

DRAFT
MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
DECEMBER 19, 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 Chuck McGrady, Commissioner Mark Williams, 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, Fire Marshal Rocky Hyder, Finance Director J. Carey McLelland, Sheriff Rick Davis, Sheriff's Department PIO Joe Johnson, Deputy Clerk to the Board Terry Wilson, Engineering and Facility Services Director Marcus Jones, Associate County Attorney Sarah Zambon, Research and Budget Analyst Amy Brantley, District Attorney Jeff Hunt, Animal Services Director Brad Rayfield, Tax Assessor Stan Duncan and Communications Officer Pam Brice.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance. He wished the citizens of Henderson County a very blessed Christmas, Happy Holidays and a tremendous and prosperous New Year. He stated that a program has been initiated this year by the Associate Attorney Sarah Zambon called Henderson County Cares. This is a program that considers a monthly charter for giving opportunities. This month's charter is the opportunity for Toys-for-Tots. A press release has been sent out and Chairman Moyer felt this was very commendable on Sarah's part.

Sarah Zambon explained that many different charitable activities were going on within different departments in the county and the rest of the county was not aware of them. She felt that there was a need for coordination of the different activities and employees would have the opportunity to work together in more than a work atmosphere and also give back to the community.

PLEDGE OF ALLEGIANCE

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

INVOCATION

Commissioner Mark Williams gave the invocation.

INFORMAL PUBLIC COMMENTS

There were none.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer requested that two closed session items be added to the agenda.

Commissioner McGrady made the motion to adopt the agenda with the addition of a closed session. 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.

DATE APPROVED: _____

Minutes

Draft minutes were presented for the Board’s review and consent approval of the following meeting:
December 3, 2007, regular meeting

Tax Collector’s Report

Terry F. Lyda, Tax Collector, had presented the tax collector’s report dated December 7, 2007 for the Board’s review and consent approval.

The following information outlines collections information through December 6th for the new 2007 bills, as well as vehicle bills.

Annual Bills G01 Only:

2007 Total Charge:	\$53,561,208.65
Payments & Releases:	26,245,087.14
Unpaid Taxes:	27,316,121.51
Percentage collected:	49.00%

Motor Vehicle Bills G01 Only:

2007 Total Charge:	\$3,031,080.30
Payments & Releases:	2,089,498.22
Unpaid Taxes:	941,582.08
Percentage collected:	68.94%

Fire Districts All Bills

2007 Total Charge:	\$6,021,629.44
Payments & Releases:	3,079,347.93
Unpaid Taxes:	2,942,281.51
Percentage collected:	53.03%

2007 Strategic Plan & Capital Project Update

A monthly Strategic Plan & Capital Improvements Plan update was provided for the Boards review.

Suggested motion: “I move that the Board accept this monthly update for information purposes.”

Extension of Agreement

A draft Extension of Agreement was provided which would extend Terry F. Lyda’s contract employee status with the County from 30 June 2009 to 31 December 2009.

Suggested motion: “I move that the Board approve the Extension of Agreement – Tax Collector.”

Water Line and Sewer Line Extensions

1. Orchards at Flat Rock, Phase II

The City of Hendersonville has requested that the County comment on the proposed waterline and sewer line extension. City of Hendersonville Project Summary Sheets, with vicinity map, project map, and county review sheet, were included in the agenda packets.

Staff recommended action by the Board of Commissioners, either to grant or deny this request. If the Board decides to approve the requested extension the following motion was provided.

Suggested motion: “I move the Board approve the waterline and sewer line extension for Phase II of the Orchards at Flat Rock and direct Staff to convey the County’s comments to the City of Hendersonville.”

Extension of McCallister Lease

A revised draft lease for the McCallister property (HCSO investigations building) was included in the agenda packet. It differs from the previous draft in that the term is lengthened from three years to five, and the rent escalates \$1,200.00 per year for each year of the lease.

Suggested motion: "I move that the Board approve the McCallister lease as presented."

Update to Fee Schedule for Planning

With the adoption of the Land Development Code some minor changes to the formatting of the fee schedule are necessary. The proposed fee schedule is consistent with the new terminology used in the Land Development Code.

Suggested motion: "I move that the Board approve the fee schedule provided for the Planning Department with any change noted by the Board."

NOMINATIONS

Notification of Vacancies

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

1. Henderson County Transportation Advisory Committee – 1 vac.
2. Hendersonville Planning Board – 1 vac.
3. Nursing/Adult Care Home Community Advisory Committee – 12 vac.

Nominations

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

1. Agriculture Advisory Committee – 1 vac.

Commissioner Williams nominated Richard Staton for position #2. *Chairman Moyer made the motion to accept Mr. Staton by acclamation to position #2.*

2. Cemetery Advisory Committee – 3 vac.

No nominations were made at this time so this item was rolled to the next meeting.

3. Child Fatality Prevention Team – 1 vac.

No nominations were made at this time so this item was rolled to the next meeting.

4. Community Child Protection Team (CCPT) – 1 vac.

Commissioner McGrady nominated Phyllis Bentley for position #1. *Chairman Moyer made the motion to accept Ms. Bentley by acclamation to position #1.*

5. Environmental Advisory Committee – 1 vac.

Chairman Moyer nominated Jeff Jennings for position #2. *Chairman Moyer made the motion to accept Ms. Bentley by acclamation to position #1. All voted in favor and the motion carried.*

6. Henderson County Transportation Advisory Committee – 1 vac.

Commissioner Young nominated Fred Dorsey for position #7. Commissioner McGrady stated that the work funneled through the MPO, both its Transportation Advisory Committee and the Transportation Coordinating Committee and suggested that the Board see if they could align some of the same people that are representing the municipalities in the county with the Transportation Advisory Committee to refrain from a complete disconnect. He also suggested that the By-Laws and the make up of the Committee be looked into further for possible changes. Chairman Moyer stated that the Board would have Anthony Starr and Jim Crafton look at the structure of the Committee with possible suggestions. *Chairman Moyer made the motion*

to accept Mr. Dorsey by acclamation to position #7 subject to receipt of his application. All voted in favor and the motion carried.

7. Henderson County Zoning Board of Adjustment – 1 vac.

Chairman Moyer stated that Jim Crafton was an alternate member and has shown interest in moving up. He has served well and been in good attendance. Chairman Moyer suggested moving Jim Crafton up and then voting on a new person for the alternate position. Commissioner McGrady withdrew his nomination for Tedd Pearce. Commissioner Young withdrew his nomination for Brandon Yelverton. Chairman Moyer nominated Jim Crafton for position #1. *Chairman Moyer made the motion to accept Jim Crafton to position #1 by acclamation. All voted in favor and the motion carried.* Commissioner McGrady nominated Tedd Pearce for alternate position #8. Commissioner Young nominated Brandon Yelverton for alternate position #8. Discussion was held in regards to the possible conflict of an individual holding a position on both the Planning Board and the Zoning Board. Chairman Moyer felt the Board should talk with Mr. Pearce to determine if he wishes to stay on the Planning Board for 6 more months. It was determined that the alternate position would be rolled to the next meeting.

8. Hendersonville City Zoning Board of Adjustment – 1 vac.

No nominations were made at this time so this item was rolled to the next meeting.

9. Home and Community Care Block Grant Advisory Committee – 1 vac.

Chairman Moyer stated that 3 members of the committee were employees of Pardee Hospital and that Tim Auwarter was also an employee of Pardee Hospital. The committee does not need to be that heavily weighted with entities from the same organization or business. The Board determined that this item would be rolled to the next meeting.

10. Juvenile Crime Prevention Council – 6 vac.

No nominations were made at this time so this item was rolled to the next meeting.

