

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
JULY 19, 2006**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 9:00 a.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 Steve Wyatt, Assistant County Manager Justin Hembree, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Anthony Starr, Deputy Clerk to the Board Amy Brantley, Utilities Director Doyle Freeman, and County Engineer Gary Tweed.

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

Commissioner Shannon Baldwin gave the invocation.

INFORMAL PUBLIC COMMENTS

1. Dick Baird – Mr. Baird addressed the Board as a taxpaying citizen of Henderson County. He requested that the action verb bashed be changed to chided in the June 27 Board meeting minutes, informal public comments where Mr. Baird spoke.

On May 1 he spoke to the Board about the growing illegal alien problem in Henderson County and submitted a formal recommendation that a Blue Ribbon Panel be convened to quantify the problem for the Board and make recommendations to the Board. This month we have seen Representatives Taylor and Myrick announce initiatives to identify and deport certain of the illegals. "The Henderson County Sheriff's Department is in the middle of this yet this Board seems to have little formal interest. The train is leaving the station on this issue and to my knowledge, you're not on board."

"The recent budget review cycle saw major questions in the capital construction and facilities operations and maintenance portions of both the Public School and Blue Ridge Community College budgets. In North Carolina, the counties are responsible for funding construction, operations and maintenance of educational facilities and the state funds those costs associated with instruction. The educational organizations currently are provided the capital budget and perform the capital function. An alternative is for the county to handle the total capital load centrally. Better overall prioritization of the county capital efforts would be expected as well as economies of scale. I leave with you a formal recommendation that the County Manager be tasked to consider this alternative in development of the 2007-2008 budget and report to you on the quantitative and qualitative impacts."

2. Eva Ritchey – Ms. Ritchey spoke on behalf of the Henderson County Democratic Party in reference to WHKP. "We have come to you and asked you to return fairness to this issue of our publicly financed cable television. We have stated to you that governments must not give advantages to one business or political ideology over another. The current monopolistic arrangement is nothing less than a public giveaway of an important community resource to a private commercial interest. WHKP is using this gift of a potentially vital public resource to promote partisan political views. Members

DATE APPROVED _____

of the Board of Commissioners – it is now time to restrict the use of our government channel 11 to the purpose for which it was created, government programs. All political, commercial, and religious programming must be removed from this taxpayer channel... The Democratic Party has only one goal in this issue – the fair and equal treatment of all citizens. Presently all citizens are not being treated fairly and equally. The current monopolistic arrangement gives a public resource to a private commercial interest and it is using a public resource to promote partisan political views, to promote your own elected positions at taxpayer expense, to promote one religious belief over another, and to promote one business at the expense of another. You have received a letter from the American Civil Liberties Union. I hope you will take it in all seriousness. I hope you will respect it and respect the source for who they are and I hope, as the letter, the guest columnist said – I hope you will do the right thing.”

3. Philip Stanley – Mr. Stanley has lived in Mills River for the past 13 years. The school system attracted his family. After putting three children through the school system, he hopes the voters will give him the chance to serve as a school board member come November.

He stated he controls his financial life with two checkbooks, one for personal and one for business income and expenditures. If he screws up he pays the price. Soon the Henderson County Public Schools will present their May Financial Report. He stated that we shouldn't be fooled by all the financial weaving going on. “We need a school board that will do their work and not be like a small child at Christmas who presents a long laundry list of school proposals and expects the Board of Commissioners to decide what is best just because you have the money. At your last meeting you took the heat from Mills River parents for problems long ignored and promises not kept. You performed well under fire but in all honesty the fault doesn't lie with you. We have a bland, don't make waves, and every vote is unanimous school board that wants all the bells and whistles, happy someone else has to pay the bills, and luckily seemingly unaccountable to anyone. I sincerely hope that will change.”

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer noted that two draft sets of minutes were presented for approval although only one got onto the printed agenda. He requested the addition of “A-1 minutes of the special meeting of July 6.”

Chairman Moyer requested the addition of a Resolution honoring Ciara Newman, Miss North Carolina's Outstanding Teen 2006 and wishing her well in the Miss America Outstanding Teen competition. He wanted this added as “O” under consent agenda.

Commissioner McGrady made the motion to adopt the agenda as amended. All voted in favor and the motion carried.

CONSENT AGENDA

Commissioner McGrady requested that the draft minutes from the regular meeting of June 27, 2006 be removed from the consent agenda.

Commissioner McGrady made the motion to adopt the consent agenda minus the above mentioned minutes. All voted in favor and the motion carried.

Commissioner McGrady made the motion to adopt the minutes of the regular meeting of June 27, substituting the work chided for bashed (as requested by Dick Baird, above). All voted in favor and the motion carried.

Minutes

Draft minutes were presented for the Board's review and approval of the following meetings:

June 27, 2006, regular meeting

July 6, 2006, special called meeting

Tax Collector's Report

Terry F. Lyda, Tax Collector, had presented for the Board the Tax Collector's Report dated July 17, 2006.

Financial Report – May 2006

Cash Balance Report – May 2006

Information only, consent approval requested.

The YTD deficit in the Register of Deeds budget is due to excess excise tax from property transfers collected during the fiscal year of which 48 percent is required to be remitted to the State and is budgeted in a Register of Deeds expense line item. This will be corrected with a budget amendment in June.

The YTD deficit in the Court Facilities budget is due to the addition of a new courtroom in the building as well as utility costs in excess of the budget for the fiscal year. This will be corrected with a budget amendment in June.

The YTD deficit in the Emergency 911 Communications Fund is due to FY2006 approved appropriations for the purchase of new generators for the mountaintop communication sites, a GIS software application update that links GIS data with the Computer Aided Dispatch (CAD) system and complete replacement of the UPS-battery backup system in the 911 Center which are being paid for from fund balance appropriated.

The YTD deficit in the Mills River Watershed Protection Project and the Lewis Creek Restoration Project is temporary due to timing differences in the expenditure of funds and the subsequent requisition of Federal and State grant funds.

The YTD deficit in the Historic Courthouse, New Sugarloaf Elementary School and the new BRCC Technology Education Building Capital Projects will be reimbursed by financing proceeds from the sale of Certificates of Participation (COPS) in June 2006. The YTD deficit in the Mills River Elementary School Project, which was pulled from the 2006A COPS financing, will be reimbursed from a separate, future financing debt issue.

Henderson County Public Schools Financial Report – May 2006

The School's report was provided for the Board's information and consent approval.

Surplus Property

Presented for the Board's consideration was a resolution (Exhibit A) declaring the attached list (Exhibit B) of vehicles and equipment no longer used by the County as surplus property. The resolution also authorizes staff to advertise for sale and dispose of this surplus property by electronic public auction at www.govdeals.com after the required advertisement of the sale.

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

Statement of Intention for Standard or Electing Status for the Work First Program

State law requires each county, biennially, to submit a County Work First Block Grant Plan to the Division of Health and Human Services (DHHS). Each county Board of Commissioners is required, by Statute, to:

- Notify the State (prior to August 31, 2006) as to whether the county selects standard or electing status. Notification includes documentation of majority vote and Chairman's signature (notification form included in packet).
- Appoint a member of the Board of Commissioners to the Work First Planning Committee.

- Approve the Work First Planning Committee membership (recommended membership included in packet).

The Henderson County Board of Social Services recommended Standard Status and approval of the Work First Planning Committee membership.

The County Manager recommended accepting the recommendations of the DSS Board.

Requesting Revision of the By-Laws for the Henderson County Juvenile Crime Prevention Council

The Henderson County Juvenile Crime Prevention Council (JCPC) members have reviewed the By-Laws again. The Council requested that the By-Laws be modified to better meet the needs of the Juvenile Crime Prevention Council.

Staff recommended approval of the By-laws as presented.

Governor's Highway Safety Grant Program

Captain Rick Davis (Sheriff's Office Support Services Div.) with the Henderson County Sheriff's Department submitted the following request addressed to Justin Hembree, Assistant County Manager.

At the request of the Town of Mills River, the Sheriff's Office submitted a grant request to the Governor's Highway Safety Program. The purpose of this grant was to obtain a fully equipped Deputy dedicated to working traffic enforcement within the town limits of Mills River.

On June 22, 2006, the Governor's Highway Safety Program gave initial approval for this grant. The next step in this process requires approval from the Henderson County Board of Commissioners in order to proceed past the initial/conceptual stage.

After agreements & costs are completed, the Sheriff's Office will seek final grant approval from the Town of Mills River and the Henderson County Board of Commissioners. No County funds are being requested as part of this grant application process.

The Sheriff's Office requested action endorsing the Governor's Highway Safety Program grant on behalf of the Town of Mills River and respectfully requested this item be placed on the Board of Commissioner's consent agenda for July 19, 2006.

The County Manager recommended endorsement of the above referenced Governor's Highway Safety Program grant.

Improvement Guarantee for the Deer Meadow Subdivision

Mr. Bob Scheiderich with Southern Pride of WNC Inc., owner and developer, submitted an application for an improvement guarantee for a subdivision titled Deer Meadow. The project site for Deer Meadow is located on 47 acres of land off General Hill Road. A total of 50 lots are proposed. The Henderson County Planning Board granted conditional approval of a Combined Master Plan and Development Plan on January 17, 2006. The improvement guarantee for Deer Meadow is proposed to cover erosion control, drainage, construction of the roads which includes paving and installation of the public water system.

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 for 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 improvement guarantee approval date. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$556,788.75 to cover the cost of the improvements (\$445,431.00) as well as the required twenty-five percent (25%) contingency (\$111,357.75). June 30, 2008 is the proposed completion date of the improvements.

A draft Performance Guarantee Agreement was included 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 the Board approve the improvement guarantee application for the Deer Meadow subdivision subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

MSD Rate Increase

The wastewater collected by the Cane Creek Water and Sewer District (CCWSD) sewer system is treated by the Metropolitan Sewerage District (MSD). Effective July 1, 2006, the amount that MSD charges the CCWSD for wastewater treatment will increase from \$4.21 per 1,000 gallons to \$4.40 per 1,000 gallons.

Staff's recommendation was to pass the additional cost on to the CCWSD sewer customers. If this meets with the Board's approval, staff requested the Board approve the Proposed Rates as shown on Exhibit A.

If the CCWSD sewer rates are increased, as proposed, the monthly sewer bill for the average homeowner will increase by \$0.85 (eighty-five cents).

The County Manager recommended approval of the proposed rates as shown on Exhibit A.

Strategic Plan Monthly Report

Included for the Board's review was the Strategic Plan Monthly Report. The purpose of this monthly report is to examine the extent to which the issues within the Strategic Plan have been addressed and the goals have been achieved.

No action was required.

FY 2007 Amended Budget Ordinance

Included for Board review/ratification was the FY 2007 Budget Ordinance as amended on July 6, 2006.

Staff recommended that the Board ratify this amended ordinance per their vote at the joint Board of Commissioners-Board of Public Education meeting held on July 6, 2006.

Resolution Recognizing the Service of Bill Byrnes to Henderson County Government

Bill Byrnes will be retiring from service with Henderson County Government on July 31, 2006. A resolution had been prepared recognizing Mr. Byrnes' service to Henderson County.

The County Manager recommended adoption of the resolution as presented.

Water Line Extension – a'Virea

The City of Hendersonville had requested County comments on a proposed water line extension project to serve a'Virea development.

A City of Hendersonville Project Summary sheet, with backup documents and a County review sheet with staff comments were included for Board review and action.

The County Manager recommended the Board take action to support the referenced water line extension.

NOMINATIONS

Notification of Vacancies

There were none.

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. Environmental Advisory Committee – 2 vac.

Tom Davis was nominated to position #9 on June 27 but we did not have an application for him at that time. We now have his application. Also nominated to position #7 were Anthony Campano and Beth Bochoven, neither of whom is currently interested in being appointed.

Commissioner McGrady nominated Tim Weatherill for position #7. There were no other nominees for position #7 nor position #9. *Commissioner McGrady made the motion to appoint Mr. Weatherill to position #7 and Tom Davis to position #9. All voted in favor and the motion carried.*

The Board was not prepared to name a Chair for that Committee. Ms. Brantley will write to the members of the committee to see if anyone is interested in serving as the Chair. This issue was rolled to the next meeting.

3. Hendersonville City Zoning Board of Adjustment – 1 vac.

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

4. Historic Preservation Commission – 4 vac.

Commissioner Baldwin nominated Babs Kuykendall.

Chairman Moyer nominated Judy Abrell.

There were no other nominations at this time.

Chairman Moyer made the motion to accept both nominees by acclamation. All voted in favor and the motion carried.

5. Juvenile Crime Prevention Council – 4 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 – 3 vac.

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

7. Solid Waste Advisory Committee – 1 vac.

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

8. WCCA Board of Directors – 1 vac.

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

PRESENTATION CONCERNING COST EFFECTIVE SCHOOL CONSTRUCTION

Chairman Moyer stated that when the Mills River School situation developed, we started looking at various alternatives of how to proceed. This was something that came to the County Manager's attention and he decided to take a look at this. Chairman Moyer stated that when this first came up he had discussions with Ervin Bazzle and other members of the School Board, making them aware that we were going to look into this. Chairman Moyer informed them that the Board was not trying to pre-emp them but it was something we thought would be of interest and thought might be of interest to them also.

Steve Wyatt explained that Vice-Chairman Messer and he had the opportunity to meet with Mr. McClure, CEO of Construction Control Corporation, and heard a brief presentation. Based on conversation with Vice-

Chairman Messer, they both thought that the Board would be interested in meeting Mr. McClure and hearing a presentation from him on the company and what they do, their track record, etc.

Mr. Lee R. McClure of Construction Control Corporation presented a Power Point presentation to the Board concerning cost effective school construction and the services that are offered by his firm. He, and his associate John Caron (President of Construction Control Corporation) presented the following PowerPoint presentation

Mr. McClure's Power Point presentation is attached and incorporated as part of these minutes.

Dr. Page and some of the School Board members heard the presentation and were given an opportunity to make comments. Dr. Page had just left, because he had a 10:00 appt. but Mr. McClure distributed copies of his presentation to the School Board members in attendance: Melissa Mauer and Ken Butcher. Ms. Mauer, Vice-Chair of the School Board, stated that this is interesting to the School Board but that many of the things they offer are things that the School Board is currently doing. She stated that they are always interested in keeping the cost as low as they can.

Board member Ken Butcher asked a question of Mr. McClure. Mr. McClure stated that they tailor the program not to duplicate anything that has already been done that is workable. Mr. McClure also explained that they negotiate a lump sum fee, usually in the 3% - 6% range. They usually save enough to pay their fee, and many times they save more than their fee.

Steve Wyatt asked the Board to take the information they had been provided, carefully consider it, and staff will place this issue back on a future agenda for further discussion.

Chairman Moyer stated "When you look at the time constraints and what we're trying to do with Mills River, if the Board would agree, I think we ought to ask that the School Board have a discussion with us and we would encourage use of this concept in approaching the Mills River and ask that we have discussions with the School Board with respect to incorporating this kind of concept in the Mills River project as we move forward... Let the minutes show the consensus of the Board, Melissa (Mauer) we'll ask that you talk to the School Board and encourage use of this concept to see if there are savings and how we could make it work and how it might help in the Mills River project. I can guarantee, as Commissioner Baldwin said and I know we're going to be looking at it on the Courthouse project because it does have broader application and we will need it there as well."

SECOND ELEVATOR – HUMAN SERVICES BUILDING

Justin Hembree stated that based on discussion during the Board's last meeting, this item was placed on this agenda. Alan McGuinn with Calloway Johnson Moore & West, P.A., the lead architect for the Human Services Building project, was present and addressed the topic. Mr. McGuinn had supplied the following background information for Board review:

A second elevator was considered but was not programmed into the project primarily due to budget considerations, but we also discussed actual need. Early in the design stage of the project one centrally located elevator was considered adequate. It is actually not uncommon to provide one elevator in a two story building of this size, although a second elevator is certainly more convenient, particularly at move-in. Adding the elevator now is a little more difficult but certainly not impossible or impractical. The best location would probably be in area "C" which is the expansion space in the east end of the building near the current service drive. This location would work with deliveries, and being future expansion space, construction would not interfere with currently planned occupancy and operations. We project that a 4,000 lb. hydraulic service elevator with 2 stops will cost from \$80,000 to \$125,000, depending on the structural and electrical modifications required, but we need to consult with Cooper for more accurate estimates. To proceed we would first need to identify an appropriate location, and have Cooper develop some preliminary estimates, then we would develop

construction documents for the revision. We would send the County a proposal for additional services prior to initiating these documents. We would send the County a proposal for additional services prior to initiating these documents. Our fee would be approximately \$8,000 to \$10,000 depending on the location and elevator selection. Once the drawings and specifications are complete Cooper could provide hard construction numbers for a change order and order the elevator, while we submit the documents to the Department of Labor for approval. The design would require approximately three weeks from your authorization. The DOL review will take four to five weeks. The lead time required to deliver the elevator is approximately six weeks. Actual construction would probably take at least three months from completion of design to final occupancy.

The County Manager recommended not proceeding with the construction of a second elevator at this time. However, considering a second could be constructed in the future expansion area, it would be appropriate to re-evaluate the need of a second unit once operations in the new building have begun.

Following discussion, it was the consensus of the Board to accept staff's recommendation to not proceed with a second elevator at this time.

INCREASES IN PLANNING FEES

Anthony Starr, Planning Director, recommended increases to select planning fees. The recommended increases are those shaded in the tables included in the agenda packet. The only significant change, he pointed out, was in the area of major subdivisions where they recommend the addition of \$50 per road for major subdivisions. It is tied to the amount of work staff has to do in reviewing and inspecting the roads. The fees still will not cover the cost of staff's time. As of July 1, staff has been cataloging their time on each case so that at the next budget cycle they will have the information to show the Board what their actual costs are for processing the average case. Mr. Starr stated that with the Land Development Code, he sees some opportunities for streamlining some of their processes

The County Manager recommended the Board's adoption of the proposed fee increases

Commissioner McGrady moved the adoption of the revised fee schedule. All voted in favor and the motion carried.

BLUE RIDGE COMMUNITY COLLEGE FINANCES

Commissioner Young had requested that this be placed on the agenda for discussion. Commissioner Young explained that he has the utmost respect for Dr. Sink and his Board at Blue Ridge Community College (BRCC) but there has been a lot of information/disinformation in the newspaper and on the news media. He briefly mentioned the Board of Governors for Community Colleges and the State Auditor. Both are currently doing reports on BRCC. He felt the Board of Commissioners should invite the State Auditor or someone from his department to attend a Commissioners' meeting and inform the Board of what they have found in their audit so the Board of Commissioners can make a proper decision whether we need to do an audit of the county funds.

Commissioner McGrady stated that his understanding of the audit the State Auditor is performing at BRCC is not just an audit of the state funds but rather an audit of the colleges' funds, which are both funds coming from the county and from the state. He further stated that any report issued by the State Auditor is a public record and we have ability to view those reports that are being generated by the State Auditor.

Steve Wyatt met with Dr. Sink on Thursday and received a copy of the audit which was then provided to the Board the next day. The State Auditor looks at all funds. The report does identify funds by source: local funds, contributions, fees, etc. The audit, as audits are, is samples of transactions. He saw no exceptions related to county funds. Not every transaction is looked at in an audit. If Commissioner Young has particular issues or questions then those particular or specific issues or questions can be asked and answers can be received and that can be done through the County Manager or Board to Board.

TELEVISION CABLECAST POLICIES (HCTV 11)

Russell Burrell informed the Board that included in the agenda packet were proposed new policies for cablecast over HCTV Channel 11. They are essentially in two parts: Articles 2, 3 and 4, dealing with programming that is both audio and video in nature, and Article 5, which deals with “audio-only” programming.

The guidelines for combined audio and video programming are very similar to those currently in effect. Those for audio-only programming are greatly revised, to take into account board and contractual requirements. Please note that, in the case of audio-only programming, failure to abide by these guidelines, even once, can result in the dropping of such programming from HCTV 11. (This is not needed for combined audio and video programming, since the County will directly control such cablecasts.)

Mr. Burrell stated that the five terms of article 5 are entirely new. The provisions prior to article 5 are very similar to our existing broadcast policies and they would cover all manner of programming other than audio-only programming. Mr. Burrell reviewed the provisions of article 5 with the Board, stating that a contract would be required. Among other things, the requirements of that contract are also the same requirements that are in the proposed WHKP Radio Hendersonville contract the Board will review next. Certain content is restricted under this audio-only programming, that being paid political programming. The provider of the audio-only content would be required to make sure that no paid political programming airs over the signal that is provided to Channel 11. For other types of content – opinion content that is not paid political content or religious content, a disclaimer is required. That disclaimer would be required before and after any block of such programming and it would notify listeners that the content of such programming does not necessarily contain the opinion of and is not either endorsed by or disapproved by Henderson County Government, its elected officials or employees and that the provider of the audio-only programming, and not the county, has control over what the programming is. Mr. Burrell feels that successfully avoids the county’s problems in the establishment of religion cases that have been cited by various folks. The biggest problem that you run into are what are called excessive entanglements problems, where it gets into the county either establishing and pushing a particular religion or suppressing a particular religious viewpoint. We avoid that by this disclaimer and by shifting liability. One of the other provisions of the contract is that any liability including the cost of the defense of any suit that’s brought being undertaken by the third party contracting with the county to provide the audio-only content, in this case the concrete example of Radio Hendersonville/WHKP. They would provide us with a defense and they would indemnify us against any losses as result of their broadcasting, if any lawsuit was actually brought under this proposed contract.

There was some discussion regarding the ACLU with Mr. Burrell stating that he had spoken to Mrs. Parker, who is the Attorney who provided a letter to the county from the ACLU of North Carolina. The Commissioners had received copy of the same letter. Mr. Burrell – “I think it is fair to say that first of all their position is that while they disfavor this they don’t have any concrete authority that would find this particular type of arrangement in any way illegal but that their concerns, while not completely gone, are much ameliorated by the fact of these disclaimers being provided in the programming.”

There was discussion regarding “equal access”. WHKP bases their decision regarding equal access based on a business decision

Russell Burrell informed the Board that allowing commercial content is clearly permissible if your purpose is not to allow that commercial content. If you are allowing WHKP Radio on for certain other purposes; local news, local sports, what have you, and as a result of that there is also commercial content provided but that is not the purpose you’re providing, your purpose is to get the local news and sports, it is clear in the case law that that is not a problem for you.

If the Board is so inclined, the County Manager had offered the following motion:

I move that the Board adopt the proposed new policies for cablecasting on HCTV Channel 11.

The Board went right into discussion of the next agenda item, since it was related to this one.

CONTRACT WITH RADIO HENDERSONVILLE, INC.

Provided for the Board's information was a draft contract with Radio Hendersonville, Inc. (WHKP) regarding provision of audio signal for HCTV Channel 11. According to the Board's previous discussions, this contract draft includes the following:

- A term ending June 30, 2008, subject to earlier termination pursuant to any cable franchising agreements.
- Recognition that Henderson County intends to increase the amount of non-text programming on Channel 11, such that there could be a lower demand for audio only content during the term of the agreement.
- Indemnification of the County by Radio Hendersonville, Inc., against any liability on account of the broadcast of WHKP feed over Channel 11.
- Disclaimers prior to and following religious or political programming advising listeners that (1) the content of such programming does not necessarily contain the opinion of and is not either endorsed or disapproved by Henderson County government, its elected officials or employees, and (2) Radio, and not the County, has control over what programming is broadcast on WHKP.
- Prohibition of broadcast of "paid political programs" over Channel 11 (including both long-form programs and commercials); there is no prohibition of broadcast on WHKP, of course, only on that feed going out over Channel 11.
- Compliance with "equal opportunity" and "equal time" provisions of Federal law.
- Compliance with County policies as adopted.

If the Board is so inclined, the County Manager had offered the following motion:

I move that the Board approve the language of the proposed contract with Radio Hendersonville, Inc., and direct the Chairman and staff to execute a contract containing substantially identical terms.

Mr. Burrell stated that a couple of changes had come to him just this morning, to be added as bullets 9 and 10. One was a restatement of a policy provision that is contained as 5.5 in the policies. A violation of the terms of the contract or of the policies means termination of the provision of audio-only programming from this provider. The other would give the radio station the right to terminate this agreement upon 30 days notice to the county if they chose to do so.

Chairman Moyer asked that one thing be added to the termination provision, he thinks that it has to be crystal clear that if the radio station elects to terminate or if it is terminated because of violation of any of the terms of the agreement, the indemnification with respect to any actions that are brought or based on what has occurred prior to termination would continue to apply and the county would receive indemnification.

Russell Burrell stated that he would work on such language and have it ready for the Board at this meeting. Chairman Moyer asked that he revisit whether the non-discriminatory language should also be in the policies.

The Board will revisit this issue and take action, later during this meeting.

ALTERNATIVE REVENUE TASK FORCE APPLICATIONS

Attached were the applications received for the Alternative Revenue Task Force for the Board's consideration and further discussion as deemed appropriate. Applications received from:

Steve Dozier
Edward Fortaw
Ed Glenn
David Nichols
Carl Shaw

Paul Taylor
Candler Willis

Steve Wyatt reminded the Board that at their last meeting they chartered a Task Force to look at alternative revenue sources for necessary capital construction. This issue follows up on the heels of the discussion the Board had earlier. He added one additional letter of interest to be a member of the Task Force, from Hall Waddell for a total of eight interested applicants. There had been earlier discussion of a 7 – 9 person charter. The Board had discussed some diversity from a couple of aspects, different walks of life, different professions, different interests. All of these volunteers are males. There has been no interest shown or contact from any person associated with the school system. Mr. Wyatt felt that the Board needed to have the roster put together in August so that this group could become organized and begin their work.

Commissioner McGrady suggested that this issue be rolled to the August 2 meeting because we need a broader range of applicants.

There was a suggestion to have representation from the area of agriculture and from the school board as well as some balance between male/female.

It was the consensus of the Board to roll this item to the August 2 meeting.

Recess

Chairman Moyer called a brief recess to change videotapes.

PUBLIC HEARING – Rezoning Application #R-20-6-01 (R-20 & RC to R-10)

The Layman Foundation of North Carolina and B.L. Hyder, Applicants

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

Rezoning Application #R-2006-01, which was submitted on May 17, 2006, requests that the County rezone approximately 107.07 acres of land, located between Interstate 26 and Norfolk Southern Railroad in the Naples community, from an R-20 (Low-Density Residential) zoning district and RV (Rural Conservation) zoning district to an R-10 (High-Density Residential) zoning district. The Subject Area appears to be parcels 9661-02-2982 and 9651-92-1626 which are owned by the respective applicants, the Layman Foundation of North Carolina (parcel 9661-02-2982) and B.L. Hyder (parcel 9651-92-1626).

The Henderson County Planning Board considered rezoning application #R-2006-01 at its regularly scheduled meeting on June 20, 2006. During that meeting, the Board voted 7 to 0 to send the Board of Commissioners a recommendation for denial of rezoning application #R-2006-01 to rezone the Subject Area from existing R-20 and RC zoning to an R-10 zoning district.

Before taking action on the applications, the Board of Commissioners must hold a public hearing. In accordance with Section 200-76 of the Henderson County Zoning Ordinance and State Law, notices of the July 19, 2006 public hearing regarding rezoning application #R-2006-01 were published in the Hendersonville Times-News on June 28, 2006 and July 5, 2006. The Planning Department sent notices of the hearing via first class mail to the owners of properties adjacent to the Subject Area on July 5, 2006 and to the applicants July 6, 2006. Planning Staff posted signs advertising the hearing on the Subject Area on July 6, 2006.

Following the public hearing, Board action to approve, modify, or deny rezoning application #R-2006-01 would be appropriate.

Anthony Starr informed the Board that he was just handed the second written request and now has written requests from both applicants to postpone the hearing or continue the hearing until the August 16 meeting. He informed the Board of a couple of choices:

1. Staff can go ahead and present the information as they normally would and then the Board could make a decision as to whether to postpone the hearing, or
2. The Board can have that discussion now. The Board could continue the public hearing and no further advertisement or public notice would be required or the Board could set a date for a new hearing and staff would have to re-advertise and re-notice the hearing.

Mr. Starr felt the applicant's intent was to try to address some of the issues raised at the Planning Board meeting.

County Attorney's opinion

Russell Burrell stated that once the Board goes into public hearing, if they continue it, it would not require re-noticed. The Board, as the decision maker, would have the right to continue it. The decision is totally in the Board's discretion.

Much discussion followed. Chairman Moyer asked those in attendance – "If we continued it to August 16th are any of the parties here that would like to participate in this hearing that would not be able to be available on the 16th?"

Public Input

1. Dorothy Freeman – Ms. Freeman stated that she has lived on the farm 52 years. There were two houses on that farm road in 1952 that had access to the road that Fletcher Academy is going to have to drive out. It is still a one-lane road at this time. Now there are four houses on that road, she lives in one of the houses, her daughter lives in one and there are two other houses on that property. They all drive out the same way, the same single lane road. There is a proposed 20-foot right-of-way on the upper side of the road that she yielded to Mr. Hyder when he was in the trash business. When the property floods they have to exit over on the property that she bought 40 years ago. She drives out the back way as does her daughter. Ms. Freeman has allowed the other two people to drive out the back way. The first of June she sold that piece of property to Mr. Justus and held 15 feet so that she can go out that back way when it floods.

She left town on June 25 and has been out of town (vacation) for three weeks. The property flooded on June 27. She stated that there is no way that we can put the number of houses on that property that is planned. She sees no way to bring a large amount of people out of there when there is a heavy rain or a flood.

A lady from the audience came forward (did not identify herself) and asked what the reason was that was given for asking for the month's delay? Chairman Moyer explained that it was so that the applicants could try to work matters out with the landowners in the area.

2. Jack Tate – Mr. Tate is counsel for the applicant, just employed by the applicants for less than a week. He did not participate in the planning hearing. He has met with the applicants and their engineers and planners regarding the issues that were raised at the Planning Board. He had called Ms. Freeman last night and let her know that the request that had been sent in by the Layman Foundation to postpone the hearing was timely and had Mr. Hyder's been received 2.5 hours earlier, he understood that it would have actually been postponed. He plans to meet with Ms. Freeman and others in the area to try to work through issues. Mr. Tate was not familiar enough with the case to be able to appropriately answer questions from the neighbors and from the Commissioners. He needs some time to become familiar with the case before having the actual hearing.

3. Alan Wilson – Mr. Wilson lives on Canterbury Way. He asked that they address a couple of things, one being the condition of Old Asheville Road and the condition of Canterbury Way. Neither of these roads is in any condition to handle the type of traffic that 300 – 400 homes would have. He stated that the School board had made a statement that the school system is at maximum capacity in that area. If we're going to put hundreds of homes with children, that will affect the schools.

Chairman Moyer made the motion to continue this public hearing until August 16 at 11:00 a.m. All voted in favor and the motion carried.

Chairman Moyer announced that the hearing that was opened today is continued to August 16 at 11:00. All the information that was given today, including statements, will carry over but they also will be given a chance to make statements again on August 16. Staff will be ready, Jack Tate will be ready and we will have a full hearing at that time.

Commissioner Baldwin suggested that, due to the importance of this hearing, it be re-advertised as a continuance so that folks in the community that are not in attendance will know that it has been continued.

Anthony Starr requested that the Board make it a condition that the applicants pay the cost of the re-advertisement. Jack Tate replied that they would be happy to do so.

**TELEVISION CABLECAST POLICIES (HCTV 11)
CONTRACT WITH RADIO HENDERSONVILLE, INC.**

Russell Burrell had prepared a new draft of the WHKP Contract with new paragraphs 9, 10, and 11 included at the end of the contract. They are very consistent with what the Board had discussed during the meeting. He also had prepared two proposed new policies: 4.16 and 5.6. The 5.6 is a direct quotation of the contract provision with Radio Hendersonville. 4.16 is a little different, he suggested the Board review it carefully and make sure that it is exactly what they wish to see in the audio-visual programming version of equal access, if anything at all. He asked the Board to be careful about that one because the Board does not want to create a new forum that is open to anyone for audio-visual programming. He doesn't think they can make a decision based on political or religious content as the basis of whether to allow that kind of audio-visual content. The Board has other basis for when they need to make those decisions because they don't want to have a public forum here.

- 4.16 EQUAL ACCESS: Henderson County shall not refuse to cablecast any audio-video programming submitted by a third party solely on the basis of political or religious viewpoint. This is not meant in any way to guarantee the right to present programming on HCTV to any third party, nor to expand any access of any third party beyond that otherwise allowed in these policies, but rather to insure that any decision by Henderson County made on whether to present or not present any submitted programming on HCTV is not made on the basis of political or religious viewpoint.
- 5.6 EQUAL ACCESS: The provider of audio-only programming shall insure that it operates in compliance with all "equal opportunity" or "equal time" provisions required by Federal law.

Following discussion, *Chairman Moyer made the motion to approve the policies and the contract as presented with the amendments just received from the County Attorney, except not including 4.16. All voted in favor and the motion carried.* This will be effective the date that WHKP gets back with us.

PUBLIC HEARING – Hazard Mitigation Plan

Rocky Hyder, Fire Marshal/EMS Coordinator, was also present for this agenda item.

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

Rocky Hyder informed the Board that the updated version of the Henderson County Multi-Jurisdictional Hazard Mitigation Plan was submitted for comment from the public and the Board of Commissioners. The plan contains input from each governmental unit within Henderson County regarding strategies to protect human life and health, minimize damage to existing buildings, protect infrastructure, and the environment from the effects of natural or technological hazards.

The Plan had been updated to reflect the experiences we had in 2004 with Hurricanes Francis and Ivan. Most of the updates were done to extend the dates and times set aside to accomplish some of the objectives, since this was intended originally to be a five year plan. We are now three years into the plan. The up-date is required after a Presidentially declared disaster.

The Board may adopt the Hazard Mitigation Plan following the Public Hearing if no significant changes are necessary.

Public Input

There was none.

Commissioner McGrady made the motion to adopt the Henderson County Multi-Jurisdictional Hazard Mitigation Plan. All voted in favor and the motion carried.

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

STRATEGIC PLAN COMMUNITY INPUT SESSIONS

Steve Wyatt updated the Board on the Strategic Plan. The fiscal year 2006-2007 budget, as adopted, recommended the expansion of the Strategic Planning process to a four-year planning process. Shortly after adoption that budget work began at the staff level. A team of staff is directing that under a Team Captain, Selena Coffey. The team is a cross section of county folks: Stan Duncan, Susan Fosmire, Amy Brantley, Carey McLelland, Melody Heltman, Jonathan Wallin. Some of the Commissioners have taken the first step for the Board members in that staff has conducted individual interview sessions with the Commissioners to discuss issues, identify issues that would be applicable in that planning period. That continues.

The next segment of this planning process will begin on August 1 with two (9:00 a.m. and 3:00 p.m.) community input sessions, community forum where folks are invited in to present to this Team ideas about the challenges, opportunities, problems facing this community. Parallel to that process, on August 1, there will be an on-line survey that is available on our web site that is open participation to any Henderson County resident to give feed-back along those same lines (the entire month of August). Staff will follow-up Thursday, August 3 with two additional times, times for these public input sessions are noon and 6:00 p.m. Public input sessions have been staggered to allow folks to pick a time that fits with their work schedule. The Commissioners are welcome to attend any or all of the community input sessions. They will take place in the Commissioners' meeting room. They will be videotaped and will be played back on Channel 11 to give people the opportunity to see that process. That data information will be put together throughout the month of August and it will be reported to the Board at one of the meetings in September. It will not be analyzed or put in any specific order at that time. The aggregate data will be communicated to the Board. At that point staff will take the issues that have been identified through the process, through a process that the Board is going through but also a process that the county staff will undertake beginning shortly to identify the same type of issues and opportunities. They will take those issues and begin to develop strategies, look at cost benefit analysis, look at costing those initiatives out and will report to the Board in the form of a rather large document at the first meeting in December. After that presentation the Board will be asked to review the information and start formulating priorities and questions. Staff will ask for a session mid to late January

to have a workshop to determine what the Board's priorities are and when the priorities are, expanding a 2-year process to a four-year process.

Steve Wyatt stated that the important message today is the fact that there is a very aggressive and thought out initiative to involve the public up-front to participate. Communication has been distributed to every agency that receives funding from the county. Communication has gone out to advisory boards. Some staff has been asked to attend advisory board meetings. Mr. Wyatt was asked to meet with the Solid Waste Advisory Board and he met with them two days ago. Justin Hembree met with the Recreation Advisory Board. At this time he encouraged everyone to seriously consider taking a role in this process. It is a deliberate process in that it will require a lot of work on staff's part to put all this together but it will also enable the Board to have a couple of decision making points and it will not necessarily put the Board in a position to where they have to make quick decisions without the information they need.

A parallel process – 12 year Capital Improvements Plan

Justin Hembree stated that a different project associated with the Strategic Plan development but certainly can't be separate and apart is the process to develop a 12-year Capital Improvement Plan as outlined in the County Manager's budget message. It is being done parallel and at the same time for several reasons: first of all the Strategic Plan can deal with more operational initiatives. Sometimes those operational initiatives directly relate to capital needs that will have to be put in place before new operations can take place or before operations can be enhanced or new programs can be implemented. The two projects are moving along closely with staff streamlining them as they go. There is a Capital Improvement Team made up of Justin Hembree, Gary Tweed, Anthony Starr, and Rick Harris. They will attend the community input sessions to listen to citizens and pick up on the key elements in terms of specific capital needs. Then they will take the raw data and do some costing. Their costing will be a little more complicated in terms of looking at it over a 12 year time and projecting some of the costs out. The most important thing they will do as part of this project is prepare a draft presentation to be given to the Board in December. It will list projects with brief descriptions of them, estimated costs, and a timeframe with priorities. The traditional way to prioritize is to rate a priority of 1-5 or 1-10. They will look at them a little different. First they will look at what are essential governmental mandated services, what are we required by law to do. That will be the top priority. The second one is what will we need to do to ensure that we continue to provide the same service levels that we're providing now? If we know that there is something out there that we're going to have to do to maintain service levels, that's the second priority. The third priority is things that we want to be able to enhance services, provide better services. The fourth is providing new services and the capital expenses that are related to those. We are going through a very deliberate process, an aggressive schedule.

Steve Wyatt explained that sandwiched between the two days of community input meetings, on Wednesday, August 2 we will have a representative from the Institute of Government to present a day-long staff retreat on Performance Management & Budgeting. Not only county staff will attend but also funded agencies. He has received a commitment from the Community College and the School System that they want to participate. He has also been contacted by another county. A representative from Lee County will come and participate in this training. This training will be the first step in developing our "zero-based value-added budget process". This is the ground level training.

UPDATE ON PENDING ISSUES

Land Development Code

Anthony Starr updated the Board regarding the Land Development Code, stating that they are very busy. Staff is working very hard with the Planning Board to make the necessary revisions. This is the number one priority for the Planning Staff. Every member of the Planning Staff is involved at this point. A subcommittee of the Planning Board began meeting the end of June and began meeting weekly in July to go over various sections of the Land Development Code. Every section in the Code is being reviewed or rewritten. Many sections have already been amended to make this language simpler, easier to understand. The Planning Board met last night and they have decided to start meeting every two weeks beginning with next week. Some issues have been addressed at the subcommittee level.

Commissioner McGrady stated that the intention here is to get the full Planning Board to make some recommendation on something before September 1.

Anthony Starr stated that staff and the Planning Board are making every effort to accomplish that goal.

COUNTY ATTORNEY'S REPORT

There was none.

COUNTY MANAGER'S REPORT

Steve Wyatt briefly discussed the State's budget, which has been adopted. On Medicaid, one time relief will mean somewhere in the neighborhood of \$500,000 in cost savings to Henderson County. The bad news is that it is a one shot deal, a one-time appropriation. He feels that politics over the next year will be taken to a very high level in the General Assembly over this issue. The \$2,000,000 surplus that the General Assembly had, by all accounts, will not be there in the next session. He thinks it will be more difficult and feels that this is just a one shot deal.

Mr. Wyatt touched on the negatives or reversions that the school system has been under the last couple of years, money was funded to them and will not have to be given back to the General Assembly. The local school district realizes about \$486,000 which will help them out with their current expense budget.

Mr. Wyatt mentioned child care subsidies. There was \$14,100,000 of funding for child care subsidies throughout the state of North Carolina, to be divided.

Mr. Wyatt did not know distribution formulas. There are other things that look good on paper but it depends on where you are sitting. There is additional low wealth school system funding and that is something that is great for low wealth schools. But that money comes from here and from other counties that don't qualify. It's a transfer of money from Henderson County to other counties.

Commissioner McGrady mentioned that as part of the Consent Agenda, the Board approved the Strategic Plan update but he had two questions of the Manager. In the Strategic Plan is a strategy relating to the creation of a comprehensive recreational master plan which is due for this year. What is the timeframe on getting that? Mr. Wyatt answered that Justin met with the Recreation Board yesterday to talk about these things. He stated that there is a form of a Master Plan which is really more of a needs assessment. He stated that unless funding and funding sources are identified you don't really have a plan but rather a needs assessment. Initiatives for fiscal and capital improvements in the recreation area dovetail perfectly into the strategic plan and that will be a focus of that strategic plan. Justin Hembree explained that one of the issues that has come up with the Recreation Advisory Board is every year they annually do a list and prioritize that list of specific recreation projects. Associated with that there are other operational issues that come up in terms of whether we should be providing more youth baseball programs or tennis programs in the county recreation department. Justin Hembree feels that we will see, through both the capital planning process and the strategic planning process, these issues come up. He has no doubt that the Board will hear about soccer facilities, tennis facilities, soccer programs, and other programs. As all that information is gathered together and the Board sets the priorities he feels that the Recreation Advisory Board should then step in and develop a Master Plan that is specific to our operations here. Yesterday he let the Recreation Advisory Board know that as an Advisory Board if they wanted to get together and come up with a list of priorities, both operational and capital, that they see is needed, to please come to one of these meetings and let staff hear that. He also let them know that they could attend as individuals. He also told them that if they have an idea about how to pay for these things that they should come share those ideas also.

Commissioner McGrady had a similar question related to the Local Sedimentation and Erosion Control Program. It is broadly designated as this fiscal year. He asked if we could narrow that timeframe some.

Steve Wyatt stated that the plan is to bring the Board a draft, hopefully within the next few months, but certainly before November. Mr. Wyatt stated that staff would like to have something on the books January 1 but that might not be doable. An aggressive schedule may not be possible given everything else that's going on but that will get us where the Board wants to be sooner rather than later.

IMPORTANT DATES

Designation of Voting Delegate to NCACC Annual Conference

Commissioner McGrady made the motion to designate Chairman Moyer as the voting delegate for Henderson County. All voted in favor and the motion carried.

CLOSED SESSION

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

- 1. (a)(5)(1) To discuss and give general instruction on the county's negotiating posture concerning the purchase of real estate.*
- 2. (a)(5)(2) To discuss and given instruction on the county's negotiating posture concerning an employment contract.*
- 3. (a)(6) To discuss issues concerning personnel.*

All voted in favor and the motion carried.

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman