

## MINUTES

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS  
SEPTEMBER 25, 2006**

The Henderson County Board of Commissioners met for a special called meeting at 7:00 P.M. in the Commissioners' Conference Room of the Henderson County Office Building.

Present were: Chairman Bill Moyer, Commissioner Larry Young, Commissioner Shannon Baldwin, Commissioner Chuck McGrady, Commissioner Charlie Messer, County Manager Steve Wyatt, Assistant County Manager Justin Hembree, Assistant County Manager Selena Coffey, County Attorney Russ Burrell and Clerk to the Board Elizabeth Corn.

Also present were: Planning Director Anthony Starr and Public Information Officer Chris S. Coulson

### WELCOME\CALL TO ORDER

Chairman Moyer called the meeting to order and stated the purpose of the meeting was to conduct a public hearing on the Soil Erosion and Sedimentation Control Ordinance and Program. He then turned the meeting over to Planning Director Anthony Starr.

### SOIL AND SEDIMENTATION CONTROL ORDINANCE AND PROGRAM

Anthony Starr explained that at the last meeting the Board had requested the Planning Department look at three primary options to the draft ordinance.

The first option was that a sketch plan be required for all land disturbing activity below the thresholds for which a formal plan would be required. A formal plan is required if you disturb more than one (1) acre in any circumstance or if your slope is fifteen (15%) to twenty-five (25%) percent and you are disturbing more than one-half (1/2) acre and if your slope is greater than twenty-five (25%) percent and you are disturbing more than one-quarter (1/4) acre you would have to have a formal plan. A sketch plan would be required in the instances where those type plans are not required. The sketch plan could be done by the property owner. They would simply have to show the areas to be disturbed, the building and property lines, which could be printed off of the County's GIS on-line, or the staff could print it off for them to draw where the measures would be. This would present an opportunity for the staff to interact with the public and communicate the appropriate steps that they should take to control soil erosion. It would also allow the Planning Department on the smaller projects to have a positive impact on the effect it would have on water quality by making sure the measures are in place or that the property owner would know up front what is expected. A disadvantage to this option is that it would require additional staff time to review the proofs or sketch plans, and that there likely would be a minor fee charged to cover the cost of doing that review. Other than that there is no major disadvantage.

The second option was controlling for the twenty-five (25) year storm event. Currently the state rules control for a ten (10) year storm and the draft ordinance calls for control of the ten (10) year storm water run-off during the projects while it is going on. By controlling for the twenty-five (25) year storm it could reduce the number of systems failures on sites by requiring they put in additional measures. The Planning Department tried to obtain some rain fall data and have not been able to obtain anything at this point or in the time-frame given. Mr. Starr is not sure information exists to tell them how frequently we are having events in the county annually that exceed a ten (10) year storm. The problem is that you may get that data at the airport but that is only one place in the county and yes it might have an event that exceeds the ten (10) year storm once every ten (10) years or so. This doesn't mean that there might be other places or points in the county for which there might be half a dozen storms per year. Any single point might not exceed the storm once every ten (10) years. It is just an average. It is unclear as to what the true impact would be with that option. One of the disadvantages, of course, is that it would increase the development cost potentially of the project by having to have larger systems in place. In some circumstances it could even require that additional area would be disturbed that may not have otherwise been disturbed because they would have to have larger systems in place. This is not all of the time but under certain circumstances it could occur.

The third option is the revocation or suspension of other county permits if someone is in violation of the ordinance. This provision would be simple to add and would allow the county officials to revoke or suspend any other county

DATE APPROVED:

permits that are issued if they are in violation. This would be used in a case where someone doesn't comply. This sometimes may be the most effective method to gain compliance because essentially it would bring the project that they have to a halt. When they can't get any other building permits their project is going to come to a halt. One downside to this is that you would not want to use this all the time and in every case because it can have an impact on those workers that are on that site and have to go home and be without work the remainder of that day or a couple of days, however the burden would be on the property owner to make sure the situation is corrected.

This is a quick and brief overview of the three options staff looked at.

Commissioner Young stated that the ten (10) year storm is seven (7) inches of rain in a twenty-four (24) hour period.

Anthony Starr agreed that this was his understanding.

Commissioner Young stated that the twenty-five (25) year storm is only eight (8) inches of rain in a twenty-four (24) hour period.

Anthony Starr agreed that this was the information indicated to him.

Commissioner Young questioned using more undisturbed land to go the twenty-five (25) year rather than the ten (10) year storm when it only has to do with an extra inch of rain. The last rain of more than six (6) inches in a twenty-four (24) hour period, that he could recollect, was when Hugo went through in the mid ninety's. He questioned if it is necessary to use more undisturbed land, which creates more erosion, for an additional inch of rain in a twenty-four (24) hour period.

Commissioner McGrady also questioned the different things required under the twenty-five (25) year storm versus the ten (10) year flood event.

Anthony Starr explained that it may be somewhat unique to each site. Some sites may not require much of anything at all and then other sites may be substantially more.

Commissioner McGrady questioned if there were standards for this or somewhere a developer could look to determine what was necessary.

Anthony Starr answered that the state had a design manual and that the county could design a manual if needed. It is based on engineering calculations. For example it may be that a larger retention pond or sedimentation basin is all that is necessary. The outlets on the retention ponds may be a different size. Anthony doesn't feel that they can put a difference in cost figures out there at this time for the twenty-five (25) year versus ten (10) year storm. This would vary per site.

Commissioner McGrady questioned if any other county has chosen the twenty-five (25) year storm rather than the ten (10) year storm.

Commissioner Young questioned the same.

Mr. Starr was not aware of any.

Commissioner Messer asked for a sketch plan requirement example and information on educating the public.

Anthony Starr explained that the sketch plan consists of the public coming into the office without anything. The Planning Department could print out on standard paper a map of their property from the GIS site. They would need to draw the dimension of the structures and the area that will be disturbed. Planning would calculate the area to be disturbed at that point. They would need, for example, to show where silt fencing would be installed. Then it would be deemed compliant.

Commissioner Messer questioned if developers could do the same.

Anthony Starr answered they could do the same thing provided they didn't exceed the thresholds that require a formal plan such as disturbing more than one (1) acre of relatively flat land or more than one-half (1/2) or one-quarter (1/4) acre depending on slope.

Commissioner Messer questioned if the Planning Department was able to determine slope.

Anthony Starr responded that the GIS data did include slope information.

Commissioner Baldwin questioned who could submit an intermediate plan or formal plan.

Anthony Starr explained that the way the Draft Ordinance was drawn up now would require that the plan be drawn up by a design professional which is defined as a professional engineer or landscape architect. The Planning Department would like to create another layer on the GIS site that would indicate the areas that exceed the slopes which would automatically flag an area that needs to be examined closely. At this point the Planning Department would use their data to do slope calculations. Of course if there was a detailed survey of the property it could be used instead. This ordinance does not take soil types into consideration.

### **PUBLIC HEARING**

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

Dave Walters resides at 245 North Hills Drive which is part of Haywood Knolls Subdivision. He supports the proposed ordinance. He feels that keeping soil out of ground water, streams, ponds, and lakes is a good basic conservation practice. It is apparent that the state agencies for whatever reason are not adequately dealing with the problem. His concern about the ordinance is that he feels that it is not going far enough. Something is missing. Section 9 refers to Storm Water Outlet Protection. This refers to where the storm water goes and what impact it has. This is his concern. Erosion of the stream banks in the county is an ever increasing problem. It is not just the major storms that we have been having that are causing it. More of our land is being converted from its natural state where storm water is well retained to asphalt and metal where there is no storm water retention. The water level at a bridge in his development is reaching higher levels than in the past and staying at the higher levels longer. This water is carrying a lot of sediment as can be seen by back water areas filling in. He feels that this problem is getting worse county wide. The damage to water quality alone cannot be allowed to continue. It is another problem having to depend on a bridge and a connecting road crossing a stream. He feels that he is speaking for everyone who accesses their home by crossing a private bridge. The bridges and connecting roads are in an ever increasing state of jeopardy. The damage to private bridges and public bridges as well as from erosion is on the rise. At the rate of new development that is occurring in the county the trend in water quality and the security of bridges is all going in the wrong direction! The cost of repairing, upgrading, or replacing a private bridge and or connecting road is a very unjust and costly expense on the owners. Mr. Walters would like to see the addition of a regulation that limits the storm water runoff from a new development to a level of the original undeveloped land.

Jack Oechslin resides at 242 North Hills Drive and has resided in Mill Pond Creek for 49 years. Chronologically the problems that have come up are; the original proposal for the site for Lake Pointe Landing Retirement Complex to be located at Bradley Road and 191 with fifty (50) parking spaces paved. At that time there was a retired Hydrologist living in Haywood Knolls. The runoff during a normal heavy rainstorm was amazing. The second proposed site for Ingles contiguous with Rugby Middle School which again presented a problem as far as runoff in Mill Pond Creek. Third, Ingles proposed a site at North Rugby and 191. Their runoff just had to be dumped into a culvert going under highway 191 into Mill Pond Creek which did not affect them directly but would have affected people on South Rugby. Lastly Mr. Dorn's self storage complex that is proposed at Mountain Road and highway 191 again directing the runoff to a culvert running under 191 to Mill Pond Creek just to the side of Corn's Store. The property owners with private bridges and roads must keep revisiting this potential problem. The approval of the Soil Erosion and Sedimentation Control Ordinance will be greatly appreciated.

Dave Huber resides at 320 South Lakewood Circle in Willow Lake Inc. The area was once home to several species of migratory fowl, fish and other marine life, birds and ducks. Many of these species have disappeared in

the past two years. Their lake has lost several feet of depth. Their maintenance person can actually walk across the lake at certain areas without getting his head wet. The neighborhood and lake has become a sediment pit and catch pond for the development known as Willow Place. Willow Place erosion plan and road profile was dated June 2, 2004. It was revised and finally approved June 30, 2004. Projected area is 12.20 acres. The acres to be disturbed are 10.63 acres which is in excess of 87%. The planned residents are twenty (20) single family homes. Completed or under construction are six (6) units. There is one foundation built but because of water the basement has not been floored yet. There have been two (2) violations that they are aware of non-compliance. Silt fences, sediment basins and disturbed home construction sites have not been maintained with area seeding and mulch as required in the erosion plan. Each time there is a rain event their fragile neighborhood is deluged with mud, debris, and sediment. The lake was dredged in March, 2004 prior to the Willow Place Development. The lake has been in the neighborhood for over fifty (50) years and did not require dredging until 2004. They are now faced with another required dredging due to the loss of depth in just two years. The approximate cost of dredging is in excess of \$5000. Thirteen (13) of his neighbors are on fixed income and would find it difficult to afford another special assessment. There have been fourteen letters written to various federal, state, and local agencies for assistance with the problem. They were referred to North Carolina Department of Environment and Natural Resources Water Quality. They were advised that they must take legal action to clarify the problem. They did not have the personnel to police the erosion plan. Water wells have been contaminated. Two (2) neighbors have personally spent in excess of \$4000 to repair basement damage. He stated they appreciate the time and effort taken by the county and time that will be taken in the future to ratify this very important issue. It is requested that if the program is implemented it include a provision to administer to existing developments to be inspected on a timely basis and require the developers strict adherence to their approved erosion plan.

Carolyn Blalock resides at 125 Ladson Road and represents the League of Women Voters of Henderson County as Chairperson for the local Natural Resources Committee. Since April, 1988 the League of Women Voters of Henderson County has held the position that the adoption of a local Soil and Sedimentation Control Ordinance is a critical piece to support the good development in these fragile environments of Henderson County. The League realizes that this ordinance is not the only piece of the complex issue of soil erosion and sedimentation. A Storm water ordinance is their next stop. The League congratulated the county on the continued progress made in land use issues with the adoption of a flood plain ordinance. Now citizens will have the opportunity to work together on a local level to bring about a better appreciation for our precious soil rather than have the state attempt to try to do it for us. By adopting a soil and sedimentation and erosion ordinance at a county level, everyone on the local level will be working together to minimize soil erosion and sedimentation in our county and it will be everyone's responsibility to control sedimentation on his or her land. The League of Women Voters highly urges the county to adopt the Soil Erosion Ordinance before anymore of the streams and lakes are filled with soil lost from development. These specific points were made for consideration.

- Amending the proposal to be written for 25 year rainfall as apposed to a 10 year rainfall
- Stricter enforcement penalties for those who begin site work without a permit in place
- All citizens should receive fair and equal treatment
- The ordinance should require a site to be prepared by an engineer or landscape architect and the League believes that the upfront cost for such professional preparations can and should be minimized if the permit requirements on the standard checklist can be met without engaging an engineer or a landscape architect

Frank Hoyle resides at 1625 Ridgewood Blvd. and has lived in Henderson County for 52 years. He is a current resident of the city of Hendersonville. In the draft ordinance he read that one of the stated purposes is "regulating certain land-disturbing activity to control accelerated erosion and sedimentation. Mr. Hoyle believes that the purpose of the ordinance is broader than that. He believes that the purpose is to protect the economic and ecological integrity of the county. It is to allow Henderson County to continue to prosper as an area that is attractive to natives of the area, tourism, retirement relocation and second home living. The purpose of the ordinance is also to enable Henderson County to compete for new jobs by making sure we have clean water and a great quality of life to offer companies interested in moving here. The things that must not be polluted or damaged are those things that form the basis for the record growth and economic prosperity that we currently enjoy. Mr. Hoyle is also a member of the Seniors Committee of the Environmental Conservation Organization or ECO. In preparation for this hearing the committee has reviewed and compared the Erosion Control Ordinances for the city of Asheville, Haywood County, the Town of Lake Lure, and the Model Ordinance for the State of North Carolina and the Draft Ordinance for Henderson County. The most restrictive of these Ordinances is that of the Town of

Lake Lure, which requires the submission of an Erosion Control Plan for any activity which disturbs one hundred (100) square feet of land. The committee would not recommend such a standard for Henderson County, but it shows how serious the Town of Lake Lure is about protecting its major economic asset – the lake itself. Overall, the Draft is a good document. However, the result of the committee’s study is that the following areas must be addressed before the adoption:

- 1) Section 5 (Mandatory Standards for Land-Disturbing Activity) (d) Ground Cover. In the sentence reading “except as provided in Section 8(b) (5) of this ordinance, provisions for a ground cover...” Drop the term “provisions for a ground cover” in favor of “completion of a ground cover” In the same sub-section (d), change the time period for accomplishment from “15 working days or 90 calendar days...whichever period is shorter” to” within 21 calendar days...”This wording would then correspond with the time period allowed in sub-section (b) Graded Slopes and Fills in the same section.
- 2) In view of the lessons learned from recent years’ rain activity associated not only with hurricanes; but also with localized rain events, move to the standard of a twenty-five (25) year storm and not a ten (10) year storm in Section 8 (Design and Performance Standards) and Section 9 (Storm Water Outlet Protection). This will provide for greater safety and perhaps allow for protection from what many feel will be a worsening in the severity of weather conditions in the future.
- 3) There is much concern involving the requirement for the submission of an Erosion Control Plan based on what the Draft Ordinance and the Staff Report of September 5, 2006 both refer to as “a lot, parcel, or tract with an average slope...” Although the Staff Report does clarify that the thresholds for Plan submission are for disturbed land, the Ordinance is not clear on this point. As the makeup of both Staff and Commission changes over time, we feel that the Ordinance itself should be clear on this threshold for Plan submission and not subject to re-interpretation at a future date. There is not a formula as to how this “average” slope is to be determined. In Henderson County the disturbed area could easily vary greatly in degree of slope from one section to another resulting in an average slope below that which requires a Plan submission. This could lead to a lack of regulation for those areas of the disturbed area which exceeds the so called “average” slope. The Committee feels that a formula should be clearly stated in the Ordinance to apply to those slopes within the disturbed area exceeding a certain percent grade, as well as, the overall “average” slope.
- 4) Section 6 (Erosion and Sedimentation Control Plan) (b) Plan Submission states “A Plan shall be submitted for all land disturbing activities...A Plan shall be prepared by a design professional.” There was discussion at the Board meeting of Tuesday, September 5, 2006 concerning what types of Plans would be required. There was talk of “major plans” and “minor (sketch) plans” However the Draft Ordinance defines the required “Plan” only as “An Erosion and sedimentation control plan.” Again, the Committee feels that this definition is too broad and open to reinterpretation by future Boards and Staff according to the whims and political pressures of those times. In order to give guidance to those design professionals required to prepare such Plans and to relieve Staff of the onus of deciding what shall be required of each separate Plan submitted for approval, firm guidelines should be established. For this purpose we endorse the adoption of the attached language describing the required content of Plans. This description of content could be amended by future Boards. However, it would clearly relieve current and future Staff from any accusations of requiring less, or more, from any one applicant than another.
- 5) Section 4 (Scope and Exclusions), (b) (1) (i). Include the terms “orchards and fruit crops” among the crops listed.

Diane Silver is the Extension Agent for Water Quality and the County Extension of Mud Creek Water Shed Coordinator. In comparing the ten (10) year storm to the twenty-five (25) year storm event and how much difference that one (1) extra inch of rain really makes. One (1) inch of rain across one (1) acre of land is over twenty-seven thousand (27,000) gallons of water. She feels that this is a significant difference. The bigger the area of disturbance the increase of water adds up significantly. In regards to the concern of more land disturbance in order to manage the additional water versus planning only for the ten (10) year storm, it is not always necessary to disturb more land in order to manage more volume of water. There is a whole variety of sediment control practices that are useful for meeting the requirements. There is the State Sedimentation and Erosion Control Field

Manual. This is the manual provided to contractors. There is also a design manual that gives all the specs that designers can use to plan control. Hay bales can be used as a barrier so that as water is coming off the site it runs through the hay bale and the hay bale captures the sediment and the water filters through the hay and cleaner water goes off. Turf blankets can be used which cover the disturbed area while it's not being worked on and then move the turf blanket as you move across your site. There are a variety of procedures that can be used without disturbing more land. The designer would design for the twenty-five (25) year event by using several procedures in combination rather than just choosing one. She feels that it is very feasible to plan for the twenty-five (25) year storm event and that it would be very beneficial to do so. There was a mention of the value of education and having a locally controlled program. Ms. Silver would like to emphasize that the hope is that there will not be a lot of violations that need to be enforced. Hopefully by going through the process of applying for the application the county has the opportunity to provide the information to those doing the land disturbance. They will know their responsibilities from the beginning and know how to fulfill them instead of trying to fix a problem that happened. We want to try to prevent the problem from happening in the first place. This is a very positive ordinance in the sense that it provides that avenue for communication that doesn't exist when someone is exempt from applying to the state for a permit and the communication never happens.

Dave Lowles resides at 79 Bay Willow Court and is a member of the Environmental Advisory Committee but is not representing their views. He distributed handouts with suggestions for improvements. He informed the board that this information has already been shared with Anthony Starr by email.

- In the first section (Section 4) some definitions need to be added. The average slope and erosion control plan were mentioned by others and he is in agreement. He had taken "when is a plan or permit required" and turned into a matrix because he feels it is easier to understand. Highlighted in blue on his handouts under the draft do not require a permit, but Commissioner Baldwin has suggested that all have permits.
- In design standards (Section 8) for maximum runoff of twenty-five (25) year storm, there should be a maximum amount of area uncovered at one time for residential development. This combined with a requirement to cover within fifteen (15) working days (section 5) would greatly reduce erosion.
- He suggests adding into Access and haul roads (Section 13) that whenever an access or haul road joins a dedicated road, sufficient depth and width of gravel, properly compacted, for a length no less than fifty (50) feet shall be installed as a mud matt to prevent messing up the roads.
- Section 13 addresses the issue of responsibility for maintenance and Mr. Lowles questions "What is the interpretation of" after site development? In our development, the builders point to the developer and the developer points to the builder and no erosion control maintenance measures are undertaken. I suggest that in residential developments, the developer must warrant that all erosion control permits are in place and that compliance measures have been maintained and regular inspections have satisfactory results, i.e. a residential property can not be sold unless all erosion control permits and inspections are in place.
- In Section 15, Inspections and Investigations, inspections of individual home sites with disturbed areas less than one (1) acre will be conducted by the same inspectors covering other building matters. A check list format will be developed to show continuous compliance with the ordinance. The inspection document will also reference the developers permit number to allow cross reference to the original loan disturbing activity. The regular inspector may issue a stop-work order until erosion control measures are in compliance with codes.

Martha Sachs resides at 626 North Rugby Road and is glad that the Board is looking into these issues. She has seen all over the county state mandated erosion control sediment fences which are not working properly. She likes that the county is implementing regulations that will exceed state regulations. Regarding rainfall in late 1997 or 1998 there was a ten (10) inch rainfall in a twenty-four (24) hour period. Although no water entered her basement from the outside it came up from underneath from underground springs. Ms. Sachs had to replace her basement carpeting. This was obviously more than a twenty-five (25) year rainfall. She would recommend more than a twenty-five (25) year rainfall if possible. The people in Raleigh don't really know what happens here. It can be pouring rain on one corner and dry a block later. She feels that the strict enforcement penalties for those who begin work without a permit is tremendously important. It has been noted in the last few years that when people

decide what they want to do they do it and do it without proper permits. Then when they do request the permits they have already invested a lot of money and expect the permit without delays. She also doesn't understand why the municipalities do not have to comply with the county regulations. This should be corrected at the state level. Along with the question of sedimentation and erosion she hopes that in the new land use plan there are strong policies with relation to removing trees. There is a lot of unnecessary tree removal.

Fred Pittillo resides at 3277 Chimney Rock Road and is a farmer from Henderson and Transylvania County. He wishes to thank the Commissioners for being public servants. He doesn't always agree with them but they deserve more respect than they get sometimes. His concern is with the bottom land. He is not sure if sediment control, erosion control and runoff can be combined. The issue of being able to continue farming with all of the construction and building going on is somewhat uncertain in the future if something is not done to contain some of the water that is going in the basin. It can only hold so much. He is involved with Edneyville Community Center who has Habitat upstream from them and is building a lot of homes. Mr. Pittillo is working with Diana Silver with the Extension with Habitat. The water is going to run onto the fields that they are trying to build. There are ways and means to do things that are constructive and not destructive. It doesn't have to be a holding pond particularly. It isn't done yet but he feels that there are ways to get the results that we all need without forgetting the farmers.

Fred Roane resides at 209 Deerpath Lane off Little River Road. He is pleased to see that there is an agreement by the Commissioners that this step is necessary. We have responsibility to protect our soil and water and it is refreshing to see that they are stepping up to show this is the position of the Governing Body. He offered these major points and questions:

- How to determine “average slope” of a certain parcel or land? What does “average” here mean? What reference data system will be used to calculate this figure? Will the public have access to this information and be able to calculate themselves and appeal the Administrator's finding?
- Will “grading permit” (or land disturbance permit) be required for any area to be disturbed less than one (1) acre, which is now the requirement? Requiring such a permit would aid the Administrators of the program in determining responsibility early in the project therefore being proactive.
- Henderson County is made up of some major mountainous areas with high periodic rainfall and resulting runoff. It appears that a twenty-five (25) year storm runoff plan would be better suited as a standard for this Ordinance, versus the ten (10) year plan that is proposed.
- It is evident by the content of this Ordinance that the informational materials to be developed and furnished to the public will be vital rolls in providing guidance and details to their readers. This goes toward the “proactive approach” that this Ordinance strives to achieve. It would be wise to include a variety of perspectives and local resources in creating these vital materials. Mr. Roane suggests a panel of knowledgeable and interested parties be formed to produce these materials that would, not only explain the details of this Ordinance, but provide specific guidance to homeowners, contractors, grading equipment operators, engineers, builders, administrators, and others involved in the process. This process and the possible negative results are just too important to leave open to interpretation. Mr. Roane recognizes the Administrators must have some leeway in their work, but just as important, the public must have clear guidance on how to protect and preserve our Nature during land disturbance activity.

Mary Jo Padgett resides at 334 Third Avenue West and is the Executive Director of the Environmental and Conservation Organization. ECO has asked for such an ordinance for a decade, because the results of their stream monitoring program – the Volunteer Water Information Network, which the county supports financially – consistently shows that sedimentation is the most prevalent and consistent problem in Henderson County streams. ECO has been monitoring thirty-three (33) sites on twenty-eight (28) streams for thirteen (13) years monthly and the data is consistent. They have the following suggestions:

- Site sketches or plans which help the enforcement officer understand the situation on which the erosion control plan is being designed, both on the land itself where buildings are going to be, and also surrounding territories as well, and the impact that might have and how things relate not only to how the property is being disturbed but adjacent property. The Buncombe County ordinance ties the erosion control plan to a person's application for a grading permit. We recommend that requiring a grading permit be considered.
- Implementing the twenty-five (25) year storm standard.

- Place a local ordinance Project manager on-site for every workday on larger sites.
- Concern about the use of the word “average”, as in “an average slope over twenty-five (25%) percent.” We are not sure how the “average” is calculated. Worst-case scenario is that an area will be mostly flat, but a house is proposed for the slope area. Thus the “average” slope calculation may not kick in to regulate erosion control on the hillside where the house will sit.
- Look into the 20 acres of disturbed land that is allowed in High Quality Water Zones (Section 8)(b) (1). This sounds like much more than should be uncovered at one time in an HQW zone.
- In section 9 – Storm Water Outlet Protection – they would rather see storm water confined to the property being developed. They suggest that the storm water velocity and amount on developed land should not exceed what the standard was before the property was developed. Technology today allows development to occur that does not send storm water onto other property and into streams but retains it on-site. The effects of storm water on adjacent down-slope property owners result in many phone calls to the ECO office after heavy rainfall. This would require a separate storm water ordinance.
- Phrased in the ordinance is “if your runoff effects property owners you can be required to restore it.” They suggest adding the phrase “or pay someone else to restore it.”

Jeff Young resides at 426 N. Mills River Road and began by applauding the board for taking on this issue. He provided the following cautionary comments as an engineer who has prepared erosion and sediment control plans.

1. The smaller acreage requirements on steep slopes. He was disappointed to see that the requirements are limited to site sketch or map. The single factor that has the biggest impact on the severity of erosion is slope. The highest quality of water is found higher up in the water shed. He suggests reconsidering the ordinance for smaller acreage by making it an even playing field.
2. The twenty-five (25) year storm requirement is carried by the state in conjunction with projects near high quality water resources or trout water. The ten (10) year storm is used everywhere else. There is a large variance between the two storms.
3. Regarding staffing, if you do adopt an ordinance that has small acreage requirements you will be looking at more pertinent applications, more sites than the state is currently looking after at this time. If you look at Buncombe County they have three (3) full staff members and the possibility of adding a fourth. This is County only, Asheville City monitors their own. You are looking at a longer turn around, and less inspections.
4. In the report to the board with the first draft ordinance there was a comment of 6-8 weeks turn around time for erosion control permits from the state. There is a thirty (30) day period by rule that there must be comment such as “approved” or “disapproved with revisions.” It is deemed approved if not heard back from in 30 days.

Bill Sare resides at 15 Lazy Boy Lane and is a member of ECO Seniors Club. Henderson County is perhaps the fastest growing county in the state in terms of development. With this amount of development it seems we are at a place where we have a greater challenge than ever to preserve the integrity of our water shed. He agrees that the following are needed:

- Commissioner Baldwin’s request for site sketches to help as much as possible to shift proactive measures rather than the reactive
- Project manager on site daily
- Twenty-five (25) year storm versus the ten (10) year storm
- The meaning of “average” when discussing slope

Chairman Moyer requested that Anthony Starr return to the podium. He asked Mr. Starr to follow up with additional information as follows:

### **Average Slope**

Anthony Starr addressed the issue of “average” slope. Slope is measured as rise over run. There is an issue which addresses a parcel that is relatively flat in one part and steep in another part. Potentially they would come under the thresholds there and not have to require a formal plan, even though they may be developing on a steep slope.



The draft took into consideration the average slope of the entire lot and the initial thoughts were centered on the easiest way to measure this in the beginning. If the board wants to go further than that then they could define it as the average slope of the disturbed area as apposed to the entire parcel. This would capture more projects and the option is available. The way the draft ordinance is written now would take into account the average slope of the entire parcel.

### **Grading Permit or Plan**

Anthony Starr responded that the state design manual requires a grading permit as part of the erosion control plan.

### **Access and Haul Roads**

The state already implements the requirement for a Mud Matt.

### **On-site Project Manager**

There is no requirement in the draft ordinance at this time for an on-site project manager.

### **HQW Zones**

The State rules declare that if you are in a designated high quality water zone that you are not allowed to disturb any area at one time more than twenty (20) acres. This only applies to HQW Zones. We do follow the minimum requirement set by the state that says if you are in a high quality water zone you cannot disturb more than twenty (20) acres at one time.

### **Twenty-five (25) year storm versus ten (10) year storm**

Buncombe County is looking at the storm water issue. He is not certain if they are considering the twenty-five (25) year for the storm water issue or soil erosion issue. The choice comes down to frequency. If you have a ten (10) year event it is theoretically control for the ten (10) year event. If you have a twenty-five (25) year event then it is theoretically control for the twenty-five (25) year event. It would be a frequency at which those systems may or may not fell. There is no data to show how often this is occurring.

Board discussion followed. The consensus was that the Board had enough information that they could give staff a little more guidance.

County Manager Steve Wyatt informed the Board that he had met with a majority of the municipalities several weeks ago. Hendersonville has passed a Resolution to support the County's effort. The other municipalities have not made a decision at this time.

Commissioner McGrady expressed that it would be in everyone's best interest for the municipalities to be on board.

Commissioner Baldwin feels that is important to have clear levels of distinction in writing.

### **Directions to Staff**

Staff should be directed to look at the minor plan/major plan deviation that is in the Lake Lure Plan now. They would need to come back to the Board with a prevision of an ordinance that includes a sketch plan requirement.

*Chairman Moyer made the motion that the staff come back with the major/minor plan and sketch plan requirement be incorporated into the language. All voted in favor and the motion carried.*

Chairman Moyer asked for Anthony Starr's advice with the twenty-five (25) year versus ten (10) year issue. Mr. Moyer is concerned that the Board may be taking on more than they can handle. He questioned if it could be phased in at a later date.

Anthony Starr responded that when they were crafting the current draft a large part of the discussion was whether certain items would be feasible. The twenty-five (25) year storm was not included because of lack of experience with knowing what the impact was. He is sympathetic with the impact it would have potentially on development costs. On the other hand he feels that it could have a substantial improvement or reduction in the number of system failures which could provide serious damage to the streams.

Chairman Moyer feels that if none of the neighboring counties are implementing the twenty-five (25) storm plan that we would have a harder time getting the municipalities to come on board with us.

Commissioner Baldwin felt there was room for compromise. A tier effect could be used by possibly adding the twenty-five (25) year storm only in areas with more drastic slope. Otherwise when an area meets a certain slope the twenty-five (25) year plan could be used. We would have to be certain that we used the twenty-five (25) year plan in areas that really need it. In flatter areas such as the area Mr. Pittillo called the “bottom area” the ten (10) year plan would be used.

Chairman Moyer asked Commissioner Baldwin what he felt that the criteria should be. He understands what he is saying but doesn’t know where they should draw the line. Chairman Moyer discussed the possibility of defining “average” in a much more restrictive way and therefore they could accomplish the same thing. If you calculate the slope based only on the disturbed area instead of the average of the whole site, you can probably pick up more of the slope, certainly if it is disturbed, than if you did otherwise.

Commissioner Young proposes that the twenty-five (25) year storm be used when they develop the storm water run off. That is where he feels it is needed the most.

*Chairman Moyer made the motion that the Soil Erosion and Sedimentation ordinance be adopted with the ten (10) year storm event as set forth in the draft.*

Commissioner McGrady feels that it is critical that all of the municipalities come on board. He is inclined to stay at the ten (10) year storm event. He feels that they should consult with the municipalities.

Commissioner Baldwin continues to recommend the twenty-five (25) year storm event.

Commissioner Young agrees that in order to accomplish the results they are looking for in the ordinance they must have the municipalities on board. He doesn’t feel that they would agree with the twenty-five (25) year storm event.

More discussion followed. *A vote was taken and the motion passed four to one with Commissioner Baldwin voting nay.*

*Chairman Moyer made the motion, for purposes of discussion, to look at the average of disturbed area and come up with a “How you can best define average.” per situation. All voted in favor and the motion carried.*

*Chairman McGrady made the motion to adopt a provision with respect to revocation of permits. All voted in favor and the motion carried.*

Chairman McGrady reminded the Board that a way would have to be found to get past the corporate entity that is putting in a subdivision and recognize who the principles are if they are the same players and possibly doing bad things over here they need to be able to get them regardless of what the corporate entity is.

Chairman Moyer feels that the language can clearly deal with this type of problem but is not ready at this time to implement a project manager on site.

Commissioner Young does feel that a project manager is necessary but not continually during the construction.

Commissioner Messer was in agreement with Chairman Moyer.

*Chairman Moyer made the motion to defer on the issue of Project Manager on site until a later time. All voted in favor and the motion carried.*

Chairman Moyer requested that staff take a look at some of the other language and come back to the Board.

Commissioner Baldwin wanted the Board to make sure that whatever terminology was used for plans such as site plans, or sketch, minor plan, major plan, in the erosion control plan, was defined.

County Attorney Russ Burrell brought to the attention of the Board that one issue that had not been discussed is the effective date of the ordinance.

Chairman Moyer reminded everyone that four (4) months from date of adoption was what had been discussed at earlier meetings.

Commissioner Baldwin questioned what staff would need in order to make sure that the ordinance was implemented. Chairman Baldwin addressed Mr. Sam Laughler, Director of Building Services in regards to the two erosion control officers that he recommended. Mr. Baldwin questioned if the municipalities were included.

Sam Laughler answered that it did include the municipalities and that the figures were based on everything that happened within Henderson County for incorporated areas as well as non-incorporated areas.

Commissioner Baldwin feels that additional erosion control officers will be necessary.

Commissioner McGrady questioned the Counties enforcement of the current State plan.

Planning Director Anthony Starr responded that his understanding was that with the effective date of the ordinance and assuming that the State has delegated authority to the County, the Sedimentation and Control Commission will turn over at that point all active cases to the County. This will not address cases that have already been closed.

Chairman Moyer and Commissioner Baldwin requested more research to clarify this information.

Board discussion followed. County Manager Steve Wyatt would like Sam Laughler and Anthony Starr to look closely at the issue of additional complexity and time requirements added. Mr. Wyatt would like to know if we are going to have the staff needed on board and properly trained to enforce the ordinance or is the county going to need additional resources. Time will need to be allowed to help people with sketch plans, pulling if off GIS, etcetera.

**Adjourn**

*Commissioner McGrady made the motion to adjourn the meeting. All voted in favor and the motion carried.*

Attest:

\_\_\_\_\_  
Terry Wilson, Deputy Clerk to the Board

\_\_\_\_\_  
William L. Moyer, Chairman