

MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
MAY 2, 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, County Engineer Gary Tweed, Fire Marshal Rocky Hyder and Finance Director J. Carey McLelland, Planner Lori Sand and Zoning Administrator Natalie Berry.

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. Jay Jackson** – Mr. Jackson stated that the Cemetery Advisory Committee had held three official meetings, and had learned a lot about what the Committee could and could not do. They had determined that a section of Mill Pond Cemetery qualified as public abandoned, asked that county funds and personnel be used to maintain the cemetery. The Committee had also discussed signage designating cemeteries, and requested guidance from the Board on how the Committee should proceed. He hoped that following the next two Committee meetings a complete list of cemeteries would be available.

Following some discussion, it was the consensus of the Board to have this topic placed on their next agenda.

DISCUSSION/ADJUSTMENT OF AGENDA

David Nicholson requested the addition of Consent Agent Item “K” - One North Carolina Fund and Item “L” - Juvenile Justice & Delinquency Prevention Grants. *Commissioner McGrady made the motion to approve the agenda with the two modifications to the Consent Agenda. All voted in favor and the motion carried.*

CONSENT AGENDA

*Commissioner McGrady made the motion to approve the Consent Agenda. David Nicholson stated that Staff requested that Item J be pulled for discussion. Commissioner McGrady amended the motion to approve Items A through I and K through L. All voted in favor and the motion carried.*

Karen Smith stated that with respect to Item “J” - Improvement Guarantee for White Oak Village, Phases 1 through 4, the application indicated that they wished to do a surety performance bond. White Oak Village had since requested they be allowed the option of posting a surety performance bond or an irrevocable letter of credit. She requested the Board’s permission to allow either method, stating that the agreement would be reworded.

*Commissioner McGrady made the motion to approve Item “J” with the change requested by the applicant. 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:

- March 23, 2005, regular meeting
- March 31, 2005, special called meeting

**Tax Collector's Report**

Terry F. Lyda, Henderson County Tax Collector, presented the Tax Collectors' Report dated April 28, 2005, for the Board's information.

**Financial Report – March 2005**

**Cash Balance Report – March 2005**

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

The YTD cost in the General Fund Non-Departmental line item is the annual property/liability insurance premiums paid to the NCACC Insurance Risk Pools for FY2005. The remaining costs will be allocated out to departmental budgets in April of this current fiscal year.

The YTD deficits in the CDBG-Scattered Site Housing Project, the Mills River Watershed Protection Project, the Mud Creek Watershed Restoration Fund 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 in May of this current fiscal year.

**Henderson County Public Schools Financial Report - March 2005**

The Schools Financial Report was provided for March for information and consent approval.

**Adoption of Order on Variance Request of Pinnacle Falls, L.L.C.**

On 20 April 2005, after a quasi-judicial hearing the Board of Commissioners voted unanimously to grant the request of Pinnacle Falls, L.L.C., for a variance from the requirements of the Henderson County Subdivision Ordinance. The variance sought was to be relieved of three requirements of the Subdivision Ordinance regarding design and construction of a portion of a road within the subdivision "Pinnacle Falls".

Attached was a proposed order which, if approved by the Board of Commissioners, makes findings of fact and conclusions from the hearing, and grants the variance request.

**Petition for addition to State Road system**

Staff recommended approval of a petition to add Sweetwater Valley Court to the State Road system. It has been the practice of the Board to accept road petitions and forward them to NC Department of Transportation for their review. It has also been the practice of the Board not to ask NCDOT to change the priority for roads on the paving priority list.

**Register of Deeds – Request to use ROD Restricted Funds for Automation, Enhancement and Document Preservation**

Beginning in January 2002, the General Assembly enacted legislation that required counties to place 10 percent of certain revenues generated by the Register of Deeds Office into a fund to pay for automation enhancements and document preservation. This fund which is a portion of the County's Restricted General Fund Balance has in excess of \$150,000 currently. Only the Board of Commissioners may authorize the use and release of these restricted funds.

Presented for the Board's consideration was a budget amendment requesting to use the Register of Deeds

Restricted General Fund Balance to cover the cost of reproducing CDs of indexed data from the old vendor, Cott Systems, Inc., that can be utilized by the current vendor, IKON Office Solutions, during the changeover of information systems in the Register of Deeds Office. Also included in this total cost is a support agreement and training provided by IKON. The total proposed cost to obtain the indexed data along with the necessary training and support is \$33,378.

The County Manager supported the use of these restricted funds by the Register of Deeds Office to cover the cost of obtaining the indexed data along with training and support. He noted that it would be appropriate for the Board to consider adopting the attached budget amendment to appropriate \$33,378 from the Register of Deeds Restricted General Fund Balance for this request.

### **Improvement Guarantee for Crab Creek Valley Subdivision**

Mr. Bob Scheiderich, of Southern Pride of WNC, Inc., had submitted an application for an improvement guarantee for a subdivision to be known as Crab Creek Valley (formerly called Crab Creek Meadows). Crab Creek Valley will be located off of Hidden Lake Road, near the intersection of Hidden Lake Road and Crab Creek Road. The Henderson County Planning Board granted conditional approval of a Development Plan for Crab Creek Valley on March 15, 2005. The improvement guarantee is proposed to cover required road and water system and associated construction costs.

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 \$379,300.00 to cover the cost of the improvements (\$303,440.00) as well as the required twenty-five percent (25%) contingency (\$75,860.00). The proposed completion date for the improvements is July 30, 2005. 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 was presented 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.

The County Manager recommended that the Board approve the improvement guarantee application for Crab Creek Valley, subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

### **Request for Extension of Improvement Guarantee for Mountain Vista Subdivision**

On April 21, 2004, the Board of Commissioners approved an application, submitted by Pavilion Development Corporation, for an improvement guarantee for a subdivision known as Mountain Vista. As required by the Performance Guarantee Agreement for the improvement guarantee, the developer posted with Henderson County irrevocable letters of credit that, together, amounted to \$706,151.00, to cover the cost of completing road, water system, erosion control and related improvements in Mountain Vista. The Agreement also required that the required improvements be completed by May 1, 2005. The expiration dates on the letters of credit are July 1 and July 7, 2005.

The Planning Department had received a letter from Gary Benjamin of Pavilion Development Corporation requesting that the County extend the deadline for completing the improvements. Mr. Benjamin estimated the developer would need another 60 days to do so. Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners to grant extensions to completion dates for improvement guarantees for a maximum of one additional year, provided the time between initiation and completion of the improvements does not

exceed two years.

If the Board of Commissioners agrees to extend the completion date for the improvement guarantee for Mountain Vista, staff had provided for the Board's consideration a draft Performance Guarantee Agreement which reflects a new improvements completion date of July 31, 2005, and requires submittal of amendments to the previously filed letters of credit showing an expiration date not earlier than 60 days after such new improvements completion date. The new Performance Guarantee Agreement must be executed by the relevant parties if the Board approves the extension request.

The extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements. Therefore, the County Manager recommended that the Board approve the request to extend the completion date for the improvement guarantee for Mountain Vista subdivision to July 31, 2005, provided that amendments to the letters of credit are submitted in accordance with the new Performance Guarantee Agreement.

#### **Improvement Guarantee for White Oak Village, Phases 1 through 4**

VGC Properties, LLC, developer of White Oak Village subdivision, had submitted a request for an improvement guarantee for Phases 1 through 4 of the project. White Oak Village is being developed on Zeb Corn Road. A portion of the subdivision is the former White Oak manufactured home park. The Henderson County Planning Board granted conditional approval of a Master Plan and a Development Plan for Phase I of the project on December 21, 2004. Henderson County Planning Department staff conditionally approved Development Plans for Phases 2, 3 and 4 of the project on April 28, 2005. The improvement guarantee is proposed to cover installation of public sewer improvements (and related remaining engineering fees) as well as storm drainage improvements.

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 a surety performance bond. The developer intends to post with the County a surety performance bond in the amount of at least \$535,375.00 to cover the cost of the improvements (\$428,300.00) as well as the required twenty-five percent (25%) contingency (\$107,075.00). The proposed completion date for the improvements is January 1, 2006. 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 was provided for the Board's consideration. If the application is approved, the developer must submit a surety performance bond in accordance with the terms of the Agreement. Once the County receives a bond in proper form, the relevant parties must execute the Agreement.

The County Manager recommended that the Board approve the improvement guarantee application for White Oak Village subdivision, subject to the developer submitting to Henderson County a surety performance bond in accordance with the terms of the draft Performance Guarantee Agreement.

#### **One North Carolina Fund**

The Partnership for Economic Development requested that Henderson County apply for \$200,000 under the One North Carolina Fund for Raflatac. The County was successful in receiving these funds for Raflatac's last expansion. David Nicholson recommended that the Board authorize the Partnership and staff to apply for funding for Raflatac under the One North Carolina Fund.

#### **Juvenile Justice & Delinquency Prevention Grants**

The Henderson County Juvenile Crime Prevention Council (J.C.P.C) had approved funding for local juvenile crime prevention programs. The funds for Fiscal Year 2005-06, in the amount of \$208,354, were available for this purpose through the State of North Carolina. Each program was required to provide a 30% match.

The programs approved by the J.C.P.C. were as follows:

1. J.C.P.C. Administrative Expenses	\$7,500
2. DJJDP/29 <sup>th</sup> Henderson County Emergency Temp Shelter	\$5,000
3. DJJDP/29 <sup>th</sup> Henderson County Psychological Services	\$10,250
4. Henderson County Public Schools/C-Stop Counselor	\$32,075
5. Project Challenge (Restitution)	\$63,623
6. Boys & Girls Club of Henderson County	\$30,000
7. Dispute Settlement Center	\$59,906

The grant applications were recommended for approval to the Board of Commissioners by the J.C.P.C. They will then be forwarded to Raleigh before the May 16, 2005 deadline. The County Manager recommended approval of the J.C.P.C recommendations.

## **NOMINATIONS**

### **Notification of Vacancies**

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

1. Alliance for Human Services – 1 vac.
2. Blue Ridge Community College Board of Trustees – 2 vac.
3. Cane Creek Water & Sewer District Advisory Committee – 5 vac.
4. Environmental Advisory Committee – 4 vac.
5. Henderson County Historic Courthouse Corporation – 3 vac.
6. Jury Commission – 1 vac.
7. Land-of-Sky Regional Advisory Council on Aging – 1 vac.
8. Library Board of Trustees – 2 vac.
9. Nursing/Adult Care Home Community Advisory Committee – 1 vac.
10. Planning For Older Adults Block Grant Advisory Committee – 1 vac.
11. Social Services Board – 1 vac.

### **Nominations**

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

#### **1. Apple Country Greenways Commission – 1 vac.**

On April 20, 2005 Commissioner McGrady nominated JoAnne Hill to serve on the Committee. Ms. Hill will represent the Town of Mills River until such time as the Commissions agreement is changed to allow Mills River to be an equal member of the Commission. *Chairman Moyer made the motion to appoint Ms. Hill 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. Nursing/Adult Care Home Community Advisory Committee – 3 vac.**

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

## **HISTORIC COURTHOUSE TIMELINE**

The following time line had been established based on Henderson County directions and the intent was to provide construction documents for the above project and make it available to the public for bid. Bids were anticipated to be opened on or before September 26<sup>th</sup> 2005 by which time Henderson County Commissioners can make decision and award contract to the General Contractor on October 3<sup>rd</sup>. 2005. The following

timeline had been submitted by the Kohan Group.

<b>May 1- 31, 2005</b>	<b>Begin Programming and Schematic Design</b> Define Demolition area. Define Building Program Provide schematic lay-out for the new Annex Elevations and Building Perspectives Identify Occupants and Department space allocations Outline specifications Schematic Phase Cost Estimate
<b>June 1-30, 2005</b>	<b>Design Development</b> Develop systems and cut sheets Identify materials and methods Finishes and equipments Specifications Design Development Cost Estimate
<b>July 1- August 1-31, 2005</b>	<b>Construction Documents</b> Develop Sections and Elevations Details Equipment Finishes Schedules Specifications Construction Document Cost Estimate
<b>September 1-26, 2005</b>	<b>Bid period</b> Prepare Bid Documents and Advertisement Pre Bid Conference Bid opening Award Contract

David Nicholson stated that to meet the timeline, the Board would need to adopt a Resolution exempting the County from the architectural qualification-based selection process. Freeman White had developed a full set of plans for the Courthouse renovation in 1996. In 2001, they also worked on schematic designs to add a service annex on the back of the Courthouse. When Freeman White closed their governmental unit, they transferred those plans to the Kohan Group.

David Nicholson stated that the Kohan Group was a Limited Partnership of another company that probably should be listed in the Resolution. Chairman Moyer clarified that if the Board approved the Resolution exempting the Board from the requirement, Mr. Nicholson would then negotiate with the Kohan Group with respect to a fee. It was assumed that since they had the drawings already, their fee would be significantly less.

Commissioner Baldwin questioned whether any space need parameters had changed since the last set of plans were drawn. David Nicholson answered that he would need to bring a new program back to the Board. He anticipated bringing a new schematic design and program back to the Board at the June 6<sup>th</sup> meeting. Following some discussion about specific space and technology needs for the building, Chairman Moyer requested Mr. Nicholson compile a list of policy questions that he required Board direction on, and bring that list back for discussion at the Board's next meeting.

Commissioner McGrady had some concerns about the wording in the existing resolution, and requested that the legal name of the architectural firm or the name of the architect be listed correctly prior to its approval by the Board, specifically, the entity or person needed to hold a N.C. license to practice architecture. Following discussion of the available options, it was the consensus of the Board to defer action on the Resolution until the name issue was corrected.

### **ANIMAL SHELTER – BIDS**

On April 21, 2005, bids were opened for the construction on a new animal shelter. A total of three bids were received. A copy of the bid tabulation form was presented for the Board's consideration. The lowest bidder was Cooper Construction Company at a base price of \$1,404,000. Our last construction estimate, which was done in January, was \$1,227,570. For purposes of the bidding process, David Nicholson had added 5% bidding contingencies to the budget which brought the bid estimate to \$1,288,948. Based on this estimate, we are \$115,052 over budget. However once Alternates 2, 4, 5 and 6 are deducted, we are \$68,681 over budget.

Mr. Nicholson had asked Morgan Woodward, our new Animal Services Director, to review the plans. He was considering suggesting several changes to the plans that will reduce the cost. He had also asked Cooper Construction Company, as the lowest responsible bidder, to value engineer the building. They had indicated they can suggest several cost saving alternatives.

Alternate #1 called for an additional 14 runs at a cost of \$165,000. Currently, we have 11 runs and the base design calls for 25 runs. Staff would like for the Board to consider funding approximately one-half of the additional runs. Staff believed that would allow the County to increase the number of adoptable animals at the Shelter. Chairman Moyer pointed out that with an aggressive spay/neuter program, the number of animals waiting to be adopted would drop. There followed additional discussion about the cost to add the runs now versus later.

Mr. Nicholson recommended that the Board award the bid to Cooper Construction Company and authorize staff to negotiate with them to lower the base price. He also requested that the Board authorize staff to work with the architect and contractor on reducing the cost, and providing approximately seven additional runs. Following these negotiations, staff would report back to the Board a final contract price for Board approval.

David Nicholson reminded the Board that Staff was also looking at areas that we can utilize as community fund raising. Some examples of this effort would be to fund the landscaping around the building and courtyard and equip the public education room. A donation of \$30,000 from a citizen had been received toward the project.

Following some additional discussion, *Commissioner McGrady made the motion to award the bid to Cooper Construction Company, authorize staff to negotiate with them to lower the base price, and work with the architect and contractor on the cost of providing approximately 7 additional runs. All voted in favor and the motion carried.*

### **SUGARLOAF ROAD REAL ESTATE**

Russ Burrell discussed the following with the Board:

1. The Henderson County Board of Education had executed an assignment of its interest in the option to purchase certain real estate, approximately 43.45 acres, more or less ("the real estate"), located on Sugarloaf Road, to Henderson County. The acceptance of the option was subject to approval and acceptance by the Henderson County Board of Commissioners.
2. The Board of Education also approved a Resolution seeking the Board's approval of the selection of and payment of fees for services from an architect to design a new school to be located on the real estate.
3. In past financed school construction projects, the Board and the Henderson County Board of Education have entered into a Memorandum of Understanding regarding each boards' responsibilities regarding his matter.
4. Henderson County solicited bids for the interim financing of the purchase of the real estate. The Board was presented a proposal from First Citizens Bank and Trust Co., which was the low bidder

on the fixed rate option. That proposal was recommended by Staff. However, pursuant to NCGS §160A-20(g), the proposal could not be accepted until after a public hearing on at least ten days published notice. At the Board's April 20, 2005 meeting, the Board approved a reimbursement resolution which would allow the purchase costs of the real estate to be reimbursed to the County from the proceeds of any financing for the construction of a school to be built on the site. The financing would cover the interim between the purchase of the real estate and the closing of the construction financing.

The Board was presented with an "Assignment of Option to Purchase" as a part of the agenda packet for their consideration. There was discussion about whether the Board wished to deed a portion of the property to the Board of Education, or lease a portion. If the Board chose to lease the property, the County would not be required to buy the property back at some point in the future. It was the consensus of the Board to lease the property to the Board of Education.

*Commissioner McGrady made the motion that the Board accept the assignment of the option, as indicated in the "Assignment of Option to Purchase" as included in the Board's agenda packet. All voted in favor and the motion carried.*

*Commissioner McGrady made the motion that the Board authorize the Henderson County Board of Education to select an architect for the design of a new elementary school on the real estate described in the "Assignment of Option to Purchase" as included in the Board's agenda packet, and further to pay reasonable fees for the services of an architect for the design of the school. Following some additional discussion about the schools design and the site of the school, Chairman Moyer stated that the County would approach the Board of Education concerning which 20 acres they were interested in so it would not present future problems. A vote was then taken on the motion. All voted in favor and the motion carried.*

*Commissioner McGrady made the motion that the Board agree to the terms of the draft Memorandum of Understanding presented in the agenda packet with the addition that we clarify that it will be a lease arrangement of buildings located on 20 acres or less. Chairman Moyer confirmed that would be an ongoing lease arrangement between the parties at the end of the financing. All voted in favor and the motion carried.*

*Commissioner McGrady made the motion that the Board set a public hearing on the land purchase financing proposal to be held at 11:00 a.m. on May 18, 2005. All voted in favor and the motion carried.*

#### **CANE CREEK EXTENSION POLICY - UPDATE**

The Board of Commissioners requested that staff work with the Cane Creek Water and Sewer District Advisory Committee to update the extension policy. The policy which was approved by the Board in October of 1996 contained several sections that pertained to the former system – the Mud Creek Water and Sewer District.

The Advisory Committee met on several occasions to review a draft provided by staff. Comments were solicited from the Town of Fletcher and Town of Mills River on the draft. Their suggestions were incorporated within this draft policy. The Advisory Committee approved the policy on March 17, 2005 and recommended the following policy be sent to the Board of Commissioners for your approval. On April 19, 2005, the draft policy was presented to the members of the LGCCA. They provided no additional comments.

**DRAFT**  
**HENDERSON COUNTY SEWER POLICIES**  
**For the Cane Creek Water & Sewer District**

- I. *The Board of Commissioners will consider installing sewer lines in the unincorporated areas of the District for economic development purposes that will assist with the recruitment or retention of industrial firms or for public health and safety reasons. Such sewer projects should conform to the guidelines of the County Comprehensive Plan, Master Sewer Interceptor Plan, and/or be projects included in the County's Capital*



*Improvement Plan.*

- II. *When making decisions concerning the County's financial participation in sewer projects, the Board will expect total project payback within a ten-year time frame. However, the Board may consider longer paybacks for the types of projects listed in Policy Statement I.*
- III. *The Board may consider extending sewer lines within incorporated areas of the District for those reasons listed in Policy Statements I and II.*
- IV. *The County may consider installing sewer lines inside the corporate limits of municipalities, if the County has plans to serve areas beyond the municipal borders with such sewer lines.*
- V. *When considering extending sewer lines within the corporate limits of municipalities, the Board will solicit comments from the governing body of the affected municipality. The County will consider these comments, as early as possible in the process, before approving sewer lines.*
- VI. *It is the responsibility of the municipalities within the District to construct collector lines inside their corporate boundaries for reasons other than industrial recruitment/retention and/or for public health/safety. Any sewer lines constructed by municipalities must be built to District standards. Following construction, municipalities must offer to donate the lines to the District. Municipalities may contract with the County to provide construction services.*
- VII. *The County may consider assisting municipalities with financial support for sizing sewer lines for future needs. In any case, proper flow calculations for future extensions shall be taken into consideration.*
- VIII. *The Cane Creek Water and Sewer District which is operated by the County shall be self-supporting. The Board of Commissioners will consider all available funding sources including, but not limited to, the levying of a property tax, the charging of availability and other appropriate fees, and the adjustment of sewer rate schedules.*

*Commissioner Messer made the motion to pass the new Cane Creek Water & Sewer District Extension Policy. All voted in favor and the motion carried.*

**IMPORTANT DATES**

David Nicholson proposed the following dates for the Board's review of the FY 05-06 Budget:

- Wednesday, May 18, 2006      County Manager - Presentation
- Monday, May 23, 2006      Overview of Budget  
Commissioner's questions  
Department of Social Services  
Public Health Department
- Monday, June 6, 2006      Public Hearing  
Board of Public Education  
Blue Ridge Community College
- Monday, June 13, 2005      Sheriff/Detention Center  
Fire Departments  
Rescue Squad
- Wednesday June 15, 2005      Budget Wrap-up

Commissioner Messer questioned the time for the Monday evening meetings. Commissioner Young suggested beginning the meetings at 6:00 p.m. David Nicholson confirmed that the May 23<sup>rd</sup>, June 6<sup>th</sup> and

June 13<sup>th</sup> meetings would begin at 6:00 p.m.

*Commissioner Baldwin made the motion to accept the dates as proposed with the exception of the first three, changing those dates to this calendar year, at 6:00. All voted in favor and the motion carried*

Commissioner Young discussed the need to hold Public Hearings that were expected to be lengthy during a time when the Board could allow more time for those hearings. Chairman Moyer suggested that unless a Public Hearing was clearly non-controversial, Staff suggest special meeting dates for them to be held. Based on that direction, David Nicholson questioned the Board's opinion on holding the Public Hearing on the Budget scheduled for the first Monday night in June. It was the consensus of the Board to ask Mr. Nicholson to find a separate date for the Public Hearing. Since that Hearing had been set with the previous motion, David Nicholson stated the date would be set at the next meeting.

### **CLOSED SESSION**

*Chairman Moyer made the motion to go into Closed Session as allowed pursuant to NCGS 143-318.11 for the following reasons:*

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.*
2. *(a)(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (I) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease; or (II) the amount of compensation and other material terms of an employment contract or proposed employment contract.*
3. *(a)(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.*

*All voted in favor and the motion carried.*

### **HISTORIC COURTHOUSE TIMELINE – REVISITED**

David Nicholson distributed an updated Resolution for the Boards consideration. With respect to the legal name of the entity in the Resolution, it read "by contract with the Kohan Group in association with Antoine Architects, LLC, a Licensed North Carolina Architectural Firm." *Commissioner McGrady made the motion to approve the Resolution. All voted in favor and the motion carried.*

### **ACTION FOLLOWING CLOSED SESSION**

*Commissioner Young made the motion to make Russell Burrell the Henderson County Attorney. All voted in favor and the motion carried.*

### **PUBLIC HEARING ON ROAD NAMES**

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

Rocky Hyder reminded the Board that on April 4, 2005 the Board had established a public hearing for this date for the following new road names:

**Proposed Name**  
LONE RIDGE TRAIL  
WYATT LANE

**Public Input**

There was none.

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

*Commissioner McGrady made the motion to adopt the road names as presented. All voted in favor and the motion carried.*

**PUBLIC HEARING ON PROPERTY ADDRESS CHANGES**

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

On April 4, 2005 the Board of Commissioners designated May 2, 2005 at 7:00 p.m. as a public hearing for the purpose of approving property address changes from October 1, 2004 through April 22, 2005. Pursuant to NC General Statute 153A-239.1 counties must hold a public hearing on property address changes; therefore the Board conducts public hearings on a biannual basis to formally approve changes made by the Property Address Office during the previous six-month period.

**Public Input**

There was none.

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

*Commissioner McGrady made the motion to approve the property address changes as presented. All voted in favor and the motion carried.*

**PUBLIC HEARING ON RURAL OPERATING ASSISTANCE PROGRAM GRANT APPLICATION**

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

The purpose of this public hearing was to allow for citizen comments concerning applying for the upcoming fiscal year's Rural Operating Assistance Program grant through the North Carolina Department of Transportation. The Board received a copy of the grant application for the FY 2005/06 Rural Operating Assistance Program. This grant had been one of the major funding sources for Apple Country Transit. The application calls for a match from Henderson County in the amount of \$14,556.70 for the upcoming fiscal year. This amount is approximately the same as in past years, but represents only a portion of the local costs associated with the County's movement to an "urbanized" public transit area.

There was some discussion among the Board with respect to the ability to transfer funds between EDTAP, WorkFirst and RGP. Bill Crisp answered that there was now some flexibility to move monies within funds.

**Public Input**

There was none.

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

*Commissioner McGrady made the motion to approve the grant application and certified statement Resolution, and commit to the required matching funds. All voted in favor and the motion carried.*

**PUBLIC HEARING ON DRAFT HENDERSON COUNTY FLOOD DAMAGE PREVENTION ORDINANCE**

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

Rocky Hyder presented the following presentation regarding the "Flood Ordinance".



## Floodplains

- ✦ Allow floodwaters to spread across their extent
- ✦ Reduce velocity and force of floodwaters
- ✦ Absorb some of the volume of floodwaters
- ✦ Provide valuable wildlife habitat
- ✦ Necessary for the protection of water quality

## Objectives

- ✓ Protect human life and health
- ✓ Reduce money for costly flood control projects
- ✓ Minimize the need for rescue & relief efforts due to flooding
- ✓ Minimize damage to public facilities and utilities
- ✓ Reduce prolonged business interruptions
- ✓ Prevent increased flood levels caused by unwise floodplain development
- ✓ Encourage the retention of open space development that will not impede the flow of flood waters
- ✓ Preserve prime agricultural land

## Revisions to Ordinance

- ✦ Legal Revisions
- ✦ Page 5: Reference Level refers to the definition of Special Flood Hazard Area however the Board chooses to define it (i.e. including or exclude the 500-year floodplain)
- ✦ Page 5 Special Flood Hazard Area definition clarified to include the 500-year which was an omission in this definition in the first draft submitted to the Board
- ✦ Page 6 Simplification/Clarification of Substantial Damage and Substantial Improvement
- ✦ Page 8 Referring to the International Building Code rather than the State Building Code
- ✦ Page 9 Removing the application requiring the location of altered watercourses because the ordinance does not permit altering watercourses.
- ✦ Page 15 Adding the ability to locate water and sewer lines in the floodway, and permitting streambank restoration projects in the floodplain.
- ✦ Page 19 Clarification that agriculture-related structures may be used for working and may be temperature controlled.

## Ordinance Comparison Table

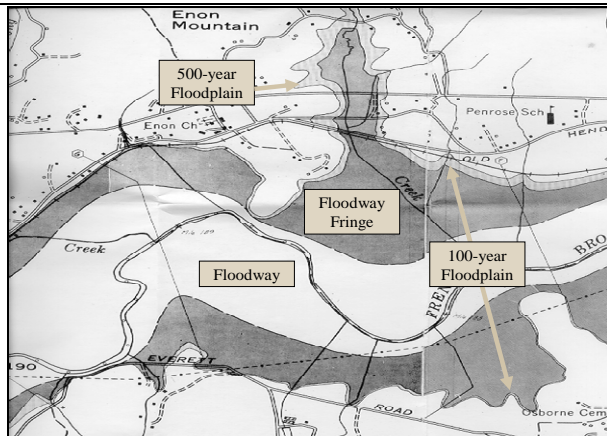
Regulation	Draft Henderson County	Hendersonville	Fletcher	Transylvania County
Definition of Special Flood Hazard Area	Floodway, 100-year and 500-year floodplains	Floodway and 100-year floodplain	Floodway and 100-year floodplain	Floodway and 100-year floodplain
Regulatory Flood Protection Elevation	4 feet above base flood elevation, not to exceed 6 feet	2 feet above base flood elevation	3 feet above base flood elevation	1 foot above base flood elevation
Development in Floodway	Water dependent structures with no-rise certification only.	Limited uses associated with recreation, infrastructure, and redevelopment; limited percentages of the lot; with no-rise certification only.	Yes, with no-rise certification	Yes, with no-rise certification
Development in 100-year floodplain	Limited uses associated with agriculture, recreation, infrastructure	Limited uses associated with recreation, infrastructure, and redevelopment; limited percentages of the lot.	Yes, with elevation/floodproofing certification	Yes, with elevation/floodproofing certification
Development in 500-year floodplain	Limited uses associated with agriculture, recreation, infrastructure	Yes, unrestricted	Yes, unrestricted	Yes, unrestricted
Watercourse Alteration permitted	No	Yes, with monitoring requirement	Yes, with monitoring requirement	Yes, with monitoring requirement

## Acreeage in SHFA

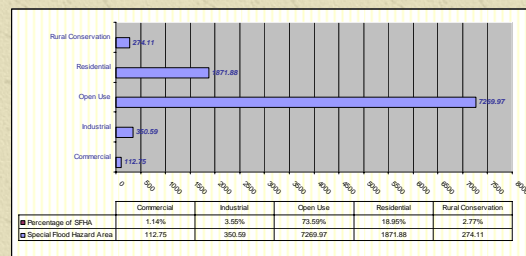
### Under County Jurisdiction

100-Year Floodplain	10,558 acres	4.40%
500-Year Floodplain	845 acres	0.34%
Special Flood Hazard Area (Total)	11,403 acres	4.74%

Source: Henderson County 2020 Comprehensive Plan



## General County Zoning Classifications in Floodplains



The Ordinance was drafted to further the goals stated in the Henderson County 2020 Comprehensive Plan and the Henderson County Multi-Jurisdictional Hazard Mitigation Plan. Those plans stated the following:

**CCP**

- Recommendation N-01: Minimize the potential for damage to personal property, infrastructure, and life due to flooding.
- Action Strategy A: Adopt a Flood Hazard Prevention Ordinance.

***Multi-Jurisdictional Hazard Mitigation Plan***

- Mitigation Goal 3: Minimize the potential for damage to personal property, infrastructure, and life due to flooding.
- Implementation measures stated for achieving this goal are:
  1. Encourage County participation in the National Flood Insurance Program and subsequent participation in the Community Rating System Program.
  2. Develop a County Flood Damage Prevention Ordinance.

According to the Board of Commissioners' 2005 Strategic Plan, the Board intends to adopt a Flood Ordinance during Fiscal Year 2004-2005 and to begin enforcing it in Fiscal Year 2005-2006. In addition, the Board also indicated in the 2005 Strategic Plan that it planned to consider participation in the National Flood Insurance Program (NFIP) in Fiscal Year 2005-2006.

Staff presented a draft of the Flood Ordinance to the Board of Commissioners during its March 23, 2005 meeting. The Board of Commissioners voted to refer the draft Flood Ordinance to the Henderson County Planning Board, Agriculture Advisory Board and the Environmental Advisory Committee for review and comment and set a public hearing on the Flood Ordinance for May 2, 2005.

The draft Flood Ordinance was presented to the Environmental Advisory Committee at its April 5, 2005 meeting. At the end of the meeting, committee members requested additional information. A summary of this additional information was attached as a separate memo to the Environmental Advisory Committee. The committee's recommendations and comments were presented to the Board for their consideration.

The draft Flood Ordinance was reviewed with the Planning Board at its April 19, 2005 meeting. The Planning Board voted 4-2 to recommend that the Board of Commissioners adopt the draft Flood Ordinance as submitted. It was noted that the two Planning Board members voting against this recommendation were supportive of adopting a Flood Ordinance but felt the draft submitted was too restrictive.

The draft Flood Ordinance was presented to the Agriculture Advisory Board on April 27, 2005. After a brief presentation by Henderson County staff and a discussion of the Flood Ordinance, the Agriculture Advisory Board stated in the form of a motion that the Flood Ordinance was too restrictive to suit the agricultural community.

During the course of the presentations mentioned above and continued review of the draft Flood Ordinance, there had been minor administrative revisions to the ordinance. In addition, the (Acting) County Attorney has reviewed the draft ordinance and his proposed revisions, including a draft resolution, as well as proposed revisions based on preliminary review by State of North Carolina staff, were highlighted in the attached draft ordinance (see Attachment 10). These revisions do not affect the intent or permitted activities of the ordinance; they are simply clarifications and required legal language.

In accordance with State Law, notices of the May 2, 2005, public hearing regarding the draft Henderson County Flood Damage Prevention Ordinance were published in the Hendersonville Times-News on April 13, 2005 and April 20, 2005.

Mr. Nicholson recommended the ordinance have an effective date of July 1, 2005, and that staff provide the

Board with a proposed fee schedule for the ordinance prior to the July 1, 2005 effective date. In addition, he recommended the Board direct staff to initiate the process of joining the NFIP and provide the Board with a summary of that process and a projected schedule for joining at the next Board meeting.

Mr. Hyder clarified that the Ordinance would only be effective for the area within Henderson County, and would not effect areas within any municipality. Each municipality would have to adopt their own Flood Plain Ordinance in order for them to participate in the National Flood Insurance Program and thereby be eligible for disaster assistance. Staff answered several additional questions from the Board on specific provisions within Staff's recommendations.

### **Public Input**

1. Bob Williford – Generally spoke in favor of the Ordinance, but stated that additional time would be necessary for review and comment.
2. Drew Brannon – Generally spoke in favor of the Ordinance, but requested the Board allow additional time for review and comment.
3. Fred Pittillo – Mr. Pittillo stated that he was a farmer growing sod in both Henderson and Transylvania County. He suggested that most problems within the floodplain, were created outside the floodplain. He discussed some personal experience he had with Flood Damage Prevention Ordinances, and requested the Board look at ways to allow farmers to continue normal farming practices and build necessary structures within reason.
4. John Fadok – Mr. Fadok stated that he was the owner/operator of the Hendersonville Airport. The airport was entirely within the 100-year floodplain. He was generally opposed to the Ordinance because of the effect it would have on the airport. He also felt the Ordinance addressed only half the problem, having no effect on property owners not in the floodplain, but who contribute to floodplain problems.
5. Stu MacRoberts – Requested the Board reconsider the Ordinance as proposed, making it less restrictive. He expressed particular concern regarding the effect of the Ordinance on the airport.
6. Danny Williams – Requested the Board reconsider the Ordinance as proposed, making it less restrictive. He expressed particular concern regarding the effect of the Ordinance on the airport.
7. Mark Williams – Asked the Board to reconsider the Ordinance as proposed, making it less restrictive especially with respect to the effect it would have on farmers. He requested additional time for review and comment from the public.
8. Kenny Barnwell – Mr. Barnwell requested additional time for review and comment, stating that particular attention needed to be paid to some of the definitions.
9. Tim Culberson – Mr. Culberson spoke in general opposition to the Ordinance because of the effect it would have on the airport.
10. James Beddingfield – Mr. Beddingfield did not wish to speak at this time.
11. William Patterson – Mr. Patterson spoke in opposition to the Ordinance. He addressed several points contained within the Ordinance including items such as: the definition of a floodplain, the type of fencing allowed, addressing the floodplain versus the floodway, and the problem within the existing flood maps.
12. Philip Correll – Mr. Correll spoke in general opposition to the Ordinance because of the effect it

would have on the airport.

13. Angela Beeker – Ms. Beeker had been retained to ask the Board to reconsider the no-build approach taken currently in the proposed draft ordinance for the following reasons: 1) A substantial number of property owners will be negatively affected more than is necessary to carry out the stated objectives of the Ordinance, 2) A substantial portion of those areas shown as recommended Industrial Zones by the Chamber of Commerce is in the 100 and 500 year floodplain. A no-build approach to floodplain management eliminates a substantial amount of this acreage for industrial development, 3) The County Comprehensive Plan does not go so far as to recommend a no-build approach to flood plain management, 4) Other municipalities in Henderson County having flood plains within their borders either have no regulation of flood plains, or allow construction within certain limits. Development occurring in these jurisdictions will push the flood waters back onto acreage in the unincorporated areas, thereby potentially increasing the floodplain areas subject to the no-build policy. Henderson County's no-build approach provides more open land to absorb the flooding caused by development within these jurisdictions, 5) With a no-build policy, who needs flood insurance.
  14. Sam Fritschner – Mr. Fritschner was also present representing a client. He noted that there were several legal issues that should be considered. The Supreme Court had ruled that a lot of governmental actions changing uses in property do not constitute a 5<sup>th</sup> or 14<sup>th</sup> Amendment taking. But in many cases it had also been ruled that depriving property of all reasonable economic use does constitute taking. He felt that as proposed, the Ordinance would constitute the taking of a substantial number of parcels within Henderson County.
  15. Theron Maybin – Mr. Maybin generally spoke in opposition to the Ordinance, and asked the Board to reconsider the Ordinance as proposed, making it less restrictive. He stated that to write an effective Ordinance, the Board needed to get input from those affected by flooding.
  16. Bert Browning – Mr. Browning spoke in general opposition to the Ordinance because of the effect it would have on the airport.
  17. Jeff Young – Mr. Young is an engineer, and familiar with issuing no-rise permits. He felt that an Ordinance could be written that achieved the County's objectives to protect life and property, without being so restrictive. He questioned the effectiveness of the existing flood plain maps, noting that they were out of date and ineffective.
  18. Scott Jarvis – Mr. Jarvis stated that the French Broad River in Henderson County was clogged with fallen trees. If the water was unable to flow out, the County would indeed experience flooding. He requested the Board seek balance, fairness and equality in considering the Ordinance.
  19. Katie Breckheimer – Ms. Breckheimer spoke in support of the Ordinance, stating that she wished to see the 100 and 500 year flood plains protected. She requested the Board help farming and tourism stay alive in Henderson County by enacting the Ordinance.
  20. Ken Allison – Mr. Allison stated that he was not opposed to an Ordinance, but felt that as proposed it was far too restrictive. He requested the Board study the proposal making it less restrictive. He also expressed concern with implementing an Ordinance based on maps that were far out of date.
  21. Kirby Johnson – Mr. Johnson did not wish to speak at this time.
  22. Leon Allison - Mr. Allison stated that he was supportive of local farmers, and that as proposed the Ordinance would take too much from local farmers.
- Commissioner McGrady stated that his opinion was that there were a lot of questions that needed to be

answered and suggested the Board take the time necessary to answer those questions.

*Commissioner Young made the motion to table the Ordinance until the receipt of the proper information and the new maps, with a lot more study being done on the Ordinance. Commissioner Baldwin requested staff comprise a list of the concerns brought to the Boards attention. Commissioner Messer thanked the people in attendance, stating that an Ordinance needs to be written to protect the community with the help of the community. Chairman Moyer suggested that the Board revisit the issue in approximately a month, allowing Staff and various other groups to submit comments and suggestions for consideration. Following discussion, Commissioner Young restated his motion stating “that due to lack of information, not having the new floodplain maps, that we table this until we get the new floodplain maps, and get more vital information on this”. A vote was taken on the motion, with the motion failing 1 – 4 with Commissioner Young voting in favor.*

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

**ADJOURN**

*Commissioner Messer made the motion to adjourn the meeting. 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