

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: January 2, 2007

SUBJECT: Minute approval for September 5, 2006

ATTACHMENTS: YES

SUMMARY OF REQUEST:

The attached Minutes are being provided for the Board's review and approval.

BOARD ACTION REQUESTED:

Consent approval requested.

Suggested Motion:

I move that the Board of Commissioners approve the September 5, 2006 minutes as presented.

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
September 5, 2006

The Henderson County Board of Commissioners met for a special called meeting, workshop on Sedimentation and Erosion Control Program and Ordinance at 6:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Shannon Baldwin, Commissioner Chuck McGrady, County Manager Steven Wyatt, Assistant County Manager Justin Hembree, County Attorney Russell Burrell, Public Information Officer Chris Coulson, and Clerk to the Board Elizabeth Corn.

Also present were: Planning Director Anthony Starr, Building Services Director Sam Laughter, and Zoning Administrator Natalie Berry.

CALL TO ORDER/WELCOME

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

DISCUSSION/ADJUSTMENT/ADOPTION OF AGENDA

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

Commissioner McGrady made the motion to accept the Resolution as attached to the minutes put forth by the library to endorse the Big Read for Henderson County and support the grant application to the National Endowment for the Arts. All voted in favor and the motion carried.

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE AND PROGRAM

Chairman Moyer instructed Planning Director Anthony Starr to provide the highpoints of the program. Chairman Moyer advised that a background memo accompanied the draft which covers the key points. There would be no public input at this meeting however, there would be at a later meeting.

Anthony Starr addressed the board members and public with the following information. Each person present received a staff report and summary along with the draft ordinance. The Henderson County Comprehensive Plan adopted by the board of Commissioners in 2004 as well as the 2006 Strategic Plan both recommend the creation and implementation of a Soil Erosion and Sedimentation Control Ordinance in the 2006/2007 fiscal year. With the adoption of the 2006/2007 Budget, the Board of Commissioners did authorize two (2) new positions beginning in January, 2007 to administer the program.

Currently, the State Department of Environment and Natural Resources Division of Land Resources (DLR) administer and enforce the rules regarding soil erosion and sedimentation control. The State staff is significantly under funded and they do not have resources to implement and enforce the current rules effectively. As a result, there are issues with enforcement even though their staff tries very hard to do what they have with the resources they have to provide adequate oversight. Their plan and review times are also sometimes lengthy depending on which office in the State you are talking to. Plan review times can be between six (6) and eight (8) weeks long. Sometimes that results in a delay for some developers when they are trying to move their projects along.

DATE APPROVED _____

The Proposed Henderson County Ordinance represents the same requirements that the state enforces. The DLR allows local government to assume responsibility and locally administer the program. The DLR provides a model ordinance that must be followed. Local governments may adopt more stringent requirements than the state. The draft ordinance duplicates the state model ordinance in all areas but one. Section 4 (c) requires the owner or developer to submit a plan in the following instances:

- (1) Any land disturbing activity which uncovers one or more acres on a tract of land.
- (2) Any land disturbing activity which uncovers one-half (1/2) acre or more on a lot, parcel, or tract with an average slope of 16 to 25 percent in its natural state.
- (3) Any land disturbing activity which uncovers one-quarter (1/4) acre or more on a lot, parcel, or tract with an average slope over 25 percent in its natural state.

The Board could adopt the ordinance as a stand alone ordinance or incorporate it into the new land development code. Given the potential timeline of this ordinance and the Land Development Code (LDC), adoption as a stand alone ordinance could prove beneficial. Incorporation of this ordinance into the LDC could occur when the LDC is complete if originally adopted as a stand alone ordinance. The Planning Board recommended incorporation of any Soil Erosion and Sedimentation Control Ordinance into the LDC.

To implement the new program two full-time personnel would administer and enforce the program. Appropriate fees could support the cost of administering the program. The county would assume responsibility from the state for enforcing the applicable standards of the state law and the local ordinance. Local administration of the program will shorten the review time for developers from 6-8 weeks to less than 3 weeks. Developers should experience a significant improvement in customer service.

Initiation of the program requires some preparation prior to implementing the ordinance. It is suggested that the effective date occur no sooner than 4 months after adoption of the ordinance to allow for recruitment and selection of personnel, training, creation of forms and procedures, and the purchase of necessary equipment such as computers and vehicles. Staff estimates program start up costs totaling \$172,822 for the first 12 months. With ordinance approval in September, new personnel could begin work in January with the program beginning in February. Staff estimates annual program costs of approximately \$122,822 for subsequent years. The state requires review and approval of the local ordinance by the Sedimentation Control Commission. This review would occur after local adoption and may take up to 90 days. The State has indicated that the Sedimentation Control Commission could delegate the state program to Henderson County at their February, 2007 meeting if we submit our petition by October, 2006.

State staff indicated that we could apply for a grant to reimburse the County for 40% of the program start-up costs. This grant would begin July 1, 2007 or when the State budget is adopted. Any expenses for the program after that date could be reimbursed. Expenditures that could be reimbursed include vehicles, personnel costs, equipment, computers, furniture, etc. The State would not reimburse any expenses that occur before July 1, 2007.

Currently the state charges a plan review of \$50 per acre rounded up to the next full acre. This fee does not cover the state's cost to administer the program. Significant tax dollars support the state program. Staff proposes a fee of \$250 per acre rounded up to the next full acre to recover 100% of the county program costs. This fee may require adjusting in subsequent years and may not cover 100% of the program costs of the first year. Buncombe County charged \$250 per acre but recently increased their fee to \$400 per acre. A survey provided by the state indicates other local jurisdictions charge fees ranging from \$80 to \$540 per acre. If a violation occurs, staff would issue a notice of violation and require a re-inspection. Staff suggests a re-inspection fee of \$80.00 per inspection. If a violation is discovered, state law allows the local government to suspend all other existing building permits or refuse to issue new permits until the situation is corrected.

Upon adoption of the ordinance, staff intends to create public informational items about the requirements. One method of informing the public can be represented by distributing brochures to anyone who obtains a building or septic permit. Educating the development community will likely be the most effective method of reducing soil erosion. A variety of public education methods would be developed and initiated.

Successful program implementation requires municipal participation since a significant portion of development activity occurs with the municipalities. If municipalities decline to participate in the program, higher fees will become necessary to cover the cost of administering the program. A local agreement would allow the county to administer the program inside the municipalities. Contacting the municipalities for participation will be a key step in the process.

Mr. Starr followed up with additional information to the Board:

- The plan approval and the permit are one in the same.
- Notification must be made at least 30 days prior to any land disturbing activity.
- A new GIS layer will be available on a public website to identify slopes.
- A Permit specialist will be available to flag necessary cases. Most zoning requests are done by the city. Zoning is not reviewed by the county at all. Commercial jobs require site plans, however; residential jobs do not. It has been proposed that we do a site plan or statement for residential. Land disturbing activity could be addressed with a summary worksheet by requesting additional information, therefore using that for a flag. Permits can be revoked and jobs suspended.
- Plans must be drafted by a land design professional such as a landscape architect or professional engineer.
- Civil penalties can be up to \$5,000 per day. Additional re-inspection fees may apply.

Chairman Moyer requested that Anthony Starr give a broad overview of how the ordinance is put together and allow the Board to ask questions while doing so.

The attached draft ordinance has twenty three (23) different sections. The section numbers will change when it is codified into our County Code. Included in the draft are Title, Purpose, Definitions, Scope and Exclusions, Mandatory Standards for Land-Disturbing Activity, Erosion and Sedimentation Control Plans, Basic Control Objectives, Design and Performance Standards, Storm Water Outlet Protection, Borrow and Waster Areas, Assess and Haul Roads, Operations in Lakes or Natural Watercourses, Responsibility for Maintenance, Additional Measures, Existing Uncovered Areas, Fees, Plan Appeals, Inspections and Investigations, Penalties, Injunctive Relief, Restoration after non-compliance, Severability, and Effective date.

Chairman Moyer suggested that a Public Hearing be set in order to allow public comment as soon as possible. At that time they would discuss whether or not a site plan is necessary.

Steve Wyatt suggested that if the framework is in a basic format we are prepared to move forward with a Public Hearing within the required 10 day notice.

Commissioner Young recommended that it be a special called meeting versus a regular scheduled meeting.

Commissioner Baldwin was concerned with slope and volume of water. The ordinance is written to address a ten (10) year vent. This model is used to address the state and not tailored for the mountains. He is also concerned with soil type. Different types of soil move differently in water. There is no way staff could look at all issues unless given adequate time. He feels that looking at slope, soil type, etc. (which are all in GIS), and then looking at a site plan drawing to scale, (which can be done by the contractor or property owner) would give the county a better way to access where they were on the project. Mr. Baldwin asked if the ordinance would be brought forward as is or changed to add a section to require a site-plan submittal and review.

Commissioner McGrady agreed with the public hearing and obtaining more information from the public.

Commissioner Messer agreed with Commissioner Baldwin that this ordinance is a start however we need a plan in line. Mr. Messer feels that it needs to be looked at again.

Anthony Starr suggested looking at the 25 year storm plan versus the 10 year storm plan. This would in turn bring in further measures to control runoff.

Commissioner Young questioned the backing and support of the Environmental Protection Agency, the Clean Water Agency to the county.

Anthony Starr explained that they supported us fully.

Commissioner Baldwin motioned that staff be asked to add a provision that would call for a site-plan submittal drawn to scale so that staff could adequately address or analyze the site so they could determine whether or not the minimum or maximum acreage is going to be disturbed.

Anthony Starr explained that the staff did discuss requiring a permit for all disturbance activity initially. It did not include a site-plan. The purpose was to give the staff a chance to communicate the expectations and best practices. The staff can take this draft ordinance and add a site plan without all the other requirements.

Commissioner Baldwin motioned that a provision be added that requires both a general permit and a site-plan, drawn to scale, in order to access the amount of area to be disturbed.

The motion failed four to one with Commissioner Shannon Baldwin voting for the provision, and Chairman Moyer, Commissioner Messer, Commissioner Young, and Commissioner McGrady voting against.

Commissioner McGrady made the motion to set a special called meeting for a Public Hearing to discuss the proposed Soil Erosion and Sedimentation Control Ordinance Program for Tuesday, September 26, 2006 at 6:00 PM.

All voted in favor and the motioned carried.

Chairman Moyer requested that Mr. Starr draft the language and send it to the Board for review as quickly as possible. He would also like input from Mr. Starr as to the suggestions.

Commissioner Baldwin suggested placing the additional items to be considered in the advertisement for the special called meeting.

Chairman Moyer was in agreement to the additions to the advertisement.

Commissioner Chuck McGrady moved to adjourn the meeting at 7:03 PM. All voted in favor and the motion carried.

Attest:

Elizabeth L. Corn, Clerk to the Board

William L. Moyer, Chairman