

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
JUNE 21, 2005**

The Henderson County Board of Commissioners met for a special called meeting at 6:00 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 Clerk to the Board Elizabeth W. Corn.

Also present were: Budget & Management Director Selena Coffey, Finance Director J. Carey McLelland, Deputy Clerk to the Board Amy Brantley, Fire Marshal Rocky Hyder, Planning Director Karen C. Smith, Zoning Administrator Natalie Berry, and Planner Lori Sand.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance. He explained that there was a need for the Board to go into closed session and asked that it be added to the agenda as item #5. *Commissioner McGrady made the motion to approve the revised agenda. All voted in favor and the motion carried.*

JAIL DEMOLITION – Withdrawal of Bid

Russ Burrell explained that we received a request on June 21 from D.H. Griffin Wrecking Co., Inc. to withdraw its bid for the demolition/construction project concerning the former Henderson County Jail structure. Under N.C.G.S. 143-129.1, when receiving such a request, the County “shall promptly hold a hearing thereon. The agency shall give to the withdrawing bidder reasonable notice of the time and place of any such hearing.”

Upon review of the proposal for the referenced project, D.H. Griffin Wrecking Co., Inc. determined that they had mathematically omitted from their calculations an entry in the amount of \$80,000.00 for the new construction as required by the bid documents. They phoned the county the next morning to notify of their intent to withdraw their bid.

The Board was requested to set a hearing on the request. Since the statute has no iron-clad requirements regarding notice, the hearing could be held as early as the Board’s scheduled June 23 special called meeting. A motion to that affect (or to some other day as the Board may desire, so long as it fits the statutory requirement of “promptness”) would be appropriate.

Commissioner McGrady made the motion to set the hearing for June 23, 2005 at 6:00 as the first item on the agenda. All voted in favor and the motion carried.

FISCAL YEAR 2005-06 BUDGET

David Nicholson distributed a hand-out which was entitled “Alternative A-Revised FY 2005-06 Budget”. This is the same format that was used at the last budget workshop to review additions and reductions to the budget. The Board had suggested some changes in the “Additions” at the last meeting and staff had made those changes/additions.

DATE APPROVED _____

Chairman Moyer suggested that the Board run down the list of “Additions” and vote on each one. The Commissioners had reviewed all these items earlier in budget deliberations. Following is the list with the vote count for each one:

Additions

Agriculture Project	\$ 40,000	5-0	unanimous
Schools: Class Size Reduction Plan	305,035	4-1	Young - nay
Schools: Positions	111,709	5-0	unanimous
BRCC	74,204	5-0	unanimous
Alliance Non-Profits	30,000	5-0	unanimous
DSS: 1 Community Social Services Assistant (9 mos.)	11,818	5-0	unanimous
DSS: 1 Income Maintenance Caseworker (9 mos.)	14,205	5-0	unanimous
Sheriff: 1 Position (9 mos.)	48,124	5-0	unanimous
Sheriff: 5 Patrol (9 mos.)	240,621	4-1	Young - nay
Sheriff: 2 Drug Investigators (9 mos.)	132,787	5-0	unanimous
Sheriff: 1 Telecommunicator (9 mos.)	24,167	5-0	unanimous
Library: 2 Tech Positions (9 mos.)	47,723	5-0	unanimous
IT: 1 Computer Tech (9 mos.)	28,348	5-0	unanimous
Health: Interpreter (9 mos.)	22,362	5-0	unanimous
Assessor: Laptops and data projector	9,000	5-0	unanimous
Mills River Watershed Program	15,000	5-0	unanimous
Rescue Squad	<u>21,240</u>	5-0	unanimous
Total Additions: Alternative A	\$1,176,342		

Other Issues

Balance of Alternative A	(6,123)
IT Department Savings	<u>(21,488)</u>
Total	(27,611)

Upper Broad River Watershed Program	10,000	5-0	unanimous
Additional ECO/VWIN Funding	1,600	5-0	unanimous
Library Video Surveillance Equipment	<u>7,200</u>	5-0	unanimous
Total	18,800		
New Balance	(8,811)		

Following much discussion, The Board wished to add additional money to three items, as follows. This also would balance the budget.

Agriculture Project	+3,811
Alliance Non-Profits	+2,500
Mills River Watershed Program	+2,500

Chairman Moyer made the motion to increase the Agriculture Project to \$43,811, Increase the Alliance to \$32,500, and the Mills River Watershed Program to \$17,500 and to give direction to staff to prepare the official budget ordinance and bring back to the Board for a vote on Thursday, June 23. All voted in favor and the motion carried.

Discussion followed regarding the old Tuxedo School property and the use of the land there for a park and a library for the Tuxedo community.

A community meeting is scheduled for September to get input from the residents in the Tuxedo community.

Commissioner Baldwin mentioned the need for some type of service agreement with the Mills River Watershed Program and the Upper Broad River Watershed Program with a reporting structure.

CLOSED SESSION

Chairman Moyer made the motion for the Board to go into closed session as allowed pursuant to NCGS 143-311 for the following reason(s):

1. (a)(6) To consider the performance, character, physical conditions, and employment of an individual public employee or officer.

All voted in favor and the motion carried.

FLOOD DAMAGE PREVENTION ORDINANCE

Chairman Moyer explained that he did not expect the Board to make a decision about the ordinance tonight but that concerns and issues should be brought up and discussed. The Board will plan to discuss this further after finalizing the budget on Thursday night.

County Attorney – Issues raised

Russ Burrell stated that he had been contacted by several people with issues that they would like to see different.

- The issue of fill in the flood fringe area. The entire floodplain area is divided into the floodway and the flood fringe. The flood fringe is defined by FEMA in relation to its map. It is the area that is within the 100 year floodplain but outside of the floodway.

The current draft allows fill only on 20% of the lot within the flood fringe area and only on existing lots.

The Beeker document allows fill but as an alternative suggests that fill could be done on a lot if compensatory storage is also done on the same lot with the acquisition of a no-rise certificate.

Staff's position is in order to get a no-rise you have to demonstrate something like that anyway. Staff's draft from May 24 did not take it that far according to Karen Smith.

The Planning Board's recommendation would allow 100% fill.

- Technical changes – Russ Burrell stated that he hoped the Board would permit staff to come back to the Board with a final technically adjusted ordinance that makes sure that all the references are appropriate. We are currently dealing with so many drafts.
- Ms. Beeker or her clients wished to make clear that in terms of development, changing a water course would be allowed so long as a permit is received from the Corps of Engineers. She wanted that clarified in this draft that essentially the grant of a permit from the Corps of

Engineers to change any stream (blue line streams) that would allow that same change under this ordinance.

The Henderson County draft would allow no water course alteration.

- Customary agricultural practices not involving building a building. Agriculture is defined pretty broadly in this draft. Dikes, ditches and that sort of thing is what we're considering here. And that reconstruction be allowed if it's already in existence now but is destroyed by flood. Reconstruction to be allowed as a variance procedure for the customary agricultural practices that don't involve buildings.

Karen Smith stated that our variance covers that already. It doesn't require a variance, it is clearly allowed in either draft.

County Manager – memo dated June 21

“The Board is about to make an important decision concerning a Flood Damage Prevention Ordinance (FDPO). On behalf of staff, I am submitting this memo to point out several key issues which should be considered. As you are aware, the activities within the floodplains will affect adjacent upstream and downstream properties, infrastructure (e.g. roads, water and sewer systems, etc.) and public health and safety. The FDPO will set the course for how this community will be affected by future flooding including our ability to mitigate the flood or to create flood damage problems.

Concerns

Staff is concerned about an ordinance that would permit development and fill in floodway fringe areas which amounts to only approximately 3,233 acres in our jurisdiction. The floodway fringe is the area within the 100-year floodplain but outside of the floodway.

The staff's revised draft of the FDPO does not permit development within the floodway fringe unless: (1) the development is related to agriculture, recreation, infrastructure, accessory structures or expansion and additions to existing structures; and (2) a no-rise certification is provided. The reasons that staff recommended this level of regulation are outlined below.

Fill and development in the floodway fringe:

- will decrease the current flood storage capacity of existing floodplains, potentially raise base flood elevations and possibly expand the land area subject to flooding. The issue of flood storage capacity must be considered carefully; once this capacity is lost it is difficult and expensive to reclaim.
- is likely to increase the amount of impervious surfaces along streams such as parking lots, which can cause an increase in the velocity and storage capacity of storm water runoff from such surfaces to nearby rivers and streams, which can contribute to flooding and reductions in water quality.
- whether it is by fill, structures or even items such as fences, these activities can act as a dam for debris carried by water during a flood event and cause rivers and streams to back up, thereby increasing the land area that could be affected by flooding.

- would allow structures in the floodway fringe, places people, buildings, personal property (such as vehicles), pets and farm animals in a potentially hazardous area.
- may subject structures to subsurface flooding from floods greater than the base flood. For example, water could infiltrate basements putting damaging pressure on foundation walls, etc.

Relationship of Flood Damage Prevention Ordinance to the CCP

Henderson County's 2020 Comprehensive Plan (CCP) should provide policy direction on the subject of floodplain management. Staff believes that the revised staff ordinance is derived from the direction within the CCP.

The CCP states through its recommendations, action strategies and supporting text, including public input summaries, that land use planning should protect sensitive natural areas such as floodplains and direct growth away from them. The CCP recommends the adoption of a FDPO and states that the County should manage land uses according to the Growth Management Strategy and Future Land Use Map. The CCP's Future Land Use Map establishes the "Conservation" land use category for areas that are intended to remain largely in their natural state with only limited development such as most, if not all, of the 100-year and 500-year floodplains.

Recommendations

While several staff members are more knowledgeable in this area than I am, my bottom line is that the County's position in the past of not participating in the National Flood Insurance Program (NFIP) did not necessarily prevent filling in floodplains. However, it did keep the 100-year floodplain relatively free of structures due to the inability of property owners to obtain conventional financing for projects because they were unable to purchase flood insurance. Staff has recommended an ordinance that allows limited development in floodways and floodway fringe areas that would allow the county to join the NFIP and would help maintain the "status quo" established by the County's past position on floodplain management.

You are in a unique position of considering several ordinances. I recommend that you should adopt an ordinance that has a goal of limiting development in the floodplain. While just adopting the minimum standards would make flood insurance available in the unincorporated areas of Henderson County, it would create a more developed floodplain. We need to be careful that we do not create a situation where future flood events cause more damage to life and property than has past flooding events. Once areas are filled or developed, it is too late to impose higher standards that would be highlighted due to a major flood.

I acknowledge the input that the Board of Commissioners has received from various groups and individuals concerning a Flood Damage Prevention Ordinance and your need to seek a compromise between yourselves and the community. While I support the staff's revised ordinance, the Board may want to consider adopting the standards in the City of Hendersonville's flood damage prevention regulations, including those contained in its Zoning Ordinance. Such standards would allow, for example:

- Limited types of development within the floodway and floodway fringe, such as that allowed by the staff's revised ordinance in areas of agriculture, recreation, etc.

- Redevelopment of existing developed sites in the floodway and floodway fringe that no longer function as natural floodplain requiring that there be a net benefit in terms of floodplain functionality.
- Other development in the floodway fringe, occupying no more than 10% or one-half acre, whichever is greater, of floodway fringe areas on pre-existing lots and with a no-rise certification.

Regardless of the standards that the Board of Commissioners decides to adopt in a Flood Damage Prevention Ordinance, staff would request that a no-rise certificate be provided for any allowable fill or development in order to confirm that such actions will not impact others.

Procedural Issues

After the Board has a chance to discuss and reach an agreement on the outstanding issues related to floodplain management, I recommend that the Board provide direction regarding any specific issues it wishes to adopt and allow staff to bring back a revised draft for your final action. At that point, the Board can adopt an ordinance, the fee schedule which was included in your June 6, 2005 agenda and begin administration of the ordinance upon its effective date, as determined by the Board.

Following the adoption, Henderson County will need to apply to join the NFIP. Our adopted ordinance must be reviewed and approved at the State level. It is possible that the State could require amendments to the ordinance prior to issuing its approval.”

There was much discussion regarding the items covered in this memo.

Chairman Moyer stated that his idea was to get issues on the table and discuss them today but not to vote on the Ordinance at this meeting. The Board was in agreement, feeling that all the necessary wording was not there yet.

Staff had developed a matrix comparing the ordinances. The Board had given some new ideas to add to the matrix at this meeting. Chairman Moyer asked that staff remove the Fletcher document from the matrix, leave the State minimum, remove the Beeker document, and add the compromise document. The Board also wanted the redevelopment concept added and the 10% or 20% concept. The Board agreed that they may not be ready to vote on the issue at the meeting on Thursday night but may be ready to resolve the key issues and direct staff to come up with an ordinance to bring back to the Board that the Board could then adopt and set an effective date.

ADJOURN

Commissioner McGrady made the motion to adjourn the meeting at 7:34 p.m. All voted in favor and the motion carried.

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman