

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
SEPTEMBER 20, 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, 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, Deputy Clerk to the Board Terry Wilson, Research/Grants Coordinator Amy Brantley, Public Information Officer Chris S. Coulson, County Engineer Gary Tweed, Associate County Attorney Sarah Zambon, and Code Enforcement Director Toby Linville.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

Commissioner McGrady led the Pledge of Allegiance to the American Flag.

INVOCATION

Commissioner Shannon Baldwin gave the invocation.

MAYOR'S CUP RAFT RACE

Chairman Moyer informed those in attendance that last Sunday was the annual Mayor's Cup Raft Race. Last year Henderson County finished last. This year the team rallied and got third place. The team members were: Commissioner Baldwin, Commissioner Messer, Capt. Rick Davis (Sheriff's Dept.), Travis Pearce, and Chairman Moyer. Chairman Moyer stated that it was a fun race and an enjoyable day.

INFORMAL PUBLIC COMMENTS

Chairman Moyer asked each person who had signed up for informal public comments to please limit their time to about 3 minutes.

1. Emily Cowan – Ms. Cowan is an Assistant District Attorney in Henderson County. She has lived here about 1.5 years. She moved here from Jacksonville, N.C. She is a homeowner and lives downtown Hendersonville. She got married this past summer and she and her husband are expecting their first child in May. The reason she chose to share all that with a room full of strangers is because of a problem at the Henderson County Courthouse regarding second-hand smoke. The location of the smoking lounge on the top floor of the courthouse (third floor) is the big problem. It is not a public lounge and is not able to be accessed by the public. It occupies the staff break room which is situated between courtroom one and the District Attorney's office. She showed the location on a map. She stated that as an Assistant District Attorney, she has court every single day in courtroom one and she runs court every single day in courtroom one. On the days that she doesn't (if someone from another County runs it) she goes to her office which is located in the District Attorney's suite which is also affected by the second-hand smoke. Ms. Cowan stated that the lounge does not contain the smoke in any reasonable way. The smoke has become unavoidable. She stepped over to the map and was talking and I couldn't make out what she was saying. She was talking about the areas that are permeated by the second-hand smoke.

DATE APPROVED _____

She had provided a letter from Jeff Hunt, District Attorney, that he wrote in 2000 indicating his desire to get rid of the smoke problem and his desire to prosecute if people were not willing to abide by the no-smoking rule in that area. She asked him to write a letter but he re-issued that letter from 2000. Also in the packet was a petition signed by 55 people yesterday. Ms. Cowan was not at work yesterday, she was at a conference at Lake Junaluska. While she was out of the office one of the Defense Attorneys, Robin Bowen, asked some people to sign a petition and in one afternoon she got 55 signatures, including Defense Attorneys, District Attorney, Jeff Hunt himself (Elected District Attorney), as well as Judge Robert Cilley who is the head District Court Judge who works in courtroom one and has his chambers directly across from the smoking lounge.

She referenced other materials that had been provided for the Board's review regarding the dangers of second-hand smoke, quoting that the only way to protect people is to move smoking areas outside.

She stated that under North Carolina law, in state run buildings, you have to designate 20% of the indoor facility to smoking. However, there are some things that can be done. Eighty percent (80%) of the public space needs to be smoke free; however, there's a way to get rid of the 20%. Ms. Cowan stated that we currently are in violation of the 20% rule already, there is not 20% of the courthouse designated as smoking.

She stated that if you can say that it is physically impracticable to contain the smoke then you do not have to designate 20% of the building to smoking. Courthouses across the state have done this. She stated that out of the five county districts that we are a part of, we are the only one with indoor smoking so the other four counties have smoke-free courthouses.

Ms. Cowan did not ask the Commissioners to make the Henderson County Courthouse smoke-free. She thinks it is a good idea and the best policy. She also thinks that it is the only way to truly protect people from second-hand smoke. Instead what she did ask is that they move the smoking lounge somewhere else. There is a smoking lounge on the first floor (the ground floor) that is for the public. Once again Ms. Cowan walked over to the map and I couldn't make out what she was saying.

Ms. Cowan quoted that the Surgeon General now says that it is no longer an annoyance, the scientific evidence is now indisputable, second-hand smoke is not a mere annoyance, it's a serious health hazard that can lead to disease and premature death in children and non-smoking adults. She told the Board that we're putting the county at risk of some serious law suits. We're exposing children, young impressionable children to this smoke. She shared with the Board a list of chemicals that are available in second-hand smoke. We're opening ourselves, as a county, to law suits for various reasons including the presence of the chemicals, including damage and danger to unborn children and born children and finally to cancer survivors. "This is already having effects on people and it's going to get worst and I ask you as County Commissioners to please take this seriously. I don't have the luxury of time. I don't have the luxury of waiting a few years for the legislatures to change their mind. I have to be up there every day, right now and I have to hope and pray that this does not have a negative effect on my child. So I ask you to please take this very seriously, to please read through the materials I have given you, including the letters from other concerned people, the petition and just to take this to your committees and to please do the right thing and eliminate that smoking lounge from the top floor of the courthouse."

Chairman Moyer asked the County Manager and the County Attorney to take a look at this and place it on a future agenda for action.

2. Philip Stanley – Dr. Stanley lives in Mills River on Banner Farm Road. He stated that he is a candidate for the School Board. He stated that it is sad that the School Board lacks members with Truman's character to make hard decisions by considering the consequences for the entire community by passing the buck to the Board of Commissioners. Mr. Stanley reiterated something he

had said at a previous meeting – “The County Manager should give the School Board a realistic number before the budget process begins. He should update that number as time passes to stop this endless cycle of the School Board budget packed with every dream list to be followed by the Board of Commissioners entering the budget process and portrayed as the "Grinch who stole Christmas". It's time for this charade to end. The People of Henderson County expect a good school system but intuitively they know that money is only one of the many factors that a great school system makes. As I said at the last School Board debate – Washington, DC spends \$5,000 more per student than we do but would we trade their test scores for ours? Hopefully, Mills River will get the facility they need with the ability to expand it's size economically in the future as it should be for all schools. We can no longer afford to build inefficient schools, to fulfill wishful thinking of career minded School Board members.”

3. Jeffery Naber – Mr. Naber lives in the Sedgewood Subdivision out Highway #191. He is representing his neighbors in the subdivision. He spoke to the issue of a text amendment, application # TX-2006-01. This refers to C2 zoning and the current Ordinance which allows for special use permits to place industrial uses in a C2 commercial neighborhood district. He tried to paint a vision of driving down Highway #191 into his neighborhood, you pass subdivisions like Dogwood Forest, Indian Hills, Creekside, Carriage Park, and as you come down the hill toward Mountain Road intersection, there is a small commercial neighborhood district with the Haywood Animal Hospital, Corns Outlet, a Medical Center, and a Beauty Salon. Further on down the road you have the Schools and the School property. Coming back to the intersection the issue for him and his neighbors right now is the corner of the intersection. Application has been made for that C2 property, which is approximately 2.5 – 3 acres. The applicant is in the process of trying to get a special use permit to put an industrial site there, a light industrial site which would be a mini storage unit, 480 units. If you compare that elevated site of 40 feet, “there is no other mini storage area in the county that is elevated where as you drive through the neighborhood you would see every unit on that site as it goes up the hill.”

Chairman Moyer expressed that the item is on the agenda for the Board to set a public hearing and the public hearing is the time for people to make their case.

Angela Beeker, Attorney, stated that her client was just making his point and asking the Board to set the public hearing.

Chairman Moyer allowed Mr. Naber to continue.

Mr. Naber continued asking the Board to set a public hearing and give full consideration to this issue.

There was some discussion about the process and the County Manager was directed to look at this so that we won't have public comments prior to having a public hearing on an issue.

4. Dick Baird – Mr. Baird spoke as a tax paying citizen of Henderson County. He spoke to the issue of school funding, stating that next year we would be faced with the school system's need to complete Dana and the major construction projects at Mills River and Hillandale. The off-the-cuff estimate is \$35,000,000. Current enrollment trends indicate a new elementary school will be required every two or three years. As these kids progress, an expensive new middle school and high school are going to be needed sooner than anticipated.

