

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
APRIL 4, 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

Present were: Chairman William L. Moyer, Vice-Chairman Charlie Messer, Commissioner Shannon Baldwin, Commissioner Chuck McGrady, Commissioner Larry Young, County Manager David E. Nicholson, Assistant County Manager Justin Hembree, Acting County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

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. Deputy Clerk to the Board Amy Brantley was present through nominations.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

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

INVOCATION

David Nicholson gave the invocation.

INFORMAL PUBLIC COMMENTS

1. Evelyn Nichols – Ms. Nichols reminded the Board that in 1995 she won the Z. Smith Reynolds Award which was for community activism. From her award, she gave the county \$10,000 which was placed in the Community Foundation for the East Flat Rock Community Park. The rest of the funds she put into the community center and other aspects of the community. She stated that she was at the park about 3 weeks ago and noticed that the tire swing was missing. There were a couple hundred people present at the park that day and there was no drinking water available. She stated that this is a health problem. The bathrooms were closed. She feels there should be some kind of inspection done on a regular basis by the park director. She feels that we are not good stewards of what we have.

Ms. Nichols stated that her family has had land at Mount Olivet since before the Civil War. She asked the Board what had happened to the park that the Tuxedo community was suppose to have.

2. Fielding Lucas – Mr. Lucas spoke about development sprawl into the county being led by the Henderson County Board of Education. He spoke of oversized schools and oversize sites, class size, etc.

DISCUSSION/ADJUSTMENT OF AGENDA

David Nicholson asked that item “D – Town of Fletcher Request that County relinquish zoning authority over three parcels” be removed from this agenda and moved to the mid-month meeting.

DATE APPROVED _____

Commissioner McGrady made the motion that the Board approve the agenda with this one change. All voted in favor and the motion carried.

CONSENT AGENDA

Commissioner McGrady made the motion to approve the consent agenda as presented. All voted in favor and the motion carried.

The consent agenda included the following:

Minutes

Draft minutes were presented for the Board's review and approval of the following meeting(s):

January 25, 2005 – special called meeting

Tax Collector's Report

Terry F. Lyda, Henderson County Tax Collector, had provided the Tax Collector's Report dated April 1, 2005, for the Board's information and consent approval.

Financial Report – February 2005

Cash Balance Report – February 2005

These reports were presented for information and consent approval.

The YTD cost 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 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 – February 2005

The Henderson County School System provided this report for information and consent approval.

State ADM Fund Application

The current year budget includes a revenue source from the Public School Building Capital Fund ("ADM Fund") which the County has programmed to pay debt service on the financing for the Clear Creek and Etowah Elementary School Projects that were completed in 2003. Staff requested that the Board consider approving the prepared ADM Fund application for \$549,858 to pay this debt service. The Board of Public Education has previously approved this application to use these funds.

Mr. Nicholson informed the Board it would be appropriate for them to approve the prepared ADM Fund application at today's meeting since these funds have been budgeted as revenue in the current fiscal year. An application to use State ADM funds requires approval from both the Board of Commissioners and the Board of Public Education.

Resolution Concerning the Dissolution of Trend Mental Health Authority

As part of the State's reform of the mental health system, North Carolina General Statutes require that each county formally dissolve their local mental health authority. The time has come for the Trend Mental Health Authority to be formally dissolved. As the Board is well aware, the Western Highlands Network Board of Directors has been serving as the Trend Board of Directors for more than a year. Therefore, this action is merely a formality required by State law.

Staff recommended that the resolution be adopted as presented.

Update Concerning Mental Health Issues

Considering the community's interest in issues surrounding the "reform" of the State's mental health system, staff felt that it was an appropriate time to update the Board on local and regional mental health issues. The presented memo provided a comprehensive update. No action was requested.

Lease Agreement with City of Hendersonville

Staff has been working with the City of Hendersonville to lease a tract of land to use for recreation activities, primarily soccer. The property in question is located adjacent to Jackson Park and consists of approximately 11.09 acres. The City has agreed to the prepared lease that includes the following terms – rent is \$1 per year, the lease is year to year with automatic renewals, the lease may be terminated with 30 days notice, and the County may use the property for recreation purposes. The Acting County Attorney drafted this agreement.

Staff recommended approval of the lease agreement as presented.

Request Public Hearing for Assignment and Reassignment of Property Address Numbers

Staff requested a public hearing date for the purpose of approving property address number assignment and changes for Henderson County residents from October 2004 to April 2005. NCGS 153A-239.1 requires counties to hold public hearings on address number assignment and changes.

A public hearing date of Monday, May 2, 2005, at 7:00 p.m. will allow staff to make proper notice.

Request for Public Hearing for Road Names

Staff requested a public hearing date for new road names for the following:

- Lone Ridge Trail
- Wyatt Lane

A public hearing date of Monday, May 2, 2005, at 7:00 p.m. will allow staff to make proper notice.

Water Line Extensions

The City of Hendersonville had requested County comments on three proposed water line extension projects: Naples Commerce Park; Sunset Ridge, Phase II; and Fruitland Baptist Bible Institute.

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

Extension of bidding process on Animal Shelter

As of 29 March 2005, only one potential bidder had obtained the bid package (although more may have obtained the documents online). This bidder contacted staff and noted a difficulty in completing the bid documents on time, and requested a ten-day extension of the time in which to do so.

(As an aside, if fewer than three qualified bidders submit bids on the project, the bid process must be re-advertised, after which a bid may be accepted, regardless of the number of bidders.)

This is a request to extend the period for submitting bids on this project for a period of ten days, through and up to 2:00 p.m. on 15 April 2005. This extension would be re-advertised in all the publications in which the original advertisement was placed.

The County Manager supports this proposal.

Resolutions:

1. Proclamation – North American Police Working Dog Association Week

The Sheriff's Department requested the Board proclaim the week of June 19-25 as "North American Police Working Dog Association Week".

2. Proclamation – National Volunteer Week

Chairman Moyer requested the Board proclaim the week of April 17-23 as National Volunteer Week and thank all volunteers and foster these positive initiatives.

3. Resolution – Support of Community Development Block Grant Program

The Board was requested to support the preservation of this vital program at the U.S. Department of Housing and Urban Development and support a FY 2006 funding level of \$4.7 billion overall, and no less than \$4,350 billion in formula funding. This would fund the program at its FY04 level and restore the unwarranted cuts made to the program in FY05.

Cemeteries Awareness Month

The Cemetery Advisory Committee requested that the Board declare May 2005 Cemeteries Awareness Month in Henderson County. Staff had drafted the resolution and recommended its adoption as presented.

NOMINATIONS

Notification of Vacancies

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

1. Apple Country Greenways Commission – 1 vac.

Nominations

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

1. EMS Quality Management Committee – 1 vac.

Bob Goodwin, Pardee Hospital CEO, had recommended Gayle Sams and we have an application on file for her. The position is for a hospital administrator or their nominee.

Chairman Moyer nominated Gayle Sams to position #15 as the hospital representative. There were no other nominations. *Chairman Moyer made the motion to accept Ms. Sams by acclamation. All voted in favor and the motion carried.*

2. Environmental Advisory Committee – 1 vac.

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

3. Henderson County Planning Board – 3 vac.

Commissioner Young nominated Eric Goodman and Carolyn Swanner.
Commissioner Baldwin nominated Mark Williams and Stacy Rhodes.
Commissioner McGrady nominated Tedd Pearce.

Chairman Moyer stated that since we have five nominees for three positions, we'll roll these appointments until the next meeting.

4. Joint College Facility Committee

Chairman Moyer stated that this has been started and he asked for two Commissioners who would be willing to serve on that committee. Following discussion, *Chairman Moyer made the motion that Bill Moyer and Chuck McGrady serve and start the process with Blue Ridge Community College. All voted in favor and the motion carried.*

5. Juvenile Crime Prevention Council – 2 vac.

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

6. Nursing/Adult Care Home Community Advisory Committee – 4 vac.

Perry Robinson is currently serving and is willing to continue. Commissioner Baldwin nominated Perry Robinson. *Chairman Moyer made the motion to appoint Mr. Robinson. All voted in favor and the motion carried.*

6. Solid Waste Advisory Committee – 1 vac.

Chairman Moyer reminded the Board that Tom McCullough was nominated on 3/23/05. We have received an application for him since. *Chairman Moyer made the motion to accept Mr. McCullough by acclamation. All voted in favor and the motion carried.*

SCHOOL FACILITIES

David Nicholson informed the Board that at the Joint School Facilities Committee meeting of March 23, 2005, the School Board presented its updated school facility plan. This new plan calls for the construction of a new elementary school this fall with the addition and renovations of Mills River and Hillandale to follow. A copy of the updated plans was presented for Board review.

They have taken an option on a piece of property on Sugarloaf Road for the new elementary school. This land is approximately 43.45 acres at \$16,000 per acre. Under North Carolina law, the Board of Commissioners must approve land purchases by the school system as to price.

Mr. Nicholson showed a map of the property in question.

Mr. Nicholson recommended that the Board take the following actions:

1. Approve the presented construction time line as a guide for our capital planning purposes.
2. Approve the purchase of the property at the suggested price.
3. Authorize staff to develop a request for proposal to receive offers from financial institutions to finance this property. (This financing would be rolled into the construction loan this fall.)

Following discussion, *Chairman Moyer made the motion to approve the construction time line as a guide for our capital planning purposes, approve the purchase of the property in the name of Henderson County at \$16,000 per acre and we will deed to the school system property not to exceed 20 acres for a school, based on a Master Plan for the property that would indicate the location of the school and the property needed for the school. All voted in favor and the motion carried.*

Chairman Moyer made the motion for staff to develop a Request for Proposals (RFP) to receive offers from all financial institutions that would like to bid to finance this property on an interim basis to be rolled into permanent construction later in the fall. All voted in favor and the motion carried.

APPROVAL OF INSTALLMENT FINANCING FOR DANA ELEMENTARY SCHOOL AND HUMAN SERVICES BUILDING CONSTRUCTION

David Nicholson explained what a COPS (certificate of participation) is and how it works. He showed a PowerPoint presentation which compared COPS to some of the other forms of financing.

A Resolution had been presented for consideration by the Board. The resolution would give final approval to the past negotiations for and the future execution of the financing documents for the Dana School and Human Services Building construction projects. The most important material terms are that the financing is for a maximum of \$26,000,000.00, due not later than May 1, 2025, and that the annual interest rate will be between 5.09% and 5.23%.

The financing documents referred to in this resolution were included in the agenda packet for the March 23, 2005 meeting, and were also available in the County offices. They were the subject of a public hearing on March 23, 2005.

The County Manager recommended approval of the prepared resolution.

He reviewed his memo to the Board dated April 4, as follows. The Board of Education received bids on the renovation and addition to Dana Elementary School last Thursday. On Friday, we spoke to their architect concerning the proposals. Unfortunately, the bids came in higher than anticipated by their architects. The lowest base bid was \$11,234,000, which was 2 million dollars over estimated construction cost. The base bid and the fees associated with the project is now \$12,497,750. As a part of the COPS financing, we had used 12 million dollars as the maximum cost which included a bidding contingency. However, they are still \$497,750 over budget.

We have been working with our underwriters, bond council and the Local Government Commission today to determine how to proceed with the financing. Staff from the LGC suggested that we increase the amount of borrowing. Bond Council stated that based on the documents we could borrow an additional \$500,000. The LGC concurred with this amount. Below I have addressed the alternatives.

1. The Board authorizing the additional \$500,000.
2. Approve the original 26 million and wait until the bid opening for the Human Services Building.
 - a. If more than the 26 million is needed for combined projects, we would have to hold another public hearing and increase the total amount to be borrowed.
 - b. Approve the 26 million and provide local cash to balance the project budget.

Mr. Nicholson recommended that the Board take the following actions:

1. Request that the Board of Education work with their architect and the lowest responsible bidder to identify any possible cost savings in this project.
2. Approve an increased maximum borrowing of \$26,500,000.

Carey McLelland distributed an updated Resolution to approve this issue for the Board's review and approval.

Following discussion, Commissioner McGrady *made the motion to approve the "Resolution Approving An Installment Financing Of School And County Administrative Facilities And The Sale Of Not More Than \$26,500,000 Certificates Of Participation, Series 2005A And Authorizing The Execution And Delivery Of Documents In Connection Therewith and authorize the Chair to communicate with the Board of Education requesting that they work with their architect and the lowest responsible bidder to identify possible cost savings for the school project. All voted in favor and the motion passed.*

Recess

Chairman Moyer called a 5 minute recess.

PUBLIC HEARING To Consider a Moratorium (Interim Development Ordinance) on Zoning Changes and Other Land Use Issues for the US Highway 25 North Zoning Study Area

Commissioner Messer made the motion for the Board to go into public hearing. All voted in favor and the motion carried.

Karen Smith reminded the Board that the Henderson County Planning Board finalized a set of rezoning recommendations back in December of 2004 and forwarded them to the Board of Commissioners in the form of a report with some maps on December 21, 2004. In that report, the Planning Board stated that it supported the recommendations of the zoning study and that the recommendations followed the direction and goals of the Henderson County 2020 Comprehensive Plan, also known as the CCP. However the Planning Board also stated the need for the County to update its current zoning ordinance. Once a new ordinance was available the Planning Board recommended that it be allowed to revisit the US 25 North Zoning Study Area to refine its recommendations using the new ordinance, to be more consistent with the CCP. The Planning Board felt that the rezoning recommendations for the study area could better implement the CCP if tools recommended in that plan were available, for example the Comprehensive Plan recommends the development of a Land Development Code which would update and combine various Land Use Ordinances that the county already has, including zoning. The Comprehensive Plan also recommended a Proposed Flood Damage Prevention Ordinance that would look at standards for land uses and growth management that include things such as access management along roads, design and development standards for projects, sedimentation and erosion control, stormwater and many more. The Board of Commissioners received the report from the Planning Board and held a special called meeting to review the recommendations on January 12, 2005 and the Board scheduled a public hearing on those recommendations at the February 7 meeting to be held on March 21, 2005. At the March 9 meeting some Commissioners discussed concerns with going forward with the US 25 North zoning recommendations as they had been proposed in the absence of a full set of land development regulations and land use management tools. As a result, during that meeting the Board postponed indefinitely a March 21 public hearing on the rezoning recommendations for the US 25 North Zoning Study Area. The Board imposed a temporary cessation on new zoning requests and new construction permits within the US 25 North Zoning Study Area. That order expires at the close of this meeting this evening. The Board asked staff to draft an ordinance imposing a moratorium on rezoning applications and other land use issues within the US 25 North Study Area as well as scheduling the public hearing for this meeting on the moratorium ordinance or Interim Development Ordinance. At the meeting on March 23 the Legal Department and Planning

Department Staff presented a rough draft of an Interim Development Ordinance for the study area. The Commissioners referred it to the Planning Board for review and recommendations.

Tonight's hearing on the Interim Development Ordinance for the US 25 North Area is proposed for adoption pursuant to state regulations. For the purposes of providing notice of the hearing, staff followed state statutes and our local Zoning Ordinance requirements for a zoning map amendment which included mailed notice of the hearing to the property owners within the entire US 25 North Study Area and those adjacent. Planning staff had previously sent postcards letting them know that the other hearing had been postponed and about the interim cessation and then about this hearing as well. Notices of the hearing were published as legal ads in the Times-News on March 23 and March 30, 2005. Signs were also posted advertising the hearing at various central locations throughout the US 25 North Zoning Study Area and elsewhere in the county.

Karen Smith stated that the Planning Board met on March 29 in a special called meeting in order to get recommendations to the Board of Commissioners in time for tonight's public hearing. The Planning Board took three separate actions at that meeting:

1. A six to two (6-2) vote in its discussion on the proposed interim development area, the area that would be subject to the Interim Development Ordinance. Through that discussion they proposed to significantly reduce the size of the area that would be subject to this ordinance, if it is adopted. As recommended by the Planning Board, the interim development area contains 1,303.49 acres in 566 separate parcels. The parcels were shown in green on the map attached to the Board's agenda item. They were also shown on the television screen. The draft ordinance refers to both a map and a parcel list. Ms. Smith gave a copy of the parcel list to the Clerk.

In terms of the refinements by the Planning Board, Karen Smith stated that with a few exceptions the area that the Planning Board proposed to be subject to the moratorium or Interim Development Ordinance are those parcels that run along and near US 25 between the Town of Fletcher on the north and the City of Hendersonville's extra-territorial jurisdiction to the south. They are in the County's planning jurisdiction and exclude several that are in municipal jurisdictions. They are parcels that are already zoned Commercial or those that are currently zoned Open Use but were proposed by the Planning Board in its recommendations back in December to be zoned commercially or to be zoned rural conservation and that rural conservation district was applied mainly in areas where there is flood plain. There are several parcels that are zoned Office & Institutional. The US 25 North Zoning Study Area that had been recommended by the Planning Board back in December contained approximately 5,556 acres. The interim development area recommended by the Planning Board reduces the geographical scope of the area affected by the proposed Interim Development Ordinance by at least 75%, compared to the zoning study area boundary.

2. In addition to reducing the size of the area affected by the Interim Development Ordinance, the second action the Planning Board took at its March 29 meeting was to recommend by an 8-0 vote some changes to the text of the Interim Development Ordinance the Board of Commissioners had referred to it. Many of the changes that the Planning Board made were to reflect the reduced size of the affected area and for clarification of the text. However, the Planning Board did also move some uses from the list of those not affected or the list of allowed uses to the list of uses that would not be

permitted in the area affected by the Interim Development Ordinance. The Planning Board Chairman, Tedd Pearce, was present and would speak when Ms. Smith was finished. The draft recommended from the Planning Board would prevent, for the term of the Ordinance, some but not all types of development within the affected area. These are the uses that were seen as being more intensive or having a greater potential impact on traffic, service delivery, the character of US 25, etc. Some of the uses, and this is not an all-inclusive list, that would not be permitted include but are not limited to many nonresidential uses. Uses that would be prohibited are new larger scale and higher density residential developments, new commercial or industrial subdivisions of land, new signs requiring a permit under the county's outdoor advertising sign ordinance, basically new billboards, new expansions or new uses that would require certain permits in the open use district and it also restricts most filling, grading, dredging, and development activities within floodways and floodplains. The Ordinance also spells out a number of uses that are not going to be subject to the ordinance or that would be exempt from the ordinance. It includes most of your existing uses of land including those that might be proposed and which would already have a permit issued by either the Inspections Department, County Zoning, that sort of thing, bonafide farms, other agriculture, forestry, fishing and hunting uses, as well as public utilities as classified by the North American Industry Classification System, accessory buildings, home occupations, the smaller residential subdivisions and up to 10 lots and lower density manufactured home parks (both of those are limited to 2 units per acre maximum density), buildings and facilities for emergency service providers, communications towers that would conform with our regulations, certain signs, and projects which have a valid statutory vested right granted by this Board and we have two projects within the area that Ms. Smith is aware of that have such a vested right. All of the uses that are exempted would still have to comply with applicable local, state, and federal requirements. In addition to restricting certain uses, this proposed Interim Development Ordinance would also prevent the acceptance and consideration of rezoning applications within the affected area on those green parcels within the term of the Interim Development Ordinance. The proposed term at this point, as recommended by the Planning Board is for the ordinance to be in effect for 18 months, unless terminated sooner by either an action by the Board of Commissioners or the adoption of a new Land Development Code and the application of the Code to the Study Area through a zoning map amendment. As indicated in the Board's 2005 Strategic Plan, staff anticipates that the draft of the new Land Development Code would be presented to the Board of Commissioners by December of 2005 and preferably by the fall of 2005 following review and recommendations by the Planning Board. The remainder of the 18 months proposed would be to allow the Board of Commissioners to consider the draft, to hold the public hearing, make any necessary modifications, and take action on the text. Once the text is through, staff and the Planning Board would then work on map amendments. The initial idea was to be working on map amendments for the entire county with a focus on the small area plan for the US 25 North corridor. Once we have recommendations for a zoning map amendment, staff would take this to the Planning Board, then to the Board of Commissioners, public hearing, etc. Some Planning Board members did express some concern about the impact of the Interim Development Ordinance on economic development activities that might be large scale projects and also that the limited time that the Board had to respond didn't have the opportunity to gather public input. That is in the Board's hands this evening.

3. The third action the Planning Board took on March 29 by 8-0 vote was to recommend that the Board of Commissioners hold a public hearing on the rezoning recommendations previously made by the Planning Board for the properties that would not be subject to the Interim Development Ordinance. There is one little piece from their prior recommendations that was subject to the rezoning the Commissioners approved several months ago for the State and some county properties but they recommended that piece stay as it was recently rezoned. They asked that the Board of Commissioners go forward and in order to do that the Board of Commissioners would have to reschedule the public hearing that was supposed to have occurred on March 21, advertised for a new area, dependent on what action the Board takes this evening.

Tedd Pearce, Chairman of the Planning Board, then spoke briefly and was available to answer questions. He stated that some of these recommendations were just clean-up or house keeping issues. The Planning Board tried to propose something that would be workable and effect the least number of people possible. He expressed that the goals appear to be that the Board wants to be in a position to have a Land Development Code that would allow the Board to see to it that the commercial growth (primarily) that will take place on 25 North in the next 20-25 years will be a good addition to Henderson County and make a nice corridor that we can be proud of and that will enhance the entire community.

Mr. Pearce stated that in the next 20 years it's almost inevitable that 25 North become a commercial corridor.

Public Input

1. Ben Campen – Mr. Campen and his son own Smiley's Flea Market on US 25 at Fletcher. Twenty-one years ago he came to Henderson County to look at placing a flea market here, one thing that was of vital interest to him was that the property had no zoning on it and he was able to do what he wanted in ways that were compatible with the marketplace. His concern was that zoning would be placed on the property. He's afraid that the zoning will negatively affect a lot of small businesses. Smiley's is a composite of many small businesses. Smiley's needs to remain flexible enough to answer to the needs of the public. He asked that the Board consider not placing a moratorium on the property.
2. Eva Ritchey – Ms. Ritchey informed the Board that last week a very important study was released, last Wednesday. It was not the work of green tree-hugging extremists. It was 1,300 eminent scientists from 95 countries and 22 academies of science. The leader of this report, Dr. Reed, said that the bottom line of this assessment is that we are spending earth's natural capital putting such strain on the national functions of earth that the ability of the planet's ecosystems to sustain future generations can no longer be taken for granted. The report further went on to say that nearly 1/3 of the land's surface is now cultivated, more land converted than in the whole of the 18th or 19th centuries combined. She quoted many facts from the study. Ms. Ritchey quoted "We can no longer continue doing business as usual which brings us to this moratorium and to school financing". She told the Board "You are approving schools and construction, major civic projects in this community which are not taking into consideration our use of energy which are doubling the amount of monies that taxpayers are having to spend." She told the Board that policies must be established that require natural costs to be taken into account for all economic decisions. She asked the Board to consider that we are a part of where our planet is going, not only for ourselves but for future generations.

3. William G. Lapsley – Mr. Lapsley was present on behalf of a property owner on Hwy. 25, David and Nancy Bayless. Their property will be impacted by the proposed moratorium being considered tonight. He read a memo Mr. & Mrs. Bayless had prepared since they were in Florida. A copy of the memo is attached as a part of these minutes.

The bottom line of the memo was that they requested the boundary line for the moratorium be revised to exclude their property. They felt that any such boundary should not include those parcels that had been zoned for many years and that are not recommended for any change in their zoning status.

4. Ed Groce – Mr. Groce is a local attorney and represents Larry Holbert and Ronnie Gray. He stated that this property along US 25 is commercial, 75% of it is commercial. He stated that the only way the Board would have the power to exercise a police power here is to find that an emergency exists. Mr. Groce stated that there is no need for the ordinance, it has been bounced around for the last 5 years. He stated that this property is going to be commercial and will generate more tax revenue and be more valuable to the county.
5. John Pace – Mr. Pace owns about 17 acres located off the highway where his business is located. He asked the Board to try to find an alternative way to go about what they're trying to accomplish without enacting a moratorium for 18 months.
6. Hazel Moss – Ms. Moss declined to speak at this time.
7. Faye Carland – Ms. Carland declined to speak at this time.
8. Robert Hansen – Mr. Hansen has been a resident on 25 North for 40 years. He has approx. 2 acres. He felt that the moratorium would be a way to try to accomplish something that is really illegal. A mini-warehouse was built in his front yard. That is what he has to look at. His property is proposed to be zoned residential but he feels it should be commercial. He specifically requested that the moratorium not be placed on his property or any other similar property.
9. Janis Moore – Ms. Moore declined to speak at this time.
10. Scott Jarvis – Mr. Jarvis is a 58 year native of Henderson County. According to Mr. Jarvis, if enacted, this moratorium will be shown on the internet, it will be shown in Real Estate magazines and we will have properties that will have a cloud over them, even after the moratorium is lifted on 25 because people will still associate it. He asked the Board to consider the tax value of commercial properties along US 25 North. He told the Board "We do not need a moratorium."
11. Charles Grime – Mr. Grime declined to speak at this time.
12. Stuart Bassine – Mr. Bassine was no longer present.
13. Bob Simpkins – Mr. Simpkins declined to speak at this time.
14. Keith Coin – Mr. Coin spoke in opposition to the proposed Interim Development Ordinance.

15. Ken Fitch – Mr. Fitch spoke in favor of the proposed moratorium for the time to study the area. He stated that consideration of the size of the corridor is an important factor to access. He thanked the Commissioners and the Planning Board for their careful consideration of this very important issue.
16. Barbara Darden – Ms. Darden represents Mr. Montessori who owns 65 acres in Mountain Home. He distributed some brochures for the community entitled “Ashmont – A Continuing Care Retirement Community”. She stated this development would be quite up-scale and quite a contribution to Henderson County. She asked to be excluded from the moratorium, if the Board imposes it.
17. Blair Justice – Ms. Justice has lived in Naples all her life and her family has owned property there since the 1930s. She spoke in opposition to the moratorium issue stating the county should help them pay the taxes on their property if they were going to limit what they could do with their property for the next 18 months.

No one else had signed up to speak. Chairman Moyer recognized Tedd Pearce who made a few clarifications. Mr. Pearce recommended that if the Board were not going to enact a moratorium, he would strongly urge that they get back immediately to the process of rezoning the properties in this area and doing something in the interim to prevent any more building permits being pulled in the open use areas which basically allows people to pull a permit and hang onto the permit and try to keep it current and they're no longer affected by the Board's plans for rezoning.

Commissioner McGrady stated that the ordinance is directed only at changes in uses of the property, not in trying to restrict present uses. Some people raised the issue of wanting to potentially add additional buildings, renovate and repair for current uses. The proposed ordinance would allow new accessory buildings and renovations, repairs, and even expansions of existing uses on the property would be allowed under this ordinance.

Karen Smith answered some questions from the Board.

Commissioner McGrady made the motion that the Board go out of public hearing. All voted in favor and the motion carried.

Chairman Moyer stated that there would be no more input coming to the Board, the record is basically closed. Board discussion followed.

Commissioner Young made the motion not to enact a moratorium, but to continue to zone properties on that highway on a piece by piece basis as they come before the Planning Board and then to the Board of Commissioners, and to try to be fair to everybody.

Karen Smith reminded the Board that if they wanted to proceed with a public hearing, staff would have to re-advertise it so they need a minimum of three weeks to prepare for a public hearing, post the property, and notice it in the Times-News. It must be done no later than 10 days prior to the Public Hearing, no more than 25 days. If the Board wished to hold it at West High School, she offered some dates.

A vote was taken and the motion failed two to three with Commissioners Messer and Young voting aye.

Following much discussion, *Commissioner Messer made the motion to have a public hearing with respect to the last 25 North zoning recommendation put forth by the Planning Board to the Board of Commissioners.*

There was continued discussion. *Commissioner Messer withdrew his motion.*

Commissioner McGrady made the motion to adopt the IDO (Interim Development Ordinance) as recommended by the Planning Board with one change, putting a moratorium in place for 12 months rather than 18 months and to proceed with a public hearing at the earliest possible date to consider zoning throughout the entire US 25 North Zoning Study Area. A vote was taken and the motion carried three to two with Commissioners Messer and Young voting nay.

Recess

Chairman Moyer called a 5 minute technical recess.

PUBLIC HEARING – Variance Application #CTV-05-01 Pegasus Tower Company, Applicant Harold K. Timmons, Applicant’s Agent – QUASI-JUDICIAL

Chairman Moyer – “Alright, we’re in public hearing. Good evening. We now begin the hearing of a quasi-judicial proceeding, which we have to do, on this matter – on the application of Pegasus Tower Company Ltd. for a variance application# CTV-05-01 under Henderson County Communications Tower Ordinance. As I said, this will be a quasi-judicial hearing. We have to follow our rules with respect to it. Parties have to be – automatic parties are those that the Board allows to become parties. Those parties included will be Karen Smith, Henderson County Planning Director; Natalie Berry, Henderson County Zoning Administrator; Pegasus Tower Company and its representative as applicant; and such other persons allowed to become parties by this Board. Only those persons who can demonstrate that they will be affected by the outcome of the decision are allowed to participate in the proceeding as parties.

First, are there any Board members who feel that they cannot sit as impartial decision maker in today’s proceeding? No one has indicated they have any problems. Have any of the Board members received any information concerning this application that’s not a matter of public record that they would like to disclose at this time? No one spoke up.

OK, all persons who speak and participate, including any witnesses that will be called will be placed under oath. The Board will ask staff for an overview of the application, then the applicant will present evidence the applicant wishes to present in support of their request. After the applicant is finished, anyone else who has expressed a desire and who the Board has recognized as a party would then be allowed to present their evidence. All parties will be given an opportunity to ask questions of all witnesses testifying in the proceeding. The Board will have a chance to ask questions throughout the proceeding. After the evidence is presented, the Board will discuss the issues raised and may make a decision. The board can also put off the decision for up to 45 days. We will now proceed to identify all parties to the proceeding. Are there any people here, other than the ones I mentioned for staff or for Pegasus that would like to be parties to this proceeding? If so, come forward, indicate your name and what your interest in this matter and then the Board will determine whether you become a party.”

Elizabeth Corn - “Mr. Chairman, we had about eight people sign up. If it’s okay, I’ll just call them to the podium and they’ll address you in this order.”

Chairman Moyer – “Alright, that’ll be fine.”

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Elizabeth Corn – “Charles Lewis”

Charles Lewis – “Yes”

Elizabeth Corn – “If you’ll come address the Board, please.”

Chairman Moyer – “Now you’re not – you’re not giving your evidence now. All you’re doing is indicate why you want to be a party.”

Charles Lewis – “I understand. My name is Charles Lewis. I live at 174 Judd’s Peak Road, Saluda, North Carolina, which is directly across from the tower location.”

Chairman Moyer – “Any problem? You’re admitted as a party, thank you.”

Elizabeth Corn – “William Wilkes”

William Wilkes – “My name is William Wilkes. I live at 160 Broyles Road in Hendersonville, North Carolina. I am also the owner of the property on which the tower is proposed to be located. I also ask to be heard because I am the owner of property on Orchard Hill which is in the vicinity of a possible competing tower. Thank you.”

Chairman Moyer – “Any problem? Alright, next.”

Elizabeth Corn – “Paul Stoney”

Paul Stoney – “Good evening. I live on Pace Mountain Road and my property is visually affected by the variance that’s being requested tonight and I would like to speak to that.”

Chairman Moyer – “Any problems? Alright, you’re admitted.”

Elizabeth Corn – “Curt Watkins – no Curt Watkins?”

Chairman Moyer – “Is Mr. Watkins in the room? Alright.”

Elizabeth Corn – “Joan Husni”

Joan Husni – “I live on 101 Orchard Hill Drive and again there’s a competing tower that might go up right behind my house. That’s why I’d like to address the Board later or question ...?”

Commissioner Messer – “Where did you say you live?”

Joan Husni – “Orchard Hill. Mr. Wilkes just mentioned that there was a possibility of a competing tower going on Orchard Hill and that would be within less than a mile of each other.”

Chairman Moyer – “But we will not be discussing competing towers as part of this proceeding.”

Joan Husni – “Well, I don’t know about height of the one that they’re proposing tonight or the type of tower, or the type of lighting, whether it’s gonna be strobe lighting or – these are the questions, if they are not answered.”

Chairman Moyer – “We’ll make you as a part but I’m gonna restr... be careful with.”

Joan Husni – “Yeah, that’s what I say – I want to know these – if they’re gonna answer them, OK?”

Chairman Moyer – “Is that alright, we’ll just keep”

Commissioner Baldwin – “Well, I’d just like to say that if there are concerns about a – if there is an interest in a competing tower, then I think these folks can gather information. I don’t know that they necessarily qualify, unless they are an adjoining property owner and live in the area.”

Talking – too many people talking at once. I couldn’t make any of it out.

Joan Husni – “Judd’s Peak comes up to Orchard Hill, OK, and there’s been discussion of two different towers going up.”

Chairman Moyer – “OK but will the appearance of this tower affect you in any way?”

Commissioner Baldwin – “That’s all we’re concerned about.”

Joan Husni – “Well I’d like to know the height and the type of – if they’re gonna put strobe lighting or something.”

Commissioner McGrady – “Can we ask counsel to.”

Russ Burrell – “Let me go into what you have to determine as a Board. You’re here for a request for a variance. To grant this variance the Board needs to make specific findings of fact that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. Now that means on the property on which it’s applied for but that the variance applied for is in harmony with the general purpose and intent of the ordinance and preserves the spirit and in granting the variance the public safety and welfare have been assured and substantial justice has been done. That’s what you need to consider. That’s the light in which you need to decide who should be a party.”

Chairman Moyer – “Then I think you’re gonna have to say more other than you’re concerned about a competing tower. I don’t. I personally”

Joan Husni – “The reason is because – in speaking to the Mayor in Saluda – he didn’t know if he could put like. He didn’t know the height of the tower – so I might be for this one as opposed to the other one. I couldn’t get the answers from the Saluda Board.”

Chairman Moyer – “But the issue here tonight is a variance.”

Joan Husni – “Yes and in the variance wouldn’t they say the height of the tower and what kind of lighting or what kind of tower?”

Commissioner Messer – “I don’t have a problem with her sitting on but I don’t think she should be a party.”

Chairman Moyer – “No Mam, you can listen and get all that information but you don’t really, I don’t believe have standing as a party.”

Joan Husni – “They will be, I mean they will be answering those questions.”

Chairman Moyer – “They may, that’s – some of that may come out but you cannot participate in the hearing.”

David Nicholson – “Karen”

Commissioner Baldwin – “You may listen and stay and gather that information as it comes out.”

Joan Husni – “Well that’s okay, that’s what I”

David Nicholson – “Can Karen just find – they have to follow their rules and regulations but they are asking for a variance on one issue, a very specific issue so”

Karen Smith – “We can get you that information.”

Joan Husni – “I just didn’t know if that’s part of that.”

Chairman Moyer – “Who’s next Ms.”

Elizabeth Corn – “Rosalind Campbell”

Chairman Moyer – “No longer here, okay.”

Elizabeth Corn – “Martha Johnson”

Martha Johnson – “My niece and I own the land that’s surrounding where the tower’s going.”

Chairman Moyer – “Alright, I have no problem there.”

Elizabeth Corn – “Mary Mowery”

Mary Mowery – “Hi, I’m not sure if I –I’m Mary Mowery and I live at 142 Judd’s Peak Road which is right next door to Charlie Lewis and across the street from Ms. Johnson and although I’m not a property owner, my family has rented the same property for 22 years and I feel like I have a vested interest in the neighborhood so I’d like an opportunity to speak.”

Commissioner Baldwin – “Definitely legal counsel on that.”

Russ Burrell – “You know I’m not sure from that I understand exactly where that sits. I mean if it's within a ... view and then you have to decide whether that – a right to rent is gonna continue in the future as a substantial enough right.”

Commissioner McGrady – “22 years worth of rental I guess is a substantial enough right and it’s a question of – I mean clearly if she was directly adjoining this property, you wouldn’t have any problem. You’re – this – you’re basically adjoining the adjoining property is what we’ve got.”

Commissioner Baldwin – “I don’t know if I agree with that.”

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Chairman Moyer – “Well let’s”

Commissioner McGrady - “Well I guess I err on the side of allowing a party to be in, there’s no harm in doing that and in this case just”

Chairman Moyer – “Alright, you’re admitted as a party.”

Mary Mowery – “Thank you.”

Elizabeth Corn – “That’s all I have Mr. Chairman.”

Commissioner Baldwin – “Shouldn’t we revisit then – if we’re gonna let her in, shouldn’t we revisit the other issue?”

Commissioner McGrady – “The other one isn’t even an adjoining of an adjoining. It’s”

Chairman Moyer – “But he said he owned the property that the tower’s occup”

Commission McGrady “No, no, no”

Commissioner Baldwin – “But she’s in with view.”

Chairman Moyer – “Go ahead.”

Someone from the audience – “Can I speak to that? Mrs. Hosni’s property is in view of the proposed tower, at least as much so as Mr. Stoney’s. In addition, as we will present, there is the possibility that if this tower is denied a tower will be built by the City of – or on property owned by the City of Saluda which will directly affect people who live in Henderson County, adjoining that property and so it is possible if this tower is denied that a competing tower could be created over which you would have no jurisdiction that which could have negative effect on Henderson County residents.”

Chairman Moyer – “But I – my – I’ll go to our counsel but I did not think that was relevant for this proceeding.”

Russ Burrell – “You’re very limited in what you can hear evidence on tonight.”

Chairman Moyer – “That’s right.”

Someone from the audience – “Well, OK.”

Elizabeth Corn – “What was your name sir?”

“I’m sorry, I’m William Wilkes, yeah.”

Chairman Moyer – “Well, would all the parties please come forward and be sworn in by our Clerk, Mrs. Corn, please.”

Elizabeth Corn – “I need each of you to touch the Bible with your left hand, raise your right hand. Do you swear or affirm that the testimony you shall give to the Board of County Commissioners shall be the truth, the whole truth, and nothing but the truth, so help you God?”

All in unison – “I do.”

Chairman Moyer – “Mrs. Smith and Ms. Berry, are you ready to proceed with staff overview at this time?”

Karen Smith – “Yes, Mr. Chairman. Actually I’m gonna turn it over to Natalie Berry who I want to introduce to the Board for the first time. She’s our Zoning Administrator, been with us since about November.”

Chairman Moyer – “OK, Ms. Berry. Nice to have you with us.”

Natalie Berry – “Thank you. Good evening. My name is Natalie Berry for the record and I’m the zoning administrator for Henderson County’s Planning Department. I have additional duties of being the Administrator of the Communication Tower Ordinance as well. Today we’re here to talk about a variance application, CTV-05-01, from Pegasus Tower Company and their agent is Harold K. Timmons. The variance application which was submitted on February 3, 2005, requests a waiver from the required submittal of easement acquisition documents for a 199 foot communication tower, proposed for property located on Judd’s Peak Road. Section 81-6 B(2)(a)[10] of the Communications Tower Ordinance requires: ‘Where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant.’ The tower is proposed for a tract of land (parcel identification number of 00-9595-44-8747-55). It’s owned by William R. Wilkes. The applicant is Pegasus Tower Company and the applicant’s agent is Harold K. Timmons. Before taking action on this application, the Board of Commissioners must hold an evening public hearing. The hearing has been advertised in accordance with Henderson County Communications Tower Ordinance, the Henderson County Board of Commissioners Rules of Procedure for Quasi-Judicial Proceedings and State Law.

I would like to share with you just some general information of why we’re here today. I received an application from Pegasus Tower Company December 20, let me – just one second let me find my place here – okay December 20, 2004. The application was for a level II, category IV tower. Now as ordinance administrator, I have the ability to approve or deny the application. The reason I failed to accept the application was because all the information was not submitted in the package that has to be there for it to be a complete permit application so I turned the application and the fees back to the applicant January 10, 2005 and I sent a detailed letter on the reasons why. The Henderson County Communications Tower Ordinance states in Section 81-6 B(10) Easement Acquisition Documents – it says where any adjacent property to the tower site falls within the distance of the tower height measured from the tower base, the applicant shall submit with the application a statement of intent to grant an easement to the applicant. If such application is subsequently approved, the permit will be conditioned on the easement documents being recorded in the Henderson County Register of Deeds Office. The applicant must submit copies of the recorded easements to the Ordinance Administrator. Failure to secure and record the easements will constitute noncompliance and will be grounds for revocation of the permit as provided in Section 81-11. This application did not specify the exact location of the proposed tower so I could only assume. They had it labeled as a tentative location. They wouldn’t give an exact dimension on the property where it would be set so I took a conservative approach and went with each boundary of the property which there was five adjoining property boundaries and I did the 199 feet from each boundary because we had no idea

exactly where the tower would sit. And that's what made me come to the conclusion that we did not have enough information to accept the application because I had received a letter in the mail – I'm looking for the – let me find the attachment for you. It is attachment 6 and it is a letter from Karol Kay Rooh, Trustee and Karol Kay Rooh, N.C. Per Resident Trustee and she owns a piece of property within that fall radius and she has stated 'I will not agree to this easement' which leads me to believe they wouldn't be able to acquire the easements necessary for their application. And that's what brought us here today, they're asking for a variance from that particular part of the permit application."

Chairman Moyer – "Thank you for that overview."

Natalie Berry – "If I can answer any questions."

Chairman Moyer – "I will get your evidence in a little bit. We'll now move to the applicant's evidence. Who is the spokesman – OK."

Harold Timmons – "Good evening. For the record, my name is Harold Timmons. I am the zoning manager for Pegasus Tower Company. Pegasus Tower Company is located at 139 Steelsburg Highway, Cedar Bluff, Virginia. Tonight, I hope to be able to impress upon that what we are proposing is in accordance with Section 81-10 of your Communications Tower Ordinance. We believe that there are practical difficulties or unnecessary hardships in our way of carrying out what we propose. In meeting the strict letter of this chapter, we also believe that what we're proposing is in harmony with the general purpose and intent this chapter and what we propose will preserve the spirit of the ordinance. We also believe that the public safety and welfare will be assured by what we are proposing. First, before I go to, let me address a couple of things. I would say that we did submit an application. The application did not contain the easement documents. We submitted it in hopes of being able to obtain those easement documents and would have given staff an opportunity to proceed with the review only having the easement documents being the remaining document. The letter that she mentioned receiving from Mrs. Rooh was sent to all the adjoining property owners and we basically advised them with that letter that we need an easement as we're requested by the county to get that easement. We were not specifically requesting the easement at that time. That was the only land owner that responded and it was the only land owner that in their response indicated that they would not grant an easement. While she indicated that they would not grant an easement it did not indicate that they were opposed to the tower.

Let me proceed:

First, we believe that the use of the property and our objective can be accomplished without harm or injury to the surrounding properties for the spirit and intent of the zoning ordinance. The subject easement requirement imposes, in our view, an unnecessary hardship because the same goal of safety can be preserved without the easements.

Second, the land owners property is adequate in size to meet the physical set back requirements of the ordinance however the requirement that an easement be obtained from land owners within the distance of the tower height creates a practical hardship. This requirement is only applied to towers and since most towers can be designed to collapse upon the property they are on without encroaching on the adjacent property, as a practical matter we feel it is unnecessary.

Third, it is our belief that most land owners do not want to encumber their property with unnecessary easements. The need to encumber someone else's land due to a use on your property is not as a practical matter very popular. We think this is especially true when there are other alternatives to achieve incomparable safety without placing an easement on someone else's property. None of the land owners in this area have expressed opposition to our request to Pegasus Tower Company. We have sent out on two separate occasions certified notices to adjacent land owners and land owners within 400 feet of

the property that we're proposing and till this point in time we have not received any calls, any letters, any e-mails or any faxes in opposition to our request. However one land owner did indicate that they would not grant an easement as I mentioned earlier and they did not indicate that they were opposed to the tower. In order for us to avoid the need for these easements, the proposed structure would have to be reduced in height down to 108 feet. This would allow for a radius that would be completely within the subject property; however, at this height the ... user and all other subsequent users would only obtain an adequate level of service which in essence defeats the purpose of having the structure in the first place.

Four, we view that the general objective of this provision is to advise adjacent land owners of the potential for harm and to get them to agree to accept the potential for harm via an easement on their property. It is designed to – as a protection, a protection in safety in our view. We acknowledge its merits and we too believe that safety in these instances is paramount. However, by designing a tower to collapse within the property, we feel we can duplicate and well as further the aspect of community safety while offering an alternative that is in keeping with the spirit and intent of this provision. We propose to make structural modifications that would create a fall area radius of 30% of the tower's height and this is supported by structural engineer's letter that we submitted in the packet of information for the variance. This would equate to about 63 feet and it would remain on the subject property.

Lastly, Pegasus Tower Company believes that the granting of the requested variance would have the practical effect of improving the general safety around the area of the tower when designed to this stringent standard. We do not feel that the granting of the variance establishes a precedent, if it does then it is certainly a positive one as it seeks to enhance safety within the community as opposed to the proposed alternative that would lessen or diminish safety.

We respectfully request that the Board consider our issues and our obstacles in this matter and grant our request for a variance and allow us to move forward providing our wireless client with the structure they need and the location that they have analyzed and deemed acceptable for their technology and their proposed network. That completes my presentation. I certainly would be happy to try to answer any questions that you have at this time.”

Chairman Moyer – “Any questions for Mr. Timmons? Thank you, we may have some.”

Russ Burrell – “Any of the other parties can ask questions.”

Chairman Moyer – “Just stay close by the mic and this gentleman has a question for you.”

Someone from audience – “I'm sorry I don't have a copy for everybody of what I'll be referring to.”

Chairman Moyer – “Are you gonna give testimony?”

Someone from audience – “Beg your pardon?”

Chairman Moyer – “The only thing you can do now is ask Mr. Timmons a question. You'll have a chance to give your testimony later.”

Commissioner Baldwin – “So let – for the record let me see if I understand this correctly. You are asking for a variance to the requirement that you obtain a waiver”

Someone – “Easement”

Commissioner Baldwin – “Yeah, an easement. You’re asking for a waiver from the easement requirement.”

Harold Timmons – “That is correct.”

Commissioner Baldwin – “That is what you’re requesting?”

Harold Timmons – “Yes”

Commissioner Baldwin – “I would, I would, I would submit to the Board that this does not qualify for a variance.”

Chairman Moyer – “Well lets, we have to let the testimony all come out.”

Commissioner Baldwin – “You don’t have to if it doesn’t qualify.”

Chairman Moyer – “Well”

Commissioner Baldwin – “And I don’t believe this qualifies for the simple fact that you cannot remove a requirement or a kind or a type from the ordinance but you can vary the amount and that’s what we’re doing, we’re saying a requirement we’re gonna potentially waive the requirement. If we were waiving a number, a set back, a height requirement that’s a different issue but what we’re being asked to do technically isn’t an amendment to the ordinance and we cannot do that.”

Chairman Moyer – “We certainly can’t do it at this proceeding. Sir, you have a question?”

Someone from the audience – “Yes”

Chairman Moyer – “Go ahead.”

Someone from the audience – “I’d like to ask you what this red line represents?”

Harold Timmons – “That red line is represent a radius from the center of the tower that extends out, I believe 200 feet which will then be the areas in which easements are needed.”

Someone from the audience – “And that’s the area that you seek to have the exception to pull those back into the – to the Wilkes property?”

Harold Timmons – “We seek to have that requirement eliminated.”

Someone from the audience – “OK , OK and that’s 200 feet all the way around. That’s the present – present:”

Harold Timmons – “That’s the proposed location, yes correct.”

Elizabeth Corn – “We need your name sir, for the record.”

Chairman Moyer – “Would you go to the mic and state your name, you didn’t indicate your name when you asked your question so.”

Someone from the audience – “I’m sorry, Charles Lewis.”

Elizabeth Corn – “Thank you.”

Chairman Moyer – “Alright. Any other questions for Mr. Timmons at this time? OK, thank you. Staff’s evidence? You want to put on evidence at this time Ms. Berry?”

Natalie Berry – “Yes sir.”

Chairman Moyer – “OK”

Natalie Berry – “As the ordinance administrator, I’m not in support of the variance request for the following reasons:

- 4.1.1 The County Zoning Office received a letter from the property owner stating she would not sign the required easement document that I showed you a few minutes ago.
- 4.1.2 The applicant has had discussions with the City of Saluda about locating the same communication tower on a parcel of land within 1,000 feet of the subject property. The City of Saluda then satellite annexed that parcel for that purpose (see attachment 9). Let me see where 9 went. You can see it on attachment 5 as well which is this one right here. The parcel is this piece right here and the parcel we’re talking about is the pink one right below it. OK, I spoke with Ernie, let’s see, Ernie Williams, the City Administrator for the City of Saluda today and he told me that parcel of land had been in the ownership of the City of Saluda for a number of years and that Pegasus had approached them about putting a tower there so they satellite annexed the property for that reason. That’s one reason.
- 4.1.3 The intent of section 81-6.B(2)(a)[10] of the Communications Tower Ordinance is to give property owners within the closest proximity of a proposed tower a right to prevent the siting of the tower by refusing to provide the required easements. The easement acquisition documents are therefore an integral part of the application process for a communication tower.
- 4.1.4 Section 81-10 of the Communications Tower Ordinance covers the procedures for variance requests and the findings and conclusions that the Board of Commissioners must make in order to grant a variance. It states:

‘Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Board of Commissioners may authorize a variance, if such variance can be made without compromising the intent of this chapter. Notwithstanding the foregoing, no variance may be issued allowing the modification of any height restriction or limitation contained in this chapter.’

It also states:

‘The Board of Commissioners shall consider the public health, safety and welfare when ruling on applications for variance. Any grant of a variance pursuant to this Section 81-10 must be based upon specific findings of the fact made by the Board that support the following conclusions:

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this chapter.
 2. This variance applied for is in harmony with the general purpose and intent of this chapter and preserves its spirit.
 3. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done.
- 4.1.5 The Ordinance Administrator does not think that the variance application, as submitted, provides the Board of Commissioners with the facts it needs to make the necessary findings and conclusions to grant the variance.

That's my case."

Chairman Moyer – "Mr. Timmons, you have any questions for Ms. Berry at this time?"

Harold Timmons – "I'll keep my comments till the end after all testimony has been rendered and I have the opportunity to come back and address."

Chairman Moyer – "Alright, well I'll get to that in a minute. Do any other parties have questions for Ms. Berry at this time?"

Commissioner Baldwin – "I – I've – I've got another question. I just want to make clear I'm understanding this correctly. We're not asking for the radius to be relaxed. We're – the request is for the requirement."

Natalie Berry – "Correct"

Commissioner Baldwin – "To have – have the easement waived?"

Natalie Berry – "Correct."

Commissioner Baldwin – "Those are very different."

Natalie Berry – "Now when we accepted the application we were not sure that it was something that would be a variance request so we did get with Russell and he said we needed to accept the application as is and present it to the Board."

Chairman Moyer – "Well Russell may be able to give me some advice too but I think we've heard the applicant's evidence and we can give the applicant one more chance. We've heard staff's evidence. I think the conclusions as Commissioner Baldwin indicated is quite clear in this case. Do you wish to proceed or is the Board ready to move on this matter."

Commissioner McGrady – "We ought to hear from everybody."

Chairman Moyer – "What"

Commissioner Baldwin – "I don't have a problem with letting folks speak but I – you know – it's really a point of order and I'm willing to defer to counsel on the issue though"

Russell Burrell – "All the"

Commissioner Baldwin – “Counsel let it through so let’s hear it.”

Russell Burrell – “I don’t think we had all of what made up the request at the time but I think you – once you’re in this hearing you need to go through and complete the hearing process and then make a decision.”

Harold Timmons – “I think one of the points that I wanted to bring back out and I don’t know if this is an appropriate time or not, if you want me to talk now or if you want me to wait till everybody else has said what they have to say?”

Chairman Moyer – “I’ll let you speak now if you wish.”

Harold Timmons – “OK uh in regards to whether or not this should be a variance request or not, I think I have to respectfully disagree with Mr. Bal – Commissioner Baldwin on the basis that under 81-10 in the first sentence it pretty much says here that because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter. Is this easement requirement not a provision of this chapter? I would say it is a provision of this chapter and this statement thereby opens the door for consideration as a variance. Secondly, as far as the easement requirement goes, the requirement you have and this may be relevant or not but the requirement that you have, you have basically granted the ability to approve or deny a request to an adjacent land owner. That is a power that is solely reserved for this Board and it’s agents. Think about that for a minute. No one can build anything. We couldn’t build a tower on a site or anyone unless they can get an easement. You can’t get an easement because the landowner holds the power and control to take it, to give it or to take it as he pleases. So I just wanted to make sure that that point was brought out. And secondly, also the easement itself. There’s no detail or information indicating how that easement should be worded. That landowner can build him a house right in that easement if he wants to because the ordinance doesn’t speak to that so you can get the easement and it’s designed to assure safety but unless there’s something that prevents them from building a structure in that easement, where’s the safety? What we propose is to keep our structure on our property where it should be. That, I think, is in the best public interest. Also, I think that – you know this is a quasi-judicial hearing. The points that are made here and suggested and brought up should be relevant to the – to the- to the issue at hand. The issue at hand is whether or not we prove our case that we should have an easement or not, not whether or not the view affects anyone, not whether it affects their property values or any of those things because they are not relevant to the variance request so I would ask you respectfully to try to keep the comments directly on point and to the issue at hand, thank you very much.”

Chairman Moyer – “I will do that, thank you. Would you call the witnesses in the order that – I mean the parties in the order that?”

Elizabeth Corn – “Charles Lewis”

Chairman Moyer – “Mr. Lewis, do you wish to give, to make a statement.”

Charles Lewis – “Yes I do.”

Chairman Moyer – “And I will hold these statements to be relevant to the issue of the variance, not whether there’s a tower or anything like that. It has to be on the issue of the variance.”

Charles Lewis – “I understand.”

Chairman Moyer – “OK”

Charles Lewis – “I don’t have – I don’t have a copy for everybody.”

Chairman Moyer – “That’s alright, just so you keep one.”

Charles Lewis – “I’m Charles Lewis. I refer you to page 2 of that hand-out. The red line indicates the easement area that the applicant seeks to have waived and the reason that we’re here is purely and simply that that property is not sufficient to put a tower on. If you’ll look at that easement area, it’s a considerable area. It reaches out into Judd’s Peak Road, touches Neil Rooh’s property, my property, a considerable amount of the Johnson’s property. I don’t – this case is just like somebody that moves into the flight plan of an airport and then complains about the noise. They selected this piece of property and they knew or should have known that they had to have these easements, that they had to have the property encumberenced by that red line. They don’t. They are significantly short of that. Therefore, we feel that the – the variance is improperly sought and we ask that this Board will deny it”

Commissioner McGrady – “One question. Your property is within that zone, right?”

Charles Lewis – “Yes, if you look at (two or more people were talking and I cannot make out).

Commissioner McGrady – “The answer’s yes, right?”

Charles Lewis – “Yes”

Commissioner McGrady – “And you’re telling us that you would not provide such an easement, is that right?”

Charles Lewis – “I would not provide an easement and I don’t know of any law that obligates me to go to.”

Commissioner McGrady – “That’s a different point. I just wanted to find out those fact – those two facts.”

Charles Lewis – “I will not grant an easement.”

Commissioner McGrady – “Thank you.”

Chairman Moyer – “Stay there for a minute sir. Staff, Mr. Timmons, anybody have any questions for this party while he’s here? Alright, thank you very much.”

Elizabeth Corn – “William Wilkes.”

William Wilkes – “Well I think Mr. Timmons has demonstrated that the proposed tower application at least meets the spirit and intent of the law which is to protect the general safety of the public. We have admitted evidence as nearly as I can tell from the zoning administrator concerning the possible siting of a tower on the City of Saluda property. She just presented this evidence, I heard no objections to it. If that is permitted from her then I believe people who want to speak to that issue need to be heard.”

Chairman Moyer – “No and I will not grant you that, that’s not relevant to the variance that we have here.”

William Wilkes – “She brought the subject up. Thank you very much. That’s all I have.”

Commissioner Baldwin – “And – and we probably need to emphasize that that’s not something for us to consider, cannot consider that.”

Commissioner McGrady – “It was only brought up, I believe, for the purposes of showing that there are potentially alternative sites, not that – there is no critical need for this piece of property, I assume.”

Chairman Moyer – “So whenever”

Commissioner McGrady – “But it’s not – can’t be used for any other .. I mean it’s a very limited reason why that’s brought up. It doesn’t – it doesn’t – it’s not relevant in any other regard.”

Chairman Moyer – “And then – and all information with respite to the other site should be disregarded. It’s not relevant to the variance as Commissioner Baldwin indicated. The next party.”

Elizabeth Corn – “Paul Stoney.”

Paul Stoney – “Alright, it is my understanding you all disallowed comments regarding – in view of property value, is that”

Chairman Moyer – “That’s correct.”

Paul Stoney – “Well that basically disallows my concern at this time but I would like to bring your attention to how difficult you all struggle with issues of zoning. When you do get them in place it’s advisable to stick by them and – and follow the intent. The intent here – given the adjacent property owners the rights that they have in granting the access to this property need to be honored. I would respectfully request that you deny the variance and honor their rights as adjacent property owners. Thank you.”

Chairman Moyer – “Any questions for this party before he leaves? Alright, thank you.”

Elizabeth Corn – “Martha Johnson.”

Martha Johnson – “I would think that it would be self explanatory that when you refused an easement, that would mean that you didn’t want the tower there. I mean – he said that she – the lady refused the easement but he didn’t know whether that meant she wanted or didn’t want the tower but I won’t sign an easement.”

Chairman Moyer – “Your property is?”

Martha Johnson – “It’s all around it. He’s right in the middle.”

Chairman Moyer – “Alright.”

Martha Johnson – “Thank you.”

Chairman Moyer – “Any questions?”

William Wilkes – “Yes. My name is William Wilkes. I’d like to know if you did not offer to have the tower put on your property?”

Martha Johnson – “After you were gonna put it on yours. When I was first approached I said no I do not want a tower anywhere on that land.”

Chairman Moyer – “Again, we’re getting into an area that is not relevant to granting of the variance. I’m sorry.”

Elizabeth Corn – “Mary Mowery”

Chairman Moyer – “She passes.”

Elizabeth Corn – “That’s it”

Chairman Moyer – Alright, now we’ll give each party that wishes a chance to make rebuttal evidence and closing comments. We’re gonna roll these together ‘cause I don’t think there should be a lot so we’ll start with the applicant and your closing remarks and you can address anything that’s been raised.”

Harold Timmons – “We respectfully submit that we do have standing for you to approve or deny the variance that we have placed before you. Uh we also are not out to be uh bad neighbors or to cause anyone any harm. We are just trying to pursue every avenue that we possibly can to retain this site for this client because this client likes this location. As a matter of fact, there are two clients that are interested in this site so it is very important to us that we at least extend opportunity to try to pursue the ordinance to its full extent and for every avenue that the ordinance permits us and we believe that we’ve done that. We believe also that we have met the provisions of 81-10 as it relates to those things that it talks about, practical difficulties and unnecessary hardships, harmony, preserving the spirit, public safety and welfare and we think that our proposal for keeping this tower on this property is better than actually obtaining easements that basically say it’s okay for you to allow, if your tower would fall it’s okay for it to fall on my property. We think it’s better that it stays on this property. We’ll design it that way and we think that that actually enhances the safety in general. Thank you.”

Chairman Moyer – “Thank you. Staff do you have closing remarks? Ms. Berry?”

Natalie Berry – “Just one comment. I would just like to submit the entire package as evidence, that’s all.”

Chairman Moyer – “Okay, it’s submitted. Do any of the other parties have closing comments they’d like to make? Alright.”

Someone in the audience (lady) – “Yeah, I’d like to say something. He keeps talking about the safety of it. If he didn’t put it, there wouldn’t be a safety issue.”

Chairman Moyer – “Now the evidence has been presented and closing remarks concluded, it would be appropriate for the Commissioners to discuss this issue. As you know, we can decide the matter now, we can bring it back uh what’s the Board’s pleasure? Commissioner Baldwin, would you like to speak first?”

Commissioner Baldwin – “Well I think – I – you know – I think we could have turned the application down from the very beginning, the fact that it wasn’t something that deserved hearing simply because it wasn’t appropriately filed. Had a number been asked to be relaxed, I think we could have reviewed that issue; however, we seemed to have waived that and we seemed to have had the hearing. So I’d like just to do the – the – the application based on the merits of the application. Uh is the property owner here?”

Someone from the audience – “Yes.”

Commissioner Baldwin – “Could you come forward, please sir.”

Someone from the audience – “Yes sir”

Commissioner Baldwin – “Uh how large is this piece of property in terms of square feet or acreage?”

Someone from the audience – “It’s about 1.2 acres.”

Commissioner Baldwin – “It’s 1.2 acres and what’s it currently zoned?”

Someone from the audience – “I couldn’t tell you. Perhaps.”

Someone else spoke but I couldn’t tell who or what.

Commissioner Baldwin – “It’s zoned open use?”

Someone from the audience – “Yes”

Commissioner Baldwin – “OK, uh anything prohibit you from building a house on the property?”

Someone from the audience – “No, even if the tower were there nothing would prohibit me.”

Commissioner Baldwin – “From building a house on the property. Okay thank you. That’s all I have.”

Chairman Moyer – “Alright. Comments from any other Commissioners? What’s the Board’s pleasure with respect to this matter?”

Commissioner Baldwin – *“I move that we deny the variance request based on that it does not pass uh paragraph A-1 which says that the uh property owner can secure no reasonable return from nor make no reasonable use of the property. The property owner just stated that the property could be used for residential purposes which would allow him a reasonable return on the property. It doesn’t pass the test.”*

Chairman Moyer – “A motion is on the floor. Are there other comments?”

Commissioner McGrady – “I support the motion, the result of the motion although I think there are a range of reasons, not just that one that one might just decide to turn down the request so I’ll go for the motion but I – I don’t think uh I want to go through any and all the reasons that I might have and so”

David Nicholson – “Would you like ...?”

Commissioner McGrady – “I would”

Russell Burrell – “Normally what would happen with a quasi-judicial is the Board would – would make a general set of findings but would direct staff to come back with a more extensive set of findings.”

Commissioner McGrady – “That we would then include in our consent agenda to reflect that and that’s really what I’m – my only concern, Commissioner Baldwin is I think that you could probably expand. I would state in my place I was on the committee that put together this ordinance way back when. The proposal then is – I guess ironically – I guess two of us up here were cell phone tower/company people and so I do understand the engineering here and actually we considered that when the ordinance was put in place – collapsible towers and all of that and despite that the Planning Board then and the County Commission at that time decided that it wanted this requirement in terms of easements despite the engineering possibilities that were out there and so I’m just not persuaded despite understanding the engineering then and now that we need to – to go this route.”

Chairman Moyer – “Motion on the floor to deny the variance for the reasons that have been stated by several of the Commissioners and if it’s alright, Commissioner Baldwin, we’d ask the County Attorney to draw findings of fact consistent therewith and conclusion of law based on your motion and the action the Board takes. Alright?”

Commissioner Baldwin – “Yup”

Chairman Moyer – “*Alright, any further discussion? All in favor of that motion say aye.*”

In unison – “Aye”.

Chairman Moyer – “Opposed” There were none. “Alright, the variance is turned down unanimously.”

Commissioner McGrady – “*I move we go out of public hearing if that’s – or rather the quasi-judicial hearing.*”

Chairman Moyer – “*Alright, motion to go out of public hearing. All in favor say aye.*”

In unison – “*Aye*” (*unanimous vote*)

ASHEVILLE AIRPORT RESPONSE

David Nicholson reminded the Board that at their January 3, 2005 meeting, the Board heard a request from the Asheville Regional Airport to allow their purchase of property in Henderson County. The Board indicated that they would like to seek a payment in lieu of taxes on this property as well as the properties previously purchased without Henderson County’s consent. The Board also requested that Henderson County receive membership on the Airport Authority Board.

David Nicholson presented the response from the Airport Authority’s Director to Henderson County’s requests. They had indicated within their letter that they would not support a payment in lieu of taxes and that a change in their Board membership would take approval from the City of Asheville and Buncombe County.

Mr. Nicholson recommended that the Board continue to support a payment in lieu of taxes on these properties. In the case of the current proposed purchase, this is a prime piece of commercial property.

The Airport Authority recently paid the City of Asheville \$1.19 million for the neighboring piece of property. This purchase, with the proposed price of \$795,000, clearly shows that this property has commercial value. The value of the payment in lieu would be insignificant compared with the value to lease this property of a vendor that serves the airport.

He could not recommend that the Board accept the offer of an invited guest; however, they do correctly state that the agreement would have to be changed by the City of Asheville and Buncombe County to allow for a change in their membership. He also recommended that the Board formally contact the Asheville City Council and the Buncombe County Board of Commissioners directly with our proposal for Board membership.

Following discussion, *Commissioner McGrady made the motion to deny the request to agree to the acquisition of this property. All voted in favor and the motion carried.*

TOWN OF FLETCHER REQUEST THAT COUNTY RELINQUISH ZONING AUTHORITY OVER THREE PARCELS

This item had been removed from this agenda.

IMPORTANT DATES

Karen Smith offered some dates the County could use West Henderson High School for the public hearing on the 25 North Zoning Study.

The Commissioners reviewed their calendars. *Chairman Moyer made the motion to set the public hearing on the 25 North Zoning Study for Monday, May 9 at West Henderson High School at 6:00 p.m. All voted in favor and the motion carried.*

CANE CREEK WATER & SEWER DISTRICT – no business

CLOSED SESSION – none

ADJOURN

Commissioner Messer made the motion to adjourn the meeting at approximately 10:25 p.m. All voted in favor and the motion carried.

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman