

## MINUTES

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS  
JULY 2, 2007**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner 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: Planning Director Anthony Starr, Finance Director J. Carey McLelland, County Engineer Marcus Jones, Associate County Attorney Sarah Zambon, Communications Specialist Pam Brice, Research/Grants Coordinator Amy Brantley, and Planner Matt Card.

Absent was: Deputy Clerk to the Board Terry Wilson

### CALL TO ORDER/WELCOME

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

### PLEDGE OF ALLEGIANCE

Chairman Moyer led the Pledge of Allegiance to the American Flag.

### INVOCATION

Commissioner Williams gave the invocation.

Chairman Moyer stated that the National Guard was unable to attend and had asked the Board to reschedule the signing ceremony recognizing them for their contribution.

### INFORMAL PUBLIC COMMENTS

1. Eva Ritchey - Ms. Ritchey began "Is there no one here that will save this place?" Seven Falls, The Glen, Bearallow; we have been waiting 20 years for land use policies to preserve the beauty that people came here for and we still don't have it. When she had opened up the paper and saw the remarks by Mr. Pearce where he was understandably upset, the people were accusing the Planning Board of taking money for their good treatment of developers. She thought he was right. She doesn't think the Board has ever taken money but they've taken lunch and that is the problem, its access. The majority of members who have been appointed to the Planning Board have close ties to the development and building community. They take their orders as much from the North Carolina Builders Association in Raleigh as they do this community and the results show. When she read the paper she didn't believe she had ever seen a more shameful advertisement. She never knew we could be bought for \$100,000. She stated that Seven Falls Development had a number of infractions against DENR and their offering to start a foundation for the poor folks out in Etowah to help them so that they can get a twenty year pass on having to live up to best policies. If the County is going to be bought by a developer let's ask for more.
2. Ned Doyle - Mr. Doyle was in agreement with Ms. Ritchey. Mr. Doyle is not a big fan of the development pattern that is emerging in Henderson County at this time. He feels that it is clear that this whole situation that the County is facing from many standpoints is that this is not illegal. If there is a question could we change the ordinance, or work with the developers? There is nothing to stop it. In Mr. Doyle's opinion we are all looking at this as terms of the laws of men.

DATE APPROVED \_\_\_\_\_

Well, we can change that law – well we can disregard it – we’ll grant the special exemption and we’re working our way around it and legal use terms and many of us are sinking to a low level of only looking at it in those details. There is a logical extension which is a higher court in terms of dealing with these legal issues. I would offer that we are breaking the laws of God and we are breaking the laws of nature with this development pattern without the input of the citizens and without concern for the long term ramifications of these actions of these Boards right now working with these developers. “Thou shalt not steal” and what we’re collectively doing is stealing the air, stealing the water, stealing the wildlife, and stealing the forest and quality of life, not only of us (us old guys) but the children and our grandchildren. Wells are running dry. The climate is changing and the patterns are shifting. We cannot draw more water and expect it to magically appear.

3. Charles Brown - Mr. Brown expressed the same opinion as Ms. Ritchey and Mr. Doyle. An offer had been made on his property and they had considered what they would take beforehand. They would have to leave and move away from their home of 13 years. The amount of money offered did not even match up with the tax value. He does not feel that they should be able to get a grandfather clause in so that they can do as they see fit without anybody saying what they do. The people that live on the land should have a say so on what is going on not them and their donations trying to buy a way in.
4. Darlene Brown – Ms. Brown realizes that construction and building is the way that things go but she hates to see the farm land disappear. She feels that if we’re going to allow people to come into our county and buy up our land to put whatever on it they should be held to a standard. They should not be given any leeway at all and should be made to do it right. The problem is that things have not been done right in this county and so you have houses that are sliding off of hillsides where they should never have been built and you have wells going dry.
5. Tommy Mills - Mr. Mills had a list of properties that Seven Falls had already acquired and the ones that were to be acquired. His property is part of the property that is to be acquired. He doesn’t know how they are going to acquire it if he is not going to sell it. The properties that they are buying out there, most of the time they are only paying them \$40,000 - \$50,000 for an acre and then they turn around and sell it for \$300-900,000 an acre. This doesn’t seem too fair. He heard that they had acquired a lot more land recently and with the current plan of 900 homes scheduled to be built now you would be looking at around 2000 cars going in and out. He doesn’t feel that the water table can handle it either.
6. Carroll Gosnell - Mr. Gosnell lives in the Pleasant Grove area. What he sees going on with this property he feels is a travesty and is just not right. If Henderson County Board of Commissioners wonders why Etowah is discussing incorporation, this is one of the very reasons. Hopefully they can control it if the Board of Commissioners can’t. He questioned if the upcoming land code was so restricted that Seven Falls couldn’t work under the guidelines and what happened to control growth, public safety, public health and the public welfare?
7. Angela Fernandini – Ms. Fernandini reminded the Board that she had filed an appeal for the Phase I Development Plan that the Planning Board passed on June 21<sup>st</sup> and amongst the paperwork in the request for Board action the developer says that he is going to follow certain storm water rules or other permits governed by DENR. She stated that as of yet that the developer had not done so. She found it funny that they propose this in the request for Board action but don’t now. If there is property that they do not have a contract on that’s in their master plan they can’t seek vested rights for those properties. She would like the Board of Commissioners to consider the vested rights of the community. She is fourth generation Etowah as are many other people and these people deserve vested rights. Under the project narrative it says that this development will have a sports bar on site. This is a dry county and you can’t buy

alcohol in Etowah and she really doesn't think the values in the community would support a development having 900 homes and being able to have access to alcohol and then drive off that mountain and come into town. They also proposed a kids activity center. One thing mentioned during master plan approval was that the developments going up in Etowah, specifically this one and Biltmore Farms would not be affecting our school system. If they are not going to be affecting our school system, then why are they having a kid's activity center on site? They also keep saying that they will build a fire station but the plan only shows a shell. She questioned if the county would be responsible for everything else including equipment, training, etc.

8. Richard Freudenberger - Mr. Freudenberger spoke to the proposed development agreement with Seven Falls. He was on the website for the seller's agent and amongst the promotional material it said "Why hasn't anyone done this before?" The Seven Falls Golf and River Club has been promoted by the developer and the seller's agent as a once in a lifetime opportunity for whom? This is a private investment for a hand full of people. This is not like a family building a home and living in it for twenty years. The Board's decision to guarantee protection against the cost of future public and environmental safe guards is equivalent to the security and exchange commission granting a 20 year guarantee of profit on a mutual fund. We who have had vested interest in Henderson County for years are just fed up with developers and equity investors from out of state using our communities and our natural resources as a personal ATM machine for their individual gain. There are over 140 gated communities in Western North Carolina, many with golf courses. Now they're not satisfied with disturbing the landscape they have to molest the waterways as well. This is over two square miles of development.
9. Bruce Gosnell - Mr. Gosnell lives in the area where Seven Falls is being developed. He can't see building sites of that magnitude in locations where the roads are not adequate for that amount of travel. He questioned his vested rights when the Land Development Code comes out. He doesn't feel that he will have any rights. The only vested rights that he sees he will get out of this is the vested right to pay his taxes which he feels is going to be a lot higher. They keep talking about the tax base of Seven Falls being 1.2 billion dollars and he doesn't think this is going to help the county. He would like to see a rainy day fund in the county. It doesn't matter what the tax base is because we're going to spend it anyway and then there is no gain. The people who live there will put up with all this traffic and the whole nine yards and it won't be funny.
10. Marijane Pell - Ms. Pell spoke against vested rights. Seven Falls has repeatedly violated laws that govern housing developments and the water quality of our local streams. There are four water violations out against them according to Kevin Barnett and she heard that they did not get the proper permits for burning and every homeowner needs permits for burning. These people are supposed to be professionals and yet their excuse is accidents happen. With all of the money they have at their disposal and experts they hire, there should be no accidents. If they cannot be trusted to take care of simple things like permits, how can they be trusted with anything else; like reframing from using septic tanks after two years. Now they are seeking vested rights which we will give them which will also give them probably septic tanks in the four future developments and water wells as well. She believed that the Commissioners are charged with the safety and well being of their constituents. If you truly want to act on that you will say to this developer, fine you can go ahead but first not until the new roads are in place, the newer lines are in place, the water lines are in place, and the fire house is built complete with equipment needed. Ms. Pell asked the Commissioners to allow her to put up a petition in the county building and county libraries asking the people of Henderson County if they would like to put a moratorium on any large developments until after the new land use law goes into effect. She had petitions with her for anyone wishing to fill one out or if they wanted to sign the one she had with her. The Environmental Conservation Organization will also have petitions at their headquarters. There is also a petition online as well.

Chairman Moyer stated that Ms. Pell had already discussed this with the County Manager.

County Manager Steve Wyatt explained that Ms. Pell had filled out the appropriate form, which came in after the agenda deadline and they had put this item on the tentative agenda for the next meeting for the Board's consideration.

Chairman Moyer responded that the answer was no for today.

**DISCUSSION/ADJUSTMENT OF AGENDA**

Chairman Moyer had no changes to the agenda.

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

**CONSENT AGENDA**

Chairman Moyer requested pulling item "G – Approval of Vested Rights Order V-2007-04" from the agenda to be discussed for clarification. He recognized the motion for approval with the exception of Item G.

*Commissioner McGrady made the motion to approve the adoption of the consent agenda with the exception of Item G. All voted in favor and the motion carried.*

**Item G – Approval of Vested Rights Order V-2007-04**

Chairman Moyer questioned the wording on the last page of the order in regards to outdoor storage. The wording reflected unlimited outdoor storage but with a minimum of 5000 feet.

County Planning Director Anthony Starr explained that under the new Land Development Code with the zoning that this property would be permitted to have outdoor storage less than 5000 feet therefore, the ordinance was establishing that they would have rights beyond what the new code would say.

Chairman Moyer requested clarification in the order to read that they could have what is admitted by the code plus these 5000.

*Chairman Moyer made the motion to approve the Vested Rights Order V-2007-04 with the above noted change. All voted in favor and the motion carried.*

The rest of the consent agenda is as follows:

**Minutes**

Draft minutes were presented for the Board's review and approval for the following meetings:

- May 16, 2007 – Regularly Scheduled Meeting
- May 21, 2007 – Special Called Meeting
- May 24 2007 – Special Called Meeting
- June 4, 2007 – Regularly Scheduled Meeting
- June 7, 2007 – Special Called Meeting

**Tax Collector's Report**

Terry F. Lyda, Henderson County Tax Collector, had provided the Tax Collector's Report dated June 22, 2007, for the Board's review and consent approval.

Collections information was included through June 21st for the 2006 bills mailed out on August 18<sup>th</sup>, as well as vehicle bills.

**Annual Bills G01 Only:**

2006 Total Charge:	\$49,390,710.20
Payments & Releases:	48,390,710.20
Unpaid Taxes:	1,103,111.08
Percentage collected:	97.77%

Motor Vehicle Bills G01 Only:

2006 Total Charge:	\$4,943,871.00
Payments & Releases:	4,267,071.21
Unpaid Taxes:	676,540.00
Percentage collected:	86.32%

Fire Districts All Bills:

2006 Total Charge:	\$5,277,633.50
Payments & Releases:	5,077,457.51
Unpaid Taxes:	200,132.31
Percentage collected:	96.29%

**County Financial Report/Cash Balance Report – May, 2007**

These two reports were presented for the Board's review and consent approval.

Non-Departmental costs include insurance premiums paid to date for Property and Liability insurance coverage and Worker's Compensation costs. These costs are being allocated out to all departments on a pro rata basis during the fiscal year.

The YTD deficit in the Emergency 911 Communications Fund is due to the purchase of new technology and equipment during the first quarter that was budgeted in the current fiscal year and paid for from unreserved fund balance of \$66,952 appropriated in this Fund.

The YTD deficit in the Crisis Housing Assistance Program, the CDBG Scattered Site Housing Program and the Public Transit Program is temporary due to timing differences in the expenditure of funds and the subsequent requisition of Federal and State grant funds and local farebox revenues to reimburse program expenditures.

The YTD deficit in the Mills River Elementary School Project includes architectural fees that have been paid on the project to date that will be reimbursed from new school financing debt issued in FY2008.

The YTD deficit in the Balfour Automotive Science Training Center Project is being paid from sales tax refund proceeds which have accumulated in the School Capital Projects Fund from various school capital projects. This project was completed at the end of May.

The YTD deficit in the Solid Waste Landfill Fund is due to construction expenditures incurred on the new transfer station project. The total cost of this project is being paid from \$1.8 million of unreserved fund balance appropriated in this Fund.

**Henderson County Public Schools Financial Report –May, 2007**

This May report was presented for the Board's review and consent approval.

**EMS Accounts Receivable Report**

This report was presented for the Board's review and consent approval.

**Text Amendment to Nuisance Ordinance**

The text amendment was suggested to clarify Section 126-2.04 regarding outdoor storage. The text amendment arose from discussions by the Zoning Board of Adjustment. In these discussions, the ZBOA was

unclear as to whether the first provision under the Outdoor Storage in regards to amount of outdoor storage and the location of this storage could be applied to business storage which was discussed in the following clause. The proposed text amendment clarifies that the first section applies only to residences and that there are no restrictions on business outdoor storage as long as the storage is related to the business.

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

*I move that the Board adopt the proposed Text Amendment to the Section 126-2.04 of the Henderson County Code.*

#### **Fee Increase Henderson County Detention Center**

The Henderson County Sheriff's Office on behalf of the Henderson County Detention Center requested that the fee to house inmates from other counties (i.e. Transylvania County, etc) be increased from \$45 per day, per inmate to \$52 per day, per inmate. The rate change will take effect on August 1, 2007.

This is the first step in a phase-in process which will eventually move the daily rate to \$60 per inmate. The total increase to \$60 per inmate, per day will occur over a two-year period.

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

*I move the Board allow Sheriff Rick Davis and Captain Greg Cochran of the Henderson County Detention Center to institute this rate change, effective August 1, 2007.*

#### **Non-Profit Performance Agreements**

Subsequent to the approval of the FY 2007-08 Budget, staff had distributed the funding agreements to the non-profit agencies receiving County allocations. Staff will be including signed funding agreements on the Board's consent as they are received from the agencies.

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

*I move the Board authorize the Chairman to execute the funding agreements as presented and, in doing so, authorize the release of the first of the aforementioned agencies' quarterly allotments.*

#### **Award Bid – Emergency Water Shed Protection Project**

Henderson County received grants to provide several Emergency Watershed Protection Projects. The Engineering firm of Hobbs, Upchurch and Associates, P.A. was retained to develop and bid the projects. Bids were received for the Project referred to as the Don Warren Site. The projects are being paid out of grants received by the County and there are no County funds being used in the project.

Two bids were received with the low bid from Hendersonville Equipment Rental and Sales, Inc. at \$55,565 base bid, contingency of \$2,778.25 for a total bid of \$58,343.25. The high bid was at a base bid of \$61,000, contingency at \$3,050 for a total of \$64,050 from Cody-Herve Construction. The proposed work is to address stream bank stabilization along a portion of Clear Creek at Grant Mountain Road. Work will consist of installation of additional rip rap along the waters edge and Gabion Walls to retain the slope. Area is to be regraded and seeded. Staff and the Engineer recommended that the project be awarded to Hendersonville Equipment Rental Sales, Inc. for \$58,343.25 and that the County Manager be authorized to execute contracts.

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

*I move the Board approve the bid from Hendersonville Equipment Rental and Sales, Inc. for the Don Warren Site Emergency Watershed Protection Project in the amount of \$58,343.25, and authorize the County Manager to execute contracts.*

**NOMINATIONS**

**Notification of Vacancies**

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

1. **Adequate Public Facilities Task Force Charter – Chair vacancy**
2. **Mountain Valleys Resource Conservation and Development Program – 1 vac.**

**Nominations**

Chairman Moyer reminded the Board of the following vacancies and opened the floor to nominations.

1. **Blue Ridge Community College Board of Trustees – 1 vac.**

*Commissioner McGrady withdrew the nomination from the previous meeting for David Arnold. Chairman Moyer made the motion to accept Tom Orr, nominated at the last meeting, by acclamation. All voted in favor and the motion carried.*

2. **Child Fatality Prevention Team – 1 vac.**

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

3. **Hendersonville City Board of Adjustment – 1 vac.**

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

4. **Juvenile Crime Prevention Council – 7 vac.**

Commissioner Young nominated Christy Bridges for position #25. *Chairman Moyer made the motion to accept Christy Bridges to position #25 by acclamation. All voted in favor and the motion carried.*

5. **Library Board of Trustees –1 vac.**

Candler Willis and Morton Lazarus had been nominated at the last meeting. The Board was polled with one vote each with the following results:

Chuck McGrady	Mark Williams	Bill Moyer	Charles Messer	Larry Young
1. Morton Lazarus	1. Candler Willis	1. Candler Willis	1. Candler Willis	1. Candler Willis

Candler Willis was appointed to position #5 with a majority of the votes.

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.

**Moseley Architects Presentation**

Chairman Moyer introduced a representative for Moseley Architects, Jimmy Wilhide, who made a presentation on environmental issues and associated costs related to school design and construction.

Jimmy Wilhide stated that he was present on behalf of the School Board to talk about “LEED” schools and what this meant concerning Henderson County. In the past fifty years CO<sup>2</sup> has increased by 100 parts per million at a rate that is increasing tremendously from what it used to be. This is contributed to the effect of men and what we’ve been doing in the industrial revolution between 1972 and 2006. Carbon Dioxide, Methane, Nitrous Oxide, these are the gas emissions that are really affecting our environment. Carbon Dioxide is the worst. The green house effect is the radiation and the energy that is released by the sun and

then the environment is being absorbed by the earth. They are being released but the green house gases are allowing it to evaporate back into the atmosphere. School buildings represent the largest construction sector in the U.S. and buildings consume 40% of the world's total energy. By permitting the design and construction of "green schools" we can make a tremendous impact on student health, test scores, the environment and school operational costs.

The standard for schools is through the U.S. Green Building Council and it's called "LEED" (Leadership in Energy and Environmental Design). They have developed the criteria specifically for schools and that criterion is used to measure the things that are implemented into the building, as well as, the site and other areas.

The benefits of LEED schools are health, environmental and financial. Studied green schools use an average of 33% less energy than conventionally designed schools. A big part of LEED is commissioning. A large upfront number that basically is used for additional inspectors and additional commissioners that test the building and make sure that the building is meeting the specs, is meeting the drawings, that the mechanical units are running as designed and engineered so that the building is working as efficiently as possible.

Chairman Moyer asked about the fee charged for testing the system and making sure they are working right and making sure the plans are being followed. Isn't that what is in the normal architectural fee?

Mr. Wilhide stated that this was part of it, yes. They do have a site visits. This takes it a step above and beyond.

Chairman McGrady commented that the Board had visited a school in Durham which was a Moseley designed school. He requested information regarding the costs savings for this school.

Chairman Moyer requested a copy of the cost estimate savings for Henderson County.

County Manager Steve Wyatt informed the Board that there were a couple of meetings in the next two weeks and that the Board would need this time to study the material. One of the issues that the Commissioners and staff had was the construction or design bidding construction timetable. He questioned if they reviewed the information for the next two weeks, what affect will that have on Moseley's time bid construction timeline?

Mr. Wilhide responded that this wasn't something that could be done as an "add alternate." It needs to be incorporated as soon as possible. He would strive to get the information to the Board immediately.

Chairman Moyer questioned the drop dead date for when the Commissioners had to give Moseley Architects an answer?"

Mr. Wyatt asked if the two weeks prior to the next meeting would affect the design bid construction timeline with a negative impact.

Mr. Wilhide said "We will make it work if you do the two weeks."

Commissioner Williams asked how the maintenance differed with a LEED school to a non-LEED school, as far as, cost was concerned.

Mr. Wilhide did not have an answer but theorized that the new equipment being used should have fewer problems, therefore requiring less maintenance.

Chairman Moyer asked Mr. Wilhide "If you take the total estimate of what it would cost to construct these two schools and added \$714,000 to get the LEED certification would there be additional construction costs to accomplish what the LEED certification requires".



Mr. Wilhide stated that there would not be additional costs with the basic LEED certification; not silver, gold, etc.

Discussion followed.

#### **Dana Elementary Phase II A&E fees**

School Board Chairman Irvin Bazzle stated that in November the Board of Commissioners approved the architectural fees for the School Board to go forward with the final phase of Dana School. The budget was 2.5 million which included the architect fees of \$120,000. The design work was completed in April, as is the case in the last three to four years they have those numbers crunched before they go to bid. The projections came back at about \$2.8 construction cost which is a little over \$400,000 above what budget was. They then went back to the architect and starting cutting things out. Part of it that was cut out had to do with major work on the gymnasium, which has the stage in it. The design initially was to take a wall out where the stage was and move it back to enlarge it so they could have both of those things within the facility itself. This was identified as the major cost difference from the budget. Another major cost would have been a metal roof on the 5<sup>th</sup> grade building that has now been changed to a flat roof. The \$57,000 basically was for that design work so they would be able to bid the alternates. The \$57,000 is in addition to the \$120,000 but will be taken out of the \$2.5 million allocated for the entire project.

Chairman Moyer stated the school board took the other estimates out before and then they got the much higher figure and then they value engineered it using that \$57,000 of architecture fees. He inquired what assurance the school board had that they were anywhere close to the \$2.5 million.

Mr. Bazzle responded that the school board took the plans that they had, which included the gym with the wall taken out which was their initial plan. The initial plan also included the sloped roof on the 5<sup>th</sup> grade building with HVAC. The cost estimates were done which showed them the number coming above the \$2.5 million. They then told the architect to give them different designs removing these two items. They have no assurances that they will hit budget but they feel they have a better shot with the numbers and the way they have crunched them on the alternates that are going out.

Chairman Moyer surmised that based on the value, the school board thought that they could come in at \$2.5 million but they did not have the bids to back it up. He inquired if this was the same group that did Mills River.

Mr. Bazzle stated no it was the group that did Clear Creek.

*Commissioner McGrady made the motion that the Board authorize staff to pay the additional \$57,000 in A&E fees from the total construction project of \$2.5 million dollars. All voted in favor and the motion carried.*

#### **Award Bid – 6<sup>th</sup> Avenue Clubhouse**

Informal Bids were requested by Architects PBC&L for the renovation work planned for the 6<sup>th</sup> Avenue Clubhouse. The proposed work is to address some fire safety issues including replacement of fire escape, interior signage, new interior walls to control egress, and some site drainage improvements. A project budget of \$100,000 is available for construction and architect fee. Two bids were received with the low bid from B. Allen Construction at \$56,320. With the Architect Fee at \$12,000, the project is well within budget.

County Engineer Marcus Jones stated that staff was requesting the Board to approve B. Allen Construction for renovation work for the 6<sup>th</sup> Avenue Clubhouse Rehabilitation project in the amount of \$56,320.00 and authorize the County Manager to execute contracts.

*Commissioner Young made the motion that the Board approve B. Allen Construction for renovation work for the 6<sup>th</sup> Avenue Clubhouse rehabilitation project in the amount of \$56,320, and authorize the County Manager to execute contracts. All voted in favor and the motion carried.*

### **Waterline Extensions**

Planning Director Anthony Starr reminded the Board that they had wished to discuss this particular item and that waterline extensions typically are approved by the Board. Mr. Starr distributed maps of each waterline extension to the Board. He informed the Board that none of the projects being presented included any County tax dollars and all cost would be born either by the developer or perhaps the City of Hendersonville. Mr. Starr explained that the Urban Services Area including the Kenmure Development was considered in the County Comprehensive Plan as the area they expect to have or will have in the near future water and sewer infrastructure. The Rural Transition Area was the area, that over a period of years, would in some cases have timelines that aren't consistent with different parts of the county but at some point in the not so distance future would also have water and perhaps even sewer infrastructure. The Rural Agricultural Area is the area's of the County in the Comprehensive Plan identified as unlikely to have water or sewer line infrastructure and so these three different areas are the basis for the different densities recommended by the Comprehensive Plan; largely based on utilities but other factors such as our ability to provide other county services to these areas.

### **Pinnacle Falls Phase I (On Site)**

#### **Pinnacle Falls – Off Site**

The Pinnacle Falls waterline extension would provide a 1.2 mile extension from existing lines and connecting in the Kenmure development going down Pinnacle Mountain Road to the project site.

Chairman Moyer stated that the sheet used for the waterline extensions; one of the key items has always been that it is within our comprehensive plan and Mr. Starr had noted that this was not. Chairman Moyer questioned why the Board would be considering this extension. The Board should either follow their regular plan or change the plan. This extension request is not in the transition area.

Commissioner McGrady noted that the water was coming completely out of one watershed, the French Broad. This amounts to an inner basin transfer.

Mr. Starr said that the sewage is being treated on site, so it would not come back to the basin. The city or any operator of a public water supply is not required to have any kind of approval from the state for those unless we exceed two (2) million gallons per day.

Commissioner McGrady questioned as to why the Board was receiving this request after millions of dollars had already spent as opposed to asking the Board earlier on in the stage.

Mr. Starr responded that he felt that there was a problem with the process that is being used. He and the City Utilities Director had been discussing this issue of trying to develop a better system and how they could move forward through this process.

Discussion Followed.

Commissioner McGrady requested that the developer of Pinnacle Falls come to the podium for questions. He asked where they had anticipated water or where was it coming from in the original master plan for this development?

The Developer responded that they looked from inside the property. They did a geological survey of the property and were advised by an engineer from Western Carolina University that there was adequate water supply within the property. That failed to materialize and they were forced to look for an external source. This is when they began to approach the city. At no time during that process were they advised that there

was an issue anywhere within the county or within any regulations that they would be in violation of a comprehensive plan or any the statutes.

Commissioner Young wanted to know if this would affect the density of the development.

The Developer responded that it would not affect the density. They were at 147 homes and 355 acres and that is where they will remain. This will also enhance the cities ability to provide fire protection and pressure back to Kenmore. They are only using a very minimal amount of water projected for 147 homes. That's 60,000 gallons of water per day they are projecting to use.

Commissioner McGrady asked the Developer if the Board did not approve the extension what other option was available.

The Developer responded that he no other options at this point.

*Commissioner Young made the motion that the Board approve the water line extension for Pinnacle Falls. The vote passed 3-2 with Chairman Moyer and Commissioner McGrady voting nay.*

### **Summit Springs (On Site)**

Commissioner McGrady stated that in respect to Summit Springs it obviously is in a rural agricultural area and under the comprehensive plan the Board would not normally approve an extension of utilities into this area.

Anthony Starr responded that the basis of Summit Springs is that it would not likely be served with public utilities.

*Commissioner Williams made the motion that the Board approve the water line extension for Summit Springs. The vote passed 4 to 1 with Chairman Moyer voting nay.*

### **BREAK**

A five minutes break was taken to change video tapes.

### **Edneyville Inn Subdivision (Water Utility Extension)**

Commissioner McGrady stated that in respect to Edneyville Inn it is in the rural transition area and this is something they would do on a case by case basis.

*Commissioner McGrady made the motion that the Board approve Edneyville Inn Subdivision water line extension. All voted in favor and the motion carried.*

### **Water Line Extension – Grant Highlands at Bear Wallow Mountain**

Planning Director Anthony Starr asked the Board to refer to the map handout. On the map the existing water line on Highway 64, Chimney Rock Road was shown and how that area was located in rural transition area which is again the area that would have some water and sewer but does not have sewer other than at the Justice Academy. It is approximately 7.9 mile extension. The site is on the Buncombe County line and is located in the rural agriculture areas. The original project as it was approved was for 99 homes and they had proposed an on site water source, local or community wells. They have since acquired additional property and the Planning Board approved a revised master plan to expand the number of homes from 99 to 320 homes. This is an open use area so the Planning Board, under the current regulations, really did not have a mechanism to say one way or the other whether it should or shouldn't have them. Open use does not regulate density. The developer has since approached the city and the city, as he understood it, has been planning a water line extension in the area but not necessarily all the way to the site. For a water tower to serve for additional water storage capacity in an area a 1.5 million elevated tank is used. The developer and

the city are working together, as far as, providing land for that tank. The developer would extend the project further than what the city had proposed to the site.

Chairman Moyer inquired that this would have been 1 lot per 3 acres and now it is 1 lot per a little over an acre; which would more than double the density.

Anthony Starr and the developer answered that this was correct.

The developer Scott Shirley and co-developer Dean Anderson explained that they are in pretty much the same situation as Mr. Ball. He had used the same geologist and received the same feed back. When they did their exploratory drilling, thinking that they may be in a central community system to serve a number of the people from having to dig so deep, they couldn't find the volume that they needed. They have spent well over \$100,000 with the city and engineering and spent a year waiting for the state.

Commissioner McGrady requested to hear from the city representative or engineer.

City Utilities Director Lee Smith came to the podium to address questions from the Commissioners.

Commissioner McGrady commented that if they continue to expand water lines, this would increase development. He wanted to know if this was approved would it be real easy to get a whole range of other water extensions to this area, and what plans, if any, did the city have to put water into these areas.

Lee Smith responded that the city was not attending the water storage facility for growth. That facility is in our latest distribution system analysis. Their intention was not development. Their intention was to have a reliable water supply and storage facility on that side of their system. This would open up the option of additional extensions in the future.

County Manager Steve Wyatt asked what size lines the city was looking at for the 41.6?

Lee Smith responded that the line to the tank would be 16. The line on Highway 64 actually reduces at Laycock Road from 16 to 12. They would go back to Laycock Road, pick up the 16 and extend it to the tank site.

County Manager Steve Wyatt asked the location of the tank site.

Lee Smith responded that it would be on Bearwallow Road.

County Manager Steve Wyatt stated that he had received calls from people in the area who were told that they live along that road but they would not be able to tap into that waterline.

Lee Smith responded that that is not on the city side of that system. The portion of this project that city was going to be putting in anyway will be open for anyone to tap onto. The portion that is going to be a little more restricted is going to be the pressure side going from the tank through three pump stations up to the Grand Highlands Facility, which is being paid for by the developer. This is a 6 inch line and you are not looking at a lot of capacity or additional capacity for additional growth off of that line. This is not a densely populated road so there will be places where people can tie on but because of the tremendous elevation difference there will be a lot of pressure in parts of those segments from pump station to pump station.

County Manager Steve Wyatt asked that in their planning process were the issues of capacity or pressure what they were trying to tackle prior to this development.

Lee Smith responded mostly pressure. They also have no storage facilities on this side of I-26.

Gerton Fire Department Fire Chief Jay Alley stated that with the addition of 320 homes in the Grand Highlands Subdivision, it would in fact almost double the number of homes his department would be protecting. They are now a Class 6 Fire Department. With the road density and the housing density and without these hydrants and without a satellite station on Bearwallow Mountain he would never keep his Class 6. This would be mandatory. He either has to have the water with the houses or he can't have the houses because it will affect their fire rating.

*Commissioner Messer made the motion that the Board approve the water line extension for Grand Highlands at Bearwallow Mountain and direct staff to convey the County's comments to the city of Hendersonville.*

Commissioner McGrady spoke to the motion that this was a difficult situation for the Board to find themselves in. He did not feel that the County was the insurer of water to all the people who make investments in subdivisions and then it don't work out right and they need to provide water. He understood that the developer here is paying for this water to go out there but his concern is not with that but with the possible urbanization of the area in the future.

Mark Cathey, with Civil Design Concepts, for the consultant for Grand Highland at Bearwallow informed the Board that the City of Hendersonville's plan to put the water tank in that area, regardless of this subdivision, would have made potential for development with the addition of a tank at an alternate location which they had identified. The developer in this case is paying for the infrastructure to take the water and put a dedicated force main to the top of the mountain. This would give the city the opportunity to expand their fire system out there but it is not expanding the distribution system of the City of Hendersonville past their tank. This system is not adding additional development potential in that area beyond the tank. The tank is the water source. All they are doing beyond the water source is transferring water from point A to point B for use.

*The vote failed 2 to 3 with Chairman Moyer, Commissioner McGrady and Commissioner Williams voting nay.*

#### **Consideration of the draft development agreement for Seven Falls Golf and River Club**

Planning Director Anthony Starr stated that the developer for Seven Falls and their attorney had requested to create and execute a development agreement with the County. The project was located on Pleasant Grove Road in Etowah and proposed 900 homes and approximately 1,400 acres with a golf course and other amenities. The developer anticipates that the project will develop over several years and desires to establish vested rights for the project. North Carolina state law authorizes Counties to enter into such agreements. The main advantage for the developer by using this option as opposed to the traditional vested rights ordinance is that vested rights may be granted for a period up to 20 years as opposed to a maximum of 5 years. The vested right ordinance provision is limited to 5 years. The developer has already received subdivision approval for the project by the Planning Board. This area is located with the open use zoning which has no restrictions on density. The only requirements they have to meet under that are the subdivision requirements as the terms of number of street construction, etc. Under the current standards they're not required to have public water or community sewer. They can put individual wells and individual septic tanks on every lot if they so choose under our current rules. The key points about the development agreement that planning staff with the assistance of the legal staff developed for the Boards consideration are as follows:

- The developer requested that the County enter into an agreement to establish vested rights.
- State law gives Counties permission to enter into such an agreement (GS 153A-349.1).
- The project includes 1,400 acres, 875 homes, and an Arnold Palmer Golf Course in Etowah off Pleasant Grove Road. It will also include some commercial uses.
- The developer indicates the project will have a tax base value of \$1.2 Billion at build out.

- The developer wishes to obtain vested rights for 4-unit residential buildings and some commercial uses. The agreement will give vested rights for all of the project but these two points are the main reason for the agreement in addition to the extended time of vested rights.
- The developer agrees to construct 48,000 feet (9+ miles) of sidewalk and walking trails.
- The developer agrees to comply with North Carolina Phase II Post-construction storm water control requirements.
- The developer requests vested rights for 20 years.
- The developer agrees to construct a new fire station to county specifications and donate the land for the station to the County. Building plans used by Etowah Fire Department for a previously built sub-station will be the building design.
- The project will use City water and community sewer (not septic tanks).
- The developer agrees to convey all sewer infrastructure to the County for \$1 should the County decide to establish a county operated sewer system for the area. Until such time the system will be owned by the developer/home owner's association.
- The developer agrees to provide land for a water storage tank for the City of Hendersonville water system.
- The developer proposes to re-align Pleasant Grove Road and Pleasant Grove Church Road. Pleasant Grove Road floods periodically and the new alignment would lift that road section above the floodplain. This would be a significant improvement to public safety. Approval by NCDOT and the Board of Commissioners will be required for this issue at a future date. This is not mentioned in the agreement but is indicated on the master plan approved by the Planning Board.

Based on the improvements agreed to by the developer, the fact that the project will likely proceed with or without this agreement, and the overall positive impact of including the options in the agreement that are not otherwise required by law or county ordinance, Planning Staff recommends approval of the agreement. The developer proposes to construct \$13.2 million in infrastructure and improvements as part of this project.

If the Board wishes to enter into such an agreement, a public hearing is required by state law. Once the public hearing is held the Board may adopt the agreement. This process will allow the County and the developer to work out any differences prior to holding a hearing. Once the hearing is held additional changes to the agreement may be made to reflect any concerns of the public or Board. If this option does not work out the developer may use the Vested Rights Ordinance to seek approval.

Chairman Moyer felt that it would be a mistake to grant a vested right for 20 years or anything close to it. He did not think that they would gain much out of getting this as they can do it anyway. There is a lot going on out in this area and he would oppose.

*Chairman Moyer made the motion that the Board rejects the agreement for Seven Falls Golf and River Club. The request for the agreement was rejected unanimously.*

Commissioner McGrady was in support of the motion. He found it laughable that they were looking at vested rights of twenty years. He did not want to be a party to further facilitating development in the Etowah area.

Commissioner Young was in support of the motion. He didn't see how the project could be finished in five years, he would suggest maybe ten years.

Commissioner Williams was in support of the motion and also felt that twenty years was excessive. His opinion was that the ten year or less range was validated for vested rights.

Anthony Starr informed the Board that at the last meeting the Planning Board had amended their approval to allow a city water system.

An Attorney for the developer, Jason Pelz was concerned that the Board would take action without the presence of Mr. Devany.

### **Improvement Guarantee Application for Seven Falls, Phase I**

Chairman Moyer stated that this would normally have been on consent agenda however he had a concern with the master plan approval. There were some conditions attached to it and in his understanding they had not been met and he is concerned about moving ahead with Phase I and getting improvement guarantee if they have outstanding conditions under the master plan approval that have not been complied with.

Anthony Starr informed the Board that the Planning Board did approve the Phase I Development Plan last week. The conditions that were still outstanding, as he understood them, were the issue of access to Pleasant Grove Church Road with the road realignment and access to the cemetery for people who have right to get into that. Both of those issues are not within the scope of the Phase I Development Plan so the Planning Board, because of this reason, decided that those issues as a condition of the master plan approval did not have to be addressed for the approval of the Phase I Development Plan. The Planning Board did not have any authority under the current subdivision ordinance to consider any state or federal law violations in regards to environmental issues. Under state law we cannot issue building permits for violation of state rules but we cannot deny subdivision rules without having a provision to that effect in our subdivision ordinance.

Discussion followed.

William Lapsley, consulting engineer and agent for the developer stated that the issue is with one existing cemetery within the master plan. To the best of his knowledge the cemetery is extremely small and there is no platted public access to the cemetery today. The developer has proposed through the master plan to locate a platted roadway that will go right by the cemetery. It is the intent of the developer and is stated numerous times both with the master plan and Phase I level.

Angela Fernandini stated that in regards to the cemeteries, four have been found on this site. There was a newspaper article about a month prior that stated that two cemeteries were found in the Follies which will be part of this development and access to these cemeteries has not been addressed.

*Commissioner Williams made the motion that the Board of Commissioners find and conclude that the request for improvement guarantee complies with the provisions of the Subdivision Ordinance and is approved. All voted in favor and the motion carried.*

### **County Attorney's Report**

County Attorney Russ Burrell stated that in relations to cemeteries and the new bill passed under legislature is a much narrower light of access than what you have just heard. It only grants access to descendants of people who are reasonably believed to be incurred in a grave heir, descendant's designee and another person with special interest in the grave.

### **County Manager's Report**

County Manager Steve Wyatt discussed Medicaid. He had spent two hours in a meeting Saturday discussing strategy on Medicaid. The legislature has adopted an interim budget, a continuing resolution that funded state government for the month of July but not for the other 11 months. The issue was that they could not come to an agreement on Medicaid and basically a phase out of the County share of Medicaid. There are several proposals that are still alive and active and we have been asked to contact our legislatures tomorrow to remind them of how important dealing with this issue is. It's believed that the next week or 10 days is critical in that there is still momentum, but often frustration takes the place of momentum and the desire to get out of Raleigh may overwhelm them. This could also drag out until November because there are other issues that the Legislature wants to deliberate on. Mr. Wyatt recommended that the Board talk to their

representatives, especially their senator. The House seems to be very supportive of a County favorable Medicaid phase out in 3 years, basically with some tradeoffs.

### **IMPORTANT DATES**

The Board reviewed the calendar and discussed the following:

Chairman Moyer stated that there would be a 4<sup>th</sup> of July parade on Main Street. The County Manager had entered the Commissioners into the parade. The Board was to meet at 12:30 at the normal location and the parade is at 1:00. At the end of the parade, the County's Historic Courthouse Corporation is holding an ice cream social in front of the courthouse to kick off a fundraising campaign. Jackson Park and the Recreation Department will be holding activities all afternoon including live music, kid's station and then fireworks.

### **Reschedule August 6<sup>th</sup> meeting date and cancel August 15<sup>th</sup> Meeting**

Chairman Moyer stated that in respect to the August meetings, discussion had been held and the recommendation was to reschedule the August 6<sup>th</sup> meeting, canceling the August 15<sup>th</sup> meeting and having the August meeting on the 13<sup>th</sup> at 5:30.

*Chairman Moyer made the motion that the Board cancel the August 15<sup>th</sup> meeting and reschedule the August 6<sup>th</sup> meeting to August 13 at 5:30 in the Board of Commissioners' Conference Room. All voted in favor and the motion carried.*

### **Noise Ordinance Amendments**

Chairman Moyer noted that when this was last discussed the Board took action to take a look at the draft, re-circulate it and then set up a public hearing to get public input.

*Chairman Moyer made the motion that the Board reschedules the Noise Ordinance Amendment to the next meeting. All voted in favor and the motion carried.*

### **Set Public Hearing on Seven Falls in Etowah**

No longer necessary

### **Set workshops on Land Development Code – tentative dates July 10 & September 11 at 7:00**

*Commissioner McGrady made the motion that the Board set the workshops on the Land Development Code for July 31<sup>st</sup> and September 11 at 7:00 P.M. Commissioner Messer had a conflict with July 31<sup>st</sup>. Commissioner McGrady made the motion to set the workshops on the Land Development Code for August 2 and September 11 at 7:00 P.M. in the Board of Commissioners' Conference Room and further moved to set the public hearing on the Land Development Code for August 30 at 7:00 P.M. in the Bo Thomas Auditorium at Blue Ridge Community College. All voted in favor and the motion carried.*

### **Set Public Hearing on Land Development Code – tentative date August 30**

See motion above.

### **CANE CREEK WATER & SEWER DISTRICT – no business**

### **CLOSED SESSION**

*Commissioner McGrady made the motion that the Board go into closed session pursuant to NCGS 143-318.11 (a)(4) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body and he further moved that the Board go into closed session pursuant to NCGS 143-318.11 (a)(6) to discuss issues concerning personnel. All voted in favor and the motion carried.*

### **ADJOURN**

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



Attest:

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Terry Wilson, Deputy Clerk to the Board

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William L. Moyer, Chairman

DRAFT