

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
JUNE 6, 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, 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, Fire Marshal Rocky Hyder, Development and Enforcement Services Director Toby Linville, 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 Messer led the Pledge of Allegiance to the American Flag.

INVOCATION

David Nicholson gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer recognized Staff Sergeant Fred Sieber. Sergeant Sieber stated that he had been a Henderson County resident his entire life, and for the past 15 years had been a United States Marine. His unit had been deployed to Iraq from February through September of 2004. While there, he noticed that people in his unit weren't receiving too many packages. He wrote a letter to the Times-News and asked the people of Henderson County to send care packages to his unit. The response was overwhelming, and they received over 40 packages. He stated that it had really helped moral.

Sergeant Seiber read the following letter to the Board and the audience:

"Dear Commissioners and Citizens, I would personally like to thank you for your contributions to Marine Wing Support Squadron 273's Marines and Sailors while we were deployed in support of Operation Iraqi Freedom. Knowing that we have the backing of local communities makes a big difference as our country's sons and daughters strive to lift the oppressed and stand at the ready to vanquish those who would do us harm. Your thoughts, prayers and donations are a true testament to your generosity and patriotism. As a native of North Carolina, I am especially proud of Henderson County's great Americans. On behalf of all my Marines and their families, please accept my heartfelt appreciation. Sincerely, D.S. Heesacker, Lieutenant Colonel, United States Marine Corps."

Sergeant Seiber also read the following carved onto a wooden plaque:

"Presented to the people of Henderson County From: The Marines of Marine Wing Support Squadron 273 Thank you for your generous support during our deployment to Operation Iraqi Freedom II. People like you make us remember why we serve our great nation."

Sergeant Seiber presented the letter and plaque to Chairman Moyer. A standing ovation followed Sergeant Seiber's presentation. Chairman Moyer thanked Sergeant Seiber for the presentation, but more importantly for the job done for the County and the United States.

DATE APPROVED: _____

Chairman Moyer recognized Karen Smith regarding Relay For Life. Ms. Smith stated that this year's Relay For Life was another example of why this is a great County to live and work in. The 11th annual American Cancer Society's Relay For Life was held June 3rd and 4th at East Henderson High School. There was a wonderful turnout in spite of rain earlier in the day, and they were able to exceed their goal of \$145,000 by raising at least \$150,000 with more coming in. Ms. Smith thanked the Board and the community for their support.

Chairman Moyer stated that a Development and Enforcement Services Director had been hired and asked David Nicholson to make the introduction. Mr. Nicholson recognized Toby Linville, stating that Mr. Linville would be responsible for redoing the centralized permitting system, as well as assisting in developing a stronger enforcement system.

INFORMAL PUBLIC COMMENT

1. **Darryl Fullam** – Mr. Fullam stated that he was a dairy farmer, and had a dairy in Etowah. With respect to the flood plain ordinance, he recommended accepting the State model as recommended by the Planning Board. He expressed concern about property being devalued. Over the past few months, the Board had asked local farmers what they could do as a Board to promote agriculture in the County. He stated that this was the Board's chance not to help them, but to hurt them the least and not add more regulations on top of what they already had.
2. **Argie Taylor** – Mr. Taylor stated that he had been a resident of Henderson County for 79 years, except for the 30 years he was away in the military. He had lots of farming experience prior to entering the military. He currently lives off Erkwood Dr. about half way between the Mud Creek bridge on Erkwood and Crooked Creek golf course, and for 30 years has been watching the flooding in that area as it took place. He described the flooding patterns as he had observed them during that time. He also discussed flooding patterns he had observed growing up in the area. Mr. Taylor stated that over the years he had watched trucks haul in dirt to fill. He stated that in the best interest of the people of Henderson County, drastic action in regard to such action needed to be taken. He referred to an editorial taken from the June 5, 2005 edition of the Times-News entitled "Reserve flood plain for flooding", and stated that he endorsed the opinion set forth within that article 100%. Mr. Taylor expressed concern about the makeup of the Planning Board, stating that he did not feel it was representative of the community. He expressed concern that the recommendations of the Planning Board would benefit the County's wealthy developers, but not the residents of Henderson County.
3. **Leon Allison** – Mr. Allison stated that he agreed with the Planning Board's 7-2 vote to recommend the State's flood ordinance model. He stated that along Bob's Creek Road in Green River there were a lot of small farms of 5 to 10 acres. Most of the water that floods the valleys comes from the mountains. He questioned how the Board could impose strict restrictions on the flood plain while doing nothing on the large tracts in the mountains.
4. **Pat Morell** – Ms. Morell stated that she was the Natural Resources Chair of the league of Women Voters. She read a letter from the League endorsing the concept of adopting a flood plain ordinance. She stated that the Board must weigh the limits of development against the value of property to the owners, and the cost to the community should development take place. She spoke in support of a strong ordinance that limited development with a no-fill policy within the floodplain, sets a safe elevation above the base flood elevation, and limits development in the 100 year flood plain to uses associated with agriculture, recreation and infrastructure.
5. **Kenny Barnwell** – Mr. Barnwell stated that in all the meetings he had attended, all but two people had spoken in favor of the state mandate for a flood plain ordinance. He stated that these rules are far from just a band-aid fix. All the points are addressed, and would give the County a defensible ordinance to work with. Because the majority of the landowners who would be most effected had shown support for the proposal, it should be the model adopted by the Board. He stated that he realized the ordinance

wasn't perfect, and in his opinion it should contain no building and no filling in the floodway and the issuance of a no rise certificate within the flood fringe.

6. **Brandon Lee** – Mr. Lee, and three fellow 5th grade students from Edneyville Elementary spoke with regard to the floodplain ordinance. The students discussed some of the problems in other states they had learned about, such as building in floodprone areas, and filling in wetlands. They stated that as the future homeowners of Henderson County, they wished to protect farmers and the farmlands. The agriculture community provides the County with over \$100 million of income per year. The students asked that the Board consider future generations as they make their decisions concerning the protection of Henderson County's land.
7. **Angela Beeker** – Ms. Beeker requested, on behalf of the group of farmers that she was representing, the Board give careful thought before making the decision to affect such a large area with such a restrictive ordinance. The acreage in question was equal to the acreage in Hendersonville, Flat Rock and Laurel Park combined. Ms. Beeker spoke briefly to process and read from the County's Land Use Plan. She reminded the Board that detailed planning had been done along Highway 25, but in effect zoning was about to be done on a very large parcel without that detailed study occurring. She asked the Board to consider that this action, if taken tonight, would drastically reduce the value of the farmland. With one vote, many farmers would be under collateralized which could cause real problems. She agreed that individual rights must be balanced with community rights, and asked that the Board not adopt the ordinance before them today. Based on her clients directions, Ms. Beeker had put together a draft ordinance. She had taken the state model and drafted an ordinance that she felt represented Henderson County.
8. **Jeff Young** – Mr. Young stated that fair and balanced were two primary objectives the Board had when implementing laws in the County. However, fair and balanced were two words he had not heard in discussions about the flood plain ordinance. Both the first draft and the revised draft of the proposed ordinance failed to address the competing interest and land use in and around the floodplains. He also stated that the proposed draft did not allow science and hard data to determine the potential impact of a development on the floodplain. Mr. Young continued his discussion about FEMA's flood insurance rate maps and how they were developed. He stated that those maps already had a one foot buffer built into them, however the draft proposed ordinance did not recognize the significance or value of that data. Mr. Young had distributed to the Board an updated map, though not of Henderson County, from the Division of Emergency Management's website which showed the way the new maps were appearing. On those were the delineations of the floodways, the flood fringe and the flood plain. He presented those maps to help illustrate the amount of work that had gone into preparing the maps. Mr. Young continued with a lengthy discussion about the various reasons why the Board should adopt the State model as supported by the Planning Board.
9. **Stu MacRoberts** – Mr. MacRoberts stated he was the President of the Western North Carolina Air Museum, a pilot, and had been flying in Western North Carolina since 1982. He stated that anytime you reduce the ability of the earth to absorb the water, you will have floods. He felt the flood maps were outdated and inaccurate because of the growth that had occurred. The proposed ordinance exceeds federal requirements and state recommendations, would prevent any future hangar buildings at the Hendersonville Airport, and had no provision for any repair in the event of runway damage. He stated that the WNC Air Museum was located adjacent to the airport and utilized the runway, taxiways and the property. He requested the Board enact a reasonable, non-punitive ordinance.
10. **A. Pretorius** – Mr. Pretorius stated that he was a local pilot, and kept his plane at the Hendersonville air field. However, in the interest of time, Mr. Pretorius deferred his comments to John Fadok.

11. **Bert Lemkes** – Mr. Lemkes stated that it had not been long ago when the Chairman asked a group of people involved in agriculture what the County could do for agriculture. He stated that the County should first understand what agriculture really is. Mr. Lemkes stated agriculture is a capital intensive industry. They deal not only with production, but also with processing. It is a business already subject to a lot of regulations. As an industry, it is hard to deal with regulations on prices while costs continue to rise. He requested the Board consider the interests of agriculture when discussing the flood ordinance. The industry does not need more regulation, they need help. He stated that the Board could help by taking the least restrictive form of a flood plain ordinance.

12. **Mary Singleton** – Ms. Singleton spoke to the proposed '05-'06 budget. Earlier in the year, the public had been told that the number one school priority was Hillandale, due to problems with the land where the school was sited. It had been determined that the existing building would have to be replaced, and that there was a suitable site further up on the existing property. Following that decision however, the Board of Commissioners and Board of Education had agreed to a land purchase on Sugarloaf Road where a new school could be built. That made the new school the number one priority, Dana Elementary School number two, Mills River number three and Hillandale number four.

Ms. Singleton then addressed the Board of Education's request for an additional office worker at 21 schools. She expressed concern that this additional office worker was actually planned to replace existing guidance counselors. Based on her conversations with teachers, school nurses were a higher priority.

Ms. Singleton continued to discuss the fees charged to parents who have children enrolled in the before school and after school program of care. She was troubled that those fees were increasing, while land was being purchased for a school we don't need. She expressed concern about how the taxpayers dollars were being spent on both schools, as well as other county services and facilities.

13. **Bob Williford** – Mr. Williford stated that he was the President of the Greater Hendersonville Chamber of Commerce. Mr. Williford stated that following discussions with the Government Affairs Committee, the Agri-Business Committee, the Henderson County Partnership for Economic Development Board of Directors and the Chamber Board of Directors, they felt that a flood protection ordinance was needed in Henderson County. However, they felt that an ordinance of the magnitude being considered, should be studied carefully and deliberately. They felt the County should pass an ordinance meeting minimum FEMA and state requirements, not one that surpassed them. More protective measures could be passed at a later date, when additional information could be gained from the affected parties.

14. **John Fadok** – Mr. Fadok spoke as the owner of the Hendersonville Airport. He stated that he was in favor of a flood ordinance for the County. However, the ordinance that was originally proposed and even the ordinance as amended was entirely over-restrictive and would have extremely negative effects on his business, the operations of the airport, local farmers and land owners. Mr. Fadok stated that there should be some way of advising landowners that an ordinance was being considered, so they could participate in the process. He expressed concern that the ordinance was only going to affect those people already under the burden of flooding. He expressed additional concerns about what the proposed ordinance would do to the airport, and requested the Board take the time to make sure the ordinance be written and adopted properly.

15. **Carolyn Mason** - Ms. Mason stated that she had lived at her current address in Henderson County for 40 years. She stated that she did not feel that the flood plain should be able to be altered, and that in-fill had caused flooding on her property to move from near the stream bank, to much farther up on her property. During flooding in years past she used to be able to wade down to the creek, now a similar flood would cause water to be up to 14 feet deep on her property. She asked the Board to help protect the

small property owners in the county, and make the people who were doing the filling on the creek responsible to the people being affected.

16. **Mark Williams** - Mr. Williams is a current member of the Henderson County Planning Board. He worked in the banking industry, and worked directly with farmers. He had relied heavily on individuals with knowledge of the impacts of flooding, particularly engineers, in making his decisions as a member of the Planning Board. While there might be some wealthy farmers, by and large in this County farmers were struggling to continue farming. The number one way to preserve farmland was to preserve first the farmer. He felt that as proposed, the ordinance would do a great disservice to farmers in Henderson County. It would cause a devaluation of property values, which would impact their ability to borrow money and remain a viable farming operation. If the County wishes to adopt a restrictive ordinance, the County should compensate the property owner for that. Mr. Williams stated that there is a balance to be had. No one is looking for large amounts of development to occur, particularly in flood plain areas.

DISCUSSION/ADJUSTMENT OF AGENDA - continued

Chairman Moyer added two additional Closed Session Items. *Commissioner McGrady made the motion to approve the agenda as amended. All voted in favor and the motion carried.*

CONSENT AGENDA

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

The Consent Agenda items were:

Minutes

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

- May 2, 2005 - regular meeting

Tax Collector's Report

The Tax Collector's report was not received for consideration at this meeting.

Financial Report – April 2005

Cash Balance Report – April 2005

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

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 were 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 was due to architectural fees, demolition/abatement and utilities relocation work completed for this new facility. These costs would be recouped from financing proceeds for the project in May of this current fiscal year.

Henderson County Public Schools Financial Report - April 2005

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

McCallister Lease

The Board was requested to approve the continuation of the lease on the McCallister Building. The term of the lease was for one year with a month-by-month basis afterward. This would allow the County flexibility in scheduling the move of the Sheriff's Department staff to the County Office Building.

Mullinax offer to purchase lots, Rocky Gorge Lodge Subdivision

Lloyd A. Mullinax and Mary G. Mullinax (together, "Mullinax") had made an offer to purchase certain parcels of real estate from Henderson County for the total price of \$15,000.00. Mullinax had deposited with the County as required by the General Statutes the sum of \$750.00, plus an additional \$120.00 to cover the cost of publication of his offer (if acceptance is proposed by the Board). This is the identical property which was the subject of a similar offer (for a lesser amount) made by Mullinax in 2003.

The real estate was the subject of a tax foreclosure in 1937. As was pointed out regarding the prior offer to the Board, and as Mullinax noted in this offer: "...*there may have been procedural irregularities in the foreclosure and subsequent sale of said properties...*"

Staff proposed the following motion: I move that the Board propose to accept the offer of Lloyd A. Mullinax and Mary G. Mullinax in the Board's agenda packet, subject to an upset bid. The Clerk is directed to cause legal notice thereof to be published one (1) time in the Times-News Hendersonville, N.C. In the event that an increased bid is filed, the Clerk is directed to re-advertise as required by law, and to repeat this procedure until ten (10) days have elapsed from the date of last publication without a qualifying upset bid having been received. At the end of such procedure, the Chairman is authorized to execute a document accepting the highest such upset bid (or, if there are none, the Mullinax bid), and to close such transaction by quitclaiming Henderson County's interest upon payment in full by the winning bidder.

Petition for addition to State Road system

Staff recommended approval of petitions to add Divide Loop and Red Cedar Drive 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.

Employee Recognitions/Awards

The following recognitions/awards had been received by County Departments and/or employees. The Board of Commissioners had asked that these be included on the agenda for special recognition of our departments' and employees' achievements:

- Chris Coulson: *2005 Awards of Excellence Competition*

Set Public Hearing date for Road Names

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

Huntley Stepp Lane
Turkey Foot Lane
John Lee Montgomery Drive
Dancing Ridge

The County Manager recommended the public hearing be scheduled for Tuesday, July 5, 2005 at 7:00 p.m.

Water Line Extension

The City of Hendersonville had requested County comments on a proposed water line extension to a proposed subdivision to be known as Chisholm Wood. A City of Hendersonville Project Summary sheet with staff comments for the project was presented to the Board for their consideration. The County Manager recommended that the Board of Commissioners approve the water line extension with the condition that the staff comments be conveyed to the City of Hendersonville.

NOMINATIONS**Notification of Vacancies**

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

1. **Nursing/Adult Care Home Community Advisory Committee – 2 vac.**

Nominations

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

1. Alliance for Human Services – 1 vac.

Commissioner McGrady nominated Selena Coffey for Position #1. *Chairman Moyer made the motion to accept her nomination by acclamation. All voted in favor and the motion carried.*

2. Asheville Regional Housing Consortium – 1 vac.

Commissioner McGrady nominated Nippy Page for Position #2. *Chairman Moyer made the motion to accept her nomination by acclamation. All voted in favor and the motion carried.*

3. Blue Ridge Community College Board of Trustees – 2 vac.

Commissioner Young nominated William Farrell to Position #1 and Mary Ann Engel to Position #2. *Chairman Moyer made the motion to accept those nominees by acclamation. All voted in favor and the motion carried.*

4. Cane Creek Water & Sewer District Advisory Committee – 5 vac.

Commissioner Messer nominated himself to Position #1, P. Richmond Meadows to Position #2, John Davis to Position #3 and Jeff Young to Position #6. *Chairman Moyer made the motion to accept those nominees by acclamation. All voted in favor and the motion carried.*

5. Environmental Advisory Committee – 4 vac.

Commissioner Young nominated Hall Waddell, Art Hudson, Larry Blair and Fielding Lucas. Commissioner McGrady nominated Edward Doyle, Angela Fernandini, James Hutcherson and Collette Summitt. A vote will be taken on the nominees at the next meeting.

6. Henderson County Board of Health – 4 vac.

The vacant positions on the Board were #1 - John Bell, #3 – an Optometrist, #5 – a registered nurse, and #8 – an engineer. Commissioner Young stated that at the last meeting, the Board had discussed having P. Richmond Meadows move from an at large slot into the engineer position. *Commissioner Young made the motion to reappoint John Bell to Position #1. Chairman Moyer made the motion to accept him by acclamation. All voted in favor and the motion carried.*

7. Henderson County Historic Courthouse Corporation – 3 vac.

Commissioner Young nominated Don Michalove to Position #1, Theron Maybin to Position #2 and Argie Taylor to Position #3. Commissioner McGrady nominated Ken Gaylord to Position #1 and Dixie Dellinger and Ken Gregory to Position #2.

Commissioner McGrady nominated Argie Taylor to Position #3. *Chairman Moyer made the motion to accept Mr. Taylor by acclamation. All voted in favor and the motion carried.*

8. Jury Commission – 1 vac.

Commissioner Young nominated Mary Singleton. Commissioner McGrady nominated Dutch Burdette. A vote will be taken on the nominees at the next meeting.

9. Juvenile Crime Prevention Council – 20 vac.

Commissioner Baldwin nominated the following for reappointment: #1 - Mike Neyman, #3 – Erik Summey, #5 – Rodney Wesson, #6 – Ali Robbins, #8 – David Nicholson, #19 – Morton Lazarus, #20 – Kevin Lauritsen, #22 – Mary Murray and #24 – Margo Nagel. Commissioner McGrady nominated Chris Freeman for appointment to Position #19.

Chairman Moyer made the motion to reappoint #1 - Mike Neyman, #3 – Erik Summey, #5 – Rodney Wesson, #6 – Ali Robbins, #8 – David Nicholson, #20 – Kevin Lauritsen, #22 – Mary Murray and #24 – Margo Nagel by acclamation. All voted in favor and the motion carried.

10. Land-of-Sky Regional Advisory Council on Aging – 1 vac.

Chairman Moyer nominated David Beardsley for appointment to Position #1. As Mr. Beardsley currently serves as a Henderson County appointee on two Boards, Chairman Moyer requested Staff contact Mr. Beardsley regarding which two Boards he would prefer to serve on.

11. Library Board of Trustees – 2 vac.

Commissioner McGrady nominated Art Harrington for reappointment to Position #4 and Joy Perry to Position #6. Commissioner Young nominated Dennis Justice for appointment to Position #4 and Tom Orr for appointment to Position #6. A vote will be taken on the nominees at the next meeting.

12. Mountain Area Workforce Development Board – 2 vac.

Commissioner Messer nominated Dr. David Sink for reappointment to Position #4. *Chairman Moyer made the motion to reappoint Dr. Sink by acclamation. All voted in favor and the motion carried.*

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

Commissioner Young nominated Aubrey Carruth for reappointment to Position #3. *Chairman Moyer made the motion to reappoint Mr. Carruth by acclamation. All voted in favor and the motion carried.* Commissioner McGrady nominated Phyllis Brown for appointment to Position #22. *Chairman Moyer made the motion to appoint Ms. Brown by acclamation. All voted in favor and the motion carried.*

14. Planning For Older Adults Block Grant Advisory Committee – 1 vac.

Commissioner McGrady nominated Linda Lauzon for appointment to Position #12. There being no additional nominations, *Chairman Moyer made the motion to appoint Linda Lauzon by acclamation. All voted in favor and the motion carried.*

15. Social Services Board – 1 vac.

Chairman Moyer nominated Chuck McGrady for reappointment to Position #2. There being no additional nominations, *Chairman Moyer made the motion to reappoint Mr. McGrady by acclamation. All voted in favor and the motion carried.*

DRAFT FLOOD DAMAGE PREVENTION ORDINANCE

Rocky Hyder presented the revised Draft Henderson County Flood Damage Prevention Ordinance based on comments gathered at the May 2, 2005 Public Hearing, and those submitted after that public hearing. The majority of those comments had been that the ordinance was too restrictive and that the Board should adopt a minimum ordinance similar to what the Planning Board recommendation had been. Staff continued to believe that the state's draft was the absolute minimum, and a model ordinance which was not necessarily intended for any jurisdiction but laid out the basic guidelines for communities to consider when writing an ordinance specific to a communities situation.

Mr. Hyder pointed out that the draft ordinance did allow construction in the floodway with a no impact or no rise certificate. Staff certainly would not propose an ordinance that would allow building in the floodway. Staff also did not propose development within the 100 year flood plain, especially with regard to fill. Mr. Hyder expressed concern about the fact that it was not the height of the water, but the velocity of that water that caused much of the damage experienced in the last floods. He then discussed the revisions staff had made to the draft. The revised draft addresses some of the issues raised by the comments mentioned above as well as a preliminary state review of the ordinance.

The revisions include the following:

1. Removing the 500-year floodplain from the Special Flood Hazard Area regulated by the Ordinance.
2. Reducing the freeboard from four (4) feet to two (2) feet.

3. Text clarifications regarding the regulation of areas outside the Special Flood Hazard Areas that are found to be below the base flood elevation through engineering studies, additional mapping studies, etc.
4. Replacing references to “floodprone areas” and “floodplains” with “Special Flood Hazard Areas”.
5. Revising permitted uses to read “Farming, including plastic culture and all other present-use practices”.
6. Adding airport hangars as a listed example of an accessory structure.
7. Clarifying fencing requirements to allow vertical or horizontal slats.

When the Board is ready to adopt the ordinance, it will need to establish an effective date. The next items that must be addressed are initiating the National Flood Insurance Program (NFIP) application process and developing a fee schedule associated with the Flood Damage Prevention Ordinance.

Commissioner McGrady stated that there were now three ordinances before the Board: the revised Staff recommendation, the State model as recommended by the Planning Board, and the draft submitted by Angela Beeker (the “Beeker document”). Commissioner McGrady stated that he had not had an opportunity to understand the differences between these documents. He suggested developing a timetable and a process to allow the Board to make a decision. He agreed the County needed an ordinance, the question was what kind of ordinance.

At the May 17, 2005 Planning Board meeting the Planning Board voted to rescind their earlier motion recommending the Board of Commissioners adopt the Henderson County Flood Damage Prevention Ordinance as it was originally presented to the Board of Commissioners on March 23, 2005. They further set a special called meeting for June 2, 2005. At the special called meeting on June 2, 2005 the Planning Board recommended the adoption of the state minimum standards as the Henderson County Flood Damage Prevention Ordinance. In addition, the Planning Board also recommended the Board of Commissioners pursue the development of Sedimentation and Erosion Control and the Stormwater Management standards and requirements earlier than scheduled in the 2020 Comprehensive Plan.

Commissioner Young stated that he was by no means an expert in this matter, and he relied on civil engineers for their knowledge – two of which were on the Planning Board. Those experts say that the County should adopt a flood plain ordinance that is compatible with the ones around us: Hendersonville, Transylvania County, Fletcher, Asheville and Buncombe County. He questioned why Henderson County needed a more restrictive ordinance than those units of government had. *Commissioner Young made the motion to adopt the proposal from the Planning Board, including going back once the County receives the new floodplain maps, and revising the ordinance as necessary at that time. Commissioner Baldwin felt adopting the Ordinance would not bring the Board any closer to their goals, and suggested the Board hold a Special Called Meeting to more thoroughly discuss the matter. Following much additional discussion, a vote was taken on the motion. The motion failed 4-1 with Commissioner Young voting in favor.*

Commissioner Baldwin suggested giving the County Manager discretion to set a Saturday meeting, within the next 30 days, with a facilitator, to determine the direction to give staff so they will know what to draft. Chairman Moyer stated that he did not wish to start back at the beginning, but rather have staff do a side by side comparison of the various drafts presented thus far. *Commissioner Baldwin made the motion to ask the County Manager to find a Saturday to meet with a facilitator to determine the direction to give staff.* Commissioner Young stated that given the time of year, it would be hard to have the necessary people attend a Saturday meeting to provide the information. He suggested holding the meeting at night to assist with

bringing in the experts to get the necessary information. The motion failed 4-1 with Commissioner Baldwin voting in favor.

Chairman Moyer made the motion to ask staff to work the ordinances into a side by side comparison, pointing out the differences between those ordinances as well as the key policy issues on which Staff needs resolution. The ordinances to be compared would be the State model, the "Staff" draft, the "Beeker" draft, and Hendersonville's Ordinance, and bring it back to the Board at the next meeting. Commissioner Baldwin questioned Karen Smith on her opinion of taking the five models and outlining the positive and negative aspects of each. Ms. Smith stated that such a comparison had already been done between everything except the "Beeker" draft, so it would be a matter of adding that information to the rest. Following additional discussion, a vote was taken on the motion. The motion carried 4-1 with Commissioner Baldwin voting in opposition.

APPLICATION FOR COUNTY CONTROL OF AN ABANDONED PUBLIC CEMETERY (LOWER SECTION, MILL POND CEMETERY)

Russ Burrell stated that Henderson County had received an application from Jay Jackson, Chair of the Henderson County Cemetery Advisory Committee, for Henderson County to assume possession and control of an abandoned public cemetery. The cemetery is described as being "[a]t the corner of Highway 191 and Rugby Road", with Henderson County PIN 0096409780045, and is known as "lower section, Mill Pond Cemetery".

Under the ordinance:

- 1) The Board must "assume possession and control" of all abandoned public cemeteries. (Code §76-6)
- 2) "An abandoned cemetery is a cemetery for which there is no ascertainable person or entity responsible for maintenance and care, and which has not actually been maintained or cared for so that it has fallen into a state of disrepair as evidenced by overgrown foliage, broken grave markers, loss of grave identity, or such other circumstances indicating neglect or abandonment." (§76-4(a))
- 3) "A public cemetery is a cemetery that:
 - (1) Is or was last owned or controlled by a public body without any relinquishment of ownership or control by said public body; or
 - (2) Has been (i) dedicated for use by the public generally by an express or implied dedication, and (ii) accepted by the public expressly by an act of a public body or impliedly by the actual use of the cemetery by the general public." (§76-4(c))

The only substantial issue identified by staff as a concern with this application is the location of the boundaries of the "lower section, Mill Pond Cemetery". As under §76-6, the Board is responsible to insure that the cemetery "boundaries and lines are clearly laid out, defined and marked, and shall take proper steps to preserve them from encroachment", the location of these boundaries is required information. This is especially true as the remainder of Mill Pond Cemetery is well cared for, and clearly not an abandoned cemetery of any sort.

Chairman Moyer stated that his concern was that the Board was dealing with a portion of a cemetery. He questioned the implications of moving forward while dealing with pieces of various cemeteries. Mr. Burrell stated that one of the difficulties that would be encountered would be having a piece of land that might be one cemetery, but might also be multiple cemeteries. In this context, for the purposes of GIS the property has been shown as one tract of land. However, there is no owner listed for the property. It has all been shown as one tract for convenience purposes, however there is no way to know how many tracts there may actually be. Mr. Burrell recommended that if the Board did decide to accept this as an abandoned public cemetery, they direct staff to work with the people who maintain the upper section of the cemetery to delineate between the two sections.

Following additional discussion about the ability to find out who was legally in charge of the cemetery,

Commissioner Young suggested finding out who was last buried in that cemetery and going to the funeral director who buried them to determine who granted that permission.

Commissioner McGrady moved that Henderson County staff be directed to work with its Cemetery Advisory Committee and those who care for the remainder of the Mill Pond Cemetery to locate the boundaries of the lower section of Mill Pond Cemetery, and provide a reasonable and workable description of the boundaries to this Board within forty-five days of this date. All voted in favor and the motion carried.

UPDATE ON PENDING ISSUES

1. Historical Preservation Commission

Chairman Moyer stated that he had discussed with Judy Abrell the possibility of a County-wide Historical Preservation Commission. Chairman Moyer approached Mayor Niehoff about their Committee to determine who it worked and the specifics involved. Following that discussion with the City of Hendersonville, the idea had been discussed with the LGCCA about the interest of the various units of government. It was the consensus of the Board to lend their support to such a Commission.

IMPORTANT DATES

Schedule Quasi-Judicial Public Hearing on Application #SP-93-13-A5 to Amend Special Use Permit #SP-93-13 (as amended) for the Carriage Park Planned Unit Development

Dale Hamlin, Manager of Carriage Park Associates, LLC, submitted an application on April 8, 2005 to request a change in the definition "Townhouse (Townhome)" as found in Condition 1(h) of Exhibit A of the original order granting Special Use Permit #SP-93-13 (as amended). Special Use Permit #SP-93-13 was granted by the Board of Commissioners on October 11, 1993.

At the March 15, 2005 Planning Board meeting, the Applicant held a pre-application conference with the Planning Board as required by Section 200-33, Planned Unit Development, of the Henderson County Zoning Ordinance. On April 20, 2005 the proposed amendment was then referred back to the Planning Board by the Board of Commissioners for a recommendation. At the May 17, 2005 Planning Board meeting the Planning Board discussed the proposed amendment and made a favorable recommendation on it.

Staff requested the Board of Commissioners schedule a quasi-judicial public hearing on the application to amend Special Use Permit #SP-93-13 (as amended). *Chairman Moyer made the motion to set the quasi-judicial public hearing for the Carriage Park Planned Unit Development for Tuesday, July 5, 2005 at 7:00 p.m. All voted in favor and the motion carried.*

Set Public Hearing on Rezoning Action #R-2005-02

On April 20, 2005, the Henderson County Board of Commissioners (the "Commissioners") directed the Henderson County Planning Staff to study three parcels (the "Subject Area"), currently zoned OU (Open Use), and determine what commercial zoning district could be applied that would be consistent with adjacent commercial zoning by the Town of Fletcher. The Subject Area is located off NC Highway 280 (New Airport Road), near the Buncombe and Henderson County line and adjacent to the Town of Fletcher. Records indicate that the City of Asheville owns two of the parcels and that Murphy-Wilson Investment Co. owns one of the parcels that may be rezoned. Per Henderson County tax records, the Subject Area contains the following parcels:

- PIN 00964362687755 (0.05 acres, owned by the City of Asheville)
- PIN 00964362972515 (0.59 acres, owned by the City of Asheville)
- PIN 00964362963855 (0.36 acres, owned by the Murphy-Wilson Investment Co.)

The Henderson County Planning Board first considered rezoning action #R-2005-02 at its regularly scheduled meeting on Tuesday, May 17, 2005 at which time the Board voted unanimously (7-0) on a motion to send the Board of Commissioners a favorable recommendation on rezoning the Subject Area to a C-4 (Highway Commercial) zoning district.

Before taking action on the rezoning action, the Board of Commissioners must hold a public hearing. Staff proposed the hearing be scheduled for Tuesday, July 5, 2005 at 7:00 p.m. *Commissioner McGrady made the motion to schedule the public hearing for Tuesday, July 5, 2005 at 7:00 p.m. All voted in favor and the motion carried.*

BUDGET WORKSHOP

Public Schools

Ervin Bazzle, Chairman of the Henderson County School Board, presented the budget for the coming year. He discussed the use of their Strategic Plan in preparation of their budget, and stated that each budgetary item directly addresses goals the Board and community have set for the schools. Mr. Bazzle stated that the issues he wished to point out to the public had to do with the faculty and staff, the counseling programs and support staff, and lowering class size.

Mr. Bazzle discussed some trends with the Board, particularly the trend in the number schools being recognized as Schools of Distinction, Excellence, and Honor Excellence. Currently 18 out of the 21 Henderson County schools are recognized as one of those type schools. He also discussed the trend in testing scores, stating that tested grades had shown remarkable progress since 2000. Some of the programs that had been put in place around 2000, which may be contributing factors to those statistics, were class size reduction, the number of professional education courses offered, classroom instruction and time period emphasis.

Mr. Bazzle also addressed the local expense request budget, explaining the items they see as uncontrollable such as salary increases as directed by the State and utility bills. Mr. Bazzle, School Superintendent Dr. Stephen Page and members of the School Board then answered several questions from the Board on current class size averages and the need for additional class size reduction. In the budget, they were requesting six additional teachers to accommodate class size reduction. There followed much additional discussion about class room sizes, growth projections and additional factors that might influence those sizes.

There was discussion about the personnel request which included needs in areas such as nursing, technology and maintenance. The total amount being requested for personnel was \$569,510. Mr. Bazzle stated that in 1976 there were 66 buses, and last year there were 103 buses. The number of mechanics had stayed the same over those 29 years. Mary Louise Corn then discussed the situation with the need for support personnel to allow counselors to perform the jobs for which they had been hired, and the need for nurses at the schools.

Mr. Bazzle then discussed the capital requests. The amount being requested from the County was \$2,107,500. Those funds were scheduled for land and buildings, furnishings and equipment, and vehicles and equipment. He was of the opinion that based on the square footage in the schools, funding for preventative maintenance was being underfunded, and the longer things were postponed the more expensive repairs would be. There was some discussion about some of the specific repairs needed at the schools.

Blue Ridge Community College

Dr. David Sink introduced several of the Trustees of the College. He was pleased to report that the Board's return on investment continued to receive good reviews – they remained one of two colleges out of 58 in North Carolina that had received a superior rating by the State Board of Community Colleges. He stated that their budget request would be presented in three segments: operational and capital outlay money for the coming fiscal year, a request for planning money for a physical education activities center, and future needs.

The operational request presented was for \$2,018,000, the capital request was for \$52,000, and an additional \$90,000 was requested for current year expenditures that BRCC did not have the funds to cover. 10% of BRCC's budget comes from the County, and 90% comes from the State of North Carolina. Dr. Sink discussed several of the specific needs to be covered by the request, such as vehicles and salary increases for support staff.

Dr. Sink then spoke to the need for planning money for a physical education activities building. He discussed a Resolution passed by the Board of Trustees on July 12, 2004 requesting \$300,000 for planning purposes for the building. It represented a joint venture between BRCC and the Henderson County YMCA and Park Ridge Hospital. Park Ridge Hospital had pledged financial support and the YMCA had pledged architectural support. A 10 minute video was shown which outlined what the building would do for the college. There was additional discussion about the time frame envisioned for the facility, the possibility of seeking State monies and/or grants, as well as the variety of benefits such a center would provide to the entire County.

Dr. Sink alerted the Board that in the coming years BRCC would begin to have to look at facility repairs. Some State money from the bond referendum had been used for renovations, but that money was now gone. He noted that roads were in good repair, but that in two to three years they would have to address aging buildings. He also stated that there would be a need to look at funding for salaries. The North Carolina Community College system ranks 49th in the nation, and that was only because Delaware did not have a Community College system. He felt it would take a joint venture between the General Assembly and County governments to get salaries up. He estimated a future request to provide a 5% salary supplement for support staff.

IMPORTANT DATES - continued

Chairman Moyer stated that he would like to set a date to hold a Public Hearing with respect to the administrative changes in the Tax Administration Office. He proposed that Hearing be scheduled for July 5th. There would be a presentation on the benefits, and a recommendation of the changes put forth. The legislature was prepared to move forward, but they wished for the County to hold a Public Hearing in conjunction with the preparation of a local bill. *Chairman Moyer made the motion to schedule a Public Hearing for July 5th at 7:00 p.m. with respect to changes in the Tax Administration Office. All voted in favor and the motion carried.*

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. In regard to the Appeal to the Property Tax Commission Of General Electric Company, Inc., NC-PTC file number 03-558*
- 2. (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. In regard to the Appeal to the Property Tax Commission of Van Wingerden, Inc. 03-PTC-554*
- 3. (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. In regard to the Appeal to the Property Tax Commission of Mills River Partners 03-PTC-555.*

All voted in favor and the motion carried.

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

Amy R. Brantley, Deputy Clerk to the Board

William L. Moyer, Chairman

DRAFT