

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
JUNE 23, 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 Deputy Clerk to the Board Amy Brantley.

Also present were: Budget & Management Director Selena Coffey, Finance Director J. Carey McLelland, Fire Marshal Rocky Hyder, Planning Director Karen C. Smith and Planner Lori Sand.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance. He added one item to the agenda, an update on the Pardee Hospital matter. *Chairman Moyer made the motion to approve the revised agenda. All voted in favor and the motion carried.*

FISCAL YEAR 2005-06 BUDGET

Staff had drafted a Budget Ordinance for the Board's consideration in adopting the FY 2005-2006 Budget. Mr. Nicholson reminded that Board that the Ordinance included the base budget, as well as the changes and additions made by the Board at the June 21, 2005 workshop. He reviewed the various sections of the Budget Ordinance, and answered several questions from the Board. The tax rate for FY 2005-2006 was set at 51.5¢.

Commissioner McGrady made the motion to adopt the Budget Ordinance. The motion carried 4-1 with Commissioner Young voting in opposition.

FLOOD DAMAGE PREVENTION ORDINANCE

Chairman Moyer explained that at the last meeting the Board had directed Staff to come up with a new comparison sheet setting out four of the drafts that had been discussed. He requested that Rocky Hyder address the Board on the recent Agriculture Advisory Committee meeting Mr. Hyder had attended. Mr. Hyder stated that the Committee still had concerns about the property owners rights. However he felt that they did have a good exchange, and Staff was able to explain that they were trying to reach a balance between property owners rights and protecting the public safety. The Committee had passed a motion to support the "compromise draft" with some additional language.

Chairman Moyer suggested that the Board run down the list of regulations, and vote on each one. The "compromise draft" would be used for purposes of discussion and vote. Following is the list with the vote count for each one:

#1 – Definition of Special Flood Hazard Area

Chairman Moyer made the motion to accept the Definition of Special Flood Hazard Area as Floodway and 100-year floodplain. All voted in favor and the motion carried.

#2 – Regulatory Flood Protection Elevation

Chairman Moyer made the motion to use 2 feet above base flood elevation as the Regulatory Flood Protection Elevation. All voted in favor and the motion carried.

DATE APPROVED _____

#3 – Development in Floodway & #4 – Development in Floodway Fringe

For #3 - Development in the floodway, the “compromise draft” would allow “water dependent structures with no-rise certification only, infrastructure, and streambank restoration”. For #4 - Development in the floodway fringe, the “compromise draft” would allow “any development with elevation and/or floodproofing. Fill is permitted on 20% of pre-existing lots.” Chairman Moyer stated that the Agriculture Advisory Committee was comfortable with no development other than the above in the floodway, but requested some flexibility in the floodway fringe. Commissioner Baldwin expressed concern that such a course would encourage fill in the fringe. Following discussion, *Chairman Moyer made the motion to adopt #3 and #4 under the “compromise draft” as development in the floodway and development in the floodway fringe. The motion carried 3-2 with Commissioner Baldwin and Commissioner McGrady voting in opposition.*

#5 – Development in 500-year floodplain

Chairman Moyer made the motion that development in the 500 year floodplain be allowed and unrestricted. All voted in favor and the motion carried.

#6 – Watercourse Alteration permitted

The “compromise draft” allowed watercourse alterations with a monitoring requirement. Commissioner McGrady noted that the State had come back with a request for the County to conform, and allow watercourse alterations with a monitoring requirement. It was the consensus of the Board to proceed with the State’s request.

#7 – Manufactured Homes in Floodway

Chairman Moyer made the motion that manufactured homes in the floodway be permitted only as replacement and with development standards. All voted in favor and the motion carried.

#8 – Manufactured Homes in Floodway Fringe

Chairman Moyer made the motion that manufactured homes in the floodway fringe be permitted only as replacement and with development standards. All voted in favor and the motion carried.

#9 – Definition of Agriculture

Chairman Moyer made the motion that the definition of agriculture be as stated in the “compromise draft” as “permits processing of agricultural commodities grown off one’s own property in addition to those grown on one’s property”. All voted in favor and the motion carried.

#10 – Variances

It had been requested by property owners that if the ordinance had a percentage limitation on fill in the flood fringe, then variances could be allowed with a no-rise certificate. There was discussion about whether allowing such variances would put the County in trouble with Federal Standards. Following discussion, Chairman Moyer requested Staff bring back a procedure that would allow the Board to provide relief where justified under certain circumstances. Commissioner Baldwin stated that they would have to come up with a test to make findings. He felt that part of the test should include “meet a community need”, which could include things like economic development. Commissioner Baldwin suggested that such variances come before the Board of Commissioners, perhaps with a recommendation from the Planning Board. *Chairman Moyer made the motion that with respect to the variance procedure, the Board would follow the guidelines with respect to two levels of variance. For those that go down to the FEMA standards which would have more flexibility, the Board requested Staff come back with standards, one of which would be public purpose and would allow more flexibility in the variance type requirements in the Zoning Ordinance. The Board would like the variance to be heard by the Planning Board, with a recommendation to the Board of Commissioners and the Board would take final action. The Board would also have the right to impose conditions as they saw fit, and there would be a no-rise certificate required under all circumstances – that would not be part of the variance. All voted in favor and the motion carried.*

#11 – Definition of Floodway Fringe

Chairman Moyer made the motion that the definition of floodway fringe be as stated in the “compromise draft” as “the area shown as floodway fringe on the Flood Boundary and Floodway Map (FBFM)”. All voted in favor and the motion carried.

Chairman Moyer asked from the time the Board adopts the Ordinance, what the effective date would be. Karen Smith suggested setting an effective date to allow Staff time to develop any additional information necessary, such as application forms. Ms. Smith felt she could be ready with the draft by July 5th with an effective date of July 15, 2005. *Chairman Moyer made the motion that Staff take the guidance, come back with a draft based on the votes taken at this meeting. The target would be to present that draft to the Board on July 5th with a target effective date of July 15th. All voted in favor and the motion carried.*

JAIL DEMOLITION BIDS

Brian Alexander, Division Manager of the Asheville Division for D.H. Griffin, was present for the hearing. Chairman Moyer questioned whether there were additional parties present who wished to be part of the hearing. There being no response, Russ Burrell stated that the hearing could be a non-quasi-judicial hearing if D.H. Griffin agreed, and there were no other parties present who desired for it to be quasi-judicial. It was the consensus of the Board to proceed with the hearing in a non-quasi-judicial fashion.

Chairman Moyer reminded those in attendance that the matter at hand was the demolition of the jail and the building of the construction wall. Russ Burrell stated that according to NCGS §143.129.1, someone who has made a bid for a project that is set for bid by a public agency may withdraw that bid if they can show to the Board’s satisfaction that their bid price was based upon a mistake which constituted a substantial error provided that they show the bid was submitted in good faith, that the error was clerical in nature as opposed to a judgment error and that it was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of the work itself. If that is demonstrated to the Board’s satisfaction, the Board can allow them to withdraw the bid.

Mr. Alexander had provided some information for the Board’s review. He stated that on Exhibit A, he had a total tabulated for the prime bid for the contract. Exhibit B he had packaged together which contained separate bids for the demolition, grading and utilities, asbestos and new construction. Mr. Alexander stated that his error came when he failed to translate \$80,000 for the new construction to the prime bid.

Chairman Moyer stated that the formal request was to withdraw the bid. A letter to that effect had been received from Mr. Alexander dated June 21, 2005. *Chairman Moyer made the motion that under the circumstances, the Board permit D.H. Griffin Wrecking Company to withdraw their bid on the basis of the document submitted demonstrating that it was a substantial and material clerical error that caused the bid to be submitted at the level it came in on as per NCGS §143.129.1. All voted in favor and the motion carried.*

Mr. Nicholson stated that based on the action just taken, the lowest bidder was now Cooper Construction Company in the amount of \$348,000. *Commissioner McGrady made the motion to award the project to Cooper Construction Company in the amount of \$348,000. All voted in favor and the motion carried.*

PARDEE HOSPITAL MATTER

Chairman Moyer stated that prior to the Board’s regularly scheduled meeting the previous Wednesday, a person had contacted him stating they had an emergency matter they needed to discuss with him prior to the meeting. The purpose of the meeting was to indicate that the entity they represented would like to start discussions with respect to some type of acquisition or reorganization of Pardee Hospital. Chairman Moyer advised the individual that he did not have the authority to talk to them about that, but since the Board of Commissioners was in session that day, he would see what the Board felt with respect to that. At an appropriate time during the Board’s meeting, they went into Closed Session to consider whether there was any desire to commence discussion with respect to the matter.

Chairman Moyer noted that in North Carolina, we are down to 15 public hospitals that are County operated. There is considerable activity going on in the hospital area with acquisitions and sales, which means there are constant rumors which can be detrimental to a good working organization. That was why he felt it necessary to address the issue promptly, which the Board did, indicating that they had no desire to commence discussions at the time. The Board did request that Chairman Moyer, as the representative on the Pardee Board of Directors, provide additional information so they might be better informed as to what was transpiring at the hospital. Chairman Moyer had agreed to do so.

Following the meeting, Chairman Moyer informed the individual that the Board had no interest in having negotiations, but that if anything changed he would get back to them. He felt that at that point, the issue was dead. However, the next day he was informed that someone had called the newspaper and told them of the discussion. The following day he learned that one of the Commissioners was contacting Hospital Board of Director members, and informing them of the discussions. Chairman Moyer stated that those actions had caused a lot of trouble at the hospital, and he had spent a substantial amount of time explaining what the Board did do and did not do. He reiterated that there were no ongoing discussions at the Board's level with respect to selling the County Hospital.

Commissioner McGrady stated that he was irritated, and that the discussion should have been highly confidential. He noted that this need not be the subject speculation and discussion. The hospital employees should not be impacted by discussions between one Commissioner and some set of Hospital Board members. He reiterated that it was a disappointing situation.

Commissioner Messer stated that when the Board goes into Closed Session, they do so for an issue. When the Board goes into Closed Session, that was what it should be.

Commissioner Baldwin stated that he agreed that what was discussed in Closed Session should remain between the Commissioners. He did express however, that he felt the way the hospital matter came to the Board was inappropriate.

ADJOURN

Commissioner McGrady made the motion to adjourn the meeting at 7:00 p.m. All voted in favor and the motion carried.

Attest:

Amy R. Brantley, Deputy Clerk to the Board

William L. Moyer, Chairman