

Terry Wilson

From: Elizabeth Corn
Sent: Tuesday, October 31, 2006 2:27 PM
To: Amy Brantley; Terry Wilson
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Attachments: Calendar.doc

Two agenda items: August 2, 2006 minutes and Important Dates

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
AUGUST 2, 2006**

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 Chuck McGrady, County Manager Steve Wyatt, Assistant County Manager Justin Hembree, Assistant County Manager Selena Coffey, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Anthony Starr, Fire Marshal Rocky Hyder, Finance Director J. Carey McLelland, Utilities Director Doyle Freeman, County Engineer Gary Tweed, and Research/Grants Coordinator Amy Brantley.

Absent at the beginning of the meeting was Commissioner Shannon Baldwin who had called and would be late to the meeting. The minutes are marked when he arrived.

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

Steve Wyatt gave the invocation.

INFORMAL PUBLIC COMMENTS

1. Fielding Lucas – Mr. Lucas informed the Board that he resides just south of Mills River. He discussed Monday night's School Board's special called meeting. He stated that on Monday night there was no discussion of:
 1. Any possible cost reductions through construction materials change, function or space allocation changes, or other "value engineering".
 2. Classroom size changes. Drawings at the earlier meeting appear to show all new rooms the same size and larger than state guidelines suggest. No one even asked.
 3. Core sizes and expandability options for future growth as requested by the Board of Commissioners and already existing in earlier new schools. In effect this Board continues to constrict the options of future School Boards.
 4. Other options such as rehab of the poorer Mills River buildings and taking care of area growth by

using existing space and the expandability option present in Marlowe and Fletcher.

5. Or even, as some counties are planning, rehabbing the current school and converting it to a multi-track, year-around school to increase its capacity.

There was discussion of:

1. Using more of the existing space for classrooms, rehabbing the administration area rather than building new, and utilizing the current cafeteria area.
2. The relative merits of building a completely new Fletcher clone in the current baseball field area and demolishing the current location. Some had concern about demolishing relatively recent structures, well built and in good condition but others had none at all, considering an all new school building, if possible, worth the added \$2.5 million estimated cost differential.

The results – two alternatives: first a completely new school, a Fletcher clone with demolition of the existing plant and second, the original bid package design with new construction relocated about 20 yards south and no physical connection between the current, retained structures and new construction to allow for an easier, perhaps safer, two phase project rather than the original three phase plan.

Result – a shorter construction time frame and an estimated \$300,000 in project cost saving.

No decision was reached. It will be decided with more staff input at the regular meeting on August 14.

2. Dick Baird – Mr. Baird spoke as a tax-paying citizen of Henderson County. At the last Board meeting the County Manager informed the Board that the State was, on a one time basis, this year picking up the Medicaid shortfall of nearly \$500,000. The Henderson County Budget also includes funds for that purpose. Mr. Baird recommended that the Board pass a budget ordinance amendment reducing the county budget by the amount of the state's coverage, refund the county's savings to the taxpayers through an amendment to the budget reducing the ad valorem tax rate increase by ½ cent to a 4 cent tax increase. Because the Board treats these remarks as informal, he formalized them by official letter.

Chairman Moyer stated that he thought once the Board adopted the tax rate, by law they are not allowed to change it. He asked the County Attorney to address that.

Russell Burrell stated that the only event allowing the Board to change it is if there is litigation involving schools and the school funding. That's the only time the Board is allowed to change the rate once it is set.

Mr. Baird then readdressed the Board, stating that in that case his recommendation would be that these funds be set aside for fund balance.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer requested one addition to the consent agenda, it is in the notebooks but did not get printed on the agenda – “H – Expansion of the Fire Insurance Districts to Six Miles”.

There were no other changes suggested.

Commissioner Messer made the motion to approve the agenda with the one addition. All voted in favor and the motion carried.

CONSENT AGENDA

Commissioner McGrady made the motion to adopt the consent agenda with the one additional item. All voted in favor and the motion carried.

Tax Collector's Report

Terry F. Lyda, Henderson County Tax Collector, had provided the Tax Collector's Report dated August 1, 2006,

for the Board's review.

EMS Accounts Receivable Report

At the Board's request, Carey McLelland had provided the EMS Accounts Receivable Report as information for consent approval.

Referral of Special Use Permit Amendment Application for "River Stone"

Planned Unit Development to the Planning Board

Don Hunley, P.E. with William G. Lapsley & Associates, P.A. for Windsor-Aughtry Company, submitted a development plan and applied for a special use permit amendment (on file in the Board of Commissioners' office) to be allowed to amend the existing Special Use Permit (#SP-05-01) for the planned unit development known as "River Stone".

Pursuant to section 200-33.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 section 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 is so inclined, the following motion was suggested:

I move that the application for a special use permit amendment for the planned unit development by Windsor-Aughtry Company for "River Stone" be forwarded to the Henderson County Planning Board, pursuant to section 200-33 of the Henderson County Code.

Referral of Special Use Permit Application for "Vistas at Champion Hills"

Planned Unit Development to the Planning Board

Chris Day, P.E. with Civil Design Concepts, P.A. for Kasey-Phillips Development, LLC, submitted a development plan and applied for a special use permit (on file in the Board of Commissioners' office) to be allowed to create a planned unit development to be known as "Vistas at Champion Hills".

Pursuant to section 200-33.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 section 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 is so inclined, the following motion was suggested:

I move that the application for a special use permit for a planned unit development by Kasey-Phillips Development, LLC for "Vistas at Champion Hills" be forwarded to the Henderson County Planning Board, pursuant to section 200-33 of the Henderson County Code.

Request from American Red Cross to Use County Property

By letter dated July 24, 2006, the American Red Cross requested use of the County Courthouse parking lot on Saturday, August 19, 2006 for a disaster feeding exercise.

Staff recommended approval of the request.

Non-Profit Performance Agreements

Subsequent to the approval of the FY 2006-07 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 they are received from the agencies.

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

2006 Human Services Needs Assessment

Included in the agenda packet for the Board's review was a copy of the 2006 Human Services Needs Assessment as prepared by the Alliance for Human Services. This Needs Assessment has been made possible by Henderson County, as one of the three Alliance funders, and provides valuable information regarding the County's human service needs.

Staff recommended that the Board of Commissioners support the Alliance for Human Services' efforts by 1) requesting that the Alliance bring back specific recommendations for addressing the findings within the Needs Assessment for the Board of Commissioner's review, and 2) the Alliance participate in the County's 2007-2011 Strategic Planning process by having input during the scheduled listening sessions or through the completion of the e-survey.

Expansion of Fire Insurance Districts to Six Miles

The North Carolina Department of Insurance has approved Henderson County's plan for expansion of fire insurance districts from five to six miles. Approval from the Board of Commissioners is the next step in initiation of this process. The Inspector from the North Carolina Department of Insurance is scheduled to make final approval of the maps for six mile expansion during the week of August 28, 2006.

The County Manager stated that a resolution from the Board to approve expansion of fire "insurance" districts in Henderson County to six miles was ready for Board action. No tax districts will be affected by this action.

RESOLUTION

Upon motion by Commissioner Chuck McGrady BE IT RESOLVED that the Board of Commissioners of Henderson County approve the boundary lines of the Bat Cave, Blue Ridge, Dana, Edneyville, Etowah-Horse Shoe, Fletcher, Gerton, Green River, Mills River, Mountain Home, Raven Rock (Saluda), and Valley Hill Fire Insurance Districts for insurance grading purposes only, in accordance with the map filed this date with the Board of County Commissioners and recorded in the minutes of the meeting. The boundaries of the above referenced fire insurance districts are described in the Henderson County Land Records Office.

This is to certify that the foregoing is a true and accurate copy of excerpt from the Minutes of the Board of County Commissioners of Henderson County, adopted this the 2nd day of August, 2006.

Elizabeth W. Corn
Clerk to the Board

NOMINATIONS

Notification of Vacancies

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

- 1. Asheville Regional Housing Consortium**

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 – Appointment of Chairman**

Commissioner McGrady moved the reappointment of Bill Hiatt as Chair of the Environmental Advisory Committee. There were no other nominations. All voted in favor and the motion carried.

- 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 – 2 vac.

Chairman Moyer stated that the Board had already appointed Judy Abrell and Babs Kuykendall but terms need to be set for them. There are also two more vacancies to fill. There are a number of applications on file.

Commissioner McGrady nominated Donna Wilson and Susan Sneeringer. There were no other nominations at this time. *Chairman Moyer moved that they both be accepted by acclamation. All voted in favor and the motion carried.*

There are eight people whose terms need set.

Chairman Moyer nominated Judy Abrell for a three-year term, Susan Sneeringer for a two-year term, and Babs Kuykendall and Don Wilson for one-year terms. *Chairman Moyer made that in the form of a motion. All voted in favor and the motion carried.*

Commissioner McGrady made the motion to appoint the following municipal nominees:

Dries Jasma, Flat Rock; James Stockman, Laurel Park; and Eugene Avergon, Fletcher.

All voted in favor and the motion carried.

Commissioner McGrady made the motion to designate the following terms for the municipal appointees:

Dries Jasma three years

James Stockman two years

Eugene Avergon one year

All voted in favor and the motion carried.

Ms. Brantley informed the Board that Mills River plans to have their representative to the Board of Commissioners by the September meeting.

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.

Amy Brantley reminded the Board that they had been looking for a waste hauler for this position for several months. It doesn't seem that there is one forthcoming so the Chairman of that committee, Katie Breckheimer, had contacted some of the people who have applications on file and she recommended the appointment of James Hemphill to position # 7.

Commissioner McGrady nominated Mr. Hemphill for this vacancy.

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

8. WCCA Board of Directors – 1 vac.

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

ALTERNATIVE REVENUE TASK FORCE

Amy Brantley listed the applications received for the Alternative Revenue Task Force for the Board's consideration and further discussion:

Paula DeLorenzo, Steve Dozier, Edward Fortaw, Ed Glenn, David Nichols, Carl Shaw, Philip Stanley, Paul Taylor, Hall Waddell, and Candler Willis. In addition, she had received a letter of interest from Philip Stanley. This afternoon she received applications from Nick Pryor and Michael Fleming. At one of the strategic input

sessions yesterday they heard from Elizabeth Armour who volunteered herself.

Chairman Moyer stated that the School Board submitted Ken Butcher as a nominee. Commissioner McGrady had heard from former County Commissioner Renee Kumor, indicating she would be willing to serve.

Commissioner Messer nominated Michael Fleming and Nick Pryor.

Chairman Moyer requested that someone from staff type up all these names so that the Board could see them all together and then they would vote on them later in the meeting (when the list is ready).

Commissioner arrival

Commissioner Baldwin arrived at this point in the meeting.

UPDATE ON PHASE II NPDES STORM WATER PROGRAM

Gary Tweed informed the Board that there have been two developments in recent weeks concerning the Phase II NPDES Storm Water Program.

The first deals with interpretations by the Division of Water Quality, DWQ, concerning Henderson County Facilities. During February 2003, the County submitted to the N.C. Division of Water Quality the Certification (attachment page 1) that the County does not own or operate any Municipal Storm Water Systems (MS4's). This was based on the fact that the County does not own roads, and those instructions, given by the Division of Water Quality (DWQ) at that time, that individual site storm sewer systems would not be covered under the Phase II NPDES Storm Water Program.

On May 30, 2006 a site visit was made by Mike Randall, Environmental Engineer, with the DWQ, and Laurie Morehead with the Asheville DWQ office. The County Engineer took them on a tour of County owned facilities. A letter was received from DWQ also dated May 30 but received in late June; which outlines that in Mike's opinion the County should apply for a Phase II NPDES permit for various facilities in the County. His interpretation is that since individual sites have storm sewers that are County owned that these sites are MS4's under the rule.

In review of the regulation (attachment page 4), our interpretation of the rule is that individual sites are not defined as a MS4 and would not be regulated under the rule and would not require an NPDES Permit. Staff is in the process of responding to the DWQ letter.

The second development is that legislation has been introduced that would require the State to enforce the Phase II requirements not only on the Urbanized Area, (see attachments page 5), but throughout the entire unincorporated areas of the County. Paul Meyer, Attorney for the County Commissioners Association, had provided information by e-mail (see attachment page 6) that outlines the new legislation.

As result of this legislation, the State would be enforcing the Phase II NPDES Permit requirements throughout the unincorporated areas of the County.

Following much discussion, *Chairman Moyer made the motion that the Board go to NCACC (North Carolina Association of County Commissioners) and try to get support from them and the other counties on this issue and that the Board take this up again to see what kind of support there will be for doing this before the Board decides to take this on as a battle. All voted in favor and the motion carried.*

CONTINUATION OF NOMINATIONS – ALTERNATIVE REVENUE TASK FORCE

Justin Hembree had prepared a list of the persons interested in serving on the Alternative Revenue Task Force.

Chairman Moyer stated that the Board had agreed that we need very broad representation on this Task Force. Steve Wyatt had recommended about nine members for the Task Force.

It was the consensus of the Board to go ahead with a vote. The names on the list were: Paula DeLorenzo, Steve Dozier, Edward Fortaw, Ed Glenn, David Nichols, Carl Shaw, Phillip Stanley, Paul Taylor, Hall Waddell,

Candler Willis, Elizabeth Armour, Ken Butcher, Michael Fleming, and Nick Pryor.

The Clerk was asked to poll the Board. The results were as follows with each Commissioner getting nine votes:

Commissioner Shannon Baldwin – DeLorenzo, Dozier, Glenn, Shaw, Stanley, Willis, Armour, Butcher, Pryor.

Commissioner Chuck McGrady – DeLorenzo, Dozier, Nichols, Shaw, Waddell, Armour, Butcher, Fleming, Pryor.

Chairman Bill Moyer – DeLorenzo, Dozier, Fortaw, Nichols, Shaw, Armour, Butcher, Fleming, Pryor.

Commissioner Charlie Messer – DeLorenzo, Dozier, Glenn, Shaw, Stanley, Waddell, Armour, Fleming, Pryor.

Commissioner Larry Young – Dozier, Glenn, Stanley, Taylor, Waddell, Willis, Butcher, Fleming, Pryor.

The Clerk will tally the votes for later in the meeting.

HISTORIC COURTHOUSE PROJECT CONSTRUCTION ADMINISTRATION

Steve Wyatt stated that the Historic Courthouse Project is underway. The topic of construction administration for this project was placed on the agenda for discussion.

After the last Board meeting where we had representatives from Construction Control present, the company that does comprehensive construction management throughout the southeast, he took the opportunity to invite them to come sit down with staff and see about what kind of expertise they could bring to the project and determine interest. They came and met with Steve, Gary Tweed, and Justin Hembree. They went through the building. Steve has had some subsequent phone call conversations with them. They are preparing to make a proposal. They are interested in the project. They have recommended informally at this time, based on their inspection of the project, bringing somebody on full time to be involved in construction management on the project. They would also have a couple of other individuals that would be involved in oversight as different areas (mechanical, electrical, HVAC) progress, they have different specialists in their company that deal with these different issues. He feels that the Company is very capable and provides a great deal of back up with their capabilities further than just the person they would have on site. Their construction manager has experience in doing rehabilitation on historical buildings for re-use and government re-use, specifically a 1904 school in South Carolina was rehabilitated to be a community center and government center.

Mr. Wyatt stated that he is awaiting a proposal and feels that the proposed cost will be in the \$8,500 per month range and we're anticipating a 16 month project time. It would be based on one month notice cancellation. It is not critical that we act on this now; however, there are funds available and actually funds ear-marked in the project for a construction manager/construction supervisor. He feels that this company brings a lot more capability than we could bring if we were hiring an individual person.

Following discussion, it was the consensus of the Board for Mr. Wyatt to proceed with negotiations with the company and to bring back the scope of work and the price (details) to the Board for approval and possibly even have the person in attendance at the mid-month meeting.

Chairman Moyer stated that the Board is talking to the School System about using these people on the Mills River project and others.

CONTINUATION OF ALTERNATIVE REVENUE TASK FORCE

The Clerk called out the names of those persons (seven) who received four votes or more:

- Paula DeLorenzo
- Steve Dozier
- Carl Shaw
- Elizabeth Armour
- Ken Butcher
- Michael Fleming

Nick Pryor

She informed the Board that there were three persons who received three votes, (Ed Glenn, Phillip Stanley, and Hall Waddell) add three to the seven above and you have ten appointed to the Task Force, or you have a run off of the three. The majority of the Board agreed to go with ten appointees, all who received three votes and above.

Steve Wyatt stated that staff would endeavor to establish an organizational meeting with this group within the next couple of weeks to begin business and will report to the Board on a regular basis.

There was some discussion of appointing the Chair of this Task Force.

Commissioner Baldwin nominated Ken Butcher as Chair.

Commissioner Young nominated Nick Pryor.

Commissioner Messer nominated Steve Dozier.

Commissioner McGrady nominated Carl Shaw.

Chairman Moyer moved approving the four as possible chairs, wait until after the first meeting and see if these people are interested in being Chair before voting for the Chair. A vote will be taken at the next meeting. All voted in favor and the motion carried.

UPDATE ON PENDING ISSUES

Land Development Code

Tedd Pearce, Chair of the Planning Board, addressed the Board, stating that the Land Development Code is progressing at a fairly good pace. The Land Development Subcommittee is meeting weekly and the full Planning Board is meeting every other week. The full Planning Board has not approved any sections yet. They intend to keep this schedule up until they're done. Mr. Pearce stated that the Sept. 1 date is not achievable. Mr. Pearce will again update the Board at the next meeting. He stated that just because he says they won't be done by September 1, it doesn't mean they will slow down their meeting schedule or anything of that nature. The full Planning Board is committed to stay at this rate, working on it until the task is completed. The Planning Board, like the Board of Commissioners, wants an instrument that they feel represents the best possible effort that they could make. They are getting all the help and support they need. They want to make sure that what they present is as good an instrument as they can possibly produce.

Chairman Moyer asked Mr. Pearce to relay to the Planning Board the Commissioners appreciation for the extra work that they are accomplishing.

Adequate Public Facilities Ordinance

Russ Burrell skipped right to the bottom line, how does the Board want staff to proceed? Do they want Anthony to go forward and go out for a request for proposal and come back to the Board with proposals of what would be needed to move forward with drafting an adequate public facilities ordinance for Henderson County. After Anthony gives the Board an over-view on what an adequate public facilities ordinance is, the Board will take the first step in deciding whether Henderson County would become maybe the fifth or sixth county to adopt an adequate public facilities ordinance in North Carolina. The first adequate public facilities ordinance was drafted in 1994 in Pasquotank County.

Anthony Starr briefed the Board on what an adequate public facilities ordinance is. What is an APFO, what can it do, what can it not do, what counties have it, how does it work, who should we have participate in the development of an APFO, what are the major components, what are the issues, what process should we follow??? Anthony Starr explained that those are some of the questions that will have to be answered.

What is an APFO? It's a form of a land use regulation that controls the timing of property development and population growth for the purpose of ensuring that public facilities needed to serve new residents are constructed and made available with the impact of the new development. Mr. Starr stated that another way to say that is that the purpose of an APFO is to the maximum extent practical approval of new residential development will become effective only when it can reasonably be expected that adequate public facilities would be available to accommodate that development. It's a planning tool that attempts to coordinate the capital improvement plan of the county and growth. An adequate public facilities ordinance can apply to things such as schools, jails,

transportation, utilities, parks and recreation but most often and particularly in North Carolina it's limited to schools only. There are some issues as how it gets complicated and how you attribute the impact of development is easier to attribute to schools than it is other types of facilities. That's why most jurisdictions have limited it to schools, at least in North Carolina.

What it can do. It can help prevent school overcrowding. It can channel growth into certain geographic areas that are more capable of handling new development. It can provide more certainty in our financial forecast and budgeting process as we know what is going to be happening with development, based on the facilities we have. It can eliminate periods of excessively high growth and it can contribute to better capital planning.

What it cannot do. It is not a mechanism to stop residential growth and it is in of itself not intended nor will it provide the major source of funding for school construction. It will provide some significant revenues but won't be the sole source. Experience tells us that from the other jurisdictions who have done that. They are largely untested in North Carolina. There is implied authority in the planning enabling legislation but not explicit. Some of the other jurisdictions – Currituck County has had it in place since 1994 but it is a county of about 20,000 or so and has no municipalities. Cabarrus County has had it in place since 1998 but they've not denied any subdivision lots for lack of capacity but they allow them instead to make a monetary contribution towards capacity. Orange County adopted one recently but their growth rate has been less than 2% a year. Union County is in the process of developing one, they are in the end stages. They are not finished. It is a high growth county, much like we are but they have challenges to overcome in the fact that they have fourteen municipalities. Lincoln County developed one but did not adopt it.

How does it work? How one could work is that proposed residential developments would have to get an adequacy permit before they could develop. The adequacy permit is determined by comparing the existing and expected capacity at the schools in the area that the development would occur with the number of approved lots. When a residential development is denied an adequacy permit, it is placed in hold until the school capacity would be available. In other words, they wouldn't be allowed to proceed. As an alternative the county could allow the developer to proceed with their project even though school capacity doesn't exist by making a voluntary contribution. The Board would set the rate of that contribution on a per lot basis. These pre-established contributions would be used to accelerate the construction of the school items that are on our capital improvement plan. You must have a strong capital improvement plan and we are in the process of developing that. Mr. Starr thinks that will be a key component of this, if the Board wishes to proceed down this road.

There are some stakeholders, obviously the county government, the schools, and municipalities. Quite a bit of the development that occurs, occurs within municipal jurisdictions and if it only applies outside the municipalities and they're not cooperating then we're really not going to address the issue of school capacity or other capacities because it will channel the development to them but it won't address our problem completely. Homebuilders, developers, and of course the citizens would be important. The schools are the key people that would need to participate. In order to do that we'd have to have something like a memorandum of understanding among the critical participants like the schools and the municipalities and then you have other major components – CIP, financial forecast. We have those and we would just have to tie them in with everything. Cost of service analysis is one thing that we don't have in place now, an adequacy formula, school capacity and enrollment projections, and then the actual ordinance itself. A consultant would be very helpful in developing those issues.

The strategic plan recommended that an adequate public facilities ordinance be developed. If the Board wishes to proceed, Mr. Starr felt the next step would be to develop an RFP and define what the scope would be and put that out to consultants for their consideration. Staff could bring that back to the Board for how to proceed.

Following discussion, it was the consensus of the Board to agree to staff proceeding with preparing the RFP to get ready to send out. The Board was interested in looking at schools primarily. The Board wants to see the RFP before it goes out.

COUNTY ATTORNEY'S UPDATE

Russell Burrell spoke about HB 2047, an Act to Promote Consumer Choice in Video Services Providers and to Establish Uniform Taxes for Video Programming Services. Basically this is a bill that has passed that establishes state-wide franchises for video service providers. John Crook had informed Mr. Burrell that Mediacom intends to

apply for this on the first business day that they are able to do so, January 2, 2007. Upon their application and grant of a franchise, a grant being automatic by the State, they will no longer have a franchise with Henderson County. Mr. Burrell stated that what that means for Henderson County residents is that there will be a new way to resolve complaints involving the Consumer Protection Division of the North Carolina Attorney General's Office. We will probably on our Government Channel flash their number three times an hour (the number of the Consumer Protection Division in the Attorney General's office).

Mr. Burrell also addressed the franchise fee arrangements. There is a floor that will be set under the county's franchise fees that is based upon the revenue received the first six months of fiscal year 2006-2007, so between July and December of this year. That will become forever the numerator of a number that comes with the total pool of money available to be distributed to cities and counties in North Carolina under this tax and we will receive a prorated share based on, among other things, that number and that becomes our floor number. That number will be adjusted upward by population but will not be adjusted downward by lack of subscribers.

He asked John Crook to come forward to address this issue.

John Crook explained that currently under the new agreement, the County would be able to qualify for two channels and up to a maximum of seven channels. The requirement will be a minimum of eight hours a day scheduled programming. Each channel is limited to 15% of repeat programming, no more than 15% of the programming can be character generated and all programming must be non-commercial. After a matching county contribution of up to \$25,000 a year then the State will match that capital contribution up to \$25,000 and there is also a provision for another \$25,000 per channel to a maximum of three channels in operating funds potentially coming to the county/annually. The distribution on the capital contribution will be handled through ENC, the distribution on the \$25,000 in operating funds would come from the Secretary of State.

Russell Burrell stated that the programming must be non-commercial, a term that is not defined. "Does that mean that it cannot be commercially produced? Does that mean it can't have the PBS logo. Those terms don't appear anywhere in here. We'll see how that is ultimately defined in the regs. that are adopted underneath this some time later by the State of North Carolina."

John Crook explained that Flat Rock's franchise agreement is the first one that would have expired but they extended it for 12 months. Their agreement now has been extended until mid June of 2007. Henderson County is up next followed by Laurel Park which expires November 1. Hendersonville's agreement expires January 1, 2007. Henderson County, Laurel Park, Hendersonville and Mills River will all fall under this agreement, under the State franchise as of the first business day in 2007. Flat Rock will fall under the agreement then in June of next year and Fletcher will be 2010 unless they are superceded by some sort of competitive action.

Russell Burrell explained that Mediacom has in hand a draft of an agreement that he had just proposed to them that will come back before the Board for approval which basically holds things exactly as they are between now and whenever they get a franchise under the State.

John Crook stated that as of this past Friday, Mediacom provided checks to Laurel Park and to Hendersonville based on the agreement that had been reached earlier this year on settlement that was agreed to by all of the municipalities except Fletcher. Mediacom has made Fletcher a very favorable offer which they will be discussing at their workshop on Monday night. The period from January of 2004 through the second quarter of this year is a done deal so far as Mediacom is concerned. Mediacom will be making the corrected distributions for the third and fourth quarters of this year, based on the agreement that had been reached in May. They will not be changing the subscriber designations in their official file. This is a side file that they are going to maintain through the end of the year and it will be a certifiable report then that can be made by each of the franchising authorities to the state. Mr. Crook stated that he intends to recommend at the next LGCCA meeting that the concurrence of the Cable Committee is that they be allowed to stand down, their mission is completed.

COUNTY MANAGER'S UPDATE

Steve Wyatt informed the Board that yesterday, County staff conducted 5.5 hrs. of public input session. He addressed the Board's attention to the large pieces of paper on the walls in the meeting room with lists of some of the issues that were gathered. The process will begin again tomorrow at noon and at 6:00 p.m. This is the first

step in developing the four year strategic plan and then the first phase of the capital improvement plan, one of the items Mr. Starr mentioned is critical to good planning but also an adequate public facilities ordinance.

Steve Wyatt informed the Board that today 47 employees earned certificates, those who survived the budget boot camp. Bill Rivenbark from the Institute of Government came and ran the sessions. The group consisted of county department heads, funded non-profits, school system, Blue Ridge Community College. It was a day long training at the Criminal Justice Center. The session was an interactive session on Performance Management, Zero Based Budgeting, Developing and Measuring Outcomes, Benchmarks, etc. Dr. Rivenbark was on loan to us today at no cost.

IMPORTANT DATES

Set Public Hearing on Rezoning Application #R-2006-02

Rezoning Application #R-2006-02, which was submitted on June 9, 2006, requested that the County rezone approximately 5.91 acres of land, located off Greenville Highway (NC #225), from an R-20 (Low-Density Residential) zoning district to an R-10 (High-Density Residential) zoning district. The Subject Area appears to be parcel 9577-27-6882 which is owned by the applicants, Michael L. and Tracy J. Burns. The Applicant's Agent is Norma McMahan.

The Henderson County Planning Board considered rezoning application #R-2006-02 at its regularly scheduled meeting on July 18, 2006. During that meeting, the Planning Board voted 5 to 1 to send the Board of Commissioners a favorable recommendation on rezoning application #R-2006-02 to rezone the Subject Area from an R-20 zoning district to an R-10 zoning district.

Before taking action on the rezoning application, the Board of Commissioners must hold a public hearing. Staff proposed that the hearing be scheduled for Wednesday, September 20, 2006, at 11:00 a.m.

The County Manager recommended that the Board of Commissioners schedule a public hearing on rezoning application #R-2006-02 for Wednesday, September 20, 2006, at 11:00 a.m., or schedule a special called meeting.

Commissioner McGrady made the motion to set this public hearing for Wednesday, September 20 at 11:00 a.m. All voted in favor and the motion carried.

Human Services Building Grand Opening Celebration

The Human Services Building Project is nearing completion. Staff with the County's human services agencies (DSS and Public Health) will be moving into the building in late September. Operations in the new building will be underway by early October. It would be appropriate for the Board of Commissioners to schedule a Grand Opening Celebration.

The County Manager recommended the Human Service Grand Opening Celebration be scheduled for 2:00 p.m. on Wednesday, October 18, 2006. This is the same day as the Board's October mid-month meeting.

Commissioner McGrady made the motion to approve staff's recommendation to set the Grand Opening Celebration for 2:00 p.m. on Wednesday, October 18, 2006. All voted in favor and the motion carried.

Annual Volunteer Appreciation Banquet

Staff requested that the Board look at their calendars regarding the date for the 2006 Annual Volunteer Appreciation Banquet. The banquet was held last year at Highland Lake and was very successful, accommodating well the number of volunteers who daily work to better Henderson County. Staff plans to hold this year's banquet again at Highland Lake Inn, and has tentatively scheduled the date for Tuesday, October 24th.

It was the consensus of the Board to schedule the Volunteer Appreciation Banquet at Highland Lake Inn on Tuesday, October 24 in the evening.

CANE CREEK WATER & SEWER DISTRICT

Commissioner McGrady made the motion that the Board adjourn as the Henderson County Board of

Commissioners and convene as the Cane Creek Water & Sewer District. All voted in favor and the motion carried.

Commissioner McGrady made the motion that the Board adjourn as the Cane Creek Water and Sewer District and reconvene as the Henderson County Board of Commissioners. All voted in favor and the motion carried.

CLOSED SESSION

Chairman Moyer 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)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to the following claim:*

In the Matter of the Appeal of Tyleta Morgan (NC PTC)

All voted in favor and the motion carried.

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman