

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 20 September 2006
SUBJECT: Nuisance ordinance amendment
ATTACHMENT(S): Draft amendment

SUMMARY OF REQUEST:

A question has arisen regarding the potential regulation of certain farming operations (“commercial poultry and swine production, cattle feeder lots and furbearing animal farms”) under the Nuisance Ordinance, Chapter 126 of the Henderson County Code. The question arose during consideration by the Town of Mills River of the adoption of an identical ordinance (and then negotiating with the County for the enforcement of the new ordinance within its boundaries).

As the Nuisance Ordinance is not a land use regulation, or strictly speaking a pure public health nuisance regulation, the familiar statutory prohibitions on regulation of most *bona fide* farm uses do not apply. The statutory grants of authority for the removal and regulation of abandoned vehicles under N.C. Gen. Stat. §153A-132 and of solid waste under N.C. Gen. Stat. §153A-136, which are two of the three expressed bases for the regulations set out in the Nuisance Ordinance, do not contain prohibitions on the regulation of *bona fide* farms.

That said, the Board may wish to consider new language which further narrows the scope of the Ordinance. The current text, and a proposed amendment the Board may wish to consider, follow:

Current text:

126-2.02 **Exception.** This ordinance shall not regulate property being actively used as a Bona Fide farm which is any tract of land containing at least three (3) acres which is used for dairying or for the raising of agricultural products, forest products, livestock or poultry and including facilities for the sale of such products from the premises where produced provided that, a farm shall not be construed to include commercial poultry and swine production, cattle feeder lots and furbearing animal farms.

Proposed text:

126-2.02 **Exception.** This ordinance shall not regulate property being actively used as a bona fide farm. A bona fide farm includes is any tract of land containing at least three (3) acres which is used primarily for dairying or for the raising of agricultural products, forest products, livestock or poultry, and includes facilities for the sale of such products from the premises where produced.

County staff will be present and prepared if requested to give further information on this matter.

POSSIBLE BOARD ACTION:

If the Board is so inclined, the following motion is suggested:

I move that the Board adopt the proposed Amendment to the Section 126-2.02 of the Henderson County Code.

DRAFT

**AN ORDINANCE AMENDING THE NUISANCE PREVENTION
ORDINANCE IN HENDERSON COUNTY**

IT IS HEREBY ORDAINED by the Henderson County Board of Commissioners
as follows:

1. Section 126-2.02 of the Henderson County Code (that provision entitled
"Exception" of the Ordinance to Prevent Certain Nuisances) is amended by striking the
same, and inserting in lieu thereof the following:

126-2.02 Exception. This ordinance shall not regulate property being actively used as a
bona fide farm. A bona fide farm includes is any tract of land containing at least three (3)
acres which is used primarily for dairying or for the raising of agricultural products,
forest products, livestock or poultry, and includes facilities for the sale of such products
from the premises where produced.

2. This Ordinance Amendment shall become effective upon adoption.

Adopted this the _____ day of _____, 2006.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
WILLIAM L. MOYER, Chairman

Attest:

Secretary [SEAL]