

## MINUTES

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS  
JULY 5, 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 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, Fire Marshal Rocky Hyder, Development and Enforcement Services Director Toby Linville, County Engineer Gary Tweed, Finance Director J. Carey McLelland and Planner Lori Sand. 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 Baldwin led the Pledge of Allegiance to the American Flag.

### **INVOCATION**

David Nicholson gave the invocation.

### **CHAIRMAN COMMENTS**

Chairman Moyer stated that yesterday, July 4<sup>th</sup>, was a special day. We had a very nice ceremony at the historic courthouse at 11:45 with the laying of a wreath by Dr. Jones and Argie Taylor and kicked off the restoration of the historic courthouse. It was a good start for what's going to be happening with the courthouse.

### **INFORMAL PUBLIC COMMENTS**

1. John Fadok – Mr. Fadok, owner and operator of the Hendersonville Airport, spoke regarding the Flood Ordinance. Having it would have a major impact on the airport. He thanked the Board for crafting an ordinance that is much more reasonable than what was originally put out. He was not in favor of the fees, feeling that there shouldn't be any fees regarding the flood ordinance. The government is restricting the use of the land and as the public good the public should bear the cost and not put it on the backs of those people that are already being regulated. Following adoption of the floodplain ordinance, he felt the Board should look at a water retention ordinance or water run-off ordinance because of all the construction in the area. This is a major problem with the flooding that we have.
2. Theron Maybin – Mr. Maybin thanked the Board for listening to the farmers and the agriculture community and coming up with a compromise floodplain ordinance.

### **DISCUSSION/ADJUSTMENT OF AGENDA**

Chairman Moyer discussed the need to add an item as "J" to the Discussion Items – Emergency Watershed Protection Agreement.

*Commissioner McGrady made the motion to approve the revised agenda. All voted in favor and the motion carried.*

### **CONSENT AGENDA**

DATE APPROVED: \_\_\_\_\_

*Commissioner McGrady made the motion to approve 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:

- April 20, 2005 – Regular Meeting
- May 9, 2005 – Special Called Meeting
- May 18, 2005 - Regular Meeting
- June 6, 2005 - Regular Meeting
- June 8, 2005 - Special Called Meeting
- June 21, 2005 - Special Called Meeting

**Tax Collector's Report**

No report was received.

**Surplus County Vehicles and Equipment**

Presented for the Board's consideration was a resolution declaring a list of vehicles and equipment no longer used by the County as surplus property. The resolution also authorizes staff to advertise for sale and dispose of this surplus property by electronic public auction at [www.govdeals.com](http://www.govdeals.com).

The County Manager recommended that the Board approve the resolution declaring the list of personal property as surplus property and authorize staff to sell the surplus property by electronic public auction utilizing GovDeals auction services.

**NC FAST Project Position**

NC FAST (North Carolina Families Accessing Services through Technology) is a State project to automate processes in county departments of Social Services. The goals are to 1) reduce manual and repetitive tasks 2) increase time for customers that are people rather than paper focused 3) reduce program administrative costs.

It is imperative counties are directly involved in development/design of NC FAST. Direct county involvement will help ensure county level needs are met. Henderson County has an employee who has been selected to participate. The State will reimburse the county for the salary worker.

Since this employee is relocating to Raleigh for one year, a project employee will be needed to replace this person for the next year. The Board is requested to approve the establishment of a project employee slot. There is no additional cost to Henderson County for this position.

The County Manager recommended that the Board approve the creation of this project position for a period of one year.

**Petition for addition to State Road System**

Staff recommended approval of a petition to add Berry Hill 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.

**Record Disposition**

The Inspections Department recommends approval to dispose of bulky Industrial and Commercial Building Plans from January 1, 1999 to January 1, 2004. All plans pertaining to Governmental owned or operated

buildings will be retained.

### **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 Tall Timbers. 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.

### **Amendment of Upset Bid Procedure for Sale of Tax Foreclosed Parcels**

The current Board of Commissioners policy was last amended 17 December 1997. It calls for, among other things, a payment of \$120.00 to cover advertising costs when bids are received, to give notice of the new bid amount to the public. The current cost of such advertising is approximately \$200.00.

The Board was requested to approve a modification of the present policy, allowing the payment to be in the actual cost of the advertisement, as quoted to the Office of the County Attorney by the newspaper in which publication is to be made. (Currently, only one newspaper qualifies for such advertisement.)

The County manager supports this proposal.

If so inclined, the following was proposed:

*I move that the Board's Policy regarding the sale of real property owned by Henderson County as a result of a tax foreclosure sale be modified such that all references to the amounts of payments to cover advertising costs now require that the payment be in the amount of the full cost of the advertising.*

### **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:

- North Carolina Chapter of the American Planning Association's 2005 Marvin Collins Outstanding Planning Award for the 2020 Comprehensive Plan.
- National Association of Counties' 2005 Achievement Award for the Emergency Management Department's Field Operations Guide.

## **NOMINATIONS**

### **Nominations**

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

#### **1. Henderson County Board of Health – 3 vac.**

Commissioner McGrady nominated Jackie Price to position #5. *Commissioner Moyer made the motion to accept Ms. Price by acclamation. All voted in favor and the motion carried.*

Commissioner Baldwin nominated Terry Hicks. Commissioner McGrady nominated David Jones. Both these nominees were for position #9. The Clerk will poll the Board at the next meeting.

#### **2. Henderson County Transportation Advisory Committee – 1 vac.**

Commissioner Baldwin nominated Matt Matteson. There were no other nominations at this time. *Chairman Moyer made the motion to accept Mr. Matteson by acclamation. All voted in favor and the motion carried.*

**3. Juvenile Crime Prevention Council – 9 vac.**

Commissioner McGrady nominated Jason Hayes to position #13. There were no other nominations at this time. *Chairman Moyer made the motion to accept Mr. Hayes by acclamation. All voted in favor and the motion carried.*

Commissioner McGrady stated that positions #21, #23, and #25 are all at-large positions. Ms. Brantley reminded the Board that Gwenn Rice is currently filling position #21 and is the Chairman of that committee and Ms. Rice is willing to continue to serve.

Commissioner Baldwin nominated Gwenn Rice to position # 21. *Chairman Moyer made the motion to accept Ms. Rice by acclamation. All voted in favor and the motion carried.*

Commissioner Baldwin nominated Jametta Walker to position #23. Ms. Brantley mentioned that Ms. Walker is currently an employee of the Spectrum Youth Home and questioned whether this might be a conflict of interest. This was rolled to the next meeting so staff could check on the legal question.

Commissioner Baldwin nominated Sanford Marx to position #25. Commissioner McGrady nominated Al Henry to position #25. The Clerk will poll the Board at the next meeting for this vacancy.

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

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

**5. Mountain Area Workforce Development Board – 1 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 – 2 vac.**

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

**FLOOD DAMAGE PREVENTION ORDINANCE**

Russ Burrell had provided the Board with a proposed final ordinance incorporating the policy directions given by the Board of Commissioners at its June 23 meeting.

Notable provisions, with citations to the draft, included:

1. Development in the floodway only for water dependent structures, water and sewer lines where no viable alternative exists, and stream bank restoration, and with “no-rise” certification.
2. Fill as of right in the floodway fringe only on parcels which are recorded as of the date of adoption, and then only on 20% of such parcels.
3. A new section allowing “special fill permits” in the floodway fringe, only if “full compensatory flood storage” and only if the Board of Commissioners finds that the project advances a public or community purpose.

The County Manager supported this proposal.

Following discussion, *Commissioner McGrady made the motion to adopt the flood damage prevention ordinance as presented with the effective date being July 15, 2005. A vote was taken and the motion carried four to one with Commissioner Baldwin voting nay.*

**FLOOD DAMAGE PREVENTION FEE SCHEDULE**

A draft fee schedule was provided by the Planning Staff for the Board’s consideration. There was some discussion as to justification of the fee amounts.

Following discussion, *Chairman Moyer made the motion to adopt the "Proposed Fee Schedule for the Henderson County Flood Damage Prevention Ordinance (FY 2005-2006)" without the additional \$50 per acre set forth under Flood Development Permit and that staff come back at the July 20 meeting with figures with respect to what the jurisdictions around us are charging and any justification on whether or not we should have the \$50 per acre. All voted in favor and the motion carried.*

*Commissioner McGrady made the motion to direct staff to bring forward the application necessary to put in place the National Flood Insurance (NFI). All voted in favor and the motion carried.*

Chairman Moyer mentioned the need for staff to address where we stand and come back in July as to when we can get started on the other piece of this and what staff's recommendation is concerning storm water run off and erosion control. Staff stated that this is calendared in the Strategic Plan for 2006-07. There was some discussion that the Board would like for it to be moved up if possible, out of fairness we should attack both sides of the issue and not leave the people at the end of the line with an unaddressed problem.

#### **COUNTY MANAGER – ANNOUNCEMENT**

While Karen Smith was at the podium, since she had just addressed the Board, Mr. Nicholson publicly made it known that Ms. Smith had tendered her resignation. She will begin working at the Asheville office of the North Carolina Division of Community Assistance. She will be a county employee through July. She will be covering the area of Winston-Salem and west with Community Assistance.

Ms. Smith stated that she had enjoyed her time in Henderson County, stating that the people of Henderson County and Henderson County Government had taught her a lot and she hoped to carry that experience with her.

#### **PRESENTATION BY THE CEMETERY ADVISORY BOARD**

Jay Jackson, a member of the Cemetery Advisory Committee, presented the current list of Henderson County Cemeteries. The list will be continually updated. Not included in this list are the Cremated Remains Scattering/Burial Gardens and Niches that are located at churches and other places so the list does need refining.

There was a new family cemetery created this weekend. It is the Livesay Family Cemetery and is not on the list yet.

He did not have anything to report on legislative goals today. They are still researching that and will discuss it further at their next meeting.

The committee members have discussed the future role of the committee and came up with the following recommendations:

1. Supervise the Henderson County Adopt a Cemetery Program.
2. Oversee the abandoned public cemetery process, monitor and update the ongoing written list and GIS list of cemeteries.
3. Investigate any and all complaints or suggestions from citizens regarding cemeteries.
4. Attempt to identify unmarked/lost grave sites and mark with appropriate sign/marker.

Mr. Jackson stated that they have had problems with attendance at their meeting and it is difficult to have the required quorum of six members present to hold a meeting. This makes it hard on the ones that do show up. He requested that the Board reduce the number of members by one which would make them a nine member committee. This would require five for a quorum. The committee would like to recommend which person is to be released.

Mr. Jackson answered questions from the Board.

Apparently legislators are still working on drafting the "Adopt a Cemetery Program". Commissioner Baldwin asked that a letter go to our legislators from the Board of Commissioners and the Cemetery Advisory Committee that this be introduced in this session regarding legislation for "Adopt a Cemetery Program".

Commissioner McGrady reminded the Board that Mr. Jackson had made some recommendations regarding the future role of the committee. The Board should revisit that issue in the near future. He suggested that the future role of the committee as well as the recommendation to decrease the number of committee members be placed on the next agenda for July 20 for Board action.

Mr. Nicholson stated that staff would be happy to work with Mr. Jackson and the committee to re-do their charter. There are some legal issues that need to be addressed.

**PROPOSED FRANCHISE AGREEMENTS FOR EMERGENCY MEDICAL SERVICES:  
HENDERSON COUNTY RESCUE SQUAD, INC., GERTON VOLUNTEER FIRE DEPARTMENT  
AND RESCUE, INC., MILLS RIVER VOLUNTEER FIRE AND RESCUE DEPARTMENT, INC.**

Terry Layne, EMS Director, informed the Board that Henderson County Rescue Squad, Inc., Gerton Volunteer Fire Department and Rescue, Inc., and Mills River Volunteer Fire and Rescue Department, Inc. (together, "the Applicants"), have applied for franchises under the Henderson County Emergency Medical Services Ordinance, Chapter 87 of the Henderson County Code.

Each of these respond at the request of Henderson County EMS on an emergency basis and answer calls when all our units are busy with other emergencies and we don't have the manpower or units to respond to those emergencies. The Henderson County Rescue Squad answered about 90 calls this year, Gerton answered 8-10 calls, while Mills River answered 3 or so.

Pursuant to Henderson County Code 87-4(C), the applicant must be given an opportunity to be heard by the Board of Commissioners on the applications. This is also the Board's opportunity to ask the applicant any questions concerning the application and proposed services to be offered by the applicant.

The franchises proposed to be granted would be more limited in scope than a normal franchise under the EMS Ordinance. Each of these three applicants possess capabilities in terms of rough (or no) roads, and would transport injured or sick persons in emergencies from difficult to reach locations to a place where Henderson County EMS could continue the transport to a medical facility. Section 87-2C(1) of the EMS Ordinance seems to not require this ("No franchise shall be required for: (1) Any entity rendering assistance to a franchised ambulance service in the case of ... emergency for which the services franchised by the County of Henderson are insufficient or with which the services franchised by the County of Henderson are unable to cope..."), but in the interest of caution these applicants have sought a franchise from the County to clarify the lawful nature of their actions.

To be effective, an ordinance granting a franchise must be approved at two regular meetings of the Board of Commissioners. Therefore, if approved today by the Board, the ordinance granting a renewal of its franchise to the applicant will be placed on the Board's agenda for the second time for final approval at the July 20, 2005 regular meetings. In order to approve a franchise under 87-4D of the ordinance, the Board must find all of the following:

1. The public convenience and necessity require the proposed ambulance service.
2. Each such ambulance of the applicant, his required equipment and the premises designated in the application have been certified by the county and the State of North Carolina.
3. Only duly licensed ambulance attendants and emergency medical technicians are employed in

such capacities.

After initial approval, under your ordinance “the county shall cause such investigation as it may deem necessary to be made of the applicant and his proposed operations”.

Mr. Nicholson reminded the Board that Emergency Medical Services Director, Terry Layne, is responsible for administering the Ambulance Ordinance, and should be able to answer any of the Board’s questions as well.

If the Board is so inclined after hearing the evidence, the following motion was suggested:

“I move that the Board find as fact all the matters required by Section 87-4D of the Henderson County Code, and further move that the Board provisionally grant the franchise applications, subject to further information discovered by County staff after appropriate investigation, and that this matter come back before this Board on July 20, 2005.”

*Commissioner McGrady made the motion with respect to the Henderson County Rescue Squad, Inc., Gerton Volunteer Fire Department and Rescue, Inc., and Mills River Volunteer Fire and Rescue Department, Inc., that we find that public convenience and necessity require the proposed ambulance services, that each such ambulance of the applicants, their required equipment and the premises designated in the applications have been certified by the county and the State of North Carolina, and that only duly licensed ambulance attendants and emergency medical technicians are employed in such capacities and that the Board provisionally grant the franchise applications subject to further information that may be discovered by the county staff after appropriate investigation, and that this matter come back before this Board at our next meeting on July 20 of this month. A vote was taken and the motion passed unanimously.*

#### **AMBULANCE FRANCHISE RENEWAL**

Terry Layne again addressed the Board. In the agenda packet was a draft franchise agreement with Arc’Angel Trans’Support Services for the renewal of its existing franchise for the provision of non-emergency ambulance transport services.

Mr. Layne explained that Arc’Angel has been in operation since 1995. This will be the second time that they’ve renewed their franchise. It is a 5-year contract. They respond to approximately 2,900 calls per year, basic routine calls such as discharges from the hospital or Doctor’s office visits, etc. They take a burden off the emergency services shoulders. They work well with EMS. This is basically a non-emergency franchise but they will respond in emergency situations under the guidance of the EMS department.

Pursuant to Henderson County Code 8704(C), the applicant must be given an opportunity to be heard by the Board of Commissioners on the applications. This is also the Board’s opportunity to ask the applicant any questions concerning the application and proposed services to be offered by the applicant.

To be effective, an ordinance granting a franchise must be approved at two regular meetings of the Board of Commissioners. Therefore, if approved today by the Board, the ordinance granting a renewal of its franchise to the applicant will be placed on the Board’s agenda for the second time for final approval at the July 20, 2005 regular meeting. In order to approve a franchise under Section 87-4D of the ordinance, the Board must find all of the following:

1. The public convenience and necessity require the proposed ambulance service.
2. Each such ambulance of the applicant, his required equipment and the premises designated in the application have been certified by the county and the State of North Carolina.
3. Only duly licensed ambulance attendants and emergency medical technicians are employed in such capacities.

After initial approval, under our ordinance “the county shall cause such investigation as it may deem necessary to be made of the applicant and his proposed operations”.

Mr. Nicholson reminded the Board that Emergency Medical Services Director, Terry Layne, is responsible for administering the Ambulance Ordinance. If the Board is so inclined after hearing the evidence, he suggested the following motion:

I move that the Board find as fact all the matters required by Section 87-4D of the Henderson County Code, and further move that the Board provisionally grant the franchise application, subject to further information discovered by County staff after appropriate investigation, and that this matter come back before this Board on July 20, 2005.

Following discussion, *Commissioner McGrady made the motion that the Board find as a matter of fact that all the matters required by Section 87-4D of the Henderson County Code, and further move that the Board provisionally grant the franchise application, subject to further information that may be discovered by County staff after appropriate investigation, and that this matter also come back to this Board at its July 20, 2005 meeting. All voted in favor and the motion carried.*

#### **PRELIMINARY ENGINEERING REPORT - MUD CREEK SANITARY SEWER INTERCEPTOR**

Gary Tweed informed the Board that the Office of the County Engineer with the assistance of Camp Dresser and McKee has completed a Preliminary Engineering Report (PER) for a sanitary sewer interceptor into the Mud Creek Basin. The area of study is from the Cane Creek Water and Sewer District’s existing sanitary sewer system near Cane Creek into the Mud Creek Basin south to the Mountain Home Industrial Park. This proposed sanitary sewer interceptor was approved by the Commissioners as part of the CCWSD Interceptor Master plan and is the number one priority project following the Mills River Interceptor now under construction.

The development of the preliminary engineering report was prompted by proposed plans for a large residential subdivision and a proposed industrial park in the area. The Plan is to develop a sanitary sewer interceptor project on the east side of the French Broad River to serve this area and not pump across the river to the Mills River Interceptor as was being proposed by Windsor Aughtry, the developer of the residential subdivision. They are willing to provide financial assistance toward this project.

The CCWSD Advisory Committee has reviewed the PER and has endorsed the recommendation to begin the development of a sanitary sewer interceptor project in the Mud Creek Basin.

The County Manager recommended that the Board authorize staff to proceed with the development of Phase One of this project. In order to coordinate efforts between the developer and the District, staff requested that the Board exempt this project from the selection process for the project engineer.

Before the project is put out to bid, the final design and a funding plan will be presented to the Board for final approval.

Mr. Tweed explained the proposed project in much detail, showing it on a map and answering questions from the Board. The estimated cost for Phase One is \$2.1 million. Windsor Aughtry would have to install their own facility if this project is not done and so they have offered to contribute \$200,000 toward this project.

Following much discussion, *Chairman Moyer made the motion that Gary Tweed draft a letter and send to Windsor Aughtry explaining how the sewer will work and that we are willing to continue discussions but would need a more substantial contribution from them in order to do this project. A vote was taken and the motion passed unanimously.*



**Recess**

Chairman Moyer called a brief recess to change videotapes and explained that we would start our public hearings a little late when we return from break.

**PUBLIC HEARING – Road Names**

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

Toby Linville reminded the Board that staff had requested that this public hearing be held for new road names. The Henderson County Board of Commissioners approved this public hearing date at their June 6, 2005 meeting.

Road names to be heard:           Huntley Stepp Lane  
  Turkey Foot Lane  
  John Lee Montgomery Drive  
  Dancing Ridge

**Public Input**

There was none.

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

*Commissioner Messer made the motion to approve the four road names as presented. All voted in favor and the motion carried.*

**PUBLIC HEARING – To consider the reorganization of the Henderson County Tax Offices (including the possible modification of the position of Tax Collector to be no longer an elective office)**

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

Chairman Moyer reminded the Board that this is part of the Comprehensive Plan, it is goal #2 in the Strategic Plan. Terry Lyda, our Tax Collector and Stan Duncan, our Assessor have been part of the discussions regarding this issue. They both spoke briefly and were available to answer any questions. Chairman Moyer stressed that both offices/departments are functioning very well. This is no attempt to find any criticism with either department but there may be ways that we can improve service and therefore we need to at least study the issue.

This hearing was to consider the merits of the reorganization of the County's tax offices (Assessor and Collector), possibly into a single, combined office. Such reorganization, if approved, could result in the Tax Collector's position no longer being an elected office in Henderson County.

In North Carolina, the overwhelming majority of Counties do not elect a Tax Collector. This is due to the lack of discretion allowed under the General Statutes in the performance of the duties of the position of Tax Collector. In Henderson County, uniquely among North Carolina counties, the Tax Collector is elected in non-gubernatorial general election years, although the term of office runs from October 1 of the year following the election, for four years.

Any change in this position would ultimately have to be accomplished by State government.

At the conclusion of the public hearing, the Board may choose to take action regarding any recommendation the Board may make in this regard, delay action to a subsequent meeting, or take no action.

**Public Input**

There was none.

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

The Board thanked both gentlemen for their work for Henderson County.

*Commissioner McGrady made the motion to support the reorganization of the Henderson County Tax Offices which would combine the Assessor's and Collection's offices and request the Chairman to communicate to the Henderson County Legislators that we support authorizing legislation to accomplish this consolidation this session. A vote was taken and the motion passed unanimously.*

**PUBLIC HEARING – Rezoning Action #R-2005-02 (O-U to C-1, C-2, or C-4) Parcels owned by the City of Asheville and Murphy-Wilson Investment Co.**

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

Autumn Radcliff reminded the Board that 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. Our 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 application, the Board of Commissioners must hold a public hearing. In accordance with Section 200-76 of the Henderson County Zoning Ordinance and State Law, notices of the July 5, 2005 public hearing regarding rezoning action #R-2005-02 were published in the Hendersonville Times-News on June 22, 2005 and June 29, 2005. The Planning Department sent notices of the hearing via first class mail to owners of property within the Subject Area and owners of properties adjacent to the Subject Area on June 23, 2005. Planning Staff posted signs advertising the hearing in the Subject Area on June 24, 2005.

The County Manager stated that following the public hearing, Board action to approve, modify, or deny rezoning action #R-2005-02 would be appropriate.

**Staff Recommendation**

Based on the following, Staff recommended a C-4 Highway Commercial zoning district for the subject area:

Both the text and map of the CCP identify the Subject Area as being located in the Urban Services

Area (USA) and stated that the USA “will contain considerable commercial development at a mixture of scales: local, community, and regional”.

The Subject Area is located in close proximity to the I-26 interchange, and based upon the CCP and the recommendations of the U.S. Highway 25 North Zoning Study, a regional commercial node should generally be located along major roads. The Subject Area is located on N.C. Highway 280, has direct access to I-26 and is currently surrounded by commercial development that is typical of a highway commercial district.

The Town of Fletcher has an existing highway commercial zoning district (Town of Fletcher C-2) surrounding three sides of the Subject Area. According to the Town of Fletcher’s zoning district text, its C-2 zoning district is most compatible with the County’s C-4 (Highway Commercial) zoning district.

The Subject Area has access to existing public sewer lines owned by the Buncombe County Metropolitan Sewer District and the Cane Creek Water and Sewage District. In addition, the Regional Water Authority has an existing public water line that runs along N.C. 280 that would serve this area.

The Subject Area is also located adjacent to the Asheville Regional Airport.

#### **Planning Board Recommendation**

The Henderson County Planning Board first considered rezoning action #R-2005 002 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. This was based on the following:

Based on recommendations in the U.S. Highway 25 North Zoning Study, if the Subject Area had been located on U.S. Highway 25 North in a similar location as the New Airport Road area, then the Planning Board would have recommended a C-4 zoning district.

The Planning Board has not attempted in other rezoning cases to match identical or recommend language changes to the Board of Commissioners so that our Ordinances would exactly match surrounding municipalities.

#### **Disclosure**

Commissioner McGrady made all aware that he had attended the Planning Board meeting where this issue was heard. He stated that his understanding of the facts may be somewhat broader or different because he was in attendance at the meeting.

#### **Public Input**

There was none.

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

*Commissioner McGrady made the motion to approve C-4 zoning for the three parcels as recommended. All voted in favor and the motion carried.*

**#SP-93-13 (as amended) for the Carriage Park Planned Unit Development**

This will be a quasi-judicial proceeding on application #SP-93-13A5 to amend special use permit #SP-93-13 as has been previously amended for Carriage Park Planned Unit Development.

*Commissioner McGrady made the motion for the Board to go into public hearing with respect to the special use permit. All voted in favor and the motion carried.*

Chairman Moyer – “OK, now let me be very very clear on this matter. This is a quasi-judicial proceeding. It’s being held today on the uh special use permit that I mentioned where Carriage Park is the petitioner. A quasi-judicial proceeding as opposed to the last kind of public hearings you’ve heard, is much more like a uh a court proceeding and is one in which one’s individual rights are being determined under special rules of procedure. As such, not every person has a right to give evidence in a quasi-judicial proceeding. Under the rules of procedure for quasi-judicial proceedings, only persons who can demonstrate that they will be affected by the outcome of the decision are allowed to participate in the proceeding and further the only testimony and only questions that are relevant in this proceeding go to the issue that’s before the Board tonight and that deals with the – the definition of what is a ‘townhouse’ as found in the original permit conditions. Other statements, other positions with respect to Carriage Park I will rule out of order because they are not germane. The only purpose of this proceeding is to talk about and have this Board consider the def – the definition of a townhouse as found in the original permit. All persons who are allowed to speak and participate in this hearing including all witnesses that will be called must be placed under oath. The proceedings will be as follows: The board will ask any persons other than the petitioner and the Henderson County Planning Staff who desire to become parties to this action to explain how they would be affected by this proceeding. For example, they may be the owner of an adjoining parcel of property or have some other special and unique interest that justifies their participation as a party. You should understand that you do not have to be a party in order to testify in this proceeding, if some other person calls you as a witness. Then all the witnesses and parties will be sworn as a group to tell the truth in their testimony. The Board will then have the planning staff summarize the petition and what is sought by the petitioner. The Board will then have the petitioner or the petitioner’s attorney present their evidence in support of the request. Each party will have the right to ask questions of the other witnesses. After the petitioner is finished presenting evidence the other parties will then be able to present their evidence but again the only evidence that is relevant goes to what is the – the definition of uh a townhouse. Again, after each witness who testifies, they will be asked questions by the other parties and members of this Board have the right to ask questions at any time with respect to any of the parties involved. After the evidence is presented the Board will discuss the issues raised and will make a decision. The Board’s decision must be made in writing within 45 days of this hearing. It can be made tonight if the Board chooses to do so. We will now go through the process of identifying the parties.”

Commissioner McGrady – “Mr. Chairman, before we get there let me just again as a matter of disclosure uh my uh – a family member of mine does live in the Carriage Park Development. I have personally have no financial interest in the – that property on there but I think I needed to opt to disclose that fact and again I did attend the Planning Board Hearing on this matter and I don’t know exactly what the set of witnesses that may come forward as part of the quasi-judicial hearing but if they are in any way different, I would have heard what came before the Planning Board. Again, I think that’s just a matter of disclosure and does not.”

Chairman Moyer – “Do you feel you’re in a position to give an impartial decision in this matter?”

Commissioner McGrady – “I do, I believe I can.”

Commissioner Baldwin – “Yeah, I’ve got a question for him. Have you discussed the uh – the uh – your decision on this – you may – one have you made a decision with respect to this application?”

Commissioner McGrady – “No, I haven’t.”

Commissioner Baldwin – “Have you discussed this application with anybody outside of this Board?”

Commissioner McGrady – “No.”

Commissioner Baldwin – “OK, you’re fine.”

Chairman Moyer – “Any further questions? Anybody wish Mr. McGrady to recuse himself. Alright he stands. Alright as I was indicating before, the Board acknowledged as the pet – the petitioner which is Carriage Park Associates, L.L.C. and I assume – Mr. Hamlin you will be the spokesman for that?”

Dale Hamlin – “Yes sir.”

Chairman Moyer – “You are a party. The Planning Staff as parties to this proceeding so Karen are you gonna be or – handling this? Alright. Now, are there any other persons present who can demonstrate that they will be affected by the outcome of this proceeding and who wish to be a party to this proceeding? Mam, will you please come to the phone, give your name, address, and how you – why you believe you should be a party.”

A lady from the audience - “My name is Kathleen Byrne. My address is 198 \_\_\_\_\_ Stream Way and I will I will be affected because uh when I bought my home part of the uh you know – the sales pitch or whatever you want to call it was uh the – that we would have access to this area, for all the homeowners.”

Chairman Moyer – “OK. How does the Board feel with respect to that?”

Commissioner McGrady – “I have no objection to her being a party.”

Commissioner Baldwin – “I don’t either.”

Chairman Moyer – “Alright. You will be a party, thank you. Your name again please.”

Kathleen Byrne – “Kathleen Byrne – B-y-r-n-e.”

Chairman Moyer – “Thank you. Next.”

A man from the audience – “My name is Richard Krupp – K-r-u-p-p. I’m President of the Carriage Park Homeowners Association.”

Chairman Moyer – “How – will you please state why you think you should be a party.”

Richard Krupp – “As uh President of the Homeowners Association it would affect everyone in the community as far as the change of the definition of the townhouses and I’d just like to uh indicate as such when we’re ready to do that.”

Chairman Moyer – “Anybody have any objection to Mr. Krupp.”

In unison – “No”

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

Richard Krupp – “That’s Krupp, not Krump, no m.”

Chairman Moyer – “No m, Krupp.”

Richard Krupp – “Yeah, K-r-u-p-p, just like the German.”

Chairman Moyer – “OK, thank you.”

Richard Krupp – “Just for the record.”

Chairman Moyer – “Uh huh. Next.”

A man from the audience – “My name is Bob Grasso. Uh my firm is Land Planning Collaborative. We’re the land planners uh for Carriage Park and we’re the designers. We do all the layout for roads, lots, and work with uh Carriage Park and also with the Planning Board.”

Chairman Moyer – “Are you going to be speaking on behalf of Carriage Park?”

Bob Grasso – “Yes.”

Chairman Moyer – “So you will be basically a witness for you, Mr. Hamlin, is that correct?”

Commissioner McGrady – “Yeah, that’s what I was gonna say. I don’t think uh he’s appropriately a party, he’s going to be one of Mr. Hamlin’s witnesses which is fine.”

Chairman Moyer – “Right. Cause then he will not have the right to ask other people questions. I assume Mr. Hamlin, you will do that if appropriate?”

Commissioner McGrady – “Mr. Hamlin will do that.”

Chairman Moyer – “OK. We’ll swear you in but you’ll be sworn as a witness, not as a party.”

Bob Grasso – “Thank you.”

Chairman Moyer – “Thank you, Mr. Grasso. Is there anyone else in attendance that would – feels they should be a party to this proceeding. OK, then I think what we do – we need the people to come forth and uh – and be sworn in. Come to the Clerk of the Board.”

Elizabeth Corn – “I need each of you to put your left hand on the Bible, touch it, 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.”

In unison – “I will/yes.”

Elizabeth Corn – “Thank you.”

Chairman Moyer – “Do you have everyone’s name and address, Mrs. Corn? Do you need anything further?”

Elizabeth Corn – “I don’t have an address for Mr. Grasso.”

Chairman Moyer – “He’s just a witness. Do you need it for the witness or – yeah I guess you do.”

Commissioner McGrady – “We can get it when he comes up.”

Chairman Moyer – “Remind me when he comes up, we’ll get it, Mrs. Corn. We will begin now with the

presentation of the staff overview of the matter. Karen Smith, Planning Director.”

Karen Smith – “Thank you. The Board of Commissioners approved special use permit 93-13 back in October of 1993 and it was the first uh permit followed by four amendments for Carriage Park Planned Unit Development. On April 8<sup>th</sup> in 2005, Dale Hamlin who’s the manager of Carriage Park Associates, L.L.C. which is the developer of Carriage Park, submitted an application to amend special use permit 93-13 in order to change the definition of townhouse uh and that definition of townhouse is found in the original permit conditions and included in your packet you have both a staff report where we spell out the definitions as well as an attachment 4 where it is basically taken right out of the special use permit and the definitions are there. The proposed amendment evolved from some applications that had been presented to the Planning Board for various sections of Carriage Park and if the Board remembers, in special use permit 93-13 the Board of Commissioners delegated review of sections of Carriage Park to the Planning Board. Mr. Hamlin had submitted sections 21 and 22 for the Planning Board review and at the Planning Board’s February 15, 2005 meeting, the Planning Board had considerable discussion about the definition of townhome. There were several configurations of residential units presented in those plans, some of which showed multifamily dwellings and also some that showed single family per the applicants calling them townhomes. The Planning Board at that time was not comfortable uh with the definition of townhome applying to the single family townhomes, basically because they met the definition of single family detached dwelling which is also spelled out in special use permit 93-13. The special use permit considers a townhouse or a townhome to be a residential structure with multifamily units, excuse me multiple dwelling units with party walls and where each unit has its own deeded lot often with shared common areas, whereas the single family detached dwelling is a one unit structure where the unit takes fee simple title to both the home and the lot. The distinction between the types of dwelling units is related to the types of roads in the special use permit that serve different units. We have neighborhood drives which typically serve townhomes and we have residential streets which typically serve single family detached dwellings. The difference between the two types of roads is basically the right-of-way. The standards are identical for pavement width or travelway, the shoulders and that sort of thing are also more the differences, a 30 foot right-of-way for townhomes and a 45 foot wide right-of-way required for single family detached, again the neighborhood drive serving townhomes and the residential street for single family dwellings. And you have a definition if you look in your attachment 4 you can look at the definitions, both neighborhood drive and residential street. In order to be able to use the 30 foot wide right-of-way to serve all proposed dwelling units in the sections that were presented to the Planning Board, that being 21 and 22, some future sections at Carriage Park as planned and also possibly to bring into conformance some past sections of Carriage Park which have some single family units that are by Carriage Park definition townhomes. Carriage Park Associates would like to amend the definition and that definition would read ‘a single – excuse me – a residential structure which may contain multiple dwelling units with each unit having its own deeded lot, often with shared common areas’. Basically they’re structuring – striking the requirement for containing multiple dwelling units and also striking the ‘with party walls’ from the existing definition. The applicant had a pre-application conference with the Planning Board and staff at the March 15, 2005 Planning Board meeting in order to proceed with the amendment and then on April 20 following submission of the official application for the amendment the Commissioners referred the application to the Planning Board. The Planning Board has reviewed it as – as Commissioner McGrady mentioned earlier and has offered a favorable recommendation to the Commissioners and I can go over that in a little more detail when it’s time for staff’s evidence and then just for the record uh you scheduled this hearing at your June 6<sup>th</sup> meeting and in accordance with the zoning ordinance and the Board of Commissioners Rules of Procedure for Quasi-Judicial Proceedings, staff sent notices by certified mail to the applicant as well as to the owners of property adjacent to the outer boundary of Carriage Park on June 13. We posted notice of the public hearing on Carriage Park property on June 15<sup>th</sup> and had notices published as legal ads in the Times-News on June 20 and June 27, 2005 and just for purposes of the record and any order that might result, I just want enter the entire staff packet for the record.”

Chairman Moyer – “Thank you Karen. Now we’ll have the uh presentation of petitioners evidence. Mr. Hamlin proceed any way you wish.”

Dale Hamlin – “Mr. Chairman, members of the Board uh I believe that in 1993 we made an error when we presented a – a description of a townhouse. What we really want tonight is to make the description of a townhouse a real estate ownership description and not a building and I think what we put in 1993 we set it as a building with an attached party wall. What we would like to do is detach that party wall and create single family free-standing townhouses. We found that the townhouse concept is extremely popular. Uh families can move in and have a manicured and tailored neighborhood that’s taken care of by association dues uh and they don’t have to take care of their own yards so they can live in very tailored good-looking neighborhoods and that’s – that’s very popular. We also uh think that by separa – by having the opportunity to separate these townhouses and create single family homes instead of duplexes, we get one more wall of windows and that helps the owner have a happier brighter home and I think that’s good for – good for the resident. It also gives our planners and architects an opportunity to create very very good-looking streetscapes. They can place the houses exactly where they want them. They can put the landscaping in that’s pre uh predetermined and make these uh these units look very well so basically what we’re asking tonight is to change the definition to allow us to have townhouse neighborhoods with free-standing buildings. It will just, actually it will be better looking than duplexes. We have steep ground in Carriage Park. It’s difficult to work with and a lot of times by predesigning the whole neighborhood we can make them look really good and – so our purpose is to upgrade the ability, to upgrade the community, to make it a more pleasant place to live and to create houses that offer the residents the maximum benefits. We find that our major market really likes single family housing. They like to live in their own space and a single house is more popular than a duplex and we however with the definition of a townhouse oftentimes we need that shorter or more narrow right-of-way townhouses will I think be an enormous benefit, free-standing single townhouses will benefit Carriage Park.”

Chairman Moyer – “Are you gonna call Mr. Grasso at this time?”

Dale Hamlin – “Uh yes. Mr. Grasso.”

Chairman Moyer – “Mr. Grasso, I didn’t get your address before. Will you state your name and address for the Clerk please?”

Bob Grasso – “It’s Robert Grasso, 77 Central Avenue, Suite A, Asheville 28801.”

Chairman Moyer – “Did you get that, Mrs. Corn? Alright.”

Bob Grasso – “My firm is Land Planning Collaborative. Go through the planning process with our steep slopes, what we’re trying to do is tread real lightly on the property, reduce the amount of land disturbance, and also have the flexibility of layout that sometimes the subdivision ordinance uh is too restrictive whereas a PUD where more layout duplexes gives us more flexibility. Because of the demand that sales has seen for a single family we’d like to have the same flexibility in layout with uh – with a PUD arrangement by clustering houses and have that flexibility that the subdivision ordinance does not allow so we’re not lessening the road standards and uh we’re not – we’re not asking for any kind of reduction on any kind of safety or hazards with uh narrowing roads, what we’d like to do is just have flexibility with how you place those houses uh without asking for any uh – uh reduction in uh setbacks from the standpoint of uh from house to house but we – the definition of townhouse from real estate law is uh the land that is deeded underneath the drip-line of the – of the building and pleasantly the way Carriage Park’s definition - it only applies to multifamily as opposed to single family and so uh in many projects that we’ve done ... planning for across western North Carolina we – we’ve gone with the also the single family townhouse and that’s what kind of spurred this whole discussion and – and uh – and dialogue with revising the definition for Carriage Park.”

Chairman Moyer – “Mr. Hamlin, do you have anything else you’d like to add at this time?”



Dale Hamlin – “Uh just one other item in the Henderson County Zoning document which describes the planned unit development, one of the sentences says the purpose of this section is to afford substantial advantages for greater flexibility and improved marketability through the benefits of efficiency which permit flexibility in building siting, mixtures of housing types, and land use. That’s just – it’s in the zoning document. Thank you.”

Chairman Moyer – “Well if you’ll just step aside a minute, we’ll now go to cross-examination by the other parties and I’m going to ask whether any of the other parties wish to ask the witnesses any questions. Obviously the other parties are Mrs. Byrne, Mr. Krupp, and staff. Please limit your input at this point in time to questions. This is not – you’ll get a chance later to give your testimony. The thing is whether you have any questions now for Mr. Hamlin or Mr. Grasso, based on the evidence they’ve put on the record so far. I’m gonna start with Mrs. Smith, Karen do you have any questions at this time? Alright, then I’ll go to Mrs. Byrne, do you have any questions?”

Mrs. Byrne – from the audience – “Uh”

Chairman Moyer – “Wait a minute. Please come to the microphone if you have a question.”

Mrs. Byrne – “Yes. Uh I really don’t understand why the definition should be changed from townhouse to a single family house. The only reason I can see it being changed is that less land will be needed for building these single family houses.”

Chairman Moyer – “Mrs. Byrne, do you have a question for Mr. Hamlin.”

Mrs. Byrne – “Yes, is that the reason we’re changing it that it be less land required to build a single family house?”

Chairman Moyer – “Mr. Hamlin, do you want to.”

Mrs. Byrne – “Single family houses now have a setback and other things. Will it be different now that they are townhouses?”

Dale Hamlin – “I think if I understand the question you’re asking if by separating a duplex into two individual houses with setbacks whether that will be less and that will actually take up more land so the density will be less.”

Mrs. Byrne – “Take up more land. Uh huh, OK. That’s what I wanted.”

Chairman Moyer – “Thank you Mrs. Byrne. Mr. Krupp, do you have a question at this time.”

Mr. Krupp – from the audience – “No questions sir.”

Chairman Moyer – “Alright thank you. Does the Board have any questions for Mr. Hamlin or Mr. Grasso?”

Commissioner Baldwin – “Yeah, just, what would you like one or two? Either one.”

Chairman Moyer – “Mr. Hamlin, why don’t you take the mic then.”

Commissioner Baldwin – “This in no way alters your density.”

Dale Hamlin – “Pardon me.”

Commissioner Baldwin – “How does impact the density of the overall site?”

Dale Hamlin – “The density is – is a factor of uh – the PUD allows 695 units to be used in multiple different methods. You can have – you could have an apartment building if you wanted.”

Commissioner Baldwin – “Yes.”

Dale Hamlin – “Or you can have single family lots.”

Commissioner Baldwin – “Yes.”

Dale Hamlin – “We are actually reducing density by asking to split up duplexes, it’ll feel like a little more open. It will be not quite as tight.”

Commissioner Baldwin – “If we’re talking about units per acre, that’s – that’s my question. Are we changing the units per acre ratio in the development and if so which direction, more units or less units per acre?”

Dale Hamlin – “Uh – technically uh we don’t – we can’t – we can’t violate units per acre that’s been preset.”

Commissioner Baldwin – “Gotcha. I understand.”

Chairman Moyer – “But if you spread them out in theory you’re gonna have to end up with less units per acre because you’re taking more land per each unit.”

Dale Hamlin – “That’s correct.”

Chairman Moyer – “That’s what I thought I understood you to say before.”

Commissioner Baldwin – “No, that’s not what I was after. I’m strictly looking at the units, looking at the total acreage for the PUD, looking at the total – total number of units. You divide the total land area by the number of units and my question is – is that ratio being moved by your request?”

Dale Hamlin – “No sir, the ratio has to stay the same.”

Commissioner Baldwin – “Stays the same. OK.”

Chairman Moyer – “Any other questions? Thank you Mr. Hamlin.”

Dale Hamlin – “Thank you.”

Chairman Moyer – “Karen, you have no more questions at this time, right? Alright now we’ll move into evidence by the other parties and this will be your chance Mrs. Byrnes or Mr. Krupp to come in and put in evidence that’s relevant to the subject that we have here and I’ll start with you, Mrs. Bryne do you wish to make a statement at this time relevant to the definition of townhouse?”

Kathleen Byrne – “OK uh at this time, no uh I still don’t get the – he’s gonna be taking more land away, right, am I correct at that? More of the common land is being taken away to build single family houses instead of townhouses, am I correct in that?”

Chairman Moyer – “Well, we’ll get Mr. Hamlin back. I think when you add the word common land to land, I think that changes the question. Mr. Hamlin. We’ll deal with this as a continual question, cross

examination rather than statement.”

Dale Hamlin – “The uh common land has everything to do with the size of lots that are deeded and I don’t know if I can give you a good description, I’m not much of a teacher. If we have a R-40, excuse me an R-30 designation in one section of Carriage Park, that means that no more than that number of units can be put in that R-30 district, that’s – Carriage Park is made up of R-20 and R-30 that’s how the 695 came up. Had we done a mid rise or a series of mid rise buildings, if we could have gotten past the height limitation we could have stuck all 695 units on three acres and then we would have been required by the PUD to put 692 acres into open space. We are – we have every single time we bring a neighborhood to the Planning Board the first requirement is have you designated the open space based on how much acreage your development parcel is taking up? We are required to do that before they’ll even hear us so all of that open space for every single neighborhood that’s gone on record and I think it’s 14 so far uh has been recorded at the county as permanent open space so we can’t violate the open space requirements of the PUD directive.”

Chairman Moyer – “We’ll be – I think the question Mrs. Byrne’s asking is by virtue of changing this definition will this in any way reduce the amount of common open space you’re required to set aside in accordance with your permit?”

Dale Hamlin – “No.”

Chairman Moyer – “It can’t, right?”

Dale Hamlin – “No, it can’t.”

Chairman Moyer – “OK.”

Commissioner Baldwin – “So there was a ratio established from the git-go as – as to potential built upon versus common area or open space and that ratio has not changed as a result of the request.”

Dale Hamlin – “That ratio is inviolate, yes sir.”

Commissioner Baldwin – “OK.”

Chairman Moyer – “Thank you. Karen, would you from staff’s standpoint agree that that’s uh – we’ve been through this many times (laughing).”

Karen Smith – “Right, when Mr. Hamlin was referring to the open space that has to be put on record to offset the density, as he stated there is – the special use permit just sets a number of units, maximum number of units. There is no acreage to be devoted to open space. It’s strictly – if your property is in a lot that has a 30,000 sq. ft. lot size, you meet the R-30 zoning. If you happen to be on a townhouse lot that wouldn’t meet it there’s open space somewhere in the project to offset that remainder of lot size.”

Commissioner Baldwin – “So there’s no open space requirement being violated.”

Karen Smith – “Right, you have a certain number of units only that you’re restricted to, right.”

Chairman Moyer – “But they are dedicating a certain.”

Karen Smith – “What they are doing is and this has sorta been a practice of the Planning Board, is that as they do a development parcel – these sections 21 and 22 for example, if they are not going to have 30,000 sq. ft. lots, if they’re gonna have something less than that, we have asked the developer to keep track and show us where they are going to offset that so that there is almost a – a ratio there.”

Chairman Moyer – “There is a ratio.”

Karen Smith – “That we created so that when the development is completed, we know that we have all the open space that would be needed.”

Chairman Moyer – “Right.”

Karen Smith – “If they did a regular single family development so – what- if I could speak – you had asked about the density. It’s possible that certain sections have a higher density but again it’s – throughout the project the overall density would not change.”

Commissioner Baldwin – “What we’re getting confused on density is one ratio is the number of dwelling units per land area. Another way of looking at density is the built upon area versus the open space area or the total area. Those are two different densities that we’re confusing here.”

Karen Smith – “And the built upon area is not addressed through the special use permit. It would strictly be through the water supply watershed regulation.”

Commissioner Baldwin – “So the number of dwelling units per acre or land area is not being violated, is that what I hear?”

Karen Smith – “Correct “

Commissioner Baldwin – “OK.”

Chairman Moyer – “Thank you Karen.”

Commissioner Young – “Karen, let me ask a question about – on the uh road or the streets uh am I right in saying that he’s asking for a 30 foot right-of-way which is for a townhome. Is that right?”

Karen Smith – “Uh huh.”

Commissioner Young – “And a 45 foot right-of-way is for a single dwelling?”

Karen Smith – “A single family detached dwelling is how the definitions work currently, yes.”

Commissioner Young – “So he’s asking for a 15 foot variance of right-of-way?”

Karen Smith – “It – it really depends on – on the project. I mean if they were doing duplexes they would already have that quote variance as you – as you described it. They can do multifamily buildings right now on a 30 foot right-of-way and they’re asking to be able to do single family developments with a 30 foot right-of-way.”

Commissioner Baldwin – “And normally single family is required to have ?”

Karen Smith – “45.”

Commissioner Young – “45, and he’s wanting to go 30, right?”

Karen Smith – “30, right.”

Commissioner Young – “And then there was a difference in the uh – in the uh shoulders or something, I was

reading.”

Karen Smith – “The – the road standards themselves are the – are identical. You’re allowed to do or you can do additional parking in the right-of-way for the neighborhood drive but it’s not a requirement.”

Chairman Moyer – “Any other questions? Alright we’ll move to testimony and evidence by Mr. Krupp. Mr. Krupp, do you wish to?”

Richard Krupp – “OK I failed to give you my address also. The address is 2509 Carriage Falls Court, Hendersonville 28791. Uh as President of the Homeowners Association, I just wanted to go on record that the Homeowners Association has no problem or no issues with the change of definition of the townhouse to a single family drip-line community. Is there any questions for that.”

Chairman Moyer – “Well, the other parties will have a chance. We’ll start with Mr. Hamlin, do you have any questions for Mr. Krupp?”

Dale Hamlin (from the audience) – “No sir.”

Chairman Moyer – “Alright, stated. Mr. - Mrs. Byrne, do you have any questions?”

Kathleen Byrne (from the audience) – “No.”

Chairman Moyer – “OK.”

Richard Krupp – “Thank you.”

Chairman Moyer – “Staff, do you have any. Wait a minute. The Board. Does the Board have any questions. OK, thank you Mr. Krupp.”

Richard Krupp – “Thank you.”

Commissioner Baldwin – “I do of staff.”

Chairman Moyer – “Alright, well we’ll get to. Alright now we’ll go to evidence by the Planning Staff. Karen, do you want to present your evidence please.”

Karen Smith – “As is typical in these, it’s probably more recommendations and comments than – than true evidence but uh I did want to review the Planning Board’s recommendations just briefly. We had seven members of the Planning Board present at the May 17<sup>th</sup> 2005 meeting, one did recuse himself due to a conflict. After hearing testimony from Mr. Hamlin uh, Carriage Park resident Virginia Burke, Carriage Park resident and member of the Carriage Park Architectural Review Committee Gerald Breddle, Planning Board members voted unanimously to send a favorable recommendation to the Board on the amendment as presented by the applicant. Uh in your packet uh staff had included some comments that we had also sent to the Planning Board uh regarding the effects of the proposed amendment and really it seems to be fairly minimal until they bring – until the applicant brings in Development Plans for each of the development parcels, it’s really hard to tell – you know – whether the density would be higher in one section versus another and again we’re back to the un overall total number of units. The difference that we did see would be in the set-back and separation between residences along a street. Uh the 30 foot right-of-way versus the 45 foot right-of-way would – would cause the single family detached townhouses to be closer together but again if it were a multifamily building, they would already be allowed to be closer together and as I stated earlier, the travelway width, shoulders, road base, and pavement designs are identical. Uh the townhomes and single family detached dwellings have a 30 foot setback from the center line of residential streets and

you can use a residential street for townhomes but typically they don't and then for townhomes the setback with 20 feet from the center line of the neighborhood drive and again that's where the – the units could appear to be closer together. Uh and Mr. Hamlin did mention earlier that these were standards that were proposed by Carriage Park as part of their permit. We don't have a definition for townhomes in the zoning ordinance and so what they propose is basically what the Board went along with. I think there were some modifications by the Legal Department such as we went along but – you know that really is – is the only significant difference that we could identify."

Chairman Moyer – "Thank you Karen. Questions for uh Mrs. Smith?"

Commissioner McGrady – "The parties first?"

Chairman Moyer – "No, I want to start with the Board. Shannon had a question."

Commissioner Baldwin – "Yeah, this may be a Karen/Russ question but uh can – in amending this permit, can we attach conditions?"

Russell Burrell – "I think in a quasi-judicial, you're gonna be able – you're just making findings of fact and then either find it to be in the interest of – of whatever is the underlying interest compelling the PUD or not so I don't think you can addition – add additional conditions beyond what's already in the PUD, other than changing the definition."

Karen Smith – "There have been conditions in the past but the past amendments haven't been definitional, they've been more related to additions of property uh, construction of a fire station, and some other things so I – that – that does definitely leave a question at this point Mr. Baldwin."

Commissioner Baldwin – "But"

Russell Burrell – "If I understand, the previous amendments had to do with really changing the entire scope of the PUD."

Chairman Moyer – "Alright, much broader than this question."

Russell Burrell – "As opposed to – it's hard to see their application here as really changing the scope."

Commissioner Baldwin – "Well, that wasn't my question. My question was could we attach conditions and certainly those that would be germane to the issue uh not a condition on the PUD in the broader sense but narrowly constricted to the issue at hand."

Russell Burrell – "In terms of changing – of how you define a townhome? Certainly, I think you could do – include that in your definition of a townhome. If I understand exactly what."

Commissioner Baldwin – "That's the question."

Russell Burrell – "OK."

Chairman Moyer – "Any of the other Commissioners have questions for Mrs. Smith at this time. Well then we'll go to the other parties."

Commissioner Baldwin – "I do."

Chairman Moyer – "OK."

Commissioner Baldwin – “Uh Karen as far uh the right-of-way being reduced from uh 45 to 30, really as a result of the 45 foot right-of-way, there’s almost this and this is something that I may ask the land planner in just a moment. There’s almost this automatic dedication of open space. You look at the right-of-way, you subtract out the built upon area of the road and there’s open space that cannot be constructed within and so by reducing the right-of-way or actually allowing for more potential area to be built upon, technically.”

Karen Smith – “You could look at it but their rights-of-way are allowed to be considered open space so in the sense of reducing the right-of-way you could be reducing open space there but you are probably making up for that somewhere else. It really again depends on the section, the particular development parcel.”

Commissioner Baldwin – “OK. That – that’s my thought Russell.”

Chairman Moyer – “Well the road and the right-of-way are – is considered open space under their definition of this permit now so.”

Karen Smith – “Or it’s not prohibited I should probably say.”

Chairman Moyer – “Yeah so it’s no change.”

Commissioner Baldwin – “The road is considered open space?”

Chairman Moyer – “Yeah, the road is considered open space.”

Karen Smith – “Yeah. It’s – its (lots of laughing here and I couldn’t make out what was being said).”

Commissioner Baldwin – “You just shot my plotting and planning.”

Chairman Moyer – “Now you wouldn’t have expected that one, that’s for sure. OK, let’s go to – to cross examination by the other parties. We’ll start with you, Mr. Hamlin, do you have any questions for Mrs. Smith? Mrs. Byrne, do you have any questions?”

Kathleen Byrne – “Yes I do.”

Chairman Moyer – “Well would you come up.”

Kathleen Byrne – “How – how is this covered. If I have a problem or anybody else has a problem, where do we go? And you can’t say Homeowners Association because that’s nothing to do with it. I’m talking about the government, you know under their PUD?”

Karen Smith – “Are you talking about?”

Chairman Moyer – “I think you’re asking if there is a violation of the permit in some way?”

Kathleen Byrne – “Yes violation of the permit.”

Chairman Moyer – “Alright, Karen.”

Karen Smith – “Right and uh those get reported to the Zoning Administrator who is responsible for administering the and we talked about that.”

Kathleen Byrne – “Yeah we talked about that.”

Karen Smith – “Friday. It’s – right – it’s been part of my department but that will be.”

Kathleen Byrne – “But there’s a new person, right, OK.”

Chairman Moyer – “Thank you Mrs. Byrne.”

Kathleen Byrne – “Thank you.”

Chairman Moyer – “Mr. Krupp, do you have any questions for Mrs. Smith? Thank you. Alright now we have a chance, if anybody feels it’s appropriate to have rebuttal evidence uh, we’ll start with the petitioner, Mr. Hamlin, do you want to put on any more evidence or rebuttal evidence.”

Dale Hamlin – (from the audience) “No sir.”

Chairman Moyer – “Alright. Do any of the other parties wish to put on rebuttal evidence? OK, Karen, you OK? Alright. I’d ask the same . . . have any closing remarks that any of the parties would like to make, starting again with Mr. Hamlin. Do you have any further closing remarks?”

Dale Hamlin – (from the audience) “No sir.”

Chairman Moyer – “Any of the parties have any closing remarks? Karen? OK. Good. Now the evidence has been presented and the closing remarks concluded it would be appropriate for the Commissioners to discuss the issues presented today. We can either vote today, direct staff to bring back findings of fact and conclusions consistent with the decision to a future meeting of the Board for our review, or we can continue our discussion and decision until a later date. I remind the Board however that we have to issue a written decision within 45 days of the conclusion of this hearing. Do we have a motion to go out of public hearing?”

Commissioner Messer – “So moved.”

Chairman Moyer – “All in favor, say aye.”

In unison – “Aye.”

Chairman Moyer – “We are out of public hearing and open for Board discussion.”

Commissioner Baldwin – “I don’t have a problem with supporting the petition.”

Commissioner McGrady – “I too support the change in the definition of a townhouse and the special use permit as requested by the applicant and I think the appropriate way to handle this would be to uh vote to do that and direct staff to come back with the appropriate findings of fact and conclusions consistent with it. Presumably it will be on a consent agenda when all of that is in order.”

Chairman Moyer – “Alright, I think if everybody understands again just clarify the motion again or you’ll put this in the form of a motion?”

Commissioner McGrady – *“I will make it in the form of a motion that we approve the amendment to change the definition of a townhouse in section – in the special use permit 93-13 as requested by the applicant and direct staff to come back with uh an appropriate set of findings of fact and conclusions of law consistent with the decision we’re making now and the evidence presented to us.”*

Chairman Moyer – “Any further discussion by the Board? Russell, is that clear enough for you? All in favor



of that motion, say aye.”

In unison – “Aye.”

Chairman Moyer – “Alright, it passes unanimously. Thank you all very much for your attendance.”

Commissioner McGrady – “Mr. Chairman, I’d ask one other thing. I brought this up in other context but there’s gotta be a way to get this Board out of what was not a great decision that each – anything having to do with special – Carriage Park ends up coming to the Board of Commissioners. Using a quasi-judicial proceeding to deal with the definition of a townhouse is an awful use of our time. It’s a waste of the public’s time and I’d just like to find, I mean some way to get us out of this morass. Maybe back in 1993 – you know – this was good planning but in 19 – you know 2005 this is not where we ought to be.”

Commissioner Baldwin – “Yeah.”

Commissioner McGrady – “Uh and I would – I don’t know – I raised this with the Planning Board. Shannon and I have talked about it in the past and I would love to figure out a way not to have this happen. We don’t handle any other subdivision of – in this process – in this way and the Planning Board got stuck here. They had this whole discussion where they were dealing with a very specific thing, they backed into a definitional decision and all of a sudden, now it’s gotta go to the Board of Commissioners. Uh anyway I – I shot off here and.”

David Nicholson – “Do you feel better?”

Commissioner McGrady – “I feel better but I don’t know where we can go. I really do think we – we’ve got to figure out a way out of this – this special use permit.”

Chairman Moyer – “Well maybe Karen can make a note in her new assignment to give this lots of thought. I think I heard that same speech when we were on the Planning Board?”

Commissioner McGrady – “Yeah, I think you may have given it then, Mr. Chairman. Is there a way Russell?”

Russell Burrell – “I . . . thought that would be an amendment of the PUD which would require another quasi-judicial.”

Commissioner McGrady – “If we only had one more uh uh hearing on this at which point we dissolved the PUD and somehow.”

Chairman Moyer – “No, you amend it.”

Russell Burrell – “You modify the PUD to say that the uh.”

Commissioner Baldwin – “Board of Adjustment.”

Russell Burrell – “Board of Adjustment could hear these.”

Chairman Moyer – “Would you like to have a quasi-judicial on that?”

Commissioner McGrady – “I would love to get there.”

David Nicholson – “I think staff would be more than happy to work on that issue. Now I’m not sure about

the Planning staff or the people who support the Board of Adjustments but I guess they have to deal with it anyway, don't they?"

Chairman Moyer – "Karen, if you make a note and uh maybe Lori would like to tackle this and see how she could uh."

Commissioner McGrady – "I suspect the Homeowners Association and Carriage Park would love to be there uh, just – we've been through this – anybody that has anything to do with Carriage Park knows there is a massive amount of time spent on it. We don't do that with other subdivisions of its – of the same size. We just don't do that anymore."

Chairman Moyer – "Well let's not set any time limit. Let's take a look at what – how we can do it to amend the permit to resolve this and simplify it for everybody involved and at the appropriate time in the future come back and let's have a hearing and see what the Board would like to do. Not a hearing, let's have a discussion among the Board and let the Board decide which way they want to go. OK."

Commissioner Baldwin – "Just - well since Chuck went there, I just want to say that I think that uh if it's a waste of our time as policymakers to – to jump into the detail of these special use permits, when we think about rewriting our new ordinance I think we ought to give some real thought to taking these public hearings and giving them to the Board of Adjustment, like the other 900 or so – or 99 counties do in the state of North Carolina."

Commissioner McGrady – "Amen."

Commissioner Baldwin – "Rather than us try to take our time to do this. I – I think I have a comrade on the issue."

Commissioner McGrady – "It's painful to agree with you but uh I agree with you."

Chairman Moyer – "Well I'll remind you."

Commissioner Baldwin – "... I called you comrade."

Chairman Moyer – "I'll remind you you both set up the procedure in the flood prevention ordinance where you wanted the variance to come to the Board of Commissioners."

Commissioner McGrady – "I know, I know, I know."

Chairman Moyer – "And uh."

Commissioner Baldwin – "I voted against that ordinance."

Chairman Moyer – "Not against the variance though."

Commissioner Baldwin – "I voted against the ordinance."

Chairman Moyer – "Alright, moving right along. I think it's only 1:00, we have plenty of time."

David Nicholson – "We have 15 minutes on the tape, Mr. Chairman."

Chairman Moyer – "15 minutes. Good, well I think we have uh some very good news and we're gonna move to uh the uh public transportation funding and have Justin bring us up to date on what's happened and

tell you where we stand. Justin.”

### **HENDERSON COUNTY FISCAL YEAR 2005/06 PUBLIC TRANSPORTATION FUNDING**

Justin Hembree presented this information relating to the issues surrounding funding for the County’s public transportation system. The 2000 Census expanded the Asheville Urbanized Area to include the majority of Henderson County. The inclusion of Henderson County in the Asheville Urbanized Area triggered a number of changes in the manner in which federal and state funds flow to the County’s local public transportation system. In short, this change will move Henderson County’s public transportation system from a “rural” system with a strong relationship with the State to an “urban” system with a direct relationship with the federal government. MPO staff, private consultants, and County staff have been working for well over a year to develop a plan and funding strategy that will guide the County in transitioning its public transportation system from a “rural” system to an “urban” system.

In 2004, the Public Transportation Division of NCDOT agreed to fund the County’s public transportation operations through the State’s “rural” transportation program for the 2004/05 fiscal year. However, as part of this funding agreement, NCDOT required that the County submit, prior to January 1, 2005, a plan detailing how the County would fund public transportation services for the 2005/06 fiscal year and beyond.

Based on input from the County TAC, the MPO, private consultants, County staff, and a recommendation from the County Manager, the Board committed to funding the local public transportation system \$65,603 for the 2005/06 fiscal year and took action to request that NCDOT continue to fund costs associated with the operation of Apple Country Transit’s Blue Route. Furthermore, the Board directed County staff to begin the process of becoming a designated recipient of Federal Transit Administration Section 5307 funds. This agreed upon proposal was transmitted, via a letter from the Chairman, to NCDOT.

On April 12, 2005, Ms. Miriam Perry, Director of NCDOT’s Public Transportation Division, met with County officials to discuss the Board’s public transportation proposal and, most importantly, present NCDOT’s response to the County’s proposal. The attached letter contains NCDOT’s response and funding proposal for the 2005/06 fiscal year. NCDOT’s proposal provides for continued “rural” and discretionary funds for the operation of Apple Country Transit in the 2005/06 fiscal year. To summarize, public transportation funding for the 2005/06 fiscal year will be handled in the same manner as in past fiscal years, including the amount of required local matching funds. In exchange for this funding arrangement, the County must continue the process of becoming a designated recipient of Federal Transit Administration Section 5307 funds, effective July 1, 2006. The County must also develop a request for proposal for the purpose of procuring an operator of FTA supported urbanized services beginning July 1, 2006.

This is wonderful news. The Public Transportation Division of NCDOT has been a pleasure to work with in dealing with this complex issue. NCDOT, in essence, is rewarding the County’s commitment to public transportation by granting an additional year for the “urban” transition. This additional year will allow a more accurate funding plan to be developed and will also allow adequate time for the required procurement process. County staff recommended acceptance of NCDOT’s proposal for fiscal year 2005/06 public transportation funding.

*Commissioner McGrady made the motion to accept NCDOT’s proposal for funding for FY 2005-06 Public Transportation and direct staff to work on the proposal for future years. All voted in favor and the motion carried.*

### **ANIMAL SHELTER BID**

David Nicholson stated that the Board of Commissioners awarded the construction bid to Cooper Construction Company for the new Animal Shelter on May 2, 2005. However, the Board directed staff to work with the architect and contractor to bring the cost within budget. At the point of the award, we were \$68,681 over budget.

He was happy to inform the Board that we have now processed a change order in the amount of \$77,247 reducing the

base bid to \$1,280,382. As requested at the May 2, 2005, staff is requesting permission from the Board to add 7 additional runs to the base bid. The cost of these runs is approximately \$80,000.

Staff has been developing a fund raising effort for the new Shelter. We have already received \$54,000 in donations or commitments for this project. We have also received in-kind commitments for items such as landscaping. These commitments have happened by word-of-mouth without any formal fund raising effort. Mr. Nicholson believes that we can work with the community to pay for these runs and for other projects around the shelter.

The Board was requested to confirm the base bid of \$1,280,382 and authorize staff to negotiate with the contractor to add 7 additional runs in association with a fund raising effort.

*Commissioner Young made the motion to confirm the base bid of \$1,280,382 and to authorize staff to negotiate with the contractor to add 7 additional runs. All voted in favor and the motion carried.*

### **Ground Breaking Announcement**

David Nicholson invited the Board and announced the ground breaking ceremony for the Animal Shelter, to be held at 2:00 at the site.

### **UPDATE ON PENDING ISSUES**

#### **1. Historic Courthouse 100<sup>th</sup> Anniversary Proclamation**

David Nicholson reminded the Board of the pending 100<sup>th</sup> birthday celebration. July 15<sup>th</sup> will honor the date that the keys were handed from the builder to the Board of Commissioners. The day will begin with some music and special guests and dignitaries will be present. The renovation plans will be displayed. There will be a formal presentation to the Board of Commissioners from the Great Grandson of the builder that reflects what we're getting ready to do – the renovation of the building. There will be cake and lemonade. The celebration will go into the afternoon and evening with more events planned for Saturday, July 16<sup>th</sup>.

David Nicholson requested that the Board adopt a Proclamation entitled "Henderson County Historic Courthouse – A Proclamation by the Henderson County Board of Commissioners and City Councils". Laurel Park, Fletcher, and Flat Rock have already adopted this. A large proclamation will be at the celebration and will be formally signed as part of the celebration.

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

#### **Mill Pond Cemetery (lower section)**

Justin Hembree stated that we are still researching this issue. Russell Burrell and Justin Hembree actually visited the site last Friday. After walking the property, they were of the opinion that we need a survey of the property done by a professional surveyor. Once we receive that information, staff will bring the item back to the Board of Commissioners.

### **EMERGENCY WATERSHED PROTECTION AGREEMENT**

Justin Hembree informed the Board that this issue was brought to County staff's attention on the morning of Friday, July 1, after the Board's agenda packets were prepared. Therefore, staff had requested that this item be added to the agenda of this meeting.

Presented for Board review were two documents: Amendment # 1 and Amendment #1 Attachment D to the Emergency Watershed Protection Agreement between Henderson County and the United States Department of Agriculture. As noted in the attachments, this amendment will increase the amount of funds that will be allocated to the County for EWP projects by \$350,725. The amendment formally changes the total amount of the project agreement from \$1,856,880 to \$2,207,605. These are federal funds and will be matched at a rate of 25% by state funds. These funds would be used for stream bank restoration projects.

Staff recommended that the Emergency Watershed Protection Agreement (69-4532-016) Amendment #1 be approved as presented so that it can be sent to Raleigh as soon as possible to reserve the funds for us.

Commissioner McGrady asked to be recused from voting. Falling Creek Camp, of which he is the majority owner is to be the recipient of some of these funds. That may create a conflict of interest. *Chairman Moyer made the motion to recuse Commissioner McGrady from participation and voting in this matter. All voted in favor and the motion carried.*

*Chairman Moyer made the motion to approve Amendment 1 and get it sent off to Raleigh as soon as possible. All voted in favor and the motion carried (four to zero, 1 abstinence).*

### **IMPORTANT DATES**

Chairman Moyer informed the Board of a letter from Jack Lynch concerning the Comprehensive County Transportation Plan that asked for the Board's endorsement. He requested that it be on the Board's next agenda for action.

#### **Set Public Hearing – Economic Development**

The Board was requested to set a public hearing for Wednesday, July 20 at 11:00 a.m. for the purpose of considering economic development incentives for C.L. Henderson Produce Company.

*Commissioner McGrady made the motion to set the public hearing for economic development consideration for C.L. Henderson Produce Company for Wednesday, July 20 at 11:00 a.m. All voted in favor and the motion carried.*

#### **Designation of Voting Delegate to NCACC Annual Conference**

We have three Commissioners planning to attend the NCACC Conference in Charlotte in August. *Commissioner McGrady made the motion that Chairman Moyer serve as our voting delegate for that meeting with either of the other two Commissioners to serve as alternate if he is unavailable. All voted in favor and the motion carried.*

#### **NCDOT**

The Board had received a note from the Clerk to the Board as follows:

“Ann Tate called this morning from NCDOT. In lieu of the meeting we normally have each spring (secondary road public hearing) with NCDOT, they would like to come to a Board meeting and discuss with the Commissioners (not a meeting for public input as usual about secondary roads) about what roads will be funded and what roads will be deferred, since they don't have a budget this year.

She's open on dates but she and I did discuss the fact that your next BOC meeting will be Wednesday, July 20 and she suggested about 10:00 How does that sound? I told her I would get back with her tomorrow about a date and time. Thanks, Libby”

It was the consensus of the Board to have them at the July 20 meeting at 10:00 a.m.

#### **Set Public Hearing on Rezoning Application #R-2005-04**

Rezoning Application #R-2005-04, which was submitted on May 23, 2005, requests that the County rezone a 3.17 acre (approximate) parcel of land, located off Brevard Road (U.S. Highway 64), from an R-30 (Low-Density Residential) zoning district to a C-1 (Residential Commercial) zoning district. The Applicants are Shane & Sara Swecosky, and the Applicant's Agent is Angela Beeker.

The Henderson County Planning Board first considered rezoning application #R-2005-04 at its regularly

scheduled meeting on Tuesday, June 21, 2005, at which time the Board voted unanimously (9-0) on a motion to send the Board of Commissioners a favorable recommendation on rezoning the Subject Area to a C-1 zoning district.

Before taking action on the rezoning action, the Board of Commissioners must hold a public hearing. Staff proposed that the hearing be scheduled for Monday, August 1, 2005, at 7:00 p.m.

The County Manager recommended that the Board of Commissioners schedule a public hearing on rezoning application #R-2005-04 for Monday, August 1, 2005, at 7:00 p.m., or schedule a special called meeting.

*Chairman Moyer made the motion to schedule a public hearing on the rezoning application #R-2005-04 for Tuesday, August 2 at 6:00 p.m., here in our office. All voted in favor and the motion carried.*

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

#### **CLOSED SESSION**

*Commissioner McGrady made the motion for the Board to go into closed session as allowed pursuant to NCGS 143-318.11 for the following reasons:*

1. (a)(1) *To prevent disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes, in accordance with and pursuant to NCGS 143-318.10(e) and Article II of Chapter 11 of the Henderson County Code.*

*The Board is requested to go into Closed Session, pursuant to N.C. Gen. Stat. § 143-318.11(a)(1), to prevent disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes.*

*Draft minutes from the following dates have been previously distributed to the Board. Staff recommends approval of these minutes:*

<i>15 June 2005</i>	<i>6 June 2005</i>
<i>2 May 2005</i>	<i>23 March 2005</i>
<i>16 February 2005</i>	<i>6 December 2004</i>
<i>5 October 2004</i>	<i>7 September 2004</i>
<i>18 August 2004</i>	<i>2 August 2004</i>
<i>16 June 2004</i>	<i>7 June 2004</i>
<i>25 May 2004</i>	<i>19 May 2004</i>
<i>3 May 2004</i>	<i>21 April 2004</i>
<i>5 April 2004</i>	<i>18 February 2004</i>
<i>5 January 2004</i>	<i>17 December 2003</i>

*Certain of these minutes can likely be immediately unsealed as "public inspection" would no longer "frustrate the purpose of a closed session". According to §11-5 of the Henderson County Code, "the Board of Commissioners shall determine by consensus which items contained in the draft closed session minutes are appropriate to be unsealed at approval." Immediately after approving the minutes, "the Board shall vote to unseal items contained within the approved closed session minutes as appropriate."*

*Using criteria of whether the information contained in the minutes is generally known or available from Henderson County public records, the unsealing of the following minutes is suggested:*

<i>15 June 2005</i>	<i>23 March 2005 (Raflatac only)</i>
<i>16 February 2005 (Harper settlement only)</i>	<i>18 August 2004 (Park Ridge only)</i>

25 May 2004 (Raflatac only)

19 May 2004 (Raflatac only)

3 May 2004

18 February 2004

17 December 2003 (approval of previous minutes only)

2. (a)(3) *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 the following pending litigation before the North Carolina Property Tax Commission:*

*In the Matter of Morgan, 05 PTC 192*

*In the Matter of Black, 05 PTC 152*

*In the Matter of Anderson, 05 PTC 30*

*In the Matter of Levi, 05 PTC 13*

*In the Matter of T. Redmond Mowing, 05 PTC 12*

**ADJOURN**

Chairman Moyer adjourned the meeting at 9:16 p.m..

Attest:

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Elizabeth W. Corn, Clerk to the Board

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William L. Moyer, Chairman