

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
SEPTEMBER 6, 2005

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Shannon Baldwin, Commissioner Chuck McGrady, County Manager David E. Nicholson, Assistant County Manager Justin Hembree, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Budget and Management Director Selena Coffey, Public Information Officer Chris S. Coulson, Fire Marshal Rocky Hyder, Planner Lori Sand, Planner Autumn Radcliff, Utilities Director Jim Erwin, Finance Director J. Carey McLelland, EMS Director Terry Layne, and Nursing Director Barbara Stanley. 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 Young led the Pledge of Allegiance to the American Flag.

INVOCATION

David Nicholson gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer remembered those in the gulf coast region recently affected by Hurricane Katrina. He asked the community to do what they could to help the people from that region.

Theron Maybin showed the audience a sledge hammer given to his grandson by David Nicholson. Mr. Maybin's grandson had broken a piece of concrete with that hammer when the old jail was torn down. Members of the Historic Courthouse Committee, Commissioners, and County Staff had signed the hammer which could be displayed at the courthouse following the renovation.

Chairman Moyer displayed the plaque recently won by the Henderson County Raft Race team. He pointed out that the plaque was in recognition of the fact that Henderson County had come in last, and we must now display it prominently until it can be passed on to next year's last place finisher.

INFORMAL PUBLIC COMMENTS

1. **Donnie Bain** – Mr. Bain spoke as the Director of Falling Creek Camp, and discussed the Exotic Animal Ordinance. He spoke about the nature center and program at the camp, and how native species are used as a teaching tool. He stated that he supported an Exotic Animals Ordinance, but urged the Board not to consider species native to the area as exotic.
2. **Eva Ritchey** – Ms. Ritchey spoke on behalf of the Democratic Party. She discussed the situation with WHKP being broadcast on Channel 11, stating that it was a monopoly and as such was opposed by the Party. She also stated that Mediacom felt the broadcast of WHKP on Channel 11 was wrong, and pointed out several sections of the HCTV Broadcast Policies which appeared to support that view. In the interest of fairness to all citizens, the Henderson County Democratic Party requested the removal of WHKP from Channel 11.

DATE APPROVED:

3. **Richard Rhodes** – Mr. Rhodes spoke as the Vice-President of WHKP. He stated that WHKP had put cable TV on the air in Henderson County 36 years ago, and had a presence on cable TV for each of those years. He discussed the history of WHKP's relationship with Channel 11, the cost involved in setting up that station, and the numerous benefits to the community, particularly with respect to emergency situations, associated with having them on the air. He pointed out various legal opinions which stated that there were no legal issues associated with WHKP broadcasting on Channel 11. He urged the Board not to leave the County in the dark by removing WHKP from Channel 11.

4. **Sharon Alexander** – Ms. Alexander stated that she would be speaking as the legal representative of Radio Hendersonville, which runs WHKP. However, she first spoke for herself stating that as a member of the Henderson County Democratic Party, she, and every Democrat she had spoken with since the WHKP issue arose, disavowed themselves from the statements made by Ms. Ritchey. She requested that "Henderson County Democratic Party" be stricken from Ms. Ritchey's statements, as the leadership of the Party was appalled that Ms. Ritchey would represent this as an issue of the party.

Ms. Alexander then stated that there is no legal issue in this matter. The reason WHKP was currently being broadcast, was because at the time the channel was begun, there was nothing else available that would provide that service to the community. Since that broadcasting began, WHKP had consistently broadcast matters of community interest. She stated that in looking at the practicalities and option, there was no apparent solution other than to continue the broadcasting. If there were objectionable broadcasting, WHKP had the ability to stop broadcasting segments such as Rush Limbaugh.

5. **Robert Danos** – Mr. Danos spoke as the program director for Camp Mondamin for Boys and Camp Green Cove for Girls. The camps had been in business since 1922, and for most of those 84 years they had kept a wide range of animals at the camp as a learning tool for children. He stated that he supported an Exotic Animals Ordinance, but urged the Board not to consider species native to the area as exotic.

DISCUSSION/ADJUSTMENT OF AGENDA - continued

Chairman Moyer requested the addition of two items under Update on Pending Issues: "F-7" – Western Highlands Network New CEO, and "F-8" – Update on Pardee Hospital matters. He also added a Closed Session Item on an economic development matter. *Commissioner Messer made the motion to adopt the agenda as revised. All voted in favor and the motion carried.*

CONSENT AGENDA

Commissioner Baldwin requested that Item "Q" – Unsealing of Closed Session Minutes and Accounts, specifically the June 15, 2005 minutes, be pulled. Commissioner Young requested that Item "H" – Vehicle Bids and Item "I" – Vehicle Financing Proposals be pulled for discussion.

Chairman Moyer suggested those items be moved to the end of the Agenda for discussion. *Commissioner McGrady made the motion to approve the consent agenda without Items H, I and Q. 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 20, 2005 – regular meeting
- August 1, 2005 – regular meeting
- August 2, 2005 – special called meeting

Tax Discoveries

A list of 11 tax discovery requests was presented by the County Assessor for consent approval by the Board.

Tax Refunds

A list of 1 tax refund request was presented by the County Assessor for consent approval by the Board.

Tax Releases

A list of 83 tax release requests was presented by the County Assessor for consent approval by the Board.

Tax Collector's Report

Terry F. Lyda, Henderson County Tax Collector, had provided the Tax Collectors Report dated September 2, 2005 for the Board's information.

Financial Report – July 2005

Cash Balance Report – July 2005

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

Non-departmental expenses are for Property/Liability and Workman's Compensation insurance coverage that will be allocated out to each department during the fiscal year.

The YTD deficit in the Mills River Watershed Protection Project, the Mud Creek Watershed Restoration Fund and the Mills River Sewer Capital Project are all temporary due to timing differences in the expenditure of funds and the subsequent requisition of Federal and State grant funds to reimburse these expenditures.

Henderson County Public Schools Financial Report – July 2005

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

Amendment – Budget Ordinance

The Board was requested to amend the Fiscal Year 2005-06 Budget Ordinance to increase the elected officials' salary effective the first payroll period in July. This change would implement a 2% cost-of-living increase. The new salaries are as follows:

- Sheriff \$73,495
- Tax Collector \$62,012
- Register of Deeds \$53,972

The County Manager recommended that the Board approve this amendment.

School Health Nurse Contract

The Henderson County Board of Commissioners approved funding for a 10-month school nurse position for the school system. The Henderson County Department of Public Health has been requested to contract with the Henderson County Public Schools for provision of nursing coverage. There already exists a Health Department school health nurse contracted by Henderson County Public Schools. This arrangement works well in that there is continuity of services with physician supported medical backup, and all the school nurses are nationally accredited, a unique accomplishment and distinction among other counties in North Carolina. It would greatly benefit the school system if this public health nurse position could be authorized and filled immediately since it is a 10-month funded position and the school season has begun.

The County Manager recommended that the Board establish this nursing position so that we can contract with the Public School System.

Additional clerical employee for DSS and Legal

This was to request an additional entry-level clerical position. The proposed employee would be an employee of the Department of Social Services ("DSS"), but would be posted to work with and as a part of (and be supervised by) the legal department, devoting 100% of their time to DSS matters.

Through early 2005, many clerical tasks in DSS cases, particularly juvenile services cases, have been performed by the office of the Clerk of Superior Court. These tasks (including but not limited to the photocopying and service of court orders on attorneys and parties, tracking and reporting service of process) have not had specific statutory mandates as to *who* is required to perform them, only that they are required under the law to be performed. The Administrative Office of the Courts has encouraged our Clerk of Court's

office to no longer perform many of these tasks, instead focusing their efforts on only those duties required by statute. These tasks have fallen to the legal department, severely overtaxing the time of legal support staff with jobs that require a lower level of training than they possess.

The most efficient way (in total cost and in work-flow) to accomplish these tasks is this arrangement, where the employee is an employee of DSS working under supervision of the legal department. As an employee of DSS doing work exclusively for DSS, the employment costs of this employee would be reimbursable to the County on the same basis as other DSS employees. (All remaining employment costs for this employee for FY 2005-2006 would be covered by lapsed salary, so that no budget amendment is required.)

The tasks to be performed by the proposed employee were not contemplated as required of County government when your budget was created, since they were and always had been performed by another agency. However, as that agency will no longer perform these services, and as these services are required (that is, *someone* must do them, as the failure to have many of these services done in a timely fashion is grounds for an appeal (significantly delaying permanence for juveniles in DSS custody)), there is no real alternative to the County performing these tasks. In summary, this would be (1) an entry-level clerical position, (2) employed by DSS, (3) working as a part of the legal department.

The County manager was in support of the proposal.

Draft Amendment to Henderson County Hospital Corporation lease

Henderson County Hospital Corporation ("HCHC"), operator of Margaret R. Pardee Memorial Hospital, desires to modify its lease from the County for Pardee Hospital. The sole change desired is a clarification of the definition of a "purchase money Lien". A "purchase money Lien" is a type of lien which is permitted by the terms of the lease to be incurred by HCHC. The new definition reads as follows:

For purposes of this Lease Agreement a "purchase money Lien" shall be defined to include a lien (i) created at the time an item of personal property is purchased by the Hospital Corporation; (ii) in an amount which does not exceed the purchase price of the property; (iii) which secures monies loaned for the purchase of the property; and (iv) in which the secured party is any entity, not necessarily the vendor of the property, actually loaning or advancing the monies used for the purchase of the personal property.

Without the clarification, a "purchase money Lien" may technically be only granted in favor of the actual seller of the item purchased, and not, for example, in favor of a related entity dedicated to the financing of sales of the seller's products.

By way of example only, under the current definition, if HCHC wished to finance the purchase of a vehicle from Car Dealership, Inc., a dealer of Auto brand automobiles, made by the Auto Division of the Large Motors Corporation, HCHC could only grant a lien on the title in favor of Car Dealership, Inc., and not in favor, using this example, of Large Motors Acceptance Corporation, an affiliate of Large Motors Corporation which Auto Division dealers use to finance customer purchases of Auto brand vehicles. While this example likely bears no relationship to any plans of HCHC, the principle is the same for purchases of "big ticket" medical equipment, as well. The draft amendment would resolve this potential problem, as many medical equipment manufacturers do not directly finance the purchase of their devices, relying instead on third parties.

The proposed Amendment would allow liens to be created in favor of any entity so long as it is created at the time of the purchase of an item, so long as the lien amount is not greater than the purchase amount of the item, and so long as the lien secures money actually loaned for the purchase of the item by the party secured by the lien. The Board was requested to adopt a resolution clarifying the definition of a "purchase money Lien".

Modification of EMS Ordinance

Henderson County EMS director Terry Layne recommends the amendment of the Henderson County Emergency Medical Services Ordinance, in two ways:

1. By adding “non-transporting vehicles” (also known as “quick response vehicles”) to the definition of “ambulance” under the ordinance, so that their operation staffed by intermediate or paramedic level emergency medical technicians will require a franchise under the ordinance.
2. By adding a requirement that all franchisees comply with the Henderson County Emergency Medical Services program.

These amendments will allow the County to insure that non-transporting vehicles meet the state standards for the same, and also to insure that proper information exchange with the County and with the State (required by the County program) is assured.

The County Manager supported this proposal. This revision is in keeping with the Strategic Plan’s initiative to review the County’s Ordinance and make appropriate changes to update them.

Proclamations

The Board was requested to approve the following Proclamations/Resolutions:

1. 8th Annual Henderson County Benefit Toy Run Parade Day
2. Big Sweep Day Resolution
3. September as Youth Soccer Month

The Proclamations/Resolutions are attached hereto and incorporated as a part of the minutes.

Environmental Advisory Committee – Annual Report

The Environmental Advisory Committee presented their Annual Report for the Board’s review. No action was required.

Water and Sewer Line Extensions

The City of Hendersonville requested County comments on the following proposed water line and sewer line extensions:

- Dalton Property Water Line Extension
- Carriage Park Section 21 Water Line Extension
- Willow Brook Falls Water Line Extension
- White Oak Village Sewer Line Extension

The City of Hendersonville’s Project Summary sheets and County review sheets with staff comments for the projects were included for Board review and action.

Petition for addition to State Road system

Staff recommended approval of the following petitions for additions to the State Road system:

- Highland Golf Drive
- Lyndon Lane
- Holly Hill Drive N
- Hampton Drive
- Nob Hill Road
- Alton Way
- Colonial Way
- Hickory Nut Trail
- Bayberry Way
- Sourwood Trail
- Plum Tree Lane
- W. Turkey Paw Trail

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.

Referral of Special Use (PUD) Application to Planning Board – River Stone Subdivision

Windsor-Autry Company has submitted a development plan and applied for a special use permit to be allowed to create a planned unit development to be known as "River Stone Subdivision".

Pursuant to 9200-33.A of the Henderson County Code, before the Board of Commissioners may act on such a request, this matter requires "the advice and recommendation" of the Henderson County Planning Board. Under §200-33.F(3), "[t]he Board of Commissioners shall not issue a special use permit until it has received recommendations from the Planning Board. If no action is taken by the Planning Board within 45 days of the meeting at which the Planning Board first considers the development plan, it shall be deemed to have recommended approval of the development plan, and the Board of Commissioners may proceed to act upon the application."

If the Board were so inclined, the following motion was suggested: *I move that the application for a special use permit for a planned unit development by Windsor-Autry Company for "River Stone Subdivision" be forwarded to the Henderson County Planning Board, pursuant to section 200-33 of the Henderson County Code.*

Improvement Guarantee for Mountain Meadows

Jeff Donaldson and Ken Burgess, owners of the project, submitted an application for an improvement guarantee for Mountain Meadows major subdivision. Mountain Meadows is a 42-lot major subdivision located off of Oleta Road. Mountain Meadows was conditionally approved by the Planning Board on November 18, 2003. Jeff Donaldson has indicated that all improvements, except for the improvements to be bonded, are complete. The attached improvement guarantee application is proposed to cover the remaining road construction 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 developers intend to post with the County an irrevocable letter of credit in the amount of at least \$62,740.00 to cover the cost of the improvements (\$50,192.00) as well as the required twenty-five percent (25%) contingency (\$12,548.00). The proposed completion date for the improvements is April 15, 2006.

A draft Performance Guarantee Agreement was presented for the Board's consideration. If the application were 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 Mountain Meadows, 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 Shuey Knolls

Henderson County Habitat for Humanity, owner of the project, submitted an application for an improvement guarantee for Shuey Knolls major subdivision. Shuey Knolls is a 103-lot major subdivision located off U.S. Hwy 64 (Chimney Rock Road). Shuey Knolls was conditionally approved by the Planning Board on July 15, 2003. The attached improvement guarantee application is proposed to cover grading, road construction, water system improvements, drainage, erosion control and road shoulder stabilization.

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 \$194,400.00 to cover the cost of the improvements (\$155,520.00) as well as the required twenty-five percent (25%) contingency (\$38,880.00). The proposed completion date for the improvements is June 1, 2007.

A draft Performance Guarantee Agreement was presented for the Board's consideration. If the application were 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 Shuey Knolls, subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

Improvement Guarantee for Phase II of The Homestead at Mills River

The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC, owners of the project, submitted an application for an improvement guarantee for Phase II of The Homestead at Mills River. Phase II was conditionally approved by the Planning Board on May 17, 2005. The improvement guarantee is proposed to cover the cost of completing, earthwork, grading, road construction and installation of erosion control measures and storm drainage work in The Homestead at Mills River, Phase II.

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 developers intend to post with the County a surety performance bond in the amount of at least \$1,665,606.25 to cover the cost of the improvements (\$1,332,485.00) as well as the required twenty-five percent (25%) contingency (\$333,121.25). The proposed completion date for the improvements is September 15, 2006.

A draft Performance Guarantee Agreement was presented for the Board's consideration. If the application were approved, the developers must submit a surety performance bond in accordance with the terms of the Agreement. Once the County receives a surety performance bond in proper form, the relevant parties must execute the Agreement.

The County Manager recommended that the Board approve the improvement guarantee application for Phase II of The Homestead at Mills River, subject to the developers submitting to Henderson County a surety performance bond in accordance with the terms of the draft Performance Guarantee Agreement.

Non-Profit Funding Agreements

Subsequent to the approval of the FY 2005-06 Budget, staff had distributed the funding agreements to the non-profit agencies receiving County allocations. Staff will be including signed funding agreements on the Board's consent agendas as we receive them from the agencies.

The County Manager recommended that the Board authorize the Chairman to execute the following funding agreements and, in doing so, authorize the release of the first of the aforementioned agencies' quarterly allotments.

1. Western Carolina Community Action
2. Historic 7th Avenue District
3. Dispute Settlement Center
4. WNC Communities
5. SSEACO
6. Arts Council of Henderson County
7. Volunteer Medical Resource Center
8. Blue Ridge Literacy Council
9. Boys & Girls Club
10. Mills River Watershed Protection Program
11. Community Development Council
12. Council on Aging
13. Healing Place
14. Environmental Conservation Organization
15. Children & Family Resource Center
16. Pisgah Legal Services
17. Alliance for Human Services
18. Interfaith Assistance Ministry

Request for Public Hearing on October 3, 2005 for Road Names

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

Farm View Drive

The County Manager recommended the public hearing be scheduled for Monday, October 3, 2005 at 7:00 p.m.

NOMINATIONS

Notification of Vacancies

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

1. **Cemetery Advisory Committee – 7 vac.**
2. **Hendersonville Planning Board – 1 vac.**
3. **Juvenile Crime Prevention Council – 1 vac.**
4. **Senior Volunteer Services Advisory Council – 2 vac.**

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.**
At the August 1, 2005 meeting, Commissioner Young had nominated Dr. Elizabeth Todd. *Chairman Moyer made the motion to accept her nomination by acclamation. All voted in favor and the motion carried.*
3. **Hendersonville City Zoning Board of Adjustment – 3 vac.**
Commissioner McGrady nominated Kenneth Stubbs for reappointment to Position #1 and Jay Angel for reappointment to Position #3. Commissioner Young nominated Joe Cox for appointment to Position #2. Ms. Brantley stated there was no application on file for Mr. Cox. *Chairman Moyer made the motion to accept Kenneth Stubbs and Jay Angel for Positions #1 and 3 respectively by acclamation. All voted in favor and the motion carried.*
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.

ANIMAL ORDINANCE AMENDMENT

At the Board of Commissioner’s meeting on August 1, 2005, the Board approved the first reading of several amendments to the Animal Ordinance concerning exotic animals. The purpose of this agenda item was for the Board to consider adoption of the amendments through a second reading.

Rocky Hyder informed the Board that there had been some clarifications made to the Definitions Section. Pursuant to comments from a member of the Animal Services Committee, there is a need to more clearly define some of the subspecies within some of the animal species. Those definitions had been reclassified, but they had not yet been before the full Animal Services Committee. Mr. Hyder stated he would like to take those before the full Committee prior to additional discussion.

Chairman Moyer asked Mr. Burrell what the Board’s options were regarding this item. Mr. Burrell stated that the Board was not obligated to move forward with a vote tonight. They could vote on an amendment tonight, but if they vote on a amendment to what they already had, they would have to have a second reading unless it were a 5-0 vote. If there were any opposition they could not move forward with an amended version from this point. If the Board directs staff to come back with changes, that would begin the process again and the first reading would be of no significance.

Commissioner Baldwin discussed the difference between individuals keeping animals such as venomous snakes, and organizations which collected native species for educational purposes. He stated that he believed there should be a permitting process associated with organizations using such species for educational purposes. Commissioner McGrady disagreed with Commissioner Baldwin, stating that the County was seeking to regulate an area where there was no need for regulation. Commissioner McGrady suggested the Board refer the ordinance back to Staff and the Animal Services Advisory Committee for a re-write.

Following additional discussion, Chairman Moyer suggested allowing the Animal Services Committee to re-visit the ordinance, review the definitional changes that had been proposed, examine whether the inclusion of a permitting fee should remain within the ordinance, and bring back their recommendations to the Board. It was the consensus of the Board to proceed with that suggestion.

UPDATE ON HISTORIC COURTHOUSE PROJECT

David Nicholson presented the following schematic design budget for the Historic Courthouse Project:

Historic Courthouse Project Schematic Design Budget

Construction:

Base Bid	\$5,320,000
Abatement	\$570,000
Design Contingencies (20%)	\$1,178,000
Sub-Total	\$7,068,000

Extra Services:

Courtroom A/V and Site Issues	\$1,500,000
Extra Services Contingencies	\$150,000
A & E Fees (7.6%)	\$494,000
Sub-Total	\$2,144,000

Total Project Cost \$9,212,000

He discussed the substantial cost of abatement, due to the large amount of lead based paint and asbestos. He noted that he had programmed in a large amount of Contingencies - 20% Contingency in the schematic budget for design. He had also plugged in an amount for the Courtroom A/V, any site upgrades and a 10% Contingencies for these costs.

Mr. Nicholson then discussed several options that would be available to the City of Hendersonville in designing the front lawn and issues associated with parking. He answered some questions from the Board on the variety of uses for the front lawn, and possible issues with leased parking spaces. Commissioner Baldwin questioned whether there would be adequate parking for the public, especially during meetings that might have a large attendance. He also discussed issues downtown merchants might have with the County taking up spaces that could be used for shoppers. Chairman Moyer stated that he felt that since the Sheriff's Department would be moving off Main Street, an offsetting number of parking spaces would be freed up.

Hendersonville Mayor Fred Niehoff first assured the Board that the City would cooperate and work with the County on plans for the Courthouse. He stated that they were interested in working toward a downtown center type concept, including participating in the cost. Merchants in the area are aware of the tradeoff between parking spaces, versus having an attractive park-like area that people will want to walk toward. He discussed several options for parking, such as making 1st and 2nd Avenues one-way to create diagonal parking. He expressed that they did not wish to pursue building a parking deck, but would work with the County on some other plan to create parking on the south end of Main Street. Mayor Pro-Tem Ron Stephens also addressed the Board, and reiterated Hendersonville's commitment to work with the County, particularly with respect to parking.

Dr. George Jones then addressed the Board, stating the plans showed about 80% of what he'd like to see. He wished to see parking completely off the courthouse property, with a green park surrounding the courthouse. With respect to parking, he felt that having to park a block and a half from the courthouse wouldn't hurt anyone. Dr. Jones stated that after working on the Courthouse for nine years, this was the first time the Board had a plan of action in front of them. He urged the Board to move forward on restoring the Courthouse now.

Commissioner McGrady questioned what was needed for the Board to move forward from this point. He understood we need continued consultation with the City with respect to the parking issue and the design of the front lawn, as well as authorization to put together a bid package consistent with the schematic drawings provided. Chairman Moyer stated that he had confidence that the City would work with the County on parking, and that the County should work to maximize the green space behind the courthouse, while providing essential parking.

Commissioner McGrady made the following three part motion: he moved that 1) the Board direct staff to continue to consult with the City of Hendersonville on the design of the front of the Courthouse and with respect to parking in and around the Historic Courthouse, 2) the Board direct staff to work on the design for the back of the Courthouse that would maximize the green space with the minimal parking necessary for handicapped access, and 3) that the Board direct Staff to put together a bid package, following consultation with the City on the redesign of the back side consistent with the financial numbers and designs they put together. Following much additional discussion on timing and additional parking issues, a vote was taken on the motion. All voted in favor and the motion carried.

PUBLIC HEARING – Rezoning Application #R-2005-03 (O&I to R-10) Blue Ridge Community College, Applicant Jon Laughter, Applicant's Agent

Commissioner McGrady made the motion to go into Public Hearing. All voted in favor and the motion carried.

Autumn Radcliff addressed the Board, stating that 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 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 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 September 6, 2005, public hearing regarding rezoning application #R-2005-03 were published in the Hendersonville Times-News on August 17, 2005 and August 24, 2005. The Planning Department sent notices of the hearing via first class mail to the applicants and owners of properties adjacent to the Subject Area on August 25, 2005. Planning Staff posted signs advertising the hearing on the Subject Area on August 26, 2005.

The Subject Area is located in the southern portion of the Blue Ridge Community College property off College Drive (SR 1920), approximately 900 feet west of the intersection of College Drive and South Allen Road (SR 1756). The Subject Area is situated between the Herman Weisberg Training Center (used for fire, rescue and other emergency services training) located to the west, and the Elizabeth House and Pardee Care Center facilities, located to the east.

The Subject Area is currently zoned O&I, which was applied on October 1, 1990, as part of the East Flat Rock Phase I Land Use Plan. The Subject Area is surrounded on the north and east by, an O&I zoning district, to the south by a C-4 (Highway Commercial) zoning district, and to the west by an R-20 (Low-Density Residential) zoning district.

The O&I (Office and Institutional District) is intended to provide a compatible mixture of office, low-density residential, light commercial and institutional uses. The R-10 (High-Density Residential District) which is proposed for the subject area is intended to be a high-density neighborhood consisting of single-family and two family residences and small multifamily residences. The major difference between O&I and R-10 is the square footage of the lots. O&I requires a 30,000 square foot lot, while R-10 requires a 10,000 square foot lot. The Subject Area is currently undeveloped. Looking at the surrounding area, most uses within the vicinity of the Subject Area consist of residential, commercial, and institutional community and cultural uses. Residential uses are to the west and southwest of the Subject Area, as well as to the northeast, across College Drive and South Allen Road. Commercial uses can be found along Spartanburg Highway and Old Spartanburg Highway to the southwest of the Subject Area, and along Upward Road to the south of the Subject Area. Other non-residential uses include the Elizabeth House and Pardee Care Center to the east, and an office building for Four Seasons Hospice and Palliative Care which is also being built to the east. In addition, a wood products manufacturer and an RV park are located to the east and southeast. To the north of the Subject Area is Blue Ridge Community College. It is important to note that, looking westward, the Subject Area is located adjacent to the Herman Weisberg Training Center (which is used for fire, rescue and other emergency services training). The Subject Area has access to City of Hendersonville public water and sewer lines.

Staff's position at this time, under the guidelines of current plans, policies, and studies, was it supports the East Flat Rock Area, Phase I Land Use Plan's recommendation for the Subject Area to be zoned for office and institutional uses. This was based on the following: Both the text and map of the 2020 CCP identify the Subject Area as being located in the Urban Services Area (USA) and suitable for industrial development, with a portion of the Subject Area being identified for conservation. Although the CCP states, "wide ranges of residential densities will exist," it also states that, "public schools should be developed within the USA whenever possible."

The pending Industrial Study will help the County further refine the industrial land use recommendations in the CCP and will, eventually, lead to industrial sites being zoned industrial. It is possible that the industrial land use classification in the Blue Ridge Community College area could be changed to some other category as a result of the Industrial Study.

The Subject Area is located adjacent to Blue Ridge Community College, and current zoning allows for a wide range of uses that are usually found near colleges. The proposed R-10 zoning district would, primarily, only allow for residential uses. Based on comments from Henderson County Emergency Services, the Subject Area's close proximity to the existing Herman S. Wiseberg Training Center makes the Subject Area less desirable for R-10, High-Density Residential development. In addition, a small portion of the Subject Area appears to be located within the 100-year floodplain. Staff has identified no plans or policies, changes in existing conditions, or overriding community interest that would justify granting the proposed rezoning.

It is generally incumbent upon the Applicant to demonstrate an overriding justification for approving a given rezoning application. The applicant demonstrated such justification at the Planning Board meeting. 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 based on the following: Blue Ridge Community College stated that the land is not desirable for the college's facilities nor is the Subject Area part of the college's expansion plans, the Board felt that there have been many studies done of this property and found that it is more desirable for residential as opposed to office and institutional facilities based on the soil type and stability.

Public Input

1. Rocky Hyder – Mr. Hyder stated that he was speaking on behalf of the Henderson County Fire and Rescue Association, which operates the Herman Wiseberg Training Center. While the Association is not necessarily opposed to the project, they were concerned that their activities might be considered un-neighborly by the individuals who might move into the area. Based on the proposed map of the area, some of the residential units are in very close proximity to the Center. While the Center is often very quiet, when fire training is in progress, they were definitely not nice neighbors. They requested that the owners of those parcels, or the potential buyers of those parcels, acknowledge the fact that the Center exists there and had an investment that would cost \$2,000,000 to relocate to a different area.

Ron Stephens stated that he was one of the partners in this venture, and they had the full support of Blue Ridge Community College. The project will be connected with the college, though not financially. He stated that with respect to the Herman Wiseberg Training Center, they had spoken with Pardee, whose Nursing Center was located near the property, and Pardee had never had any problems with the Training Center. On any purchase documents, disclosure of the Center would be included, which would document that the property owners were aware of the Center and had no problems with it.

Planning Staff answered several questions from the Board on some of the uses in the area, particularly Elizabeth House and Pardee Care Center. Commissioner Baldwin stated that he felt it was incumbent upon the Board to show why rezoning the property was in the best interest of the community. Russ Burrell stated that for rezonings, the Board had a requirement showing how that rezoning fit with the Comprehensive Plan, or how the Comprehensive Plan should be modified to fit with a general use.

Chairman Moyer made the motion to approve the request to change the zoning on Rezoning Application #R-2005-03, from O&I to R-10 due to R-10 being consistent with the development of that area and the property, the residential concept is in keeping with nearby development, and the fact that the concerns of the Fire and

Rescue Association had been addressed. The motion carried 3-2 with Commissioner Baldwin and Commissioner Young voting in opposition.

Commissioner Messer made the motion to go out of Public Hearing. All voted in favor and the motion carried.

REVISIONS TO THE SEWER USE ORDINANCE

Russ Burrell noted that the North Carolina Department of Transportation (NCDOT) had changed its requirements concerning the granting of encroachments to private parties to construct sewer facilities parallel and adjacent to the State roads. When it is not technically possible to build a total-gravity sewer collection system, which may, upon certain requirements being met, be deeded to the Cane Creek Sewer District, developers are considering building a combination gravity/pump station/force main sewer collection system which they would own and operate. However, if the developer can't secure an encroachment for a force main from the NCDOT, this option is eliminated.

In order to (a) assist developers with securing a NCDOT encroachment for sewer collection systems to be owned by the developer and (b) protect the Cane Creek Sewer District against unnecessary risk and expense, staff was requesting that the Board amend the Sewer Use Ordinance per the attached edition. A number of other proposed additions and changes establish procedures for developers to serve the various types of development with a privately-owned sewer collection system. Other proposed revisions addressed the elimination of the Mud Creek Water and Sewer District and better identify potential water suppliers.

Still other proposed revisions address new billing and collection arrangements and formalize the policy that sewer collection systems must be total-gravity in order for Cane Creek Water and Sewer District to accept ownership. A copy of the Ordinance to Revise and Amend Henderson County Sewer Policies is attached hereto and incorporated as a part of the minutes.

David Nicholson noted that this item addresses the issue that was caused by the ruling by NCDOT about allowing private developers to use their rights-of-way. This item is also in keeping with the Board's Strategic Plan's initiative to review all of the County's ordinances and make any appropriate changes to update them.

Commissioner McGrady made the motion to adopt the revisions to the Sewer Use Ordinance as reflected in the draft Ordinance provided to the Board. All voted in favor and the motion carried.

UPPER BROAD RIVER WATERSHED PROTECTION PROGRAM NON-PROFIT FUNDING AGREEMENT

Commissioner Baldwin reminded the Board that one of the items in the Comprehensive Plan included a commitment to water quality. To that end, a Non-Profit funding agreement had been drafted which would be between Henderson County and another non-profit such as the Mountain Valley Resource Conservation and Development Council, Inc. or the Carolina Mountain Land Conservancy for the Upper Broad River Watershed Protection Program.

There was discussion regarding whether the County should enter into a funding agreement with the *Mountain Valley Resource Conservation and Development Council, Inc.* or the *Carolina Mountain Land Conservancy* for the Upper Broad River Watershed Protection Program. Because the Upper Broad River Watershed Protection Program is not itself a 501c3 agency, it is necessary that the County enter into an agreement with another such agency, whereby the funds would then be passed through to the Program. Mr. Baldwin noted that he would prefer that the County contract with the Carolina Mountain Land Conservancy, and that all activities undertaken by the Agency within Henderson County must show measurable outcomes benefiting Henderson County.

Commissioner Baldwin made the motion to adopt the Agreement presented to the Board, with the change noted (addition of language that all activities undertaken by the Agency within Henderson County must show

measurable outcomes benefiting Henderson County) and that we use Carolina Mountain Land Conservancy as the other party for the Agreement. All voted in favor and the motion carried.

INCREASE OF LOCAL CABLE FRANCHISE FEE

Russ Burrell stated that the newly adopted North Carolina budget (Session Law 2005-276, formerly Senate Bill 622) increases the reach of North Carolina's sales and use tax to include, among other things, payments to local cable television companies. The tax rate on these payments is the "combined general rate" of tax, currently seven percent (7%). However, cable companies are granted a credit against this tax for franchise fees paid to local governments, up to a total of five percent (5%).

The current franchise fee rate payable to Henderson County under the Henderson County Cable Television Ordinance (Chapter 74 of the Henderson County Code) is three percent (3%) of each franchisee's gross revenues. Under the current state of affairs, the State would receive a windfall of two percent of Mediacom's gross revenues.

Proposed was a draft amendment to the Cable Television Ordinance, which would increase the franchisees' fees to five percent (5%) of gross revenues. Only one sentence of the ordinance is changed, shown as follows: The grantee shall pay to the County during the life of the franchise a sum equal to five percent (5%) of the gross annual revenues per year in the areas of the County's jurisdiction pursuant to § 74-1 of this chapter.

The adoption of this amendment would not increase the bills to Henderson County taxpayers. They will pay seven percent, either as franchise fee or as sales and use tax, regardless of the Board's action. The adoption of this ordinance would only affect the recipient (Henderson County, versus the State of North Carolina) of a portion of that money. Mr. Burrell requested that the Board change the effective date from October 1st, to December 1st, which is the date the State's 7% tax goes into effect. Such a change would also assist with Mediacom's accounting issues.

Commissioner McGrady made the motion to approve the amendment to the Henderson County Cable Television Ordinance to increase cable television franchise fees per the draft amendment presented, with the only change being the effective date of December 1, 2005. All voted in favor and the motion carried.

UPDATE ON PENDING ISSUES

Rescue Squad Funding

Chairman Moyer reminded the Board that following discussion of Rescue Squad Funding at a previous meeting, the Board authorized him to take the matter to the LGCCA to see if each municipality and the County would adopt a tax which would fund the Rescue Squad. The LGCCA members wanted additional information about the role of the Rescue Squad prior to making a decision. Chairman Moyer went back to the Fire and Rescue Advisory Committee, and told them there were some issues with respect to the role, and requested they hold a hearing to accept input on the funding. That meeting was scheduled for September 7th. Following that meeting, the Committee will determine what type of recommendation they would like to make back to the Board with respect to funding.

Tax Administration Office

Chairman Moyer stated that with thanks to Representative Justus and Senator Apodaca, legislation had passed that would allow the County to move forward with a plan to form a Tax Administration Office. There will be a gradual implementation process associated with the change, and the Board will be presented with a specific plan now that we have the okay to move forward.

House Bill 947

Chairman Moyer noted that he had learned about this Bill while at a recent NCACC meeting in Charlotte. Apparently, several counties had gotten onto a bill which would enable them to implement an additional one (1) cent sales tax dedicated to capital projects, and in most cases for schools. That was in lieu of there being no relief from Medicaid, and no other legislation with respect to giving counties any flexibility with respect to taxes. To enact the tax in any county, the Board of Commissioners would have to approve it, and then there would be a Referendum. Because the Bill was scheduled to be voted on the day following Chairman Moyer

learning about it, he had requested that Henderson County be added to the Bill, to allow the option if desired. However, no vote ended up being taken on the Bill.

Lottery

Russ Burrell stated that using some unique parliamentary procedures, North Carolina had enacted a Lottery. He discussed the following allocation for the associated money:

- 5% of gross revenues will go to a Reserve Fund used to level lottery proceeds over time until that fund reaches \$50,000,000
- Of the remaining net revenues, after allocating for cost of expenses and prizes
 - 50% will go to the program for early grade class size reduction to an 18:1 ratio, and academic pre-kindergarten for at-risk 4 year olds
 - 40% will go to the public school building capital fund
 - 65% of that will be allocated on ADM
 - 35% allocated only to those counties whose effective tax rate is greater than the state average effective tax rate
 - 10% college university scholarships

NCACC projections for Henderson County proceeds were:

- Year 1, FY '06-'07 - \$973,563
- Year 2, FY '07-'08 - \$952,000
- Year 3, FY '08-'09 - \$1,054,000
- Year 4, FY '09-'10 - \$1,127,000

WHKP

Commissioner McGrady began the discussion, stating that he had mixed feelings on the matter. He didn't feel there was any justification for the County to be sponsoring its channel, and for opinion pieces and political ads to be running throughout a government sponsored cable broadcast. On the other hand, he felt some of the things the radio station does were important to the County, such as emergency and community information. He was interested in the station's ability to remove from the air, pieces that really shouldn't be running on a public station. He further suggested the County develop criteria for what can go on Channel 11, which will allow a radio station to be on the channel while filtering out the inappropriate content.

Commissioner Young agreed that WHKP had provided a service to the County, and questioned whether the County could provide a similar service. He did however, feel that the County should be in control of the programming done on the channel.

David Nicholson stated that Staff had come up with some broad categories for criteria. One important area dealt with disbursing emergency information. While the County can immediately place things on the character generator, any programming comes via taped programs, and we are limited to seven tapes a day. The only live discussion possible at this time is through a radio station. Mr. Nicholson stated that if the Board decides they are comfortable with a radio station being on Channel 11, Staff would want to address the issues such as Rush Limbaugh's program and political ads.

Chairman Moyer stated that rather than looking at specific instances, he felt that the Board should draw up the criteria which would have to be met, and see if any radio stations can meet those criteria. If no stations can meet that criteria, then no station will be on. If one can meet it, then it will be on. The problem may come if both local stations can meet the criteria. For example, one of the criteria should be that no political ads may be run on Channel 11.

Following some additional discussion, *Commissioner McGrady made the motion to direct Staff to bring back, at the next meeting, criteria for awarding the broadcast rights on the government channel. And, that in the interim, Staff work with WHKP and look at other options to eliminate political talk shows and religious programming until such time as the Board makes a decision on the award of that franchise.* Chairman Moyer

questioned whether Commissioner McGrady would consider splitting that into two separate motions. Commissioner McGrady agreed to split the motion. *Commissioner McGrady made the motion to direct Staff to bring back at the next meeting, criteria for awarding the broadcast rights on Channel 11. All voted in favor and the motion carried.*

Commissioner McGrady then made the motion to direct Staff to either unilaterally or through the cooperation of WHKP, eliminate political talk shows and religious programming which is currently on Channel 11 until such time as the Board makes a decision on the award of that franchise. Following much additional discussion, Commissioner McGrady amended his motion to strike the elimination of religious programming at this point. Commissioner Baldwin wished to go on the record that he personally did not have a problem with individuals broadcasting messages from their particular faith community, but in terms of fairness it probably was an issue that would need to be addressed. Commissioner McGrady restated the motion to direct Staff to either unilaterally or through the cooperation of WHKP, eliminate political talk shows currently on Channel 11. All voted in favor and the motion carried.

Land Development Code

Selena Coffey provided a brief background on the Land Development Code. Last July the Board of Commissioners adopted the County Comprehensive Plan (CCP), which included the consolidation of the County's development ordinances into a single Land Development Code. The Code was also included in the Strategic Plan and was scheduled for completion this Fiscal Year, FY '05-'06. The purpose of the Land Development Code was to provide for better coordination of related development ordinances, improve on plan review and the permitting process, and provide a regulatory structure for managing growth and development that's well organized and understandable by the public. The Code will require the revision of Land Development regulations, and may include the official zoning map as a well a zoning ordinance text.

Lori Sand, Planning Project Manager, provided a progress report on the Land Development Code's development. She stated that the first draft of the Code was almost complete, and they anticipated distributing that draft to the Planning Board at their September 20th meeting. They also planned to have a bulleted list of the major items which were outlined in the CCP, or which became issues during the last rewrite project.

Chairman Moyer stated that it was very important to try to stay on the time schedule already approved by the Board of Commissioners. In order to do that, he felt it was essential that the Board give the planning department direction and guidance with respect to how the procedure should happen. Specifically, Chairman Moyer felt they should direct Planning Staff and the Planning Board not to have public input or public hearings on the draft that's being proposed by the Planning Department. The Board of Commissioners would then be responsible to hold the public hearings.

Commissioner McGrady stated that he was strongly supportive of the public input process lying with the Board of Commissioners. He agreed that the Planning Board should be directed to review the ordinance and give the Board of Commissioners its best recommendation. The Planning Board should specifically be told that the Board of Commissioners will undertake the public process once they have an Ordinance recommended by the Planning Board.

Following additional discussion, *Chairman Moyer made the motion to request the authority from the Board to send a letter to the Planning Department and Planning Board indicating that it is the Board's desire that they stay on the current schedule, that they not receive formal public comment or input, and that the Board of Commissioners will undertake and carry out that responsibility. All voted in favor and the motion carried.*

Western Highlands Network New CEO

Charlie Messer stated that it had been a long process, but Arthur Carder Jr. had been hired as the new CEO for the Western Highlands LME. Justin Hembree pointed out that per the Resolution adopted by this Board as well as the other Boards in the LME area, a 75% vote was required to hire the CEO. Mr. Carder comes from Georgia's mental health system, which has been dealing with mental health reform for several years. Mr. Carder's first day at Western Highlands will be October 3rd.

Update on Pardee Hospital matters

Chairman Moyer stated that he had been amazed to read in the Times-News that Commissioner Baldwin had made a public statement charging him with maneuvering with other leaders in the County behind the scenes to sell the hospital. He stated that those were serious accusations, and called on Commissioner Baldwin to provide the names and give evidence of that. Commissioner Baldwin stated that he felt it was ironic that the Board had been called into Closed Session at the last minute to discuss a matter of which the Board had no knowledge. There followed heated discussion with Chairman Moyer requesting Commissioner Baldwin's evidence, while Commissioner Baldwin discussed his concerns about the process.

Chairman Moyer distributed to the Board a court decision regarding Charlotte Mecklenburg hospitals. That decision provided a clear guide to hospital boards that they can only disclose the salary, in the most narrow sense, when discussing hospital executives. Everything else is considered part of their personnel file, which does not allow for discussion of compensation, total compensation, or severance. This decision must govern what the Hospital Board does.

With regards to Jon Schurmeier, the Interim CEO, Chairman Moyer felt the Hospital Board had selected a very qualified person to be the Interim CEO. He had already provided good guidance and direction to the Board on a number of difficult issues.

There followed some additional heated discussion about the financial situation at the hospital. Ron Stephens, Chairman of the Hospital Board, addressed the Board. He stated that the hospital was a very serious issue, but that Henderson County was not alone with these problems. He stated that there were some very dedicated, very competent people on the Hospital Board, and they were working very diligently with some good advisors trying to make moving forward a positive experience. He stated that with respect to the Hospital Board, no discussion had ever been held with anyone regarding selling the hospital.

There was discussion about the possibility of holding a joint meeting between the Hospital Board and the Board of Commissioners. *Commissioner Baldwin made the motion to set a meeting date to have a joint meeting with the Hospital Board. The motion failed 2-3 with Chairman Moyer, Commissioner McGrady and Commissioner Messer voting in opposition.*

Commissioner Baldwin discussed a request that had been made by the Times-News requesting specific types of information in the possession of the hospital. He asked Mr. Stephens to update the Board on the status of that request. Mr. Stephens answered the hospital's attorney, Sharon Alexander had answered that request, quoting court cases and statutes that governed what could be provided. Everything that could legally be provided, had been provided. Commissioner Baldwin requested a copy of that letter, which will be provided by Ms. Alexander.

IMPORTANT DATES – no business**ITEMS CARRIED FROM THE CONSENT AGENDA****Item H - Vehicle Bids**

Carey McLelland reminded the Board that included in the budget were funds to finance the purchase of new vehicles which were either expiring leases, new positions requiring a vehicle or vehicles that met the County's replacement policy. On July 29, 2005, Finance Staff along with departments to receive new vehicles prepared a Motor Vehicle Request for Proposal (RFP) which was made available to interested bidders. The RFP was made available on the County's website as well. An invitation to bid pursuant to the RFP was duly advertised in the Hendersonville Times-News on July 30, 2005 (see attached Exhibit A). A pre-bid conference for this project was held on August 3, 2005 in the Henderson County Finance Department. On August 19, 2005 at 2:00 p.m., a total of four (4) bids were received by the Finance Director in the Finance Department and were reviewed for responsiveness.

Staff recommended that the Board consider approving a resolution awarding the bids to the lowest responsive bidder for the vehicles requested. The resolution authorizes the Finance Director and the County Manager to

issue purchase orders for the vehicles awarded. A copy of that resolution, detailing the bids awards, is attached hereto and incorporated as a part of the minutes.

Commissioner McGrady made the motion to adopt the resolution with respect to the purchase of the vehicles, which was provided for the Board's consideration. All voted in favor and the motion carried.

Item I - Vehicle Financing Proposals

In the current year's budget the Board approved the installment contract purchase of new vehicles to replace vehicles in the County's fleet that either had leases expiring during the fiscal year or were requested and approved as new vehicle replacements for certain departments.

Staff requested proposals from financial institutions to do an installment contract purchase financing for fifty-one (51) new vehicles at a total cost not to exceed \$958,000. Provided for the Board's review were the results of the financing proposals that were received from seven financial institutions. Bank of America has been certified as the lowest responsive proposal to finance the new vehicles for a 3-year term at a bank-qualified interest rate of 3.35 percent. The total annual debt service payments required would be \$337,005.32. The first quarterly payment of \$84,251.33 would be due in January 2006. Also provided for the Board's review were draft copies of the Installment Purchase Contract and Acquisition Fund and Account Control Agreement.

Staff recommended that the Board consider approving a resolution accepting and approving the proposal received from Bank of America and authorizing the Chairman and staff to execute the required financing documents. No formal approval by the Local Government Commission or a public hearing is required to enter into this installment purchase contract financing.

Commissioner McGrady made the motion to adopt the Resolution accepting the proposal from Bank of America to finance the purchase of new vehicles for the County. All voted in favor and the motion carried.

Item Q - Unsealing of closed session minutes and accounts

The following minutes/accounts from closed sessions of the Board of Commissioners were approved by the Board at the 1 August 2005 meeting. Pursuant to policy, at the same meeting the Board determined that the purpose of the closed session involved in these matters would not be frustrated by the release of these minutes, or that the minutes should no longer be kept sealed. The Board's approval, in open session, is sought, pursuant to policy, to allow unsealing of the attached minutes.

17 December 2003

18 February 2004

3 May 2004

19 May 2004 (Raflatac)

25 May 2004 (Raflatac)

18 August 2004 (Park Ridge)

16 February 2005 (Harper)

23 March 2005 (Raflatac)

15 June 2005

21 June 2005

Commissioner Baldwin stated that with respect to the June 15th minutes, he felt it was questionable whether that was a legal closed session. He did not support that the minutes reflected what occurred during that meeting.

Commissioner McGrady made the motion to unseal all of the above listed closed session minutes and accounts, including June 15, 2005. He stated that if there was a problem with having a Closed Session, Commissioners should at that time have objected to the Closed Session going forward, or not approved the minutes. It frustrated him that they were dealing with a procedural matter well after the occurrence of the events.

Following that discussion, a vote was taken on the motion. *The motion carried unanimously, with Commissioner Baldwin abstaining.*

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)(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.*

All voted in favor and the motion carried.

Adjourn

Following Closed Session, Chairman Moyer adjourned the meeting.

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman

