

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
AUGUST 1, 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: Planner Lori Sand, Budget and Management Director Selena Coffey, Public Information Officer Chris S. Coulson, Fire Marshal Rocky Hyder, and County Engineer Gary Tweed. Deputy Clerk to the Board Amy Brantley was present through nominations.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

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

INVOCATION

David Nicholson gave the invocation.

INFORMAL PUBLIC COMMENTS

There were none.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer requested the addition of one item under Update on Pending Issues as "I-4" – LME CEO search. The Board will receive an update by Commissioner Messer and Justin Hembree. *Commissioner McGrady made the motion to adopt the agenda as amended. All voted in favor and the motion carried.*

CONSENT AGENDA

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

The Consent Agenda consisted of the following:

Minutes

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

July 5, 2005, regular meeting.

Resolution Honoring the Service of Karen Smith

The Commissioners were requested to adopt a prepared Resolution, a copy of which is attached as a part of these minutes.

Set Public Hearing on Rezoning Application #R-2005-03

Rezoning Application #R-2005-03, which was submitted on April 19, 2005, requests that the County rezone approximately 26.8 acres of land, located off College Drive (SR #1920), from an O & I (Office and Institutional) zoning district to an R-10 (High-Density Residential) zoning district. The Subject Area appears to be a portion of parcel 9588-02-0399 and parcel 9578-94-1074, both of which are owned by Blue Ridge

DATE APPROVED _____

Community College. The Applicant is Blue Ridge Community College, and the Applicant's Agent is Jon Laughter.

The Henderson County Planning Board first considered rezoning application #R-2005-03 at its regularly scheduled meeting on June 21, 2005. During that meeting, the Board voted 8 to 1 to postpone making a recommendation to the Board of Commissioners on the rezoning request until the regularly scheduled July meeting to allow Blue Ridge Community College the opportunity to provide the Board with any additional information that would inform the Board on its decision.

On July 19, 2005, the Planning Board, after hearing from various representatives of Blue Ridge Community College, voted 6 to 1 to send the Board of Commissioners a favorable recommendation on rezoning application #R-2005-03 to rezone the Subject Area from an O & I zoning district to an R-10 zoning district.

Before taking action on the rezoning application, the Board of Commissioners must hold a public hearing. Staff proposes that the hearing be scheduled for Tuesday, September 6, 2005, at 7:00 p.m.

Mr. Nicholson recommended that the Board of Commissioners schedule a public hearing on rezoning application #R-2005-03 for Tuesday, September 6, 2005 at 7:00 p.m., or schedule a special called meeting.

Refund request for transfer tax overpayment

Attorney Ervin W. Bazzle had requested, on behalf of M/M Jonathan C. Summey, the refund of the sum of One Hundred Forty Dollars (\$140.00) in real property conveyance excise tax ("deed stamps"). The deed in question represented real estate located in Polk County, not Henderson County, but was incorrectly recorded in the Henderson County Register of Deeds Office.

Pursuant to NCGS 105-228.37, a request for refund of overpayment of real property conveyance excise tax must be made within six months of the date of payment. The payment was made March 15, 2005. Henderson County was first notified of the alleged overpayment by letter from Mr. Bazzle dated July 13, 2005.

Under NCFCS 105-266.1, the Board of Commissioners has the following responsibilities:

1. It must "grant a hearing on each timely request for refund".
2. The taxpayer must be notified of the hearing date within 60 days of the date of the request, and at least 10 days prior to the date of the hearing.
3. The hearing must be held within 90 days of the request for refund, unless otherwise agreed.
4. A decision must be given within 90 days of the hearing.

Any refund granted must include the tax paid plus interest until the date of payment.

The County Manager supports this proposal.

Technical corrections and amendments

This is a nine-part "technical corrections" ordinance, modeled on similar technical corrections statutes used in the General Assembly and Congress. A brief analysis of the nine parts follows:

1. This deletes reference to the Department of Youth Development in the Code. This Department was made a part of the Department of Social Services some years ago.
2. This modified how persons lawfully confined may be used as a source of labor for county work, using the only statutory provision allowing the same, and removing reference to an individual who is (likely) now long dead.
3. This modifies the EMS ordinance to allow persons not licensed to operate an ambulance if it is pursuant to a mutual aid agreement with a licensed entity. This would allow a mutual aid

compact with, for example, South Carolina authorities for the southernmost portions of Henderson County.

4. This changes the standards for determining response times, for the purpose of EMS franchise applications, and would insure that applicants meet state standards for levels of certification.
5. This makes clear in the Flood Damage Prevention Ordinance that streambank work permitted by Federal or State authorities does not require an additional county permit.
6. This makes clear in the Flood Damage Prevention Ordinance that “retention of land for agriculture” (as “agriculture” is defined in that ordinance) is a service to the community which may be demonstrated to apply for a special fill permit.
7. This shares the same purpose as 6 above.
8. This makes clear under the Flood Damage Prevention Ordinance that the replacement of agricultural development (as “agriculture” is defined in that ordinance) which was in existence as of the date the ordinance was adopted does not require a floodplain development permit.
9. This makes clear that business solicitation may take place on county premises when pursuant to an authorized vendor of employment benefits.

It is anticipated that similar proposals for technical corrections and amendments will follow.

The County Manager supports this proposal.

Improvement Guarantee for Tall Timbers

Jeff Donaldson, Calvin Ruby and Ken Burgess, owners of the project, submitted an application for an improvement guarantee for Tall Timbers major subdivision. Tall Timbers is a 20-lot major subdivision located directly off U.S. Hwy. 64 East (Chimney Rock Road). Tall Timbers was conditionally approved by the Planning Board on April 19, 2005. The improvement guarantee is proposed to cover the construction of the road, the water distribution system improvements and the road shoulder stabilization for the entire subdivision.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$135,845.00 to cover the cost of the improvements (\$108,676.00) as well as the required 25% contingency (\$27,169.00). The proposed completion date for the improvements is November 30, 2005.

A draft Performance Guarantee Agreement was attached for the Board’s consideration. If the application is approved, the developers must submit an irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the relevant parties must execute the Agreement.

The County Manager recommended that the Board approve the improvement guarantee for Tall Timbers, subject to the developers submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

Request for an Extension of Improvement Guarantee for Willow Place

On November 1, 2004, the Board of Commissioners approved an application submitted by Charles Fisher for an improvement guarantee for a subdivision known as Willow Place. As required by the Performance Guarantee Agreement for the improvement guarantee, the developer posted with Henderson County an Irrevocable Letter of Credit for an amount of \$78,872.50. The Improvement Guarantee covered the completion of the road construction and water system installation as required by the Henderson County Subdivision Ordinance. The agreement required that the Improvements be completed by June 30, 2005.

The Planning Department received a letter from Charles Fisher requesting to extend the completion date on the improvement guarantee. Mr. Fisher's letter states that the extension is needed because, "the inclement weather we have been experiencing in the past 6 months, we have been unable to pave Willow Circle." Section 170-39 of the Subdivision Ordinance allows the Board of Commissioners, upon proof of difficulty, to grant extensions to completion dates for improvement guarantees for a maximum of one additional year, provided that the time between initiation and completion of the improvements does not exceed two years.

If the Board of Commissioners agrees to grant the requested extension, staff had attached for the Board's consideration a draft Performance Guarantee Agreement which reflects a new improvements completion date of December 30, 2005, and requires submittal of an amendment to the Irrevocable Letter of Credit showing an expiration date not earlier than 60 days after the new improvements completion date. The new Performance Guarantee Agreement must be executed by the relevant parties if the Board approves the extension request.

The County Manager stated that the extension, if granted, would not cause the developer to exceed the two-year maximum time period for completion of the required improvements. Therefore, he recommended that the Board approve the request to extend the completion date for the improvement for Willow Place to December 30, 2005, provided that an amended Irrevocable Letter of Credit is submitted in accordance with the Performance Guarantee Agreement.

Improvement Guarantee for Pinnacle Falls

Mr. Luther E. Smith, on behalf of Pinnacle Falls, LLC, owner and developer of Pinnacle Falls subdivision, had submitted a request for an improvement guarantee for Phase II of Pinnacle Falls. Pinnacle Falls will be located on the south side of Pinnacle Mountain Road, between Pinnacle Mountain Road and Cabin Creek Road. The Henderson County Planning Department granted conditional approval of a Development Plan for Phase II of Pinnacle Falls on June 23, 2005. The improvement guarantee is proposed to cover the road construction, road shoulder stabilization and the water distribution system improvements.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$579,820.00 to cover the cost of the improvements as well as the required 25% contingency (\$115,964.00). The proposed completion date for the improvements is March 1, 2007.

A draft Performance Guarantee Agreement was attached for the Board's consideration. If the application is approved, the developers must submit an irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the relevant parties must execute the Agreement.

The County Manager recommended that the Board approve the improvement guarantee application for Pinnacle Falls, Phase II, subject to the developers submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

Improvement Guarantee for Rebecca's Pond

GHC Land Development, LLC, owner of Rebecca's Pond, submitted an application for an improvement guarantee for the Rebecca's Pond major subdivision. Rebecca's Pond is a 24-lot major subdivision located directly off Crab Creek Road. Rebecca's Pond was conditionally approved by the Planning Board on March 15, 2005. Rebecca's Pond originally began as a minor subdivision in 2003 and an improvement guarantee was posted to cover the cost of the grading and road construction for the minor subdivision.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$127,535.00 to cover the cost of the improvements (\$102,028.00) as well as the required 25% contingency (\$25,507.00). The proposed completion date for the improvements is July 22, 2006.

A draft Performance Guarantee Agreement was attached for the Board's consideration. If the application is approved, the developers must submit a new irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the relevant parties must execute the Agreement. At the time that the new Performance Guarantee Agreement is fully executed, the new Agreement will supercede the prior Agreement and the old irrevocable letter of credit for Rebecca's Pond minor subdivision should be released.

The County Manager recommended that the Board approve the new improvement guarantee application for Rebecca's Pond, subject to the developers submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

Improvement Guarantee for Willow Brook Falls

John Thompson, agent for Willow Brook Falls, LLC, owner of the project, submitted an application for an improvement guarantee for Willow Brook Falls major subdivision. Willow Brook Falls is a 15-lot major subdivision located off Willow Road. Willow Brook Falls was conditionally approved by the Planning Board on March 15, 2005. The improvement guarantee is proposed to cover the water distribution system improvements for the subdivision.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$115,909.25 to cover the cost of the improvements (\$92,725.00) as well as the required 25% contingency (\$23,181.25). The proposed completion date for the improvements is July 18, 2007.

A draft Performance Guarantee Agreement was attached for the Board's consideration. If the application is approved, the developers must submit an irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the relevant parties must execute the Agreement.

The County Manager recommended that the Board approve the improvement guarantee application for Willow Brook Falls, subject to the developers submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

NOMINATIONS

Nominations

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

1. Child Fatality Prevention Team – 1 vac.

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

2. Henderson County Board of Health – 1 vac.

Commissioner Young nominated Elizabeth Todd. An application has not been received from her yet so the Board will wait to vote on her appointment until we receive her application, hopefully by the next meeting.

3. Hendersonville City Zoning Board of Adjustment – 3 vac.

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

4. Juvenile Crime Prevention Council – 4 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.

7. WCCA – 1 vac.

Commissioner McGrady nominated Robert Danos. *Chairman Moyer made the motion to elect Mr. Danos by acclamation. All voted in favor and the motion carried.*

TAX COLLECTOR’S PRELIMINARY REPORT FOR FISCAL YEAR 2004-05

Terry F. Lyda, Henderson County Tax Collector submitted the preliminary report for FY 2004-05. Attached to the Report was (1) a list of the persons owning real property whose taxes for 2004 remain unpaid, along with the principal amount owed by each person.

“In compliance with NCGS 105-373(a)(3), attached hereto is a Report entitled ‘Settlement for Current Taxes for Fiscal Year 2004-05’ dated July 23, 2005 setting forth my full settlement for all taxes in my hands for collection for the fiscal year 2004-05.

Further, I hereby certify that I have made diligent efforts to collect the taxes due from the persons listed in such a manner that is reasonably necessary. Respectfully submitted, Terry F. Lyda, Tax Collector.”

Mr. Lyda informed the Board that we had a very good year. On our real estate collections, which are basically our levy as of September 1 this past year, we collected 98.52% which is the highest ever.

Darlene Burgess, Deputy Tax Collector, was also present and reviewed with the Board the following:

Our collection on delinquent taxes for years 1995-2003 were 99.67%.

Our collection on the delinquent DMVs was 97.18%.

Since the beginning of the delinquent tax project in 1999, staff has collected over \$7.8 million. During this past fiscal year they’ve collected \$1.2 million which is an increase of \$343,000 over last year’s reported figures.

The Board congratulated both Mr. Lyda and Ms. Burgess for the fine results this year.

NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS)

Rocky Hyder informed the Board that after the events of September 11, 2001, President Bush issued Presidential Directive 5 which basically says that every State and Local government must adopt and begin implementing the standards of the National Incident Management System (NIMS) by September 30, 2005 in order to receive federal funding. In summary PD-5 requires that over the course of the Federal ‘06 fiscal year the County must accomplish two objectives:

1. Adopt an ordinance “institutionalizing” the National Incident Management System.

2. All employees must be trained to the ICS 700 level, all emergency service personnel must be trained to the ICS 200 level, and management must be trained to the ICS 300 level.

Comments were solicited from all emergency service agencies on June 28, 2005. The proposed document has been endorsed by the Town of Fletcher and the Town of Laurel Park.

The County Manager stated that the Board should adopt the proposed ordinance pursuant to one of the following methods:

1. Adopt the ordinance on the first reading following a unanimous vote for approval.
2. Adopt the ordinance on the second reading via the consent agenda at the September 6, 2005 meeting.

Commissioner Messer made the motion to approve the NIMS Ordinance as presented. All voted in favor and the motion carried so the Ordinance was adopted unanimously.

ANIMAL ORDINANCE AMENDMENT

Rocky Hyder informed the Board that exotic animals present a challenge to animal service organizations due to their vicious propensities and capabilities, the likely gravity of harm inflicted by an attack, and unpredictability despite attempts at domestication. The Animal Services Committee considered a variety of issues in developing the exotic animal amendment to the Ordinance (from not allowing any exotics to allowing exotics by permit). In conclusion, the Committee determined a permit process would provide the most effective method for dealing with exotic animals.

The Animal Services Committee has reviewed and approved the proposed document for the Board's consideration (Animal Ordinance Amendment – Exotic Animals Section).

The County Manager stated that the Board should adopt the proposed amendment pursuant to one of the following methods:

1. Adopt the ordinance on the first reading following a unanimous vote for approval.
2. Adopt the ordinance on the second reading via the consent agenda at the September 6, 2005 meeting.

Discussion followed regarding native animals to our area versus exotic animals with at least one Commissioner feeling that native reptiles should not be considered exotic, even if they are venomous and expressing that camps should not have to be permitted and inspected if they keep some native reptiles as part of a nature program.

Commissioner Baldwin made the motion to adopt the Animal Ordinance Amendment as presented. A vote was taken and the motion carried three to two with Commissioners Moyer and McGrady voting nay. Since it was not a unanimous vote, there must be a second reading of this ordinance so it will be on the next agenda.

CEMETERY ADVISORY COMMITTEE CHARTER

Justin Hembree reminded the Board that on Monday, July 24, the Cemetery Advisory Committee reviewed a draft Charter for the Committee that was initially reviewed by the Board of Commissioners on July 20. All and all, the Committee supported the draft with two changes. First, the Committee added the wording "and as allowed by local regulations and State law" to the fourth bullet in the Committee's purpose. Second, the Committee felt that the number of members should be reduced from ten to seven. The Cemetery Advisory Committee requested that the Board approve the proposed Charter.

The County Manager stated that staff supports the Committee's request and recommends that the Board adopt the proposed Charter as revised.

Commissioner Baldwin made the motion to adopt the new Charter as presented with the requested changes and look at the Cemetery Advisory Committee attendance roster next month and make appointments at that time. All voted in favor and the motion carried.

EXTENSION OF HAULING AND DISPOSAL CONTRACT FOR MUNICIPAL SOLID WASTE

Over the past few months the County Engineer has been in negotiations with Waste Management of South Carolina on the extension of the contract for solid waste services to haul and dispose of the municipal solid waste collected at the Henderson County Solid Waste Transfer Station. Henderson County entered into contract with Waste Management beginning in 1998 with a 6-year contract. A three-year extension was executed in 2001 bringing the current contract expiration at the end of 2006. The proposed amendment to the contract will extend the expiration to the end of 2010.

Waste Management has offered to extend the contract through 2010 at the current rate of \$33.47/ton. This rate will be fixed through the term of the contract with no adjustments due to fuel cost increases or CPI. The current contract allowed increase for CIP, which will be discontinued through 2010. Increases are allowed for changes in rules and regulations, but none have occurred to date. All solid waste collected by Waste Management in Henderson County is required to be brought to the Henderson County Transfer Station. As with the current contract, either party can terminate the contract on a 6-month notice.

A second proposal was obtained from Republic Services (GDS) under the same terms as was being provided by Waste Management with the exception, GDS would not agree to bring all solid waste they collected in Henderson County to the Henderson County Transfer Station. The hauling and disposal rate offered by Republic was \$38.50/ton, which is \$5.03 higher than Waste Management.

Gary Tweed recommended that the proposed amendment to the Waste Management Contract be approved.

The County Manager recommended that the contract extension be approved as presented.

Commissioner McGrady made the motion to approve the contract extension as recommended. All voted in favor and the motion carried.

There followed some discussion on the issue of a second scale at the solid waste transfer station. Mr. Tweed is not currently actively pursuing putting in a second scale. Additional discussion was held concerning the back-up of traffic at the transfer station.

Commissioner Baldwin made the motion that the Board ask for a report from the County Engineer, that the problems be assessed and that in the report the issues will be explained to the Board with possible solutions to the problems. All voted in favor and the motion carried.

Electronic Recycling Effort

Commissioner McGrady stated that there had been a highly successful recycling effort related to electronic equipment about 10 days ago. He stated that it was amazing the number of cars that were there and how much was actually recycled.

Gary Tweed explained that the event was put on as a Land of Sky Regional Council funded event (grant funds). The grants ended up paying for about half the cost and we have to cover the rest. We collected nearly five tractor trailer loads of material in one day. There were about 1,500 – 2,000 computer systems, 500 – 1,000 TVs. Over 500 vehicles came through the site in two hours on that Saturday morning.

FOLLOW UP DISCUSSION PRELIMINARY ENGINEERING REPORT – MUD CREEK SANITARY SEWER INTERCEPTOR

At the July 15, 2005 meeting, the County Engineer presented the Preliminary Engineering Report prepared by Camp Dresser and McKee, (CDM), for the development of a sanitary sewer interceptor into the Mud Creek Basin. The area of study is from the Cane Creek Water and Sewer District existing sanitary sewer

system near Cane Creek into the Mud Creek Basin south to the Mountain Home Industrial Park. This proposed sanitary sewer interceptor has been approved by the Board as part of the CCWSD Interceptor Master Plan prepared by the County Engineer and has been 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 near the mouth of Mud Creek south of Butler Bridge Road and a proposed Industrial Park on the Tap Root Dairy Property on the north side of Butler Bridge Road. It is the desire of the County Engineer 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 the developments.

Windsor Aughtry Company had offered to contribute \$200,000 toward the development of the Mud Creek Interceptor project. The Board felt this offer was low and requested staff to send a letter to Windsor Aughtry. A letter was sent to Windsor Aughtry and a follow up meeting held on July 13, 2005 with Drew Norwood and his consultant William G. Lapsley. A letter to David Nicholson along with a letter to Norwood from Lapsley, was received July 21, 2005. Windsor Aughtry has reconsidered the matter and now is offering to contribute \$300,000 toward the County Project. The larger pump station/force main as part of Phase I of the Mud Creek Project is estimated to cost approximately \$1,000,000.

Staff feels that this is a reasonable offer from Windsor Aughtry and the County will not have a better opportunity to begin the development of sanitary sewer service into the Mud Creek Basin. The options we see are as follows:

1. Do nothing. Windsor Aughtry proceeds with the development of the Hollabrook Farms Subdivision and installs a small sanitary sewer lift station and force main connecting to the Mills River Interceptor.
2. Accept the Windsor Aughtry \$300,000 and construct the larger sanitary sewer lift station and force main connecting to the Cane Creek Interceptor. Engineering and construction by Windsor Aughtry as part of subdivision development. Henderson County to pay additional cost estimated at \$700,000. Lift station/force main will be owned and operated by CCWSD.
3. Accept the Windsor Aughtry \$300,000 and apply toward the entire Phase I Mud Creek Interceptor Project that includes the larger sanitary sewer lift station. Estimated total cost per CDM preliminary engineering report, \$2,104,707.50. Project to be responsibility of the County, would recommend engineering by WGLA in order to coordinate with subdivision development.

The County Manager stated that based on information presented, the Board will need to determine if \$300,000 from Windsor Aughtry is a reasonable offer. However, staff recommended that this board proceed with the development of Phase I of the Mud Creek Interceptor Project by adopting the prepared resolution.

Commissioner McGrady made the motion to proceed with development of Phase I of the Mud Creek Interceptor Project by adopting the Resolution exempting Henderson County from Engineer Selection as allowed by the General Statutes, and furthermore that we accept the Windsor Aughtry offer of a \$300,000 contribution to this Phase I Project. A vote was taken and the motion carried four to one with Commissioner Baldwin voting nay.

SCHEMATIC AND ELEVATION PLANS FOR THE HISTORIC COURTHOUSE REHABILITATION PROJECT

The County Manager presented schematic and elevation plans for the Historic Courthouse Rehabilitation Project and had discussions with the Board. No specific action was required at this time.

This project is expected to go out to bid in September. Staff plans to bring the bids to the Board for award in October.

Recess

Chairman Moyer called a 5 minute technical recess, to change videotapes.

STORMWATER MANAGEMENT AND EROSION AND SEDIMENTATION CONTROL PROGRAMS

Selena Coffey reminded the Board that currently, the 2005 Board of Commissioners' Strategic Plan and the Henderson County 2020 Comprehensive Plan (CCP) call for the drafting of erosion and sedimentation control (E & S) and stormwater management standards and requirements in FY 2005-06 and the implementation of these programs in FY 2006-07. At the July 20, 2005 Board of Commissioners' meeting, the Board directed Planning Staff to research pursuing the implementation of these items sooner than called for in the CCP and the Strategic Plan.

At this time, for major subdivisions and most special use permits, Henderson County requires written notice from NCDENR, Land Quality Section, verifying that a soil erosion and sedimentation control plan has been received; or written notification that no plan is required. NCDENR handles permitting, inspection and enforcement for all projects requiring E & S permits in Henderson County. Henderson County has minimal stormwater management guidelines in place in its land use regulations.

The basic stormwater management regulations outlined by the Phase II Stormwater Management Model Ordinance for North Carolina have been incorporated into the Land Development Code currently being drafted by Planning Staff. These regulations include development standards for low and high-density projects. For low-density projects the stormwater runoff must be transported from the development by vegetated conveyances to the maximum extent possible, built-upon area will maintain a 30 foot buffer from all perennial and intermittent surface waters, and an enforceable restriction will run with the property ensuring that future development and redevelopment will maintain these standards. Standards for high-density projects require that the post-development stormwater runoff will not exceed pre-development stormwater runoff for, at a minimum, the 1-year, 24-hour storm, all structural treatment systems shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids, general engineering for the project will be in accordance with the Design Manual, a 30 foot buffer will be maintained from all perennial and intermittent streams, and an enforceable restriction will run with the property ensuring that future development and redevelopment will maintain these standards. In addition to these stormwater management regulations, density and built-upon area incentives will be offered in the Land Development Code to developers choosing to incorporate Low Impact Development techniques into their development. Implementing these techniques will be voluntary on the part of the developer and will be rewarded with higher densities or increased built-upon area permitted within the development.

In order to develop a more comprehensive E & S and Stormwater Management program, planning staff currently working on the Land Development Code would need to be reassigned to this task, or a consultant would need to be brought in to develop the program while staff continues drafting the Land Development Code. Reassigning Planning Staff would have an impact on the Planning Department's ability to complete the Land Development Code according to the timeframe outlined in the CCP and the Board of Commissioners' Strategic Plan.

Should a more comprehensive E & S and Stormwater Management program be developed, the implementation of that program would need to be addressed as well. In the 2005 Strategic Plan and the CCP, implementation and enforcement is not scheduled until FY 2006-07. Therefore, funding for the staff necessary to begin enforcement of these regulations would need to be moved up accordingly. Another option for enforcement of these programs would be to contract with an engineering firm to conduct the plan review and inspections necessary for these programs as an alternative to hiring staff to enforce the regulations in-house.

The County Manager recommended the Board stay with the current implementation scheduled with the drafting of the E & S and Stormwater Management standards and requirements in FY 05-06 and implementation of those programs occurring in FY 06-07.

Following discussion, *Chairman Moyer made the motion to adopt staff's recommendation to stay on the current timetable (drafting in 2005-06 and ready to implement in 2006-07) and re-look at this issue after the Land Development Code is completed and see if there is any way we can move up the recommendation. A vote was taken and the motion carried four to one with Commissioner Baldwin voting nay.*

UPDATE ON PENDING ISSUES

Update on Water Authority/Water Issues

Chairman Moyer informed the Board that he and Mayor Niehoff had met and discussed positions again and are attempting to set up a meeting with Mayor Worley (City of Asheville). It has not been set yet. They would like to get the issue back on the table. The Water Authority currently is not functioning and will likely be dissolved.

Another issue has come up with respect to Mills River. They have their study with respect to the economic feasibility of them getting into the water business. Mayor Snyder would like to explore the possibility of them buying into the system in some way. Chairman Moyer would like to have something further to update the Board on this issue at our next meeting.

Commissioner McGrady asked the Chairman to circulate the Mills River study.

WHKP and Government Channel 11

Chairman Moyer stated that Eva Ritchey came into this meeting late, missed the sign-up for Informal Public Comments and asked to be allowed to have about 2 minutes to speak to the Board. Chairman Moyer asked the Board for permission to allow that.

Eva Ritchey - Ms. Ritchey stated that on July 19 she sent a letter to the Board of Commissioners expressing concerns about a local issue involving WHKP and Channel 11. She thanked the Board for responding to the concerns, responding positively on two of the requests. She was present to hear the discussion on the third request. She said thank you for a prompt reply and thank you for your consideration of this matter.

Chairman Moyer stated that one of the items in the letter was WHKP and Channel 11 and he indicated at that time that he would place this on the agenda for full discussion of the Board.

Chairman Moyer stated this is not the first time this has been on the agenda. He asked if the Board wished to give any direction with respect to this matter.

Much discussion followed. Commissioner Baldwin and the County Manager had worked on a list of criteria some time ago and Commissioner Baldwin asked that the list be resurrected and brought back to the Board for review and action. The County Attorney was asked to look at the legal aspects. It was the consensus of the Board to take firm action on this issue at the meeting on September 6.

Senate Bill #629/Ilford Site

Justin Hembree reminded the Board that at their last meeting there was some discussion about the possibility of having some folks here from Transylvania County and others to discuss this issue. The reason why no one has come to discuss the issue is that it looks like the project may be dead. However, there was a lot going on last week with the General Assembly in terms of substitution of Bills, changes in the language as to what would happen, etc. This is an economic development deal that would transfer property in or around the DuPont Forest to an industry but the State of North Carolina and/or Transylvania County would be responsible for any environmental clean-up or mitigation that would be necessary based on activities that took place at the site prior to this.

Last week Mr. Hembree talked to the County Manager in Transylvania County and everyone felt that the project was dead. There was a substitution Bill introduced the next day out of the Committee that this Bill had been held up in so it is still up in the air. The company is still very leery about this. The Governor's Office and DENHR are not happy at all with the Bill. There is still a lot of controversy surrounding this and nothing has formally been decided yet.

LME – CEO Selection Process

Chairman Moyer stated that the LME is extremely important to us in the mental health area. A lot has happened over the weekend.

Commissioner Messer stated that the search committee has been going through the process of interviewing applicants. They have interviewed about 5 members and narrowed it down to 2 finalists. Commissioner Messer stated that this will have a big impact on Henderson County.

Justin Hembree stated that by the middle of next week they hope that an offer will be extended and accepted. Currently there are two finalists. In order for the Board to hire a CEO they have to have 75% of the vote or a super majority vote. Mr. Hembree said that he was impressed with all the candidates, there was a good pool. The LME Board is meeting next Monday and hopefully after that an announcement will be made.

Broadband

Commissioner Young had talked with Congressman Taylor Saturday night. Congressman Taylor made a public statement that within the next 12 months Henderson County will have Broadband.

IMPORTANT DATES

Chairman Moyer reminded the Board of a public hearing scheduled for tomorrow evening at 6:00 p.m.

Chairman Moyer made the motion to cancel the mid-month meeting, August 17 regularly scheduled Board of Commissioners' meeting. All voted in favor and the motion carried.

There was discussion about the annual Volunteer Banquet. Ms. Brantley had recommended Tuesday, October 25 for the banquet at Highland Lake Inn. *Commissioner Young made the motion to accept Mrs. Brantley's recommendation and hold the Volunteer Appreciation Banquet Tuesday, October 25 at Highland Lake Inn. 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 reason(s):

- 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.*

All voted in favor and the motion carried.

Adjourn

Chairman Moyer adjourned the meeting at approx. 8:44p.m.

Attest: