

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
MAY 16, 2007**

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

Also present were: Fire Marshal's Administrative Assistant Cathy Justice, Planning Director Anthony Starr, Finance Director J. Carey McLelland, Deputy Clerk to the Board Terry Wilson, County Engineer Gary Tweed, Interim County Engineer Marcus Jones, Associate County Attorney Sarah Zambon, HR Director Jan Prichard, Fire Marshal Rocky Hyder and Planner Matthew Card.

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

County Manager Steve Wyatt gave the invocation.

INFORMAL PUBLIC COMMENTS

1. Sam Highberger – Mr. Highberger lives at 141 Country Ridge Road in Hendersonville. He complained about the “traffic noises” coming from trucks, motorcycles, souped up cars, car stereos, and modified truck exhausts on Hwy 64 west between Blythe Street and Turley Falls Road on an approximate two mile stretch. He had spoken with over sixty people who also object to the noise and had their signatures to prove it. Mr. Highberger hoped that the Police Department would take note of the specific complaints and do something about it. He felt that the first measure would be to measure the amount of noise coming from different types of motor vehicles. Mr. Highberger had spoken with Sheriff Davis about the problem. Mr. Highberger felt that more updated decibel equipment was needed so that squad cars could get a remote read-out. He had just been in the state of Oregon and learned that they have a state law outlawing “jake brakes” or unmuffled engine brakes. Mr. Highberger requested that the Board consider demanding a state law and signs outlawing such noise. Mr. Highberger gave a copy of a petition and the Oregon vehicle code to the Clerk to the Board to copy for the Commissioners.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer requested the addition of a discussion item A – North American Police Work Dog Association Meeting.

Commissioner Messer made the motion to approve the agenda as revised above. All voted in favor and the motion carried.

CONSENT AGENDA

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

Minutes

DATE APPROVED _____

Draft minutes were presented for the Board's review and approval for the following meeting:
April 18, 2007

Tax Collector's Report

Terry F. Lyda, Henderson County Tax Collector, had provided the Tax Collector's Report dated May 4, 2007, for the Board's review and consent approval.

Collections information was included through May 3rd for the 2006 bills mailed out on August 18th, as well as vehicle bills.

Annual Bills G01 Only:

2006 Total Charge:	\$49,390,710.20
Payments & Releases:	47,925,894.83
Unpaid Taxes:	1,464,815.37
Percentage collected:	97.03%

Motor Vehicle Bills G01 Only:

2006 Total Charge:	\$4,938,775.81
Payments & Releases:	3,686,683.24
Unpaid Taxes:	1,252,092.57
Percentage collected:	74.65%

Fire Districts All Bills:

2006 Total Charge:	\$5,276,766.56
Payments & Releases:	4,976,691.52
Unpaid Taxes:	300,075.04
Percentage collected:	94.44%

Tax Refunds

A list of 7 tax refund requests was presented for the Board's review and consent approval.

Tax Releases

A list of 35 tax release requests was presented for the Board's review and consent approval.

Capital Projects Update

The Board of Commissioners receives a monthly update on the 2006 Strategic Plan and Capital Improvements Projects. Because there had been no changes to the status of the Strategic Plan projects, this update was not provided this month.

Home and Community Care Block Grant for Older Adults County Funding Plan

Each year the Board of Commissioners is required to adopt a Funding Plan for the Home and Community Care Block Grant for Older Adults and identify the lead office or agency responsible for coordinating the County Funding Plan. At this time, the Funding Plan for Fiscal Year 2008 is estimated to be \$686,862, which is the same amount received in FY 2007. This is a State/Federal program administered at the local level. The proposed Funding Plan supports the service priorities identified for the current planning cycle.

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

I move that the Board appoint the County Manager's Office as Lead Agency and approve the proposed FY 2008 Funding Plan.

State Lottery Fund Application

The current fiscal year budget includes a revenue source of \$900,000 from the State Lottery Fund which the County has programmed to pay for school capital needs. A total of \$617,412 which represents three quarters had been allocated to this fund for Henderson County to date. The final quarterly allocation will not be distributed until early August 2007.

Staff requested that the Board consider approving the Lottery Fund Application for \$617,412 to pay for current fiscal year debt service on the new Sugarloaf Road Elementary School project. There was no match requirement to pull down lottery funds. The Board of Public Education must approve the application to use these funds for this purpose as well.

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

I move that the Board of Commissioners approve the Lottery Fund application as presented.

Blue Ridge Community College Resolution

For the past several months, Blue Ridge Community College had explored several avenues to restore the lake at the College. To that end, they had partnered with the North Carolina Department of Transportation (NCDOT) to improve the drainage system along College Drive. Those improvements require replacement of the drain line under College Drive.

It had been estimated that the cost for the project would be in the range of \$100,000. To assist with the cost, BRCC had by resolution and through a letter to Senator Tom Apodaca, requested NCDOT Contingency Funding in the amount of \$70,000 be allocated for the project.

NOMINATIONS

Notification of Vacancies

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

1. **Alliance for Human Services – 1 vac.**
2. **Blue Ridge Community College Board of Trustees – 1 vac.**
3. **Cane Creek Water and Sewer District Advisory Committee – 5 vac.**
4. **Environmental Advisory Committee – 3 vac.**
5. **Henderson County Board of Health – 4 vac.**
6. **Henderson County Historic Courthouse Corporation – 2 vac.**
7. **Historic Resources Commission – 4 vac.**
8. **Jury Commission – 1 vac.**
9. **Juvenile Crime Prevention Council – 16 vac.**
10. **Library Board of Trustees – 4 vac.**
11. **Mountain Area Workforce Development Board – 2 vac.**
12. **Social Services Board – 1 vac.**

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. **EMS Quality Management Committee – 1 vac.**

Commissioner McGrady nominated Dr. Tom Lacey for position #5. *Chairman Moyer made the motion to accept the nomination by acclamation. All voted in favor and the motion carried.*

3. **Environmental Advisory Committee – 1 vac.**

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

4. Hendersonville City Board of Adjustment – 1 vac.

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

5. Juvenile Crime Prevention Council – 5 vac.

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

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

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

7. Planning for Older Adults Block Grant Advisory Committee – 2 vac.

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

8. Senior Volunteer Services Advisory Council – 1 vac.

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

9. Solid Waste Advisory Council – 1 vac.

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

DISCUSSION ITEMS

North American Police Work Dog Association Meeting

Chairman Moyer noted that the previous year Officer Stepp had put together and hosted the North American Police Work Dog Association meeting which represents people from the whole country; Canada, England. It was held on a Friday evening and very well attended. The event allowed you to see what the dogs and the trainers were capable of doing.

Officer Randy Stepp stated that in 2005 they had hosted a national workshop. They are the smallest town to ever overtake this type of event. Once per year the North American Policy Work Dog Association hosts a national certification somewhere in the United States. Last year it was held in Cleveland, Ohio.

The executive board committee was approached at the end of last year and informed that the City of Atlanta, who was supposed to host in 2007, was not going to be able to host the event. Henderson County was contacted to see if they could host the event again and they accepted the challenge. This will be the 30th anniversary and you can expect between 250-300 handlers along with their dogs and their families. Mr. Stepp asked if the County might be able to help financially this time. The event will be held the last full week of June, beginning June 23 through June 29.

Commissioner Young said that Mr. Stepp had gone before the Travel and Tourism Board approximately one month prior and presented this to their Board. Travel and Tourism monies must be used for advertisement. They did commit to funding the advertisement. He feels that this will bring a lot of economic value to the county and will be a big success.

Chairman Moyer stated that there was a commitment from the city of Hendersonville agreeing to match the amount given by the Henderson County Board of Commissioners. Sheriff Davis had informed Chairman Moyer that he would give at least \$1000 from his budget.

Chairman Moyer made the motion that the Board of Commissioners support this effort and commit \$5,000.00 toward it. All voted in favor and the motion carried.

Quarterly Schools Maintenance Report

This item was skipped and will be placed on a future agenda.

Blue Ridge Community College proposed budget FY 2007-2008

Assistant County Manager Selena Coffey stated that the request came in at \$2,058,000. The County Manager's budget recommends \$2,034,543. Of this \$50,000 is included in the capital outlay for repairs to a picnic shelter. In addition there is a debt service of almost \$1,700,000 included in the budget.

David Whitson informed the Board that he was hired to manage the assets of Blue Ridge Community College. The average salary for their custodian is \$18,000. In their proposed budget is an adjustment to help bring that average salary up for those employees. Their requests for salaries is \$74,754 more than what they budgeted FY2006-2007. Of the \$74,754, \$24,000 including fringe benefits will go to salary increases and salary adjustments and \$6,000 for mandated hospitalization increase. They are in need of a couple of new positions; custodial and maintenance which would account for approximately \$45,000 for both positions. One of the positions is going from part-time to full-time and one is a new position. These were not added in the calculations.

In addition they have almost \$50,000 of increase in "other cost" which includes supplies and materials for maintenance department, custodial department and the grounds department. Mr. Whitson addressed some needed maintenance issues as follows:

- Carpet in need of cleaning
- Paint peeling off the walls
- Non-ADA-Compliant bathrooms

Chairman Moyer stated that there had been a feeling that Henderson County money had been spent on the ballfield. He asked Mr. Whitson to assure the Board of Commissioners that none of this money was going for maintenance of the ball program.

Mr. Whitson responded that no money was allotted in these figures for the ballfield.

Chairman Moyer asked about the line item "professional development and travel" which reflected a 26% increase. He pointed out to Mr. Whitson that all areas which there were not to be adjustments reflected substantial increases.

Mr. Whitson responded when you look at professional development and travel at 26%, it sounds significant and is a \$5,000 increase. This particular line item includes the president's allowances. The \$5,000 increase is for the training and development of their custodial people, maintenance people and grounds.

Chairman Moyer stated that in respect to the president's salary he assumed that the same or similar supplement to his salary was included.

Mr. Whitson responded that it was not adjusted and continued at the same level.

County Manager Steve Wyatt stated that based on conversation he had with Board members, the consensus he had received was that the president's supplement was a concern. When you look at the operational budget that was requested it was reduced by this amount. The analysis conducted by Mrs. Burgess identified this amount and the money has been withdrawn from the budget subject to the Board's satisfaction of getting their questions and comfort level at a point to where they can be supportive of some amount.

Mr. Whitson informed the Board that the Board of Trustees hoped to have a new president on board by July-August of this year.

Chairman Moyer made the motion to approve the budget as submitted at \$2,058,821.45 and eliminate the \$50,000 for capital. The motion passed 4 to 1 with Commissioner Young voting nay.

There was discussion in regards to the salary range for the president.

Amended Noise Ordinance

Henderson County Sheriff Rick Davis and his office proposed the following changes.

While maintaining a complaint-driven enforcement mechanism the new ordinance would remove the requirement of noise metering equipment for proof of violation, in favor of a system more common for criminal violations, where individual citizens may be complainants, and testify as to the disturbing character of the offending noise.

County Attorney Russell Burrell stated that the new ordinance was drafted by District Attorney Alan Leonard. The draft ordinance will be available for public viewing before it is adopted. He stated that Mr. Leonard would be giving background as to what motivated the Sheriff's Department to want to make changes.

Mr. Alan Leonard explained that even under the best of circumstances a noise ordinance could be difficult to enforce in court and the results can be spotty. Mr. Leonard, at one time, had prosecuted in thirteen western counties. He was particularly interested in the comments the gentlemen had made in regards to noise on Highway 64 west and Mr. Leonard assumed that the gentleman was talking about an area within the county. Noise on Highway 64 west would be the typical problem that the Commissioners confront. Highway 64 west is a public highway and there is going to be noise emanated from the public highway. In the proposed amended ordinance Mr. Leonard could count as many as five provisions which could apply to noises on the highway; jake brakes in particular.

The objective in drafting the amendment is first of all constitutional and second of all enforceable. As the amendment was drafted, Mr. Leonard consulted with the Institute of Government in Chapel Hill for guidance from a professor. Their proposal abandons the decimal meter approach as it had proven to be unsuccessful in Henderson County and in favor of simply prohibiting noise that is unreasonable, loud and disturbing but with some exceptions.

There is only so much that the Commissioners and Sheriff's Office can do. The Commissioners have the task of considering and tailoring a constitutional ordinance for Henderson County. The Sheriff's Department has the task of investigating and taking the violators to court. Complaining citizens have the obligation to follow up by coming to court as potential witnesses. The District Attorney must successfully prosecute the cases and then it's up to judges and juries. Ultimately this ordinance will be no more effective than judges and juries want it to be.

Discussion Followed.

Chairman Moyer stated that the Board should accept the amended ordinance and once the amended draft has been circulated and the budget is finished, set up a public hearing to get public input, get feedback from the District Attorney and then decide how to move forward.

Storm Water Management Presentation

County Engineer Marcus Jones stated that the purpose of the agenda item was to inform the Board and to initiate discussions on managing storm water in Henderson County.

Mr. Jones presented a power point presentation that outlined the following:

- Introduction to Storm Water Management
- Clean Water Act and Henderson County
- Options for Henderson County
- Clean Water Management Trust Fund
- Funding a Storm Water Management Program
- Implementation

Stormwater runoff is water from rain or melting snow that “runs off” across the land instead of seeping into the ground. This runoff usually flows into the nearest stream, creek, river, lake or ocean. The runoff is not treated in any way.

Polluted runoff consists of water on its way to creeks, rivers and lakes which can pick up and carry many substances such as pesticides, fertilizers, oil, soaps, sedimentation from construction, bare soil, pet waste, grass clippings and leaves that pollute water.

Polluted storm water runoff is the number one cause of water pollution in North Carolina. In most cases in North Carolina today, storm water either does not receive any treatment before it enters our waterways or is inadequately treated.

The federal Clean Water Act requires large and medium sized towns across the United States to take steps to reduce polluted storm water runoff. The law was applied in two phases. The first phase addressed large cities. The second phase, often referred to as “Phase II,” requires medium and small cities and counties, fast growing cities and those located near sensitive waters to take steps to reduce storm water. In North Carolina, Phase II laws took effect in 2005.

These laws require chosen cities and counties to do six things:

- Conduct outreach and education about polluted storm water runoff.
- Provide opportunities for residents to participate and be involved in conversations and activities related to reducing polluted storm water runoff.
- Detect illicit discharges (e.g. straight piping or dumping).
- Control construction site runoff (Erosion Control Programs).
- Control post-construction runoff.
- Perform municipal housekeeping (e.g. take steps to prevent runoff from city buildings and activities).

Henderson County is required to apply for a Phase II Permit with NCDENR for its facilities.

Henderson County was required to submit a permit for approval of our facilities. It was determined that we were not in agreement mainly because we did not have a sub-service storm drain system on the necessary facilities. A letter was written back to the state as such and they have not responded to the letter. Mr. Jones has held discussions with the state and it is anticipated that the original letter to Henderson County will apply.

The large impact is going to be North Carolina General Assembly Session Law 2006-246. This law requires the Water Quality Section of NCDENR to manage storm water in the unincorporated parts of Henderson County effective July 1, 2007.

These will be managed out of Raleigh with one engineer for nineteen counties.

North Carolina Clean Water Management Trust Fund has available out of cycle grants for stormwater master plans. This allows the county to model storm water in the county. Modeling is an engineering function that looks at the hydrology (how the water falls under the ground and flows to the creeks and rivers) and hydraulics (where it flows through pipes and culverts). This would allow you to identify existing problems with the watersheds and potentially develop projects that could have a possible effect on existing conditions. The grant would give the county the ability to develop a storm water management ordinance which would obviously be tailored from the state laws.

There are many options when it comes to funding a storm water management program. The state will be implementing permit fees, which is the most popular option, where the developers pay fees for review and inspection of their development in regards to storm water management. After the construction process, the subsequent owner of that device would apply for renewals to the permits in which a fee is also associated. It

can be tied into the general fund with property taxes. A fee can be charged on a parcel's impervious surface (rain tax). The State program will be funded by permit fees.

Implementation of the storm water program includes the following:

- Fiscal Year 2008
 - Apply for Clear Water Management Trust Fund (CWMTF) Grant
 - Model storm water
 - Develop Ordinance
 - Develop revision to planning code (proposed LDC)
 - Estimate and budget for program cost
 - State review of our program to see if it qualifies

- Fiscal Year 2009
 - Begin program

RECESS

Chairman Moyer called a 5 minute recess, to change videotapes.

PUBLIC HEARING – Rezoning Application #R-2007-03

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

Planner Matt Cable stated that Rezoning Application #R-2007-03, which was submitted on February 14, 2007, requests that the County rezone approximately 2.41 acres of land, located off Naples Road (SR 1534), from an I-1 (Light Industrial) zoning district to a C-4 (Highway Commercial) zoning district. The Subject Area appears to be parcels 9651-77-5124 and 9651-77-3029, which are owned by the applicant, Walter M. Rowland Jr. The Applicant's Agent is B.L. Hyder.

In accordance with Section 200-76 of the Henderson County Zoning Ordinance and State Law, notices of the May 16, 2007, public hearing regarding rezoning application #R-2007-03 were published in the Hendersonville Times-News on April 25, 2007 and May 2, 2007. The Planning Department sent notices of the hearing via first class mail to the owners of properties adjacent to the Subject Area and Expanded Subject Area and the applicant on May 2, 2007, and posted signs advertising the hearing on the Subject Area and Expanded Subject Area on May 2, 2007.

The Subject Area initially applied for is located at the intersection of I-26 and Naples Road which is approximately one half mile south of the intersection of US Hwy 25 North and I-26.

The Subject Area is currently zoned I-1 (Light Industrial), which was applied on May 9, 2005, as part of the US Highway 25 North Zoning Study. The Subject Area is surrounded by I-1 zoning district. To the west is a C-4 (Highway Commercial) zoning district, and to the south is R-20 (Low Density Residential) zoning district.

I-1 is a light industrial zoning district permitting most light industrial uses and some commercial uses, but excluding all residential uses. Permitted uses include: retail businesses, offices, personal service businesses, tire recapping, automobile sales/service, gas stations, warehouses/mini-storage and junkyards, among other uses.

C-4 is a highway commercial zoning district permitting, by right, commercial uses at various scales and is intended to serve persons traveling by automobiles and local residences.

When staff posted the property it was noted that the single family structures had been removed from the site and grading had occurred to level out the site. A foundation had been placed across the two parcels of the Subject Area. As a result, a stop work order has been issued to the applicant because they had not obtained

necessary permits from the county including zoning permits and building permits. They may also need to acquire NCDENR permits for sedimentation and erosion control. Based on the location of the building, in order for them to actually acquire a zoning permit under either of the existing or requested zoning, they will need to recombine the lots.

Staff's position at this time, under the guidelines of current plans, policies and studies, is it does not support the rezoning of the property to be zoned for commercial uses. This is based on the following:

- The CCP suggests that the Subject Area would be suitable for high-density residential, commercial or industrial development. The CCP does not specifically identify which type of use (high-density residential, commercial or industrial) may be the most suitable for the Subject Area.
- US Highway 25 North Zoning Study, which resulted in the current I-1 zoning on the property, recommended this area as being most appropriate for industrial development.
- The industrial study identified the Subject Area as suitable for industrial development as well.
- Both the US Hwy 25 North Zoning Study and Henderson County Industrial Study are intended to be extensions of the 2020 CCP.
- Applying C-4 zoning to the Subject Area may result in "Spot Zoning." Spot Zoning is a zoning ordinance or amendment (rezoning) that singles out and reclassifies a relatively small area of land owned by a single person and surrounded by a much larger area uniformly zoned, so as to relieve the small tract from restrictions to which the rest of the area is subjected. Applying C-4 zoning to the Subject Area would leave the parcels completely surrounded by an I-1 (Light Industrial) zoning district.

Staff had not identified plans or policies, changes in existing conditions, undue hardship to the Applicant, or overriding community interest that would justify supporting the proposed rezoning. Staff supports the recommendations of the US Highway 25 North Zoning Study and Industrial Study and also recognizes a spot zoning concern related to the parcels that the applicant requested.

The Henderson County Planning Board did consider rezoning application #R-2007-03 at its regularly scheduled meeting on March 15, 2007. During that meeting, the Board voted 7 to 0 to send the Board of Commissioners a favorable recommendation for rezoning application #R-2007-03 to rezone the Subject Area from existing I-1 zoning district to a C-4 zoning district. The Planning Board recommended that the rezoning also include all eight (8) adjacent parcels owned by Mr. Scott Jarvis which appeared to be parcels 9651-77-1206, 9651-76-2953, 9651-77-3029, 9951-77-3278, 9651-67-9533, 9651-76-0981, 9651-67-8212, 9651-67-5473, 9651-77-5124 and 6951-66-8998 located adjacent to the Subject Area property. A letter and a signed document that the County had generated were received from Mr. Jarvis indicating his support of the rezoning of his property.

The eight (8) properties owned by Mr. Jarvis have been referred to as the Expanded Subject Area. Staff also does not support the rezoning of the Expanded Subject Area from I-1 to C-4 zoning.

It is generally incumbent upon the Applicant to demonstrate an overriding justification for approving a given rezoning application. Staff encourages the Applicant to present any information that would inform the County's consideration of the proposed rezoning.

Chairman Moyer stated that the Board had the same issue, with respect to adding properties, as they had the last time.

County Attorney Russ Burrell commented that the ordinance specifically allows, under certain circumstances, the Board of Commissioners to make their own motion to rezone if they find it in the best interest to do so. The Planning Department and the legal office had come up with the proposed form primarily to ensure that any property owner of affected areas that they knew may come before the Board had knowledge of it and would make their position clear.

Public Input

1. Angela Beeker – Ms. Beeker was speaking for the Applicant and Mr. Jarvis. She stated that in regards to adding the properties, it was noticed in the paper and mail notice was given that these may be considered. She raised the following issues:
 - All of the uses that are allowed in the I-1 zoning district are also allowed in C-4 zoning district, just as conditional use.
 - The special uses listed in I-1 are the same as in C-4.
 - As far as the property still being available for the same industrial uses, it is their position that it still would be.
 - The property was designed in the CCP as urban service area. It is her understanding that the urban service area is appropriate for commercial development, as well as, industrial development.
 - The Board of Commissioners has not yet approved the industrial study. The Planning Board had approved the study and recommended it to the Board. Ms. Beeker shared the map of the study with the Board. The proposed area was not initially included in the drafts that were presented to the Board and Ms. Beeker feels that this was because it was not zoned as industrial as part of the US 25 North Zoning Study. This area was not in the area identified by the Committee of 100 recommendations as being one of the primary industrial sites. It is her understanding that the reason it was zoned industrial is primarily due to some existing uses located on the property.
 - The factors that were used to identify the industrial sites, in the industrial study, eliminated parcels of less than four (4) acres because the Chamber has said that anything less than four (4) acres really isn't suitable for industrial use. Their two parcels combined come to 2.41 acres.

There was no other public input.

Matt Cable responded that the intent and the purposes that were stated in the staff report were to preserve as much of the industrial lands as they had identified as possible.

Commissioner McGrady supports the application and he felt that with the additional acreage it made even more sense. The area is industrial however, it is a really small piece and it could probably all be commercial and he wouldn't be upset with it. Given the contiguous commercial acreage there, he didn't see any particular spot zoning issue that would bother him, particularly given the similarities of the I-1 and C-4 zoning district classifications.

Commissioner Williams supports the application. *Commissioner Williams made the motion that the Board favor the request for rezoning application #R-2007-03 to rezone the Subject Area from an I-1 (Light Industrial) zoning district to a C-4 (Highway Commercial) zoning district to include the parcels identified to the southwestern boundary of the tract in which the property owners had agreed. All voted in favor and the motion carried.*

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

PUBLIC HEARING – 2005 Community Development Block Grant Amendment

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

Planning Director Anthony Starr stated that there was a need to amend the 2005 Community Development Block Grant provided for the rehabilitation of up to 8 homes in Henderson County. Mr. Starr noted that it was necessary to reduce the number of homes rehabilitated with this grant from 8 to 5 due to increases

associated with electrical repairs, lead paint abatement, and Division of Community Assistance housing rehabilitation guideline changes.

A public hearing is required to change the scope of the grant to rehabilitate 5 homes instead of 8. The hearing was advertised in the Times-News on Monday, April 30, 2007. No action is required by the Board other than holding the public hearing.

Public Input

John Connell with Land of Sky Regional Council felt that the needs were covered by Mr. Starr. He did stress that of the eight original applicants, two homeowners decided that they did not want liens on their property and voluntarily withdrew. A third homeowner, when the title search was done, was determined ineligible because their property was encumbered.

The following units were provided assistance through the 2005 CDBG Scattered Site program. All units will be completed by June 30, 2007.

Rehabilitation (3)
631 Taylor Road, Hendersonville
6601 Bearwallow Mountain Road, Gerton
240 Elson Ave., Hendersonville

Relocation on Existing Property (2)
4456 Chimney Rock Road, Hendersonville
15 Andy Darity Drive, Fletcher

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

CONTINUATION OF DISCUSSION ITEMS

Employer Resource Guide

Sergeant Ben McKay discussed employer support of the County employees who are members of the National Guard and Reserve. The Commissioners received, along with the agenda, a copy of the Employer Resource Guide, which outlined various methods of providing such support. Staff proposed that to display employer support for the National Guard and Reserve employees, the Board hold a ceremony in the coming weeks to formally sign a Statement of Support for these employees. Mr. McKay read the following Statement of Support.

“We recognize the National Guard and Reserve as essential to the strength of our nation and the well being of our communities. In the highest American tradition the patriotic men and women of the guard and reserve serve voluntarily in a honorable and vital profession. They train to respond to their community and their country in their time of need. They deserve the support of every segment of our society. If these volunteer forces are to continue to serve our nation, increased public understanding is required of the essential moral of the guard and reserve in preserving our national security. The members must have the cooperation of all American employers in encouraging employee participation in guard and reserve. Therefore, we join other employers in pledging that:

1. Employment will not be denied because of service in guard or reserve.
2. Employee job and career opportunities will not be limited or reduced because of service in the guard or reserve.
3. Employees will be granted leaves of absence for military service in the guard or reserve consistent with existing laws without sacrificing vacation.
4. This agreement and its result of policies will be made know throughout our organization.

Mr. McKay proposed that Henderson County have, at the Board's convenience, representatives from North Carolina Committee for the Employee Support of the Guard and Reserve, as well as, the Henderson County employees that are currently in the guard or reserve, here for a signing ceremony so that the County can make a statement that they do support our people who are protecting our country.

Chairman Moyer made the motion that the Board of Commissioners support this process and direct the County Manager to schedule this ceremony in accordance with the request from Sergeant McKay. All voted in favor and the motion carried.

Determination of Vested Rights, Biltmore Farms, LLC

Chairman Moyer excused Commissioner Williams as he was not a part of the initial process. Chairman Moyer noted that this public hearing was held and closed. Instructions were given to the County Attorney with respect to providing guidelines of a draft order. Several citizens arrived at this meeting that did not attend the public hearing and requested to speak. This is not appropriate at this point. The hearing cannot be re-opened by law. If people were allowed to come in and speak now the process would have to start all over again.

County Attorney Russ Burrell stated that a draft order granting vested rights that is consistent with the direction that the Board had given to staff at the hearing on April 30, 2007, had been provided to the Board. This draft incorporates the conditions that were recommended by the staff. It also incorporates other conditions that the Board and staff discussed at the hearing. It is pretty long and Mr. Burrell hoped that the Board had been able to review it in depth. In doing so, of course, you have findings of fact that list all of the conditions and then later on those conditions are made a part of the order. What this would do, based on what the Board directed, is grant the vested rights and the Board would need to make a determination for what period the grant of vested rights would last. If no determination is made, it would last for a period of two years. The maximum length you can grant vested rights for is five years. There are some issues in which the applicant wishes were different after reviewing the order. It is fair to say at this point that the differences have to do with things that the Board directed and decisions made primarily dealing with building within the floodplain. A minor technical change beyond what was seen, that Attorney Burrell would recommend based on information relayed to him the prior day, was to take into account the provisions of the NC Planned Communities Act; having to do with conveyance of open space, when at least an 80% super majority of the homeowners in the subdivision (not including the developer) vote to do so. Given that a time when this occurs is liable to be outside whatever time period the Board decides for the grant of vested rights, Attorney Burrell does not feel that this will be an issue for the County.

Commissioner McGrady noted that at the hearing the applicant was asked, regarding the trails, whether the trails would be publicly accessible, and at that time the applicant stated that they would only be accessible to the residents of the community. He questioned if the applicant had commented at all on the draft, with respect to the trail provision. Commissioner McGrady stated that at another public meeting the applicant's representative came back, to a large number of Etowah residents, and indicated that upon further consideration they were willing to provide some level of public access.

Attorney Russ Burrell responded that the applicant was not in favor of this.

Chairman Moyer stated that the order was open for discussion for the Board, and the Board could decide which way they wanted to go. He had in front of him language, with respect to the storm water, which unless the language prior to final plat approval added anything, was a restatement of the law. He hoped that the Board would not have to begin reciting the law that people have to follow in all of their orders because it is "The Law".

County Attorney Russ Burrell felt that this was a restatement.

Planning Director Anthony Starr stated that it was his understanding of the state law is that if the applicant received vested rights for a site specific development plan, prior to July 1, 2007, they will not be subject to storm water phase II requirements. If this provision were not added as a requirement it would not be considered a requirement.

Commissioner Young made the motion to add the storm water provision as a requirement. No vote was taken.

Commissioner McGrady felt that the Board should grant the vested rights application however, he was in agreement with Commissioner Young in regards to the storm water issue and stated that the storm water phase II should be a requirement for the subdivision. We know today what the state says is flood fringe area, but it appears likely that the flood fringe area, as defined by the state, is very likely a moving target and new maps could arrive at any given time. He questioned how the map, if at all, would be affected or changed if the new order were adopted as written today.

Attorney Russ Burrell responded that the floodplain means whatever the floodplain is as given "today". If the floodplain turns out to be something different than today's maps, it means the floodplain, not what today's maps represent the floodplain to be. It is his understanding, from discussion, that the Board meant for whatever the maps later become to be the floodplain, whether its shrinks or expands.

Commissioner McGrady made the suggestion that the Board make this really clear in the draft order.

Chairman Moyer suggested the wording "currently or hereafter defined" be used.

Commissioner McGrady made the suggestion that the Board add a provision similar to the finding the Board is making in respect to the public interest, that addresses a very specific issue that was raised by one of the parties, and make a specific finding in case this is appealed, that the Board does not find any bad faith. Commissioner McGrady suggested allowing public access to the trails as a provision to the draft order.

Chairman Moyer was unaware if bringing the information in regards to trails at this point was appropriate.

Commissioner McGrady continued to suggest that the provision be included in the draft order and to be shared with all parties to verify if it is technically correct. Commissioner McGrady commented in regards to the duration; that section 189.5 of the statute related to duration basically says "should be vested for a period of two years unless otherwise terminated or unless specifically and unambiguously provided otherwise". It then explains why the Board may provide it otherwise. He suggested that the Board include some findings if they are planning to go anywhere more than two years to back up whenever the Board is going to go more than two years. In case they do grant vested rights for more than two years he suggested that the Board go to statute 189.5B provision and pick up some of the criteria and make some findings so that whatever the Board decides again has findings of fact specific to them.

Attorney Burrell suggested that in doing that, paragraph twelve which basically talks about the applicants request for five years and their justification which does fit into that ordinance in the statute, the size and the scope of the project. He feels that flushing that out, if the Board determines some period in the excess of two years is the appropriate period, the difficulties of having this intensive development in that short of period on the surrounding area would be okay.

Commissioner McGrady stated, with respect to buffering, the Board had received a fair number of questions from the other parties regarding various buffering issues. After reviewing what was received along with the maps, he is unsure if he is technically capable of determining whether if the order does provide all of the buffering that had been suggested by other parties.

Attorney Burrell responded that it did not; it provided buffering that was recommended by staff.

Discussion followed in regards to the buffering requested by staff, other parties, and the applicant.

Commissioner McGrady questioned the County Attorney in regards to transportation studies discussed at the hearing, if it was common to require applicants to undertake the transportation studies needed for subdivisions.

Attorney Burrell responded that with a development of this scale he had certainly seen a number of developers provide studies to the Planning Board when they come for subdivision approval to get an entrance approved.

Commissioner McGrady suggested that since this applicant had provided a transportation study voluntarily that it and any other studies being done voluntarily by the applicant be included in the agreement. The other question brought up was if there was any record of any biological issues relating to the property as far as wildlife or endangered species. Is this something that is commonly dealt with in the context of the development of a subdivision?

Attorney Burrell did not recall this type of evidence ever being presented at a hearing. While the Board has the ability to make such conditions as they see appropriate within certain limits, it is fair to say that those limits are broadly defined by what happens in other subdivisions in their approval processes. He did not recall any situations exactly where you go unless you are incorporating by reference compliance with some other law.

Commissioner McGrady requested that the County Attorney research the issue enabling him to understand the context of what the Board does elsewhere and what might otherwise be included in approvals of big subdivisions like this one. Commissioner McGrady feels that the vested rights application should be granted with the five year term with the revisions.

Chairman Moyer noted that with the changes that were brought forward it would be necessary to bring this item back to the agenda at a future date. He was not willing to vote without seeing the language change.

The consensus of the Board for the length of vested rights was five years.

Chairman Moyer made the motion to continue the vested rights public hearing for Biltmore Farms until Thursday, May 24, 2007 at 7:00 and place it first on the agenda. All voted in favor and the motion carried.

EMPLOYEE HANDBOOK

Human Resources Director Jan Prichard presented the DRAFT Employee Handbook as developed by the Legal Department, HR Department and the Personnel Policy Team designated by the County Manager. This revised draft was necessary because it was originally adopted in 1988. Only minor revisions and updates had occurred since that time.

Attorney Russ Burrell stated that one problem that had been perceived with the "Antique" Personnel Resolution was the difficulty of getting it amended. It is one where it wasn't really the subject matter that really put people on the edge of their seats, what they wanted to do with it, and it was put off. As a result from time to time it would get substantially out of date and out of compliance with other laws. What they have tried to do is go with an approach that will be much more flexible and can react much more quickly to changes in the law as they occur. With an employee handbook what you would be doing is authorizing the county manager to essentially publish this handbook. If and when the county manager saw fit to modify this handbook in the future he would notify the Board of his intent to do so and the Board would be free to bring it up at the next meeting or any other meeting the Board chose. In the absence of direction otherwise the county manager would be able to modify this handbook in whatever way that the county manager views as appropriate with notice to the Board. What the Board has is a strong statement of the at will nature of county

employment except to those departments to which state personnel applies; primarily Health Department and Department of Social Services. It also includes a statement of various policies dealing with everything from performance management to tobacco use. This is a broad statement of the things that make up the employee – employment relationship with Henderson County. It is something that is intended to be provided to each and every employee; online and on the intranet website.

County Manager Steve Wyatt stated that the Board needed to look over the handbook and see if they have questions. It should be placed on the June 4 agenda. He asked that Jan Prichard and Russ Burrell review the draft handbook annually to make sure the County is in compliance with all federal and state laws. If things arise that are particular to the County Mr. Wyatt would present them to the Board for discussion.

Mental Health Update

County Manager Steve Wyatt stated that he had emailed a copy of the state auditors report to the Commissioners in regards to the shutdown of New Vista's Mountain Laurel. Reading it would be similar to reading vested rights findings; it is very exhaustive reading. He suggested that the Board review the audit because we learn from our mistakes and obviously there is a lesson to be learned there. State grant funding has been received for the 6th Avenue Clubhouse. We have not heard back from Congressman Shuler's Office about his effort to basically get the rest of the funding that would cover the purchase price and also the improvements. The balance of the Maintenance of Effort Funds left in our budget at this time is a little over \$100,000.00. We do have two applications that will be brought before the Board at the next meeting on June 4, 2007. We are obligated to expend those funds in this fiscal year.

Chairman Moyer suggested that County Manager Steve Wyatt send out letters to those they had dealt with before to inform them that the funds would be reviewed one more time this year and if they have any requests they should send them in.

STAFF REPORTS

County Attorney's Report

There was nothing further to report at this time.

County Manager's Report

There was nothing further to report at this time.

IMPORTANT DATES

Schedule Follow-Up LDC workshop for June

County Planner Anthony Starr stated that the staff was close to finalizing language on the LDC. He expected that they would be able to distribute the information requested by the Board including maps in an updated form the following week.

Chairman Moyer made the motion that the Board set up a special meeting for a workshop on the Land Development Code (LDC) at 7:00 pm on Tuesday, June 12, 2007. All voted in favor and the motion carried.

Cancellation of a Regularly Scheduled Meeting

Chairman Moyer made the motion that the Board of Commissioners cancel the June 20th regularly scheduled meeting. All voted in favor and the motion carried.

DISCUSSION ITEMS CONTINUED

FY 2008 Budget Discussions

Assistant County Manager Selena Coffey, referring to page 23 of the budget book, began discussion with Dues and Non-Profit Contributions. Dues and Memberships have increased only in the areas where we needed the increase to increase dues and memberships with those groups we are involved with. The next section is Non-Profits which reflect an increase of \$30,000 over the current year. This includes the \$25,000 approved last night by the Board to go into the budget for United Agenda for Children. It also includes a

recommendation to fund \$5000 for Hands On!-A Child's Gallery which is an art museum gallery and is a new request. The final section is the Alliance for Human Services Agencies and the request and recommendation from the Alliance was \$272,682, which is not shown in the subtotal. The recommendation by staff for the current year budget is \$221,000.

Renee Kumor, Chair of the Alliance came to the podium to answer questions in regards to the nature of the United Way 211 Program. It is a telephone answering service center providing information for calls from people with an array of questions.

Chairman Moyer stated that he did not understand why the United Way was asking the County to provide support for one of its programs. He asked if the Community Foundation was putting money into this program.

Ms. Kumor responded that she did not know.

Chairman Moyer requested more information in regards to the United Way 211 Program.

Commissioner McGrady asked Ms. Kumor if she could give the Board any explanation as to why they should consider the additional funding that the Alliance suggested in their recommendation.

Ms. Kumor responded that the Board had looked at each agency's request and placed them in the recommendation. They gave every agency a 3% increase hoping that the Board would come out at about \$245,000. Looking at \$245,000 they do not feel that they are holding any of the agencies to any kind of distress.

Commissioner McGrady requested a copy of the Alliance request.

Ms. Coffey stated that from her standpoint what was needed was to know whether or not United Way and/or the Community Foundation funded the 211 Program out of their budget. She noted that she would like to go back to all of the items and get more information for the Commissioners.

Referring to page 49, Economic Development was the next item discussed. Ms. Coffey noted that the request had come in much later than the other requests and that the staff was well into preparing the budget recommendations at that point. The recommendation is at \$220,000 for Partnership for Economic Development for activities that they provide on behalf of the County. A 10% late fee was included on the submission of the application.

Chairman Moyer stated that the Partnership for Economic Development had come to him and one of the things they had been working on for a while was to establish a greater independence of the partnership. They have actually began moving away, got their independence from the chamber, not completely, but substantially. They wanted to move into their own facility. When the budget preparation began that had not been worked out, but did work out later. Some of the additional cost is associated with the move to their new facility.

Ms. Coffey noted that a letter was received from the chairman of the group telling them basically that the additional \$25,000 request was for expenses related to the transition. She requested that the Board discuss the option of the \$25,000 increase.

County Manager Steve Wyatt recommended the \$25,000 increase to the budget.

Chairman Moyer made the motion that the Board approve the budget for Economic Development of the \$527,586 plus \$25,000 additional. All voted in favor and the motion carried.

Ms. Coffey reminded the Board of discussion necessary in regards to the Fire Districts.

Chairman Moyer stated that the Board had received a sheet with the status of the Fire Departments and what the Board needed to do was decide which Departments the Board wanted to hear from. The general rule last year, which was not an evaluation year, was that anyone asking for an increase came to a second meeting and they presented their case to the Board.

Discussion followed.

Commissioner McGrady made the motion that the Board specifically invite Dana, Etowah, Fletcher and Mills River and anyone else who would like to come in and present their case to the Board of Commissioners. All voted in favor and the motion carried.

CANE CREEK WATER & SEWER DISTRICT – no business

CLOSED SESSION

Chairman Moyer made the motion that the Board go into closed session pursuant as allowed to NCGS 143-318.11 (a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body. (a)(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. (a)(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions or initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or to investigate a complaint, charge, or grievance by or against an individual public officer or employee. All voted in favor and the motion carried.

ADJOURN

Chairman Moyer made the motion to adjourn. All voted in favor and the motion carried.

Attest:

Terry Wilson, Deputy Clerk to the Board

William L. Moyer, Chairman