What are our options? Mr. Baird named ten:

- 1- Do nothing which is a suicide option.
- 2- Delay which is a cowardly option.
- 3- Try to slow growth which is a finger in the dyke option.
- 4- Increase property taxes which is a historic option.
- 5- Better utilize available space which is the year-round option.

- 6- Try to find alternative revenues which is the forlorn hope option.
- 7- Encourage illegals to self deport which is the American's first option.
- 8- Stop county funding of unnecessary teachers and save \$3.8 million in this fiscal year which is the sensible option.
- 9- Centralize capital management which is the efficient option.
- 10- Let the students pay an annual rental fee which is an unexplored option.

Mr. Baird stated that the Board had not legitimately examined all the alternatives. "Please do not come after another property tax rate increase until you have. When you can look me in the eye and say you have honestly looked and can find no other answer, then I will willingly whip out the checkbook. To assist you in the American's first option, I am formally submitting a draft 'Illegal Alien Immigration Relief Ordinance' with a request that you start action to enact such an ordinance in Henderson County."

DISCUSSION/ADJUSTMENT OF AGENDA

There were no adjustments to the agenda. *Commissioner McGrady made the motion to approve the agenda. All voted in favor and the motion carried.*

CONSENT AGENDA

Commissioner McGrady disclosed that he is on the Board of the Children & Family Resource Center and one of the tax releases is related to that. There is no conflict, just a disclosure. No-one had a problem with that.

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

The Consent Agenda consisted of the following:

Tax Collector's Report

Terry F. Lyda, Henderson County Tax Collector, had provided the Tax Collector's Report dated September 1, 2006, for the Board's review and consent approval.

Tax Releases

A list of 89 tax release requests was presented for the Board's review and consent approval

Tax Refunds

A list of 2 tax refund requests was presented for the Board's review and consent approval.

Financial Report – July 2006

Cash Balance Report – July 2006

These reports were provided for information and consent approval.

The YTD deficit in the Emergency 911 Communications Fund is due to the June surcharge fees collected in July being shown as accounts receivable at fiscal year ended June 30, 2006.

The YTD deficit in the Mills River Watershed Protection Project, the Lewis Creek Restoration Project and the Mills River Sewer Projects Fund 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 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 – July 2006

The report was provided for information and consent approval.

EMS Accounts Receivable Report

The report was provided as information and for consent approval.

Budget Ordinance Amendment

Henderson County has received notice of funding of a grant under the “Crisis Housing Assistance Funds” grant program from the North Carolina Redevelopment Center of the North Carolina Department of Crime Control and Public Safety. The grant is in the amount of \$702,090.00, and must be used on “Crisis Housing” approved projects.

No amount was previously included in the budget, as the fact and amount of the grant was unclear.

The proposed amendment reflects total revenue to Henderson County under the program of \$702,090.00, and appropriates expenditures of the same amount. While the amount of property tax levied under the budget ordinance cannot be varied once set without court order, other portions of the budget ordinance are subject to modification by board action.

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

I move that the Board amend the Henderson County Fiscal Year 2007 Budget Ordinance to include a new Section 11A, reflecting revenues from and appropriations for the North Carolina Crisis Housing Assistance Fund, in the amount of \$702,090.00 each.

Non-Profit Performance Agreements

Subsequent to the approval of the FY 2006-07 Budget, staff has distributed the funding agreements to the non-profit agencies receiving County allocations.

Staff had received signed funding agreements from the following agencies:

- Council on Aging
- Healing Place
- The Free Clinics
- Boys and Girls Club
- Partnership for Health
- Children and Family Resource Center
- Carolina Mountain Land Conservancy for the Upper Broad River Watershed Protection Program
- Dispute Settlement Center
- Interfaith Assistance Ministry
- Mainstay
- Pisgah Legal Services
- Blue Ridge Literacy Council
- United Way 211 Program

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

Bat Cave Fire and Rescue Lease Purchase Agreement

At the July 13, 2006 Fire and Rescue Advisory Committee meeting, Richard Barnwell, Chief of Bat Cave Fire and Rescue presented a proposal to order a new pumper. The total price of the new pumper is \$199,500.00. Bat Cave will make a down payment of \$49,500, financing the remaining \$150,000 through United Financial at a rate of 5.9% with a yearly payment of \$13,025 for 15 years.

A motion to approve the purchase of the pumper was made by Rick Livingston and seconded by Bill Stepp with unanimous approval.

Bat Cave Fire and Rescue respectfully requested the Chairman sign the prepared letter to United Financial.

Mediacom Southeast, L.L.C. temporary franchise extension

Included in the agenda packet is a proposed extension of the existing franchise agreement with Mediacom Southeast, L.L.C. This proposal maintains the status quo, pending Mediacom obtaining a state-wide franchise early in 2007. Mediacom has already agreed to this extension.

A franchise agreement must be twice adopted by this Board to be effective. Proposed is preliminary (first reading) adoption, subject to another vote at this Board's next meeting.

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

I move that the Board give preliminary approval to the extension of the County's franchise agreement with Mediacom Southeast L.L.C., subject to final agreement at this Board's next meeting.

Request for Support of Certificate of Need

Park Ridge Hospital submitted a Certificate of Need Application to obtain state approval to renovate and expand multiple departments of the hospital. The letter in the agenda packet outlines the specifics of this application. Park Ridge Hospital is requesting that the Board of Commissioners support this application.

Staff recommended that the Board of Commissioners authorize the Chairman to forward a letter of support for the Certificate of Need Application to Park Ridge Hospital.

Strategic Plan Monthly Report – 2006

Included in the agenda packet 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. This was for information. No action was requested.

Water Line Extension – Makayla's Place

The City of Hendersonville has requested County comments on proposed water line extension for Makayla's Place.

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

Staff recommended that the Board take action to support the referenced water line extension.

Water Line Extension – Fox Glen, Phase 2

Water Line Extension – Carriage Park, Section 15

Sewer Line Extension – Carriage Park, Section 17

The City of Hendersonville has requested County comments on proposed water line extensions for Fox Glen, Phase 2, Carriage Park, Section 15 and sewer line extension for Carriage Park, Section 17.

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

Staff recommended that the Board take action to support the referenced water and sewer line extensions.

Improvement Guarantee for Phase III of The Homestead at Mills River

The Homestead at Mills River, LLC, and River Oaks Joint Venture, LLC, owners of the project, submitted an application for an improvement guarantee for Phase III of The Homestead at Mills River. Phase III was conditionally approved by the Planning Board on May 16, 2006. The improvement guarantee is proposed to

cover the cost of completing earthwork, erosion control, storm drainage, paving and installation of the curb and gutter for Phase III.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developers intend to post with the County a surety performance bond in the amount of at least \$985,108.75 to cover the cost of the improvements (\$788,087.00) as well as the required twenty-five percent (25%) contingency (\$197,021.75). The proposed completion date for the improvements is June 1, 2007.

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

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

Improvement Guarantee for Eagle Pointe

Eagle Rock Properties, Inc., owner of the project, submitted an application for an improvement guarantee for a major subdivision titled Eagle Pointe. Eagle Pointe was conditionally approved by the Planning Board on January 18, 2006. The improvement guarantee is proposed to cover the cost of graveling and paving of the roads in the subdivision.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developers intend to deposit with the County a certified check in the amount of at least \$116,185.00 to cover the cost of the improvements (\$92,948.00) as well as the required twenty-five percent (25%) contingency (\$23,237.00). The proposed completion date for the improvements is August 28, 2007

A draft Performance Guarantee Agreement was included for the Board's consideration. If the application is approved, the developers must submit cash on deposit (certified check) in accordance with the terms of the Agreement. Once the County receives cash on deposit (certified check) the relevant parties must execute the Agreement.

Staff recommended that the Board approve the improvement guarantee application for Eagle Pointe subject to the developers submitting to Henderson County cash on deposit (certified check) in accordance with the terms of the Performance Guarantee Agreement.

Improvement Guarantee for the Preserve on Willow Major Subdivision

Mr. Luther E. Smith on behalf of Willow Road, LLC, owner, submitted a request for an improvement guarantee for the Preserve on Willow major subdivision. Preserve on Willow is located on approximately 90 acres of land off Willow Road across from Champion Hills. On March 21, 2006 the Henderson County Planning Board and Planning Department granted conditional subdivision approval for the proposed

development. The improvement guarantee is proposed to cover the construction of roads and public water service for the entire subdivision.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvement shave not been completed or in lieu of completing all of the required improvements and 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 \$514,896.75 to cover the cost of the improvements (\$411,917.40) as well as the required twenty-five percent (25%) contingency (\$102,979.35). September 1, 2007 is the proposed completion date for the improvements.

A draft Performance Guarantee Agreement was included for the Board's consideration. If the application is approved, the developer 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.

Staff recommended that the Board approve the improvement guarantee application for Preserve on Willow, subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

Referral of Special Use Permit Amendment Application for "Leoni's Mountain Lake Homes" Planned Unit Development to the Planning Board

Todd Leoni, agent and owner of Camp Riley, Inc., 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-04-01) for the planned unit development known as "Leoni's Mountain Lake Homes".

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 is suggested:

I move that the application for a special use permit amendment for the planned unit development by Camp Riley, Inc. for "Leoni's Mountain Lake Homes" be forwarded to the Henderson County Planning Board, pursuant to section 200-33 of the Henderson County Code.

Nursing/Adult Care Home Community Advisory Committee – Annual Report

Nuala C. Fay had prepared the report for the Board's information. No action was requested.

Big Sweep Day Resolution

North Carolina Big Sweep is a statewide community effort to retrieve trash from North Carolina's waterways and landscapes and is coordinated locally by the Environmental and Conservation Organization. The prepared resolution sets aside September 23, 2006 as Big Sweep Day in Henderson County.

Staff recommended that the Board adopt the prepared resolution.

9th Annual Henderson County Benefit Toy Run Parade Day Proclamation

The 2006 Henderson County Benefit Toy Run Parade has been scheduled for November 18, 2006. The prepared proclamation sets aside this day as Henderson County Benefit Toy Run Parade Day.

Staff recommended that the Board adopt the prepared proclamation.

NOMINATIONS

Notification of Vacancies

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

1. Community Child Protection Team – 6 vac.
2. Downtown Hendersonville, Inc. – 2 vac.
3. Henderson County Zoning Board of Adjustment – 1 vac.
4. Hospital Corporation – 4 vac.
5. Juvenile Crime Prevention Council – 1 vac.

Chairman Moyer asked Mrs. Corn to make an introduction and explain what will be changing. Mrs. Corn introduced Teresa (Terry) Wilson, the new Deputy Clerk to the Board. Ms. Wilson started work this Monday.

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. Hendersonville City Zoning Board of Adjustment – 1 vac.

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

3. Historic Preservation Commission – 1 vac.

Chairman Moyer explained that he had spoken to Mayor Roger Snyder yesterday and they hope to have a candidate soon. There were no nominations at this time so this item was rolled to the next meeting.

4. Juvenile Crime Prevention Council – 4 vac.

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

Chairman Moyer asked if the Board needed to take action on Doug Jones. Amy Brantley explained that Doug Jones had served as the United Way rep. for the last 2 years. We have been asked to allow him to continue to serve in that role until they get a new person on board, probably in December.

Commissioner McGrady nominated Doug Jones to position #17, United Way position. There were no other nominations. Chairman Moyer made the motion to accept Mr. Jones by acclamation. All voted in favor and the motion carried.

Amy Brantley explained that she had heard from the District Attorney's office last week and Emily Cowan will be their representative. Ms. Brantley had not received her application yet. She talked with Ms. Cowan at the meeting here today and she indicated that she would serve so Ms. Brantley will fax her an application to fill out.

Commissioner Baldwin nominated Emily Cowan for position #4. There were no other nominations. *Chairman Moyer made the motion to accept Ms. Cowan by acclamation, subject to receipt of her application. All voted in favor and the motion carried.*

5. Nursing/Adult Care Home Community Advisory Committee – 3 vac.

Commissioner McGrady nominated Nancy Mitchell for reappointment to position #6 and Dee Hill for position #16. There were no other nominations. *Chairman Moyer made the motion to accept Ms. Mitchell and Ms. Hill to these two vacancies. All voted in favor and the motion carried.*

6. WCCA Board of Directors – 1 vac.

Commissioner McGrady nominated Lynn Marks for this vacancy. There were no other nominations. *Chairman Moyer made the motion to accept Ms. Marks by acclamation. All voted in favor and the motion carried.*

INTRODUCTION OF NEW COOPERATIVE EXTENSION DIRECTOR

Chairman Moyer informed the Board that we have a new Cooperative Extension Director. He asked Selena Coffey to introduce the new Director.

Selena Coffey invited Denise Baker to the podium. She is the new director and is a graduate of ASU and NC State. She grew up in McDowell County. She spent a number of years working for Mitchell County and Yancey County. Ms. Coffey felt that Ms. Baker will make a great member of the Management Team here.

Denise Baker stated that she looks forward to working with the citizens of Henderson County. She has admired the Cooperative Extension Program here for a long time and she is glad to be part of that team.

Change in the order of the Agenda

Chairman Moyer explained that there is an elected official in attendance for item “I – Chimney Rock Resolution”. He suggested moving item I to the next item on the agenda to accommodate the elected official. The Board was in agreement.

CHIMNEY ROCK RESOLUTION

Disclosure – Commissioner Baldwin stated that he did not see a conflict but disclosed that he is the Community Development Director, i.e. Planning Director for the Town of Lake Lure. Parts of the Chimney Rock Park are within the municipal limits of the town so taxes are being paid to the Town of Lake Lure; however, if the State were to purchase the property, that would be removed from the tax scrolls of the Town so in support of the Resolution, he did not see a conflict. He deferred judgment to the Board of Commissioners.

No one expressed an issue so Chairman Moyer stated that the Board had been notified and the Board does not see a conflict.

Chairman Moyer introduced Jim Proctor, the Mayor of the Town of Lake Lure. Mr. Proctor requested the Board consider a Resolution with respect to the Chimney Rock matter. Many jurisdictions are currently considering this matter.

Jim Proctor came forward and addressed the Board. He explained that Chimney Rock Park is now for sale. There is also a proposed new Hickory Nut Gorge State Park. There is a large amount of state monies appropriated for the State Park and now Chimney Rock Park is on the market. A group of local citizens have urged the State to purchase Chimney Rock Park as a centerpiece for the State Park. Others have been asked to help in that support. The Town of Lake Lure, the Village of Chimney Rock, the Rutherford County Commissioners have all unanimously supported this as have a whole host of other municipalities and counties surrounding Lake Lure. Mr. Proctor stated that if the State bought Chimney Rock Park, it would be the only purchaser that could continue the park similarly to what it is and preserve it for generations to come and that is the main focus.

Justin Hembree stated that the Resolution included in the agenda packet is the same Resolution as Mayor Proctor mentioned, it was drafted and has been adopted by numerous jurisdictions in Western North Carolina as well as member civic organizations.

Commissioner Young had spoken with a member of the Rutherford County Board of Commissioners yesterday, Chairman Charles (Chuck Hill). He assured Mr. Young that the Rutherford County Commissioners had written a resolution to support this buy by the state. He also faxed a copy of it to our County Manager. Commissioner Young wasn't sure whether our resolution states that we support the resolution of the Rutherford County Commissioners and felt that should be added to our proposed resolution.

Commissioner Young made the motion to approve the proposed agenda, adding that the Henderson County Board supports the resolution from the Rutherford County Commissioners.

Commissioner Baldwin read from the resolution which stated that the Chimney Rock Park is within Henderson County but the Park is within Rutherford County and that change needs to be made to our resolution, throughout the document.

A vote was taken and the resolution passed unanimously.

VEHICLE FINANCING PROPOSALS

Carey McLelland explained that included in the current year budget is debt service to pay for the installment purchase financing of new vehicles to replace vehicles in the County's fleet that either had leases expiring during the fiscal year or were requested and approved as new vehicle replacements for certain departments. Due to the large number of vehicles (32) to replace, staff recommends installment purchase contract financing by making payments over a three year period at a very low interest rate to lessen the impact on the budget for the current and future fiscal years.

Staff requested proposals from financial institutions to refinance the purchase of thirty-two (32) new vehicles at a total cost not to exceed \$690,000. Twenty-six (26) of the new vehicles are for the Sheriff's Department and six (6) are new trucks or vans for other County Departments. Included in the agenda packet (Exhibit A) for the Board's review are the results of the financing proposals that were received from eight financial institutions.

Bank of America has been certified as the lowest responsive proposal (Exhibit B) to finance the new vehicles for a 3-year term at a bank-qualified interest rate of 3.75%. The total annual debt service payments required would be \$244,255.36. The first quarterly payment of \$61,063.84 would be due in January 2007. Staff budgeted debt service to make the first two quarterly payments that would be due in the current fiscal year's budget.

Staff recommends that the Board consider approving the resolution (Exhibit C) accepting and approving the proposal received from Bank of America and authorizing the Chairman and staff to execute the required financing documents. A draft copy (Exhibit D) of the bank's installment purchase contract was included for the Board's review and will be in essentially the same final form that the County has entered into with Bank of America on previous financings for vehicles and voting equipment with the current proposed terms. No formal approval by the Local Government Commission or a public hearing is required to enter into an installment purchase contract financing for vehicles.

It would be appropriate for the Board to adopt the prepared resolution at today's meeting approving the Bank of America vehicle financing proposal and authorizing the Chairman and staff to execute the required documents to close this transaction.

Discussion followed, including but not limited to fleet management. Captain Rick Davis explained that the Sheriff's Department tries to adhere to what the Highway Patrol has for Fleet Management. Highway Patrol has a lot of experience in that area, they try to replace vehicles at 60,000 miles. After that, there is so much maintenance cost that they start falling outside the parameters of the warranties. Captain Davis stated that the fleet is in good shape right now. He agrees that there are some vehicles that need to be ear-marked for replacement more quickly because they do get a lot of miles on them. In some areas they don't put as many

miles on them and the vehicle could go somewhere else in the county for additional use. Captain Davis agreed that there should be an active fleet management process taking place. That would benefit the entire county, not just the Sheriff's Department.

Commissioner McGrady made the motion to approve the resolution approving the Bank of America vehicle financing proposal and authorizing the Chairman and staff to execute the required documents to close this transaction. All voted in favor and the motion carried.

PURCHASE OF SHERIFF'S DEPARTMENT VEHICLES

NCGS 143-129, Procedure for Letting of Public Contracts, allows for the waiver of bidding for previously bid contracts and the purchase of equipment/vehicles by the County if within the last 12 months either a federal agency, the State of North Carolina or agency or political subdivision of the State, or any other state or agency or political subdivision of that state has completed a public, formal bidding process.

There is a ten day requirement to advertise a waiver of the bidding procedures under this statute before the Board can consider and approve such actions. This waiver was duly advertised in the *Times-News* on September 5, 2006.

The Sheriff's Department has identified that Wake County has formally bid out vehicles within the last month and would request the Board of Commissioners to consider adopting the prepared resolution allowing the department to piggyback on Wake County's previously bid contract awarded to Ilderton Dodge in High Point, NC to purchase twenty-six (26) new patrol vehicles.

Included in the agenda packet was a copy of a Sheriff's Department Memorandum making the request and identifying the specific reasons to replace the 26 patrol vehicles scheduled this fiscal year to be taken out of the fleet with 2007 Dodge Chargers.

Carey McLelland presented this agenda item and answered some questions from the Board. Captain Rick Davis was also present and answered some questions.

Commissioner Baldwin made the motion to approve the resolution to allow the Sheriff's Department to piggyback on another county's previously bid contract to purchase the new patrol vehicles per NCGS 143-129(g). All voted in favor and the motion carried.

VOLUNTEER FIRE DEPARTMENT TAX ADJUSTMENT POLICY

Selena Coffey informed the Board that from time to time, due to taxpayer or staff errors, repayments of overpaid ad valorem property taxes on incorrectly listed real property must be made. In the case of a substantial incorrect listing, this could cause a situation where a volunteer fire department would be required to pay out a significant percentage of its annual budget in any given year.

The proposed policy only comes into play where required repayments are greater than \$1,000.00. Under the proposal, Henderson County would advance repayment of any amount over \$1,000.00 on behalf of the Department involved, to be repaid over three years (in most cases). However, in cases where the fire district tax is already greater than the amount that can be set without referendum, the repayment could be stretched to five years.

Commissioner McGrady made the motion to adopt the proposed policy as presented. All voted in favor and the motion carried.

APPOINTMENT OF CHAIR AND VICE-CHAIR OF ALTERNATIVE REVENUE TASK FORCE

Steve Wyatt informed the Board that there was an organizational meeting of the Alternative Revenue Task Force. The Task Force meets again next Wednesday. The Charter for the Task Force allows the Board of

Commissioners to appoint a Chair and Vice-Chair for the Task Force. One member has volunteered to serve as Chair, Steve Dozier. One member has volunteered to serve as Vice-Chair, Nick Pryor.

Commissioner McGrady made the motion to appoint Mr. Dozier as Chair and Mr. Pryor as Vice-Chair. There were no other nominations. All voted in favor and the motion carried.

NUISANCE ORDINANCE AMENDMENT

Russell Burrell informed the Board that a question has arisen regarding the potential regulation of certain forming 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 NCGS 153A-132 and of solid waste under NCGS 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 produce 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 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.

Following some discussion, Commissioner McGrady suggested tabling a decision at this time and asking Mayor Snyder to present their request to the Commissioners at the next meeting.

Following further discussion, *Commissioner McGrady made the motion to table this issue to the next meeting and to ask representatives from Mills River to come before the Board and ask staff to work with the officials in Mills River to see if we can come up with language that addresses their concerns without opening up the specter of abandoned mobile homes. All voted in favor and the motion carried.*

CHILD PROTECTION ORDINANCE

Russ Burrell had provided the Board with a draft ordinance intended to prevent convicted child sex offenders from being present in or loitering on the grounds of parks, schools or the immediate surrounding areas.

The maximum penalty for the violation of this ordinance would be imprisonment for thirty (30) days, plus a \$500.00 fine.

Mr. Burrell explained that this ordinance is based in large part on one that is currently in existence in Laredo, Texas. The Town of Fletcher has a similar ordinance involving their parks. Weaverville has one. The City of Miami Beach, Florida also has a similar ordinance.

The ordinance defines an area including the premises and 300 feet around public schools, public parks, and public libraries and essentially declares them off-limits for convicted child sex offenders. A convicted child sex offender is defined as a person who has to be listed on the public sex offender registry that you can find on-line.

Essentially the ordinance has two provisions, one that they are not allowed to be present in what's called a child safety zone (that's the 300 foot area around and including schools, parks, and libraries) and the other says that it's unlawful for them to loiter in that zone. The reason there are two different provisions is that one is more of a legal risk than the other. There is very little legal risk in making it unlawful to loiter in such an area. There is somewhat more of a legal risk in making it unlawful to just be present in such an area.

Mr. Burrell explained that the State has enacted some legislation this past General Assembly term that makes it unlawful for you to live, reside within 1,000 feet of a school. This ordinance doesn't go into residence at all. The regulation of residence of child sex offenders is probably pre-empted by State law at this point; however, it does go into a whole difference thing, presence and loitering.

Much discussion followed.

Commissioner McGrady made the motion to direct staff to provide a new draft which would strike "B – It shall be unlawful for a convicted child sex offender to knowingly be present in any child safety zone" and leave "C – It shall be unlawful for a convicted child sex offender to knowingly loiter in any child safety zone" and further expands the breadth of the ordinance to include a range of child-serving entities that might also include charter schools and other places where children would be. Also to research whether there is a feasible way to expand this to people who would be coming off the registry. All voted in favor and the motion carried.

TOBACCO USE POLICY FOR HUMAN SERVICES BUILDING

Russell Burrell informed the Board that the Boards of Public Health and of Social Services have requested that the Board of Commissioners adopt a policy prohibiting any tobacco use in and near the new Human Services Building.

1. The Board of Public Health recommends a policy that would make all of the building and all of the grounds of the Human Services Building tobacco-free, but understands the requirements of North Carolina law, stated in bullet number 3, below.
2. The Board of Social Services recommends the most restrictive tobacco policy allowed by law.
3. Article 64 of Chapter 143 of the General Statutes allows a building housing either a local health department or a local department of social services, plus all the grounds within fifty (50) linear feet of such building, to be declared a "nonsmoking area". The grounds outside the fifty-foot perimeter may not be regulated.
4. Under these Statutes, any person smoking in a declared "nonsmoking area" would be guilty of an infraction, and be subject to a \$25.00 fine. In addition, a County employee violating this restriction would be subject to discipline.
5. Staff recommends that all the interior of the Human Services Building and all the area within fifty (50) linear feet of the building be declared and demarked as a "nonsmoking area".

Employees of both the Health Dept. and the Dept. of Social Services had requested a smoke-free campus but realize that this is all that State law allows regulation of.

Commissioner McGrady moved that the entire Human Services Building and all the area within fifty (50) linear feet of the exterior of the Human Services Building be a "nonsmoking area" pursuant to Article 64 of Chapter 143 of the North Carolina General Statutes. All voted in favor and the motion carried.

There was some discussion of how to handle the area outside the fifty feet, since there is no covered area currently for smokers. It could be handled with signs that read “No smoking within 50 feet of the building” or it might be handled with “Bus Stop” covered smoking area outside the fifty foot area.

REPORT ON 2007-2011 STRATEGIC PLAN UPDATE

Selena Coffey referenced a small report entitled “Listening to Our Community” 2007-2011 Strategic Plan Executive Summary: Community Input Phase. This is a summary of the materials from the four input sessions that were held at the beginning of August as well as the e-survey information presented in late August.

Ms. Coffey had provided to the Clerk a big thick notebook of raw materials or the information presented to staff during the input sessions and the e-survey comments that were received.

During these community meetings, the speakers and audience were asked to focus on and answer the following key questions that serve as the foundation for the 2007-2011 Strategic Plan:

1. What do you feel are Henderson County’s most important issues, opportunities, and challenges (strategic issues) for the upcoming four to five years? And why?
2. Do you have suggestions (strategies) for how the County should address these strategic issues, opportunities, and challenges?
3. North Carolina law provides counties one primary source of revenue to be used to finance its operations – property taxes. In limited instances, counties are permitted to charge fees for services. Given this, how would you propose that Henderson County should finance the initiatives that you have suggested?

These same three questions were asked on the e-survey as well as at the community input sessions. Back-up materials are also provided for Board review. All four community input sessions were taped so videos are available if you’d like to review in that manner. About 150 folks attended the four input sessions and of that number about 70 or 71 folks spoke. There were 391 e-surveys submitted. Of those, some of them were duplicated and some were incomplete, with no names and no response. About 359 were complete surveys. Ms. Coffey stated that the team will be working on strategies and action plans to address the issues that were raised. About December staff hopes to bring those draft strategies and action plans to the Board for action. This document is available on our website as of this morning. The summary document is included. The summary document will also be available in the County Managers’ Office, in case someone wishes to view it.

LOCATIONS FOR EARLY VOTING

Justin Hembree informed the Board that for the up-coming election in November there is only one early voting location planned for Henderson County, at the Board of Elections. Their new offices are off of Old Spartanburg Road. At the past several elections, early voting has greatly enhanced voter turn-out and civic participation. During the last election there were three early voting locations in the County, one at the Board of Elections, one in Fletcher and one in Flat Rock. Obviously as County Government we’re interested in ensuring civic participation and opportunity for all in the election process. One method of doing so is providing those early voting locations, one-stop voting. The Board of Elections has estimated that in order to provide each one of these locations, costs approximately \$12,000 per location. The plans from Board of Elections is to go with three early voting locations during presidential election years and going back to one early voting location during the general election, the mid years between presidential election years. The Board of Commissioners could request more early voting locations but if the Board chooses to do so then the County would be responsible for paying any additional costs associated with those extra voting locations.

Following some discussion, *Chairman Moyer made the motion to request two additional early voting sites, one in Flat Rock and the other in the Fletcher/Mills River area, with the understanding that we will step up and pay the \$12,000 per site.*

Commissioner McGrady wasn't happy about putting a request before the Board of Elections, without first hearing from them. He felt that we should have a representative from the Board of Elections to come before the Board of Commissioners to explain what their decision is and why. He felt more information was needed.

Following some additional discussion, *Chairman Moyer amended his motion to add a third additional voting site for the Edneyville/Dana area. A vote was taken and the motion passed four to one with Commissioner McGrady voting nay.*

PUBLIC HEARING – Rezoning Application #R-2006-02 (R-20 to R-10) Michael L. and Tracy J. Burns, Applicants.

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

Chairman Moyer stated that this is a public hearing with respect to a rezoning application #R-2006-02. Michael L. and Tracy J. Burns are the applicants. He called Planner Matt Cable to the podium.

Matt Cable explained that the applicant's agent is actually present on their behalf, Norma McMahan. Matt Cable explained that rezoning application #R-2006-02, which was submitted on June 9, 2006, requests 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 Planning Staff recommended approval of the application to the Planning Board which voted 5 to 1 to send the Board of Commissioners a favorable recommendation for rezoning application #R-2006-02 to rezone the Subject Area from existing R-20 zoning to an R-10 zoning district.

Before taking action on the application, the Board of Commissioners must hold a public hearing. In accordance with Section 200-76 of the Henderson County Zoning Ordinance and State Law, notices of the September 20, 2006, public hearing regarding rezoning application #R-2006-02 were published in the Hendersonville Times-News on August 30, 2006 and September 6, 2006. The Planning Department sent notices of the hearing via first class mail to the owners of properties adjacent to the Subject Area and applicants on September 6, 2006. Planning Staff posted signs advertising the hearing on the Subject Area on September 6, 2006.

Matt Cable referred to attachments in the packet of information and showed the Subject Area on maps. He stated that adjacent uses are primarily residential and include Charlestown Place planned unit development to the north and Staton Woods Subdivision to the south. Staff's position under the guidelines of current plans, policies and studies is that it supports the rezoning request to be zoned for high density residential uses. Staff's position and the Planning Board's recommendations were based on the following:

The subject area is currently located in the urban services area and northern portions of it are within the community service center. These classifications make it suitable for mixed services including residential uses with varying densities. Though there are differences between the R-10 and the R-20 zoning district, the lot sizes, set-backs, densities and uses seem to be in keeping with the character of the immediate vicinity. There is an R-10 district to the north where Charlestown Place planned unit development is located. Due to the relatively small size of the Subject Area and its similarities between the districts R-10 zoning does not appear to create a largely different impact on public services than where the Subject Area developed fully under existing R-20 zoning.

It is generally incumbent upon the applicant to demonstrate an over-riding justification for approving the rezoning application and Staff encourages the applicant to present any information that would further inform your consideration of the proposed rezonings. There is additional information in the agenda packet.

Matt Cable answered some questions from the Board.

Petitioner's Agent comments

Norma McMahan – Ms. McMahan stated that she was born here and she has watched this place grow by leaps and bounds. There are a lot of things that we have been very successful in making our community better but there are some things that we are lacking in. She wasn't sure that they could put a skilled nursing home on this property, she had read somewhere that they possibly couldn't. She already has nine investors lined up that would love to see this happen in Henderson County. Ms. McMahan stated that Carolina Village is booked solid for five years.

Chairman Moyer explained to Ms. McMahan that as part of the rezoning, we cannot get into the specific intended use of the property.

Public Input

1. Lenoir Barnette – Ms. Barnette lives at 330 Mockingbird Drive in Hendersonville. She spoke on behalf of the Staton Woods Homeowners Association which is contiguous to the property in question. The executive committee had prepared the following objections and questions to the proposed rezoning of the 5.91 acres off NC #225. “We find it difficult to understand how five of the six members of the Planning Board recommended approval of this application knowing that it violates the US #25 Corridor Study accepted by the Board of Commissioners on January 7, 2002. That recommends that the area south of Erkwood Drive/Shepherd Street is best suited for light to medium density residential purposes and that the study supports the current R-20 zoning on the subject area. Between 2002 and 2004 there was a consistent increase in the annual average daily traffic count on NC #225 in the area in question which was actually a 14.35% increase in two years. At least three higher density developments have been added since then, two of which are north of the Subject Area and one south and now a fourth is being considered. What impact has this had on #225 and how close are we now to exceeding the safe capacity of that same road. A parcel already exists zoned RA near Wistonia Place which is again contiguous which can additionally increase traffic. What kind of impact study is being done regarding the Highland Lake Road/Upward Road connector to I-26 and how will these additional high density developments impact that? Your own traffic study conducted from 2002 to 2004 shows most of the traffic going to I-26 is using NC #225 instead of #176 as #176 has remained constant during this period. In the past two weeks three families that we know of in our development experienced severe delays on Highland Lake Road/Upward Road while trying to get to serious medical appointments. Our concern is that R-10 zoning would allow four units per acre. A special use permit, about which we would have no say could further increase the number of houses per acre up to eight houses, a total of 48 families with a potential of 96 additional cars per day on #225. The Subject Property is on the market with Beverly Hanks Realtor with advertising that says that it ‘can be rezoned’, not may be. Have you committed R-10 zoning of this property to Beverly Hanks? What ramifications could occur if a totally different owner takes possession of the property, such as a special use permit? Shouldn't the applicants, who apparently purchased the property on speculation provide proof of intent? The creation of Charlestown Place causes a run-off into the streams adjoining our property. With the development of Subject Property additional run-off would occur from clearing grass-lands, tree removal, paving and roof tops. The residents of Staton Woods are concerned about erosion and an unusually large storm could cause certain Staton Woods residences to become flooded.” This was signed by the executive committee with additional notes. Ms. Barnette also asked if any Henderson County tax dollars would go to provide sewer or water hook-ups for these new higher density developments? The aforementioned Committee also noted that there was inadequate notification relative to this zoning application and hearing. The sign, which did not appear until the 12th or 13th of this month, was much too small and

illegible. There was no parking available and thus no way to read it. Notices in the newspaper were not seen by anyone of us. Mrs. Barnette distributed copies of her remarks.

2. James Kingsbury – Mr. Kingsbury resides at 319 Mockingbird Drive in Staton Woods Subdivision in Hendersonville. He expressed concerns regarding the traffic on #225 and why both the Planning Board and now the County Commissioners are choosing to ignore their own recommendations made on the South Corridor Study. This Study recommends that no high density development be put in this area south of Erkwood/Shepherd Street yet you've already put one in there and now you're using that as a basis for putting a second one in there. He questioned what the current safe capacity of #225 is.

Chairman McGrady answered "to be fair we're considering it because an application has been made. We have to consider it."

Mr. Kingsbury continued by saying that he had done his own personal analysis and if the Subject Property is rezoned R-10, that allows four units per acre on six acres which is 24 units. If a conditional use permit is obtained, this would allow eight units per acre or 48 units on this six acres. Assuming that each household has an average of two cars and that 1.5 of those cars go out each day to go to work or some other specific duty you're adding 144 vehicles onto #225. If you additionally consider the fact that each household may go out to dinner two times a week, that adds another 28 vehicles per day. If you consider each household may go shopping two times a week, that's another 28 per day. If you consider that two vehicles go out to conduct personal business such as going to the doctor, dentist, hospital, visiting, coming to a County Commissioners' meeting, that's another 28 vehicles per day. That's 250 vehicles per day added to the #225 Highway. He expressed real concern about that. Mr. Kingsbury stated that he retired here 10 years ago, he's 70 years old, and he has no idea what his longevity is going to be but to consistently have decisions made by other people in government in this county that diminish his quality of life. He stated that he is objecting to this change, he can't stop the Board from making this change and probably can't convince them to change their minds but at least he can tell them that he is getting fed up with being pushed around and his quality of life decreased in the years that he has been looking forward to enjoying his quality of life. He feels that the Board is making decisions without considering what the constituency wants to happen.

3. Dan Williams – Mr. Williams stated that he is personally influenced by this because the Subject Property adjoins his front yard. This particular property is adjacent to his front yard. What bothers him most about it is not the density but the set-back requirements would allow a condominium or apartment to be from within 25 feet of his yard to within 10 feet of his yard. His house is directly south of the property. He's been there for 15 years. It was a nice piece of woods next to him but the woods could possibly come down and within less than 60 feet of his front door, he could have a condominium in his front yard. That is his biggest concern because there is no buffer zone and when you rezone from R-20 to R-10 you go from 25 feet to 10 feet.

Matt Cable explained that the traffic counts are included in the staff report in attachment 2 on page 4.

Commissioner McGrady raised the issue that it is incumbent upon the applicant to show over-riding justification. That is the standard that the Board needs to consider when considering this rezoning application.

Matt Cable explained that it is their general policy to use the most current plans for the area. They do reference the #25 South Corridor Study which made recommendations for light to medium density in that area. The CCP (County Comprehensive Plan) calls for higher density in that area and in the immediate vicinity of that area, based on the availability of sewer and water in the area. That is our newest plan and so

that is generally what staff would base it off of. He stated that the R-10 allows for the RA (residential apartment) development, also planned unit developments but generally it's residential.

4. Delia Bankhead – Ms. Bankhead came forward in answer to a question raised by the Board. She lives at 118 Chickadee Circle in Staton Woods in Hendersonville. She answered that most of the lots in Staton Woods are close to an acre. She thought that the smallest lot was 0.67 acres. She is the Secretary of the Homeowners' Association. She expressed a concern that this property has already been advertised that it could be rezoned R-10. She spoke about the Subject Property, stating that it has a rather narrow frontage on # 25. The lot goes back rather narrow, the ground is high and quite isolated. She asked the Board to remember the other high density developments already in the area.

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

Following some discussion, *Commissioner McGrady made the motion to deny the rezoning application. In this case, he felt that the applicant had not met the burden of proof. All voted in favor and the motion carried.*

REGIONAL MENTAL HEALTH SYSTEM UPDATE

Justin Hembree stated that there had been press coverage regarding what is going on with our regional mental health system and in particular with New Vistas/Mountain Laurel. Mountain Laurel/New Vistas is the large not-for-profit mental health provider that was actually formed after the area authorities in the eight county region (Blue Ridge and Trend) dissolved. Originally there were two non-profits, Mountain Laurel which served Transylvania and Henderson County and New Vistas which served the other six counties in our region. These two agencies merged and became the safety-net provider for mental health clients in our eight county region. Based on numbers that have been presented by Mountain Laurel/New Vistas, during the quarter from April 2006 through June 2006 this agency reported serving over 8,200 clients in the eight county region. Of those, they reported serving about 1,500 clients in Henderson County, just that quarter. The vast majority of these clients come to Mountain Laurel/New Vistas as the last resort. They are primarily Medicaid eligible and/or eligible for State funded mental health services. These are folks that prior to the reform were served through the area authorities, through the state supported mental health system. Justin Hembree explained that there have been in the past concerns related to the financial survivability of Mountain Laurel/New Vistas but through reform they have continued to provide the full array of mental health services while at the same time other providers cherry-picked more profitable services. In turn, the great fear that everyone had five years ago when the reform process started, has actually happened now in terms of the more profitable services going to the providers that wanted to provide those services, leaving either local governments, the LMEs, or the non-profit safety-nets saddled with the services that aren't quite as profitable. This along with changes in service definitions, new mandates and directives from the state, have all placed New Vistas/Mountain Laurel in a very questionable financial position.

Justin Hembree stated that on September 1 the leadership of Mountain Laurel/New Vistas held a meeting with representatives from the eight counties to discuss their financial situations. They informed the group that the agency was indeed in dire financial straits and were essentially living off lines of credit and floated the idea of a financial bail out from the eight counties in the region. They informed that they were tapped into numerous lines of credit. When we asked the question, they were unable to inform us at that time (September 1) of the amount of money that they were specifically requesting from the county so another meeting was scheduled for this past Friday, September 15. Between September 1 and September 15 no formal communication was received by the counties from New Vistas/Mountain Laurel but during the meeting on the 15th, the county representatives were informed at the beginning of the meeting that the New Vistas/Mountain Laurel Board Directors had voted unanimously to begin the process of discontinuing operations of the agency. This was quite a shock to the entire group. No one realized that action was pending to such a degree. At the same meeting they were informed that a line of credit had been pulled from Mountain Laurel that had been secured by Buncombe County. After an investigation by Buncombe County's

internal auditor a recommendation was made and a decision was made by Buncombe County to pull the security for that line of credit. When this was announced, the leadership of Mountain Laurel/New Vistas informed us that they would be closing immediately, that was this past Friday. This created a crisis situation and it was clear that the immediate closure of New Vistas/Mountain Laurel would create a true public health crisis, not only in Henderson County but across the eight-county region. At one point, County representatives began discussion for options for securing a \$1,000,000 line of credit to allow New Vistas/Mountain Laurel to transition out of business in a more orderly manner and a plan was developed that would allow a loan of up to \$1,000,000 from Western Highlands, the LME, not the counties. That proposal was not agreed to by Mountain Laurel/New Vistas immediately because they had to get their Board together and look at some various things. The LME, Western Highlands, held an emergency meeting this past Monday morning. On Monday morning, the LME Board of Directors approved allocating up to \$1,000,000 to assist Mountain Laurel/New Vistas in the transition out of services. Mountain Laurel/New Vistas will cease operations October 31, 2006 and we're at the point now that we're beginning to see the rapid transition.

Justin Hembree said that the State of North Carolina has made it clear that they feel that this is a local issue and that we need to find a way to handle it. The place in our region where that burden is going to be bare is going to be placed upon the shoulders of the LME, Western Highlands local management entity. By State Statute the LME is required to insure that these safety net services are provided. To insure that those are provided there is obviously going to have to be a partnership developed and expanded upon between the LME, the eight counties, and service providers and stake holders in our area and in our region.

Justin Hembree stated that we will be holding a meeting this coming Friday morning, here in this room, with the LME. The LME CEO is going to be here along with some of his key staff and stake holders in our community; DSS, public health, law enforcement, the public schools, service providers, any one else that's obviously a stake holder in this system will be informed as to what is going on and discussions will take place of alternatives that we have in terms of shoring up the mental health system to make sure that when New Vistas/Mountain Laurel goes away, the folks that they are providing services for don't fall through the cracks and it's not as traumatic as it could be in terms of the closure of the doors immediately. One thing that the Board will need to be looking for in the near future – the county budgets annually \$528,000 for maintenance of effort funds for mental health. Those funds are included in the current year's budget but have not yet been allocated to either providers or agencies. At this point we are reviewing some proposals and we're sure more will come in terms of how these funds can be leveraged to shore up this system along with what the LME puts in place and in partnership with the LME because they're taking the lead on this to insure that there's a continuum of care as we weather this storm.

Chairman Moyer stated that it is good to see that Western Highlands (LME) is stepping in and trying to assume their role. It is a mighty big task to take on eight counties. He stated that we need to worry about Henderson County and come up with a crisis plan for Henderson County and we are committed to do just that.

Steve Wyatt said that we are trying to share information. We have an emergency on our hands. He feels that we have to make the assumption that we're on our own as far as the State of North Carolina. He said that he has made it very clear and will continue to do so to Western Highlands that he will look at them in this mental health reform, in this redesign of service delivery and that the LMEs have to be held accountable by the local entities. The LME personnel will be here Friday morning with county staff to bring the group up to speed and request their assistance. We're talking about medical providers as well as psychiatric service providers. Emergency rooms will be affected. We are trying to come up with the most effective plan that we can to lessen the impact on those institutions short term and then negate them long term. We are starting to receive very tangible written signed proposals from providers, some of which are providing options on certain coverage areas and others that are looking at the comprehensive program. Unfortunately, each of those proposals will have their own set of challenges and obstacles because the providers out there currently in the community and those that may evolve, will be looking at a dramatic and quick business expansion or perhaps even business start-up. There is the commitment and staff is working hard to lessen the impact but

there will be a negative impact. Friday was a frustrating day and it carried on into the week-end but that's over. The eight counties that are in Western Highlands took prudent action to stop an immediate closing of the doors, 5:00 Friday. That is a shocking thing that has been avoided. Everyone is working to lessen the impact and to develop a long-term plan. He welcomed input, suggestions, questions, etc. from the Board.

Board discussion followed. The consensus was that we have to look out for ourselves but we also are willing to work cooperatively with the other counties. We are committed to the eight-county partnership and will do everything we can. We may have some resources here that other counties can draw on. Other counties are in very similar situations. Henderson County needs help as do the folks in the other seven counties.

Chairman Moyer stated that early in the process we got our legislators involved, Carolyn Justice and Tom Apodaca. We had been complaining to them for years that we didn't like what was happening. Our concerns were not being taken into consideration. They heard first hand all the issues and problems and they will help work on this issue. We must come up with a short-term plan to deal with a disaster and then come up with a long-term plan that is sustainable. We are hosting a meeting this Friday. Western Highlands will be in attendance as will representatives from the other counties.

UPDATE ON PENDING ISSUES

Land Development Code

Anthony Starr informed the Board that staff is moving along quite well. The Planning Board has essentially covered every section of the draft at this point and is at the stage where they're trying to pull it all together now and approach a final form. He is hopeful that by the October 10 meeting of the Planning Board or October 17, that at one of those meetings they will be recommending a draft to the Board of Commissioners or will be very close to that point. That would allow them to bring a draft of the Code to the Board at one of the Board of Commissioners' meetings in November. They are nearing the timeline where they continue to receive applications for text amendments and rezonings and given the current process and what it takes to move through that process, it is very likely that any applications that they receive that they don't already have, they will not have the opportunity to act on before the new Code is in place. Thus, those applications would be pointless for staff, the Planning Board, and the Board of Commissioners to spend time on. Staff and the Planning Board recommended that the Board come to a consensus, if they are so inclined, that they would like to not entertain any further applications for rezonings or text amendments that have not already been received, until the Land Development Code is adopted.

Chairman Moyer asked Russell Burrell about the legal way to do such a thing.

Russell Burrell stated that first of all the applicants would be informed that the Board has expressed this as policy. If it is not going to be a formal moratorium, the Board would not absolutely declare that they would consider no further rezonings or text amendments or what have you. If the Board wishes to do that, then we would have to go through a formal process for declaring a moratorium.

If applicants are informed of the Board's expressed policy and the odds of it being reached before the Land Development Code totally changes the whole paradigm are practically nil. At that point, they can go ahead if they want to and could try to push before the process but they are being informed that your policy is that except in the exceptionally rare case that won't be reached by you before the Land Development Code is decided by the Board, then that's your policy.

Anthony Starr stated that special use permits would fall into that same situation.

Commissioner McGrady stated that the Planning Board agreed unanimously on this issue. Applicants would basically be wasting their time if they tried to push something through prior to the adoption of the new LDC.

Commissioner McGrady made the motion to support the staff recommendation regarding handling of rezonings, text amendments, and special use permits, understanding that we are not creating a moratorium

but we are expressing the sense that the County Commission had given an expected proximity of a real change in the Land Development Code, that it doesn't make sense to begin taking up those sorts of things at this time.

More discussion followed. *A vote was taken and the motion passed unanimously.*

Commissioner Baldwin wanted to go on record as saying that the first step is letting folks know that we are accepting applications but the process and time is way out there and the second step would be the use of the "M" word (moratorium) and if that's what we need to do, then that is what we need to do. If you begin to try to do good planning when bullets are flying, it's a very difficult thing to do due to the pressure it places on the department. If we need to take it a step farther he was prepared to do so.

Historic Courthouse Project

Gary Tweed explained that the project is moving along very well. We've had few issues to deal with since they started construction a month or so ago. They are currently in the middle of doing the asbestos abatement. Once they finish that, they will proceed into some lead paint removal. They have done most of the demolition work inside, removing plumbing, electrical, etc. Albert Vestal, who is with Control Corporation, will be coming on board in a couple of weeks and will be on site pretty much all the time. Mr. Tweed also plans to use Mr. Vestal on some other projects we've got coming up.

STAFF REPORTS

County Attorney's Report

There was nothing further at this time.

County Manager's Report

Steve Wyatt reported with mixed feelings that he had received and accepted the resignation of Justin Hembree, our Assistant County Manager. Justin has been with Henderson County since early 2004. Previously he had been the Mitchell County Manager. Justin will be moving on with a large Engineering Firm. He will be working to strengthen their position in working with local governments. Mr. Wyatt thanked Mr. Hembree for his service, friendship, and his support and wished him best of luck. Justin Hembree will be leaving us about the middle of October.

Commissioner McGrady – questions

Commissioner McGrady stated that the Board gets the written monthly strategic plan report as a consent item and he wished to touch on a few items. The Plan provides for a county-wide Recreation Master Plan in this cycle. He asked if we were on target to have such a plan.

Steve Wyatt stated that it should be in the overall capital and strategic plan that the Board should receive in December.

Commissioner McGrady also questioned the adoption and implementation of a Minimum Housing Code and referenced a staff draft.

Steve Wyatt stated that this is in the earlier stages. A draft should be ready some time this fiscal year.

Commissioner McGrady also reminded the Board that prior to Amy Brantley's departure as Deputy Clerk, she had the responsibility for recommendations to the Board regarding Committee/Board structure. He wanted to know where we stood on that issue.

Selena Coffey stated that recommendation was provided to the Board in the Manager's Communication from last Friday. The Board may choose to place that on a Board meeting agenda for further discussion. Ms. Coffey stated that this responsibility will likely fall to Terry Wilson, the new Deputy Clerk.

IMPORTANT DATES**Soil Erosion & Sedimentation Control Ordinance and Program**

Chairman Moyer called attention to the fact that this date was changed from September 26 at 6:00 to September 25 at 7:00 p.m.

Set Public Hearing on CDBG

Anthony Starr reminded the Board that Henderson County is eligible to receive funds for a Housing Development program in 2006 through a Community Development Block Grant (CDBG) from the Division of Community Assistance. In order to begin this process, and in keeping with the Citizen Participation Plan, the Board was requested to set a public hearing for October 2, 2006.

This is the first of two required public hearings in accordance with CDBG regulations. The second public hearing will seek comments on the application.

The purpose of this Hearing is to give citizens the opportunity to express their views and proposals prior to the formulation of the application. Henderson County will be considering an application for infrastructure for Habitat for Humanity's affordable housing Shuey Knolls subdivision.

Commissioner McGrady made the motion to set the first public hearing for this CDBG for Monday, October 2, 2006 at 7:00 p.m. All voted in favor and the motion carried.

Set Public Hearing on Rezoning Application #R-2006-03

Anthony Starr informed the Board that Rezoning Application #R-2006-03 was submitted on July 14, 2006 and requests that the County rezone approximately 16.25 acres of land, located off Asheville Highway (US 25 North), from an R-30 (Low-Density Residential) zoning district to an I-2 (General Industrial) zoning district. The Subject Area appears to be parcel #9660-53-2152, which is owned by the applicant, William W. Gregg. The Applicant's Agent is Jesse D. Johnson.

The Henderson County Planning Board considered rezoning application #R-2006-03 at its regularly scheduled meeting on August 15, 2006. During that meeting, the Planning Board voted 7 to 2 to send the Board of Commissioners a favorable recommendation on rezoning application #R-2006-03 to rezone the Subject Area from an R-30 zoning district to an I-2 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, October 18, 2006, at 11:00 a.m.

Commissioner Messer made the motion to set the public hearing on rezoning application #R-2006-03 for Wednesday, October 18, 2006, at 11:00 a.m. All voted in favor and the motion carried.

Set Public Hearing on Special Use Permit Amendment Application (SP-05-01-A1) for the Planned Unit Development known as "River Stone"

Anthony Starr informed the Board that on June 5, 2006 Mr. Hunley and Mr. Norwood submitted an initial application for a Special Use Permit Amendment (SP-05-01-A1) to be allowed to amend the existing Special Use Permit (SP-05-01) for the Planned Unit Development known as "River Stone". Staff requested the applicant revise and resubmit the application and that the applicant also provide additional materials. The applicant submitted the revised application and additional materials on July 17, 2006.

The Board of Commissioners, on August 2, 2006, referred special use permit amendment application #SP-05-01-A1 to the Planning Board for review and recommendations as required by Sections 200-56 and 200-70 of the Henderson County Zoning Ordinance (HCZO). The Henderson County Planning Board considered special use permit amendment application SP-05-01-A1 at its meeting on August 15, 2006, and its recommendations as well as staff comments will be presented at the public hearing.

Before taking action on the special use permit amendment application, the Board of Commissioners must hold a quasi-judicial public hearing. Staff proposed that the hearing be scheduled for Wednesday, October 18, 2006, at 11:00 a.m.

Chairman Moyer made the motion to set a special called meeting for special use permit amendment application # SP-05-01-A1 for Thursday, October 19, 2006 at 6:00 p.m. as well as the following item- Text Amendment Application #TX-2006-01. All voted in favor and the motion carried.

Set Public Hearing on Text Amendment Application #TX-2006-01

Anthony Starr informed the Board of a Text Amendment Application #TX-2006-01, which was submitted on July 14, 2006, requesting that the County amend four sections of the Henderson County Zoning Ordinance (HCZO). The proposed amendments include:

1. An amendment to HCZO Section 200-21, to eliminate light industrial uses and junkyards as conditional uses in the C-2 (Neighborhood Commercial) zoning district.
2. An amendment to HCZO Section 200-22, to add mini-storage facilities to uses allowed by right in the C-4 (Highway Commercial) zoning district.
3. An amendment to HCZO Section 200-23, to add mini-storage facilities to uses allowed by right in the I-1 (Light Industrial) zoning district.
4. An amendment to HCZO Section 200-24, to add mini-storage facilities to uses allowed by right in the I-2 (General Industrial) zoning districts.

The applicants are Jeff Naber, Rod Rogers, and the Sedgewood Property Owners' Association. The applicants' agent is Angela Beeker.

The Henderson County Planning Board first considered text amendment application #TX-2006-01 at its regularly scheduled meeting on August 15, 2006. During that meeting, the Planning Board voted 7 to 2 to send a favorable recommendation, with modifications suggested by Staff, for text amendment application #TX-2006-01, to amend Sections 200-21, 200-23 and 200-24 of the Zoning Ordinance. The Planning Board, by its favorable recommendation on the application with Staff suggested modifications, did not send a favorable recommendation to amend Section 200-22 of the Zoning Ordinance.

Before taking action on the text amendment application, the Board of Commissioners must hold a public hearing. Staff proposed that the hearing be scheduled for Wednesday, October 18, 2006, at 11:00 a.m.

Please see item above for the motion on this.

Request for Public Hearing on new roads

Justin Hembree stated that this a standard request to set a public hearing for two new road names:

Green Hills Farm Drive and Paris Farm Drive

per the policy naming new roads. The Board of Commissioners is required to hold a public hearing. Staff recommended that the public hearing be set for 7:00 p.m. on Monday, October 2, 2006.

Commissioner McGrady made the motion to set a public hearing for the above two new road names for Monday, October 2, at 7:00 p.m. All voted in favor and the motion carried.

CANE CREEK WATER & SEWER DISTRICT – no business

CLOSED SESSION

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

1. *(a)(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (1) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease. All voted in favor and the motion carried.*

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman