **Water and Sewer Line Extensions**

The City of Hendersonville requested County comments on a proposed water and sewer line extension to serve the proposed Section 22 in the Carriage Park Planned Unit Development.

The City of Hendersonville’s Project Summary sheet and a County review sheet with staff comments for the projects were included for Board review and action.

**Extension of Technical Assistance Contract with Land of Sky Regional for Highlander Woods Project**  
Habitat for Humanity has requested an extension on the technical assistance contract between the County and Land of Sky Regional Council for the Highlander Woods Subdivision Project. Staff recommended the approval and execution of the amendment agreement.

### **NOMINATIONS**

#### **Notification of Vacancies**

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

1. **EMS Quality Management Committee-20 vac.**
2. **Fletcher Planning Board-1 vac.**
3. **Solid Waste Advisory Committee-3 vac.**

#### **Nominations**

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

1. **Equalization and Review Board-2 vac.**  
Commissioner McGrady nominated Babs Kuykendall and William Farrell for reappointment to the Board. There were no other nominations. *Chairman Moyer made the motion to appoint Babs Kuykendall and William Farrell by acclamation. All voted in favor and the motion carried.*
2. **Juvenile Crime Prevention Council-2 vac.**  
There were no nominations at this time so this item was rolled to the next meeting.

- 3. Mountain Valleys Resource Conservation and Development Program-1 vac.**  
Chairman Moyer nominated Drew Brannon for reappointment to the Program. There were no other nominations. *Chairman Moyer made the motion to appoint Drew Brannon by acclamation. All voted in favor and the motion carried.*
- 4. Nursing/Adult Care Home Community Advisory Committee-7 vac.**  
Commissioner McGrady nominated Reva McClure for reappointment to Position #23 on the Committee. There were no other nominations. *Chairman Moyer made the motion to appoint Reva McClure by acclamation. All voted in favor and the motion carried.*
- 5. Recreation Advisory Committee-3 vac.**  
At the February 16<sup>th</sup> meeting the following nominations were made:  
Position #3 – Terry Maybin and Frank Edney  
Position #4 – Ralph King and Vince Calvert  
Position #5 – Gary Eblen and Virginia Bailey

The vote was as follows:

Commissioner Baldwin – Edney, Calvert, Bailey  
Commissioner McGrady – Maybin, King, Eblen  
Chairman Moyer - Maybin, King, Eblen  
Commissioner Messer - Maybin, King, Eblen  
Commissioner Young – Maybin, Calvert, Bailey

Terry Maybin, Ralph King and Gary Eblen were re-appointed to the Committee.

Prior to the vote on the Recreation Advisory Committee, there was discussion regarding whether the Board should consider appointing individuals to Boards if they had not submitted an application for such. *Commissioner Young made the motion that to allow individuals to be nominated for appointment to a Committee without having an application on file, but that they must have filed an application to be eligible for appointment. It was the consensus of the Board to have that motion apply to all future nominees. All voted in favor and the motion carried.*

## **DISCUSSION ITEMS**

### **Historic Courthouse Corporation**

George Jones gave a presentation regarding the plan to restore the Historic Courthouse. Several drawings were presented by Dr. Jones, depicting the four sides of the Courthouse as the Committee envisioned it being restored. He stated that the front of the Courthouse, the east side, does not need to be changed, just restored. The back of the Courthouse, the west side, was recommended to be restored with an addition. Through looking at a view of the south elevation, Dr. Jones pointed out the proposed location of elevators, restrooms, and office spaces. Dr. Jones requested support from the Board regarding the presented concept for the exterior of the Courthouse.

Commissioner McGrady stated that he agreed to the concept in general, but expressed concern about funding. The Courthouse depictions shown included the jail and annex being torn down, which could affect the federal monies planned for the project. Dr. Jones stated that he believed even if the jail was torn down using local funds, the rest of the money would still be eligible for renovations. Despite conversations staff had with Congressman Taylor's office stating that would not be the case, Dr. Jones felt the money would be coming.

David Nicholson stated that through meetings with Rep. Charles Taylor's office, it was his understanding that if an object of "historical significance" were torn down, we would no longer be eligible for the federal funding. Commissioner Baldwin questioned how it was being determined that the old jail was of "historical significance". Justin Hembree answered that it was a combination of architecture, and the fact that the jail was noted as a significant historic structure when the Downtown Hendersonville Historic District was

proclaimed. Mr. Hembree clarified that the jail is not on the Historic Register, but was noted in the write-up for the Historic District as being historically significant.

Commissioner McGrady stated that his opinion was to go ahead with the bid process, and hope that Dr. Jones was correct that the project would still be funded. Commissioner Young questioned why the County should proceed, when all indications were that the grant would not allow for the demolition of the jail. David Nicholson stated that in his opinion, the Courthouse would never be able to be utilized if some sort of annex were not added to the back of the building.

Dr. Jones stated that what he was asking was whether the Board liked the plans he had presented. If so, then they will work out the cost and procedure. Chairman Moyer questioned if the Board moving forward with accepting bids to tear down the jail, and reserved working out the issues based on how much money is received, would be acceptable for Dr. Jones. Dr. Jones answered that there needed to be a conceptual plan in place before any details could be discussed. There followed discussion about the need to renovate the Courthouse for County Administration, when it might be more economically feasible to house County Administration in the future Human Services Building. Commissioner McGrady suggested that the Board move forward with the plan to renovate the Historic Courthouse, with the understanding that the Board will move forward if indeed it is economically feasible to do so. He discussed the reasons why he felt the Historic Courthouse should be renovated for use by some County offices. There followed much discussion, some heated, about the differences of opinion in proceeding with the jail demolition and what should be housed within that structure.

*Commissioner Messer made the motion to continue with the removal and the bids on the old jail, and plan to do whatever is necessary at a future date to accommodate whatever is placed there. Chairman Moyer requested that he add to the motion that the Board will continue to work with the Courthouse Committee to try to work out the issues and preserve it to its original state. Commissioner Baldwin clarified that the Board was voting to accept the bids, but would still need to give final authorization as to the individuals chosen to do the actual demolition. Following some additional discussion regarding whether the funding was in place to demolish the jail, Chairman Moyer clarified that the motion was only with respect to going out for bids on the demolition of the jail, continuing to work with the Courthouse Committee to try to resolve the Federal funds issue and get better cost figures on the two alternatives for the renovation. Commissioner Baldwin stated that he did not hear Commissioner Messer amend his motion to accommodate what Chairman Moyer had just asked for. Commissioner Messer amended his motion to accommodate what Chairman Moyer had just stated. A vote was taken and the motion carried 4-1 with Commissioner Young voting nay.*

### **Financing Resolution-Human Services Building and Dana Elementary School Construction Projects**

Staff presented a resolution drafted by our bond counsel to the Board of Commissioners for consideration concerning the proposed installment contract financing for the Human Services Building and Dana Elementary School Projects. David Nicholson noted that the plans were ready to go for Dana, and bids would be opened in April. The last figure received for the project was \$10,350,000. He stated that there existed a possibility that the Hillandale project might be placed on hold, and funding for a new facility requested. Mr. Nicholson also updated the Board on the progress for the Human Services Building, stating that he expected to open bids in April.

First, the resolution makes the necessary findings for the undertaking and authorizes the preparation of an installment purchase financing contract which will provide the funding for these two projects. Second, the resolution authorizes the Chairman and Staff to submit an application to the Local Government Commission for its required approval of the installment purchase financing contract. The resolution also authorizes staff to apply for municipal bond insurance with respect to the contract and approves the financing team necessary to complete the process. Last, the resolution calls for a required public hearing on the financing documents to be held on the Board of Commissioner's March 23, 2005 meeting date at 11:00 a.m. and directs the Clerk to the Board to cause a notice of the public hearing to be published in the local newspaper.



Commissioner McGrady moved that the following resolution (the "Resolution"), a copy of which was made available to the Board and which was read by title:

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT, DIRECTING THE PUBLICATION OF NOTICE WITH RESPECT THERETO AND MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH.** **UNDERTAKINGS** WHEREAS, the Board of Commissioners (the "Board") of the County of Henderson, North Carolina (the "County"), desires to provide for design, the acquisition, construction, renovation and equipping of an elementary school and the design, acquisition, construction and equipping of a human services department building (collectively, the "Facilities"); and WHEREAS, the Board now proposes to finance the Facilities through an installment financing contract (the "Contract") with Henderson County Governmental Financing Corporation, Hendersonville, North Carolina ("the Corporation"), obligating the County to repay in installments the amount financed at a fixed annual interest rate of not more than 5.5% over a term not exceeding 20 years, resulting in a total amount financed not to exceed \$26,000,000 (excluding reserves and costs of issuance); and WHEREAS, pursuant to N.C.G.S. Section 160A-20, the County is authorized to finance the design, acquisition, construction, renovation and equipping of the Facilities by entering into the Contract and a deed of trust (the "Deed of Trust") that create in the Facilities and the sites on which they are located a security interest to secure payment of the obligation thereby created; and WHEREAS, subject to the prior approval of the Local Government Commission of North Carolina (the "LGC") pursuant to N.C.G.S. Section 159-148, the County intends to finance the cost of the Facilities pursuant to N.C.G.S. Section 160A-20 by executing and delivering to the Corporation or other financing entity the Contract providing for the financing of a principal amount not to exceed \$26,000,000 (excluding reserves and costs of issuance); and WHEREAS, the County intends to apply for municipal bond insurance to guarantee payments by the County under the Contract; and **II. UNDERTAKINGS NECESSARY** WHEREAS, the County staff has advised the Board, and the Board hereby finds and determines, that the County must design, acquire, construct, renovate and/or equip the Facilities in order to maintain and enhance the County's public school and certain administrative facilities to enable the County to perform its public functions, and that the Facilities will benefit the County and its residents; and WHEREAS, a public hearing must be held to receive public comment on the desirability of installment financing for the Facilities, and the Board received evidence supporting the need for such financing; and WHEREAS, the Board finds and determines that the undertakings are necessary and expedient for the aforesaid reasons and that the Facilities be financed under the terms, conditions and parameters heretofore stated and to be further determined with more particularity at a later date; and **III. FUNDS NOT EXCESSIVE** WHEREAS, the sums to fall due under the Contract can be included in the County's budget without difficulty; and WHEREAS, the above factors lead to the conclusion that the payments under the Contract are not excessive for the stated purposes of designing, acquiring, constructing, renovating and/or equipping the Facilities; and **IV. TRANSACTION A PUBLIC PURPOSE** WHEREAS, the County Attorney has advised the County that the Facilities are authorized by law and are purposes for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina; and **V. INSTALLMENT PURCHASE FINANCING DESIRABLE** WHEREAS, the Board finds and determines that short term or pay-as-you-go financing for the Facilities would place strains on the County's ability to fund general operations and education without a significant tax increase; and WHEREAS, use of the County's unobligated fund balance to finance the Facilities would reduce the fund below the guideline established by the LGC and would not be in the County's best interest; and WHEREAS, the use of non-voted debt would not provide sufficient funds to complete the Facilities in a timely manner; and WHEREAS, although the cost of financing under the proposed Contract is greater than the cost of general obligation bond financing, installment contract financing would be preferable to general obligation bond financing because a general obligation bond authorization probably could not be perfected in a timely manner and would not permit the alternative financing structures and repayment provisions available in the proposed negotiated installment contract financing; and WHEREAS, the proposed cost of financing the Facilities is too great an amount to be funded by current appropriations; and WHEREAS, the Board finds and determines that installment contract financing is therefore the most viable and efficient alternative and that the cost of such financing is reasonable; and **VI. COMPLIANCE WITH DEBT MANAGEMENT CONTROLS** WHEREAS, past audit reports of the County indicate that its debt management and contract obligations payment policies have been carried out in strict compliance with the law and the County has not been censured by the LGC, external auditors, or any other regulatory agencies in connection with such management; and **VII. ESTIMATED TAX INCREASE** WHEREAS, the Board estimates that the County's ad valorem tax rate will not be significantly increased in order to sustain the proposed financing; and **VIII. NO DEFAULT** WHEREAS, the County is not in default in meeting any of its debt service or contract obligations; and **IX. APPLICATION** WHEREAS, it is the Board's intention to adopt this Resolution for the purpose of authorizing the design, acquisition, construction, renovation and/or equipping of the Facilities, making certain findings and determinations, approving the submission of an application for approval of the Contract to the LGC and authorizing such other acts deemed necessary and advisable to carry out the design, acquisition, construction, renovation and/or equipping of the Facilities.

*NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, as follows:*

*Section 1. The Chairman of the Board, the County Manager, the Finance Director and the Clerk to the Board are hereby authorized and directed on behalf of the County to proceed with the preparation of the Contract providing for the financing of an amount not to exceed \$26,000,000 (excluding reserves and costs of issuances) at an annual interest rate not to exceed 5.5% and a term not to exceed 20 years, and otherwise proceed with the plan of financing for the Facilities described at this meeting.*

*Section 2. The Chairman of the Board, the County Manager, the Finance Director and the Clerk to the Board are hereby authorized and directed to submit an application for the LGC's approval of the Contract pursuant to N.C.G.S. Section 160A-20 and Section 159-148, and to execute a sworn statement of debt of the County pursuant to N.C.G.S. Section 159-150, in connection with the financing of the Facilities.*

*Section 3. The County staff is hereby authorized to apply for municipal bond insurance with respect to the Contract.*

*Section 4. The financing team of LeBoeuf, Lamb, Greene & MacRae, L.L.P., as special counsel, BB&T Capital Markets, a division of Scott & Stringfellow, Inc. as underwriter, Robinson, Bradshaw & Hinson P.A., as underwriter's counsel, and First-Citizens Bank & Trust Company, as trustee, is approved.*

*Section 5. This Resolution shall become effective immediately upon its adoption and shall supersede any and all previous resolutions regarding the design, acquisition, construction, renovation and/or equipping of the Facilities on an installment financing basis.*

*Section 6. That a public hearing (the "Public Hearing") shall be conducted by the Board of Commissioners on March 23, 2005 at 11:00 a.m. in the Commissioners' Meeting Room of the County Administration Building at 100 North King Street, Hendersonville, North Carolina, concerning the Contract, the Deed of Trust, the proposed design, acquisition, construction, renovation and/or equipping of the Facilities and any other transactions contemplated therein and associated therewith.*

*Section 7. The Clerk to the Board is hereby directed to cause a notice of the Public Hearing to be published once in a qualified newspaper of general circulation within the County on March 10, 2005.*

*On motion of Commissioner McGrady, the foregoing resolution entitled "RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT, DIRECTING THE PUBLICATION OF NOTICE WITH RESPECT THERETO AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO AND MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH" was duly adopted by the following vote:*

*AYES: Chairman Moyer, Commissioner Messer, Commissioner Baldwin, Commissioner Young, Commissioner McGrady.*

*NAYS: None.*

*Commissioner McGrady made the motion to set the required public hearing on the financing documents to be held on the Board of Commissioner's March 23, 2005 meeting date at 11:00 a.m. All voted in favor and the motion carried.*

### **Update on Pending Issues**

#### **Tuxedo School Site**

David Nicholson stated that it was his understanding that the School Board would be declaring the Tuxedo School Site as surplus at an upcoming meeting, at which time the property would first be offered to the County. In accordance with the Strategic Plan, Justin Hembree was working with the Recreation Department and the Library on a site plan for that facility. The issues that continue to arise in those discussions concern how much land is present, how it can best be utilized, the condition of the facility, and how the site can best be used. Mr. Nicholson stated that he hoped that once the school is declared surplus, he would be able to present the Board with the site plan to assist in determining whether it was worth pursuing for a library and recreational opportunities.

Commissioner Messer questioned whether the old building could be preserved and used for the needs of the community. David Nicholson stated that he believed to use the property to its fullest advantage, the existing structure would have to be torn down.

Katherine Taylor stated that the community had been in search of a recreation area, and hoped that the property could be utilized. It was her opinion that the existing structure would have to be torn down. Chairman Moyer stated that he agreed the property would be declared surplus, but no agreement had been reached regarding what the County would pay for it, if anything. However, he felt the issue would be worked out in some fashion.

### **DSS Staffing Request**

Liston Smith was present presenting a request for one (1) additional full-time worker and two (2) part-time workers to be increased to full-time. The level of demand for Infant and Children Medicaid and Health Choice services for children of working families continues to steadily increase. Since FY 2001/2002, Health Choice has increased 102% and Infant and Children's Medicaid 91%. Of particular note is the 37% increase in mail-in applications over the previous twelve months. 45% of all children in Henderson County were either on Medicaid or Health Choice. Mr. Smith stated that his research showed that recovery from the latest recession was almost 50% slower than previous recessions. Mr. Smith also discussed the statistics on people underemployed in Henderson County, and that in many cases they were working in jobs that did not offer health insurance.

Funds were available in the Social Services operating budget to cover the increased county cost (\$7,394) through the remainder of this fiscal year. Additional county costs for next fiscal year would be \$37,116. Staffing (one full time employee) for Health Choice had not increased since FY 2001/2002. Adjustments through workload reassignments/redistribution did not appear reasonable as an option. Significant levels of demand increases were being experienced in all assistance programs, especially Food Stamps.

David Nicholson had made a negative recommendation on the request, and Commissioner McGrady asked him to explain that recommendation. Mr. Nicholson stated that he did not argue with anything Mr. Smith had said, but his opinion was that issues with growth should be addressed as part of the budget process.

There was some discussion about where the available funds for the positions had come from.

*Commissioner McGrady made the motion to authorize one (1) additional full time worker and increase two (2) additional part-time workers to full-time with the funds to be paid out of the remaining Social Services operating budget for this fiscal year. Following some discussion about the request being made out of the budget cycle and the clarification that the continuum of the positions would be dealt with in the next budget cycle, Commissioner McGrady restated his motion, stating "I have moved to authorize the Department of Social Services to hire one full time position and the upgrading of two part-time positions to full time positions". The motion failed 2-3 with Commissioners McGrady and Messer voting aye.*

*Commissioner Young made the motion to accept the positions for this budget cycle. The continuation of the positions would be considered during budget deliberations for the coming year. There followed much additional discussion, culminating in Commissioner Young restating his motion stating "my motion is to give him (Liston Smith) the authorization to take this money and use it for temporary employees during this budget cycle whether he needs to increase their hours or whatever." Commissioner Baldwin stated he would like to make a motion and requested Commissioner Young withdraw the motion on the floor. Commissioner Young withdrew his motion. Commissioner Baldwin made the motion to allow the DSS Director to take monies from lapsed salaries to increase the hours for part-time permanent employees up to but not including full-time for the remainder of the budget cycle. The motion carried 4-1 with Commissioner McGrady voting nay.*

### **PUBLIC HEARING - Rezoning Application R-04-05, I-2 to R-10, Hollabrook Farms, Inc., Applicant William M. Alexander, Jr., Applicant's Agent**

William Alexander requested that given the length of the public hearing, the Board proceed with the remainder of the agenda and hold the public hearing following the remaining items. It was the consensus of the Board to hold the Public Hearing as the last agenda item.

### **Public Health Department-Staff Request**

The NC Division of Medical Assistance had offered to the Henderson County Department of Public Health funds of \$33,879.62 per year to be used to hire a full-time Health Check Coordinator. This Health Department employee would be placed at the Medicaid Division of the Henderson County Department of Social Services to assist Medicaid recipients to assure that they are effectively utilizing Medicaid services while limiting use of the higher cost options, such as hospital emergency rooms. The Health Check Coordinator would work with patients of all medical providers and medical assistance agencies to assure appropriate services access. The total cost for the position annually would be \$37,755.62 and would require a "local match" of \$3,876.00 that would be provided by the Department of Social Services. The position needs to be filled by April 2005 in order to receive those funds; otherwise the offer will be made to another qualifying county. Following several questions for Mr. Bridges from the Board, *Commissioner McGrady made the motion to authorize the position for a full-time Health Check Coordinator. All voted in favor and the motion carried.*

### **Update on Pending Issues**

#### **Cemetery Advisory Committee Charter**

Commissioner Baldwin noted that Strategy 1.11 of the Strategic Plan called for the Board to conduct an inventory of historic, culturally significant sites and structures as related to the cemetery issue. He questioned whether the Board wished to classify some cemeteries as historically significant, and if so, how that would be accomplished. He suggested revisiting the Charter for the existing Cemetery Advisory Committee to allow them to perform this function.

Commissioner Messer asked Russ Burrell his opinion of changing the structure of the Charter and how private property would be affected. Mr. Burrell stated that if the Board wished simply to classify cemeteries, that would not affect private property rights. If that classification in some way restricted use of land, the Board would have to start thinking about what type restrictions could be applied without taking property. Commissioner Baldwin requested the County Attorney research the various classifications for what types of cemeteries might be considered historically significant. Russ Burrell stated that he would do the research and report back to the Board at an upcoming meeting.

#### **Asheville-Buncombe-Henderson Regional Water Authority**

Chairman Moyer updated the Board on the recent happenings with the Authority. He had met with Buncombe County and the City of Asheville to see if there was any desire to work together on a negotiated settlement. It was the consensus of Henderson County and the City of Asheville to resolve our issues by negotiation. Buncombe County had determined that they wished to pursue their issues separately.

It was Chairman Moyer's position that to come up with an effective resolution of the issue, the City of Hendersonville's involvement was necessary. To that end Hendersonville Mayor Fred Niehoff had been asked to participate in those discussions to move forward. Chairman Moyer and Mayor Worley had agreed that a reasonable place to start would be where negotiations had stopped two years previously. The following had been on the table at the end of those negotiations:

- A \$1.5 to \$2 million payment to Henderson County for construction of water and sewer lines.
- The City of Asheville and the Authority would no longer have an obligation to build such lines.
- Henderson County would return the Bent Creek property to the City of Asheville.
- Further movement would be toward some type of planning vehicle on a coordinated basis.

Through the gracious cooperation of the Mayors of Asheville and Hendersonville, there was a proposal to establish a Regional Water Production Authority. The Mills River Plant owned by the Authority would be put into this Production Authority. The City of Asheville would keep all the debt, so it would come into the Production Authority carrying no debt. Mayor Niehoff had recommended a true Regional Water Production Authority, and suggested discussing putting the Hendersonville Treatment Plant in so all the production serving Henderson County would be in a true Regional Water Production Authority which would be controlled by Asheville, Hendersonville, and Henderson County. Chairman Moyer also felt that Mills River should be brought in to participate. There would be a shared cost of production. With regards to distribution,

each unit would be responsible for controlling their own distribution lines. There was also discussion about existing water lines in Henderson County run by the Authority. Mayor Worley suggested turning those lines over to Henderson County at no cost, which could then hand them over to the City of Hendersonville.

Mayor Niehoff addressed the Board on the idea of a Production Authority. He noted that the idea had been discussed about ten years ago, but had not worked out because of differences in opinion over ozonation of water. Hendersonville had been hesitant to work with the City of Asheville because of the debt service on the Authority's plant. However Hendersonville had reached the point with their plant that they were being required by the State to begin planning for expansion, and with the Authority's plant being under utilized it made sense to try to find a means of working together. Since the latest proposal had been for the City of Asheville to keep the existing debt on their plant, Mayor Niehoff stated that the cost barrier was no longer an issue. Though the proposal had not yet gone to Hendersonville's City Council, Mayor Niehoff was excited about the possibilities of working together on a Production Authority feeling that it was a win-win situation. There was some discussion about the source of the water. Mayor Niehoff stated that ten years ago, the State had authorized a combined draw of 25 million gallons per day from the Mills River. Additionally, the Asheville plant had the ability to draw from the French Broad River.

Following additional discussion about how the provision of water would affect annexations, future growth within the County, the water rates being charged in the region, *Commissioner McGrady made the motion to authorize Chairman Moyer to continue discussions with the City of Hendersonville, the City of Asheville and Buncombe County if they reconsider their position consistent with the broad outline of an agreement as discussed tonight. All voted in favor and the motion carried.*

#### **Facilities**

Commissioner Young deferred discussion on facilities to an additional meeting.

#### **Airport Property Issue**

David Nicholson stated that he had not received a formal response to a letter sent to the Airport Authority based on discussions at a previous meeting. However, a meeting had been scheduled for the coming week between the Chair and Vice-Chair of the Board of Commissioners and the Airport Authority. Chairman Moyer stated that he would proceed in that meeting based on the Board's previous discussion, pursuing a full voting seat on the Authority and payment in lieu of taxes for properties purchased by the Airport Authority.

#### **Legislative Conference Update**

Commissioner Messer updated the Board on a Resolution in support of a County-wide Local Optional Education Lottery. 25 counties would have the option to take a lottery to the legislature for a vote. If passed, those 25 counties would receive 25% of the revenue brought into that county, with the other 75% going back to the State. There had been discussion about why the proposal was for only 25 counties, and Commissioner Messer expected that there would be a lot more discussion in the future, especially in light of the State's \$1.2 billion shortfall.

Commissioner McGrady clarified that this was just a House bill that had been introduced. The Resolution in support of a local option lottery was passed by the NCACC. It had no force of law, but having taken a position, the NCACC had requested that Boards adopt a Resolution in support of a local option lottery. Chairman Moyer agreed it had no force of law, but did have the force of policy for the Association. Chairman Moyer further stated that he would not place this on a future agenda unless requested to do so by another Board member.

#### **IMPORTANT DATES**

Commissioner McGrady reminded the Board that there was a meeting scheduled on March 21<sup>st</sup> for the US 25 North Zoning study area. He did not feel that the current zoning ordinance was adequate to the task of this rezoning. The Planning Board, when suggesting certain zonings, had acknowledged that the area would need to be rezoned following adoption of the new ordinance. Since the County was due to rewrite the zoning

ordinance in the calendar year, he suggested postponing the March 21<sup>st</sup> meeting, and asking the Planning Board and Staff to move forward as quickly as possible on the zoning ordinance rewrite.

Karen Smith stated that she planned to roll any existing land development related regulation into the planned land development code. Ordinances scheduled to be written in the future would be incorporated upon their adoption. She anticipated having a draft on the new ordinance to the Board by late fall. Commissioner Messer questioned how the DOT's timeframe for completion of Hwy. 25 would coordinate with the proposed code. Ms. Smith believed the road construction was planned to conclude in fall, 2006 and the time frames might begin to coincide a bit more.

There was discussion about the various things that could happen within the study area were the hearing postponed as suggested. Commissioner McGrady stated that if there were a serious concern that requests for rezoning in the area would begin flowing in, he would offer a motion to suggest the Board put in place a moratorium on re-zonings within the study area until the topic was revisited. *Commissioner McGrady made the motion to indefinitely postpone the hearing on the US 25 Study Area, and postpone specifically the public hearing currently scheduled for March 21<sup>st</sup>. All voted in favor and the motion carried.*

David Nicholson stated that there were two issues present. The first was that the Board could set a policy not to review any re-zoning requests. If the Board wished to enact a formal moratorium, they would need to hold a public hearing and enact an Ordinance. *Commissioner McGrady made the motion to direct staff to come back to the Board after consultation with the Planning Board, with dates and language for a moratorium in the US 25 study area on any rezoning requests.* Commissioner Baldwin stated that he would prefer Staff draft the moratorium in accordance with the Board's wishes, allow the Board to review that draft moratorium, and then send it to the Planning Board for recommendations. David Nicholson stated that the following was the procedure previously used in this circumstance:

- An Ordinance would be drafted and brought back to the Board for approval
- The Board would then set a Public Hearing
- The Ordinance would go back to the Planning Board for their review

*Commissioner McGrady made the motion to use that process.* Commissioner Baldwin clarified that Commissioner McGrady was only requesting no re-zonings be permitted, not that no permits be issued. Given the amount of land in that area currently zoned open use, Commissioner Baldwin requested Commissioner McGrady amend his motion. He questioned whether the County issues certificates of zoning compliance. Karen Smith answered that initial zoning permits were issued. He requested Commissioner McGrady amend his motion to basically place a moratorium on the issuance of zoning permits during the duration.

Following additional discussion, Commissioner McGrady withdrew his motion, and requested staff come back with a series of options allowing the Board to create a moratorium on a range of possible zoning changes, and a range of activities that would currently be permitted in the Open Use areas.

The Board took a brief technical break.

Following the break, Commissioner Baldwin expressed concern that once the word got out that the Board was considering a moratorium, the Planning Department would be inundated issuing permits until the effective date of the moratorium. He suggested placing a stay on issuing the permits necessary to move forward with development for a minimum of four weeks or until such time as the moratorium takes effect. Russ Burrell stated that he felt there were ways in which the Board could do that, and requested the Board allow him to do some research on the subject during the public hearing. Chairman Moyer requested Mr. Burrell proceed with that research and report back to the Board following the close of the public hearing.

**PUBLIC HEARING - Rezoning Application R-04-05, I-2 to R-10, Hollabrook Farms, Inc., Applicant William M. Alexander, Jr., Applicant's Agent**

*Commissioner McGrady made the motion to go into Public Hearing. All voted in favor and the motion carried.*

Autumn Radcliff stated that rezoning application #R-04-05, which was submitted on December 20, 2004 requested that the County rezone a 106.57 parcel of land, located off Butler Bridge Road, from an I-2 (General Industrial) zoning district to an R-10 (High-Density Residential) zoning district. The applicant was Hollabrook Farms, and the applicant's agent was William M. Alexander, Jr.

The property was unzoned until May 16, 2001, when it was zoned Open Use by the Commissioners. In 2002, Hollabrook Farms applied to rezone the property, as well as the balance of the original tract, to the I-2 designation. That application was favorably received, and the property was rezoned I-2.

Ms. Radcliff then reviewed the Planning Department's Staff Report. That detailed discussion covered the location, current zoning, a comparison of the districts, adjacent uses, utilities/infrastructure, the previous rezoning request, the subject area as it related to the 2020 County Comprehensive Plan, Staff comments and recommendations and Planning Board recommendations.

With regard to the Planning Board recommendations, the Henderson County Planning Board first considered rezoning application #R-04-05 at its regularly scheduled meeting on Tuesday, January 18, 2005, at which time the Board took the following actions:

1. Voted three to three (3-3) on a motion to send the Board of Commissioners an unfavorable recommendation on rezoning the Subject Area to an R-10 district. Motion failed.
2. Voted four to two (4-2) on a motion to send the Board of Commissioners a favorable recommendation on rezoning the Subject Area to an R-10 district. Motion passed.

With regard to the Staff comments and recommendations:

1. Staff's position was that it supports industrial development on the Subject Area under the guidelines of current County plans, policies and studies.
2. Both the text and map of the 2020 CCP identify the Subject Area as being located in the Urban Services Area and suitable for industrial development, with a portion of the Subject area being identified for conservation.
3. The former Committee of 100 recommended that the area in the vicinity of the Subject Area, including the Subject Area itself, be zoned for industrial development.
4. An existing industrial zoning district surrounds three sides of the Subject Area. The presence of existing industrial districts and the potential of future industrial development would offer little protection, except for any required vegetated buffering, to an R-10 residential district.
5. I-2 zoning was applied to the Subject Area on November 5, 2001 at the request of the current property owner, and was supported by Planning Staff, the Planning Board, and the Board of Commissioners.
6. The R-10 district text states that, "it is expected that public water facilities and public sewage facilities will be available to each lot, providing a healthful environment." Although water and sewer are available at or near the Subject Area, making it desirable for high-density, residential development, accessing public sewer would require crossing the French Broad River by attaching a line to the bridge on Butler Bridge Road. The Henderson County Zoning Ordinance would not require the applicant to connect to public utilities.
7. The location of the Subject Area US Highway 25, I-26, and the proximity to the Asheville Regional Airport makes it suitable to support industrial development.

Before taking action on the application, the Board of Commissioners must hold a public hearing. In accordance with Section 200-76 of the Henderson County Zoning Ordinance and State Law, notices of the March 9, 2005 public hearing regarding rezoning application #R-04-05 were published in the Hendersonville Times-News on February 23, 2005 and March 2, 2005. The Planning Department sent notices of the hearing via first class mail to the applicants and owners of properties adjacent to the Subject Area on February 25,

2005. Planning Staff posted signs advertising the hearing on the Subject Area on February 25, 2005.

### **Public Input**

1. William Alexander – Mr. Alexander requested he be allowed to give input following the other speakers. He also stated that he had an affidavit from Myra Wood to present as a part of his presentation.
2. Myra Wood – Ms. Wood did not speak, but Mr. Alexander presented an affidavit to the Board for her.
3. Billy Johnston – Mr. Johnston stated that he was a landowner of a parcel on the south side of Butler Bridge Road, and was representing Tap Root Dairy on the north side of Butler Bridge Road. He had no opposition to the rezoning request. He stated that he was a fourth generation dairy farmer, and understood the difficulties of putting back money for retirement. He felt that it was wrong for the public or the government to force anyone to hold property for an industrial use.
4. Jeff Young – Expressed his concern about the proposed rezoning. All signs pointed toward the land in question being ideally suited for industrial development. A new sewer line was almost ready for use, and he felt that would help promote business. He felt the wrong message would be sent to industry if the use was changed to residential, and if the rezoning occurred there would be no turning back to possible industrial use. He requested the Board maintain the current industrial zoning designation. Mr. Young answered several questions from the Board.
5. William Alexander – Mr. Alexander distributed a packet of handouts to the Board. He stated his appreciation for both Planning Director Karen Smith, and the Henderson County Chamber of Commerce's Partnership for Economic Development. He clarified a point made by Ms. Radcliff, stating that the property had actually been on the market as industrial property for 13 years, not three.

He reminded the Board that in 2000, Karen Smith had been commissioned to perform the Mills River/Fletcher Land Use Study. She had presented that Study to the Board on March 21, 2001. Mr. Alexander identified the following points he felt were relevant to that study:

- Staff had recommended adequate infrastructure be provided before growth occurs.
- Land should be reserved for high-density residential, commercial and industrial development where public water and sewer are provided.
- It is important to provide appropriate opportunities for commercial and residential growth in the study area.
- The goal of the study was to provide a roadmap which would lead to the application of land use regulation in each area of the County in a manner which will balance private interest with community interest, manage growth, guide development and regulate density as necessary in each area.

Mr. Alexander then discussed the growth projections sited in the study versus the actual growth that had been realized in the County since the study was completed. The Study quoted the then current statistics on projected population increases for Henderson County as showing a 19.4% total increase for the time period from 1990 to 2000, and a projected increase of 12.3% for the time period from 2000 to 2010. The actual figures as now published showed a 27.9% increase from 1990 to 2000, and projected a 20.97% increase from 2000 to 2010.

Mr. Alexander noted that in 2001, there were 12 stand alone industrial sites available for sale in Henderson County as listed by the Western North Carolina Regional Economic Development Commission, a.k.a. Advantage West. Currently, there are 24 listed industrial sites ranging from 4.7 acres to 285 acres in size.

Mr. Alexander continued to discuss specific aspects of the growth projections. He noted that the percentage of our population over age 60 was growing at a rate far in excess of the overall population growth rate,



increasing the needs in the County for services of all types, and hastening the transition of our local economy from an industrial based economy to a services based economy. He also discussed the number of building permits and average dwelling costs currently being experienced in the County, and how the availability and cost of housing was an additional factor in attracting industry to the County.

Mr. Alexander requested the Board consider the application in light of the overall 2020 CCP's economic development strategy. By adopting the 2020 plan, the Board acknowledged that they should support the results of the 2001 Lockwood Greene study. That study focused specifically on economic development from the industrial standpoint, making it incumbent upon the Board to keep the balanced vision of the county's overall economy. Changes in the economic environment were due to the events of September 11th, the increase in the overall population of the County and specifically the predominance of retired residents, and the closure of multiple industries on a regional and county level. In fact, Mr. Alexander noted that the President of the Partnership for Economic Development had stated that the focus should be on retention of industry as opposed to development.

The Lockwood Greens study also noted that it was necessary to explore options to increase the supply of affordable housing. Housing costs were identified as a weakness to the County's appeal to new and expanding employers. Additionally, the CCP had multiple sections addressing the need for higher density housing. Mr. Alexander stated that granting the rezoning application would support the strategic policy of the CCP by helping to satisfy the needed element of affordable housing. He continued discussion of the attributes of the property that made it suitable for high density residential development and how that type of development actually promotes green spaces.

Commissioner Baldwin questioned with whom the property was under contract. Mr. Alexander stated that it was under contract with Windsor Aughtry.

Karen Smith noted for the record that many of the statistics cited by Mr. Alexander were accounted for in the 2020 CCP, which did update the 2001 Mills River Study. Commissioner Messer clarified that the last vote that came from the Planning Board on the rezoning, was a 4-2 favorable recommendation. Commissioner Baldwin noted that the Committee of 100 had reversed their position on the issue, but questioned whether they had taken a neutral position or were actually supporting the rezoning. Mr. Alexander stated that to be accurate, as he heard the decision reported, "their decision was not to op, to withdraw their opposition, not to oppose the application."

*Commissioner McGrady made the motion to go out of Public Hearing. All voted in favor and the motion carried.*

Commissioner McGrady stated that had he been asked to vote on this previously, he probably would have voted to deny the application. However, he felt Mr. Alexander had provided evidence that there had been changes in existing conditions to justify granting the proposed rezoning. Additionally, he felt the change in the Partnership for Economic Development's position was important, in that they were not opposing the rezoning.

Commissioner Baldwin stated that Mr. Alexander's presentation had reminded him that planning does not occur in a static environment, things are always changing. However, he was not ready to give up on the possibility of the site being used for industrial development.

*Commissioner Messer made the motion to rezone application #R-04-05, from I-2 to R-10 for Hollabrook Farms, Inc. Following additional comments from Chairman Moyer concerning the need for both industrial sites as well as affordable housing, a vote was taken on the motion. The motion carried 3-2 with Commissioner Young and Commissioner Baldwin voting in opposition.*

### **IMPORTANT DATES - continued**

Russ Burrell suggested the following to enact a temporary moratorium on new construction or zoning

compliance permits within the US Highway 25 North zoning study area. "The Board finds it necessary for the protection of public health, safety and welfare to order the complete but temporary cessation of the granting of new construction or zoning compliance permits, and in the allowing of other changes in the currently allowed land uses in the US Highway 25 North zoning study area. Pending this order this Board's consideration of a possible moratorium on rezoning and other issues in such area, and the adoption of a new comprehensive Land Development Ordinance in the County, the Board would need to find that a moratorium as ultimately adopted by this Board will likely not be as restrictive as a temporary complete cessation ordered in this order. But given that the required process is for drafting, for Planning Board approval, for Public Hearing and for the adoption of a formal moratorium, a permit crisis in the absence of such an order would occur whereby land owners and others in the study area would see permits for uses inconsistent with those uses ultimately deemed to be consistent with the health, safety and welfare of the County as a whole by this Board. The establishment of a temporary complete cessation is a necessary and proper exercise of the police power by the Board to prevent a crisis and to protect the health, safety and welfare. I would suggest that the Board hereby order no construction, zoning compliance permits or other governmental approvals or permits which would allow changes in the currently permitted land uses for an application which has not yet been filed by the close of business of today be allowed in the Highway 25 North zoning study area. The provisions of this order dealing with construction permits, zoning compliance permits and other government approvals and permits would be deemed severable. The order will remain in effect until consideration by this Board of a moratorium on rezoning and other land uses in the Highway 25 North zoning study area. But in any event this order would expire by the close of this Board's meeting on 4, April, 2005."

He further recommended the Board set a Public Hearing on such a moratorium for 4, April, 2005. That would give staff time to come back to the Board at the mid-month March meeting with a proposed moratorium that would also be reviewed by the Planning Board. *Commissioner McGrady moved the above, with the addition of the findings of fact stated in the motion. He then moved the public hearing if the moratorium was approved. The motion carried 4-1 with Commissioner Young voting in opposition.*

*Commissioner McGrady made the motion to set the Public Hearing for the April 4, 2005 at 7:00pm. All voted in favor and the motion carried.*

**CANE CREEK WATER & SEWER DISTRICT – no business**

**CLOSED SESSION – none**

**ADJOURN**

*Commissioner McGrady made the motion to adjourn the meeting at 10:30. All voted in favor and the motion carried.*

Attest:

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Amy R. Brantley, Deputy Clerk to the Board

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William L. Moyer, Chairman