11. Laurel Park Zoning Board of Adjustment – 1 vac.

Chairman Moyer stated that Mayor Henry Johnson had recommended appointment of Stephen R. Braznell for position #1 and he placed Mr. Braznell’s name in nomination on behalf of Laurel Park. *Chairman Moyer made the motion to accept Mr. Braznell to position #1 by acclamation. All voted in favor and the motion carried.*

12. Nursing/Adult Care Home Community Advisory Committee – 1 vac.

Terry Wilson informed the Board that the Chair of the committee, Nuala Fay, recommends the appointment of Paul Cianca for position #11. Commissioner McGrady made the motion to nominate Paul Cianca to position #11. *Chairman Moyer made the motion to accept Paul Cianca to position #11 by acclamation. All voted in favor and the motion carried.*

13. Recreation Advisory Committee – 1 vac.

Chairman Moyer stated that two nominations were on the floor from the prior meeting for position #8, Sue Myers and Hunter Marks. There were no other nominations. Clerk to the Board Elizabeth Corn polled the Board with the following results:

Larry Young	Charlie Messer	William Moyer	Mark Williams	Chuck McGrady
1. Sue Myers	1. Hunter Marks	1. Hunter Marks	1. Sue Myers	1. Hunter Marks

Hunter Marks was appointed to position # 8 with three of the five votes.

9. Senior Volunteer Services Advisory Council – 1 vac.

No nominations were made at this time so this item was rolled to the next meeting.

DANA ELEMENTARY SCHOOL CONSTRUCTION

County Manager Steve Wyatt stated that the Board of Commissioners has received information from the Henderson County Public Schools with respect to budgetary issues with the Dana Elementary School Phase II Construction Project. The budget for the Project, as approved by the Board of Commissioners in November, 2006, is \$2,500,000. Per a letter from the Board of Education, the project total stands at \$3,653,698 – a difference of \$1,153,698. The bids had been extended to December 19, 2007.

The Board of Public Education has requested the Board of Commissioners' appropriate the additional funds necessary to complete the project.

Chairman Moyer stated that a Joint Facilities meeting had been held with the representatives of the School Board along with Commissioner Young and staff. This issue was discussed in great length and one of the disturbing things to the Board and public was the fact that on a 2.5 million dollar bid the cost came in over a million dollars off. It is hard for the public and the Board to come to grips with the fact that you can be that far off on a 2.5 million dollar bid and it scares you to death to know what might happen on even bigger projects. Since the time that the 2.5 million dollar bid was put on the table a refinement of the bid has gradually been moving up to the 3.2 million dollar range. Joint Facilities meetings were not held in the interim. The School Board felt that the Board of Commissioners was made aware of the increase however the Board of Commissioners did not feel that they were. The School Board has looked at possible changes with the roof and whether or not they could stick with the bid. The School Board has looked at possible changes and they feel that without destroying the integrity of the school and the project they believe that this is the best figure they can deal with and that we should move forward. Chairman Moyer feels that the Board of Commissioners have major issues coming up with respect to maintenance cost, Mills River and Hillandale, and he doesn't think this is the place where the Board of Commissioners should start having a battle. It is unfortunate that the Board of Commissioners are now off budget but he recommended that the Board of Commissioners approve the request and move forward with the school and learn from the experience they've had about communication.

Chairman of the Henderson County Board of Education, Ervin Bazzle, stated that the builder that was building the major part, Buncombe Construction, was a person the School Board was relying on for the number as they went through the process as well, along with the architect. Buncombe Construction no longer exists in that regard. Buncombe Construction was saying as late as February of 2007 that they could do the project for around \$2.2 million. Mr. Bazzle stated "our cost people were telling us in February that they were worried about it, and we asked them to go back and give us hard numbers and in April the cost people said it was a little more than \$3 million. This information was conveyed to the Board of Commissioners. The School Board came forward to try to bid the alternates, to try to carve out pieces of the project so if the numbers did jump on us at bidding we would be able to look at things that could be eliminated."

Chairman Bazzle feels that in the future to improve or prevent this from happening the Board of Commissioners should look at the process that the Board of Education went through. When estimates are given they should be keyed as estimates. They should not be budget numbers until you have some sort of solid verification from your cost people. You are always going to be time factored, so when you are looking at a project that is a year or two out you have to build something into that. Get closer to design before you give the estimates to go into a budget and realize that these numbers are flexible. The cost analysis that is being done on every project in the county for the School Board and the Board of Commissioners is a necessity that wasn't being done five years ago whenever the numbers were being generated. He feels the engineering that has been going on some time is even more effective now because of the eyes that were put on the project. If you can put some independent eyes on the project, like they have for the last three projects the minimal cost certainly helps with the cost estimate.

Further discussion followed.

Chairman Moyer made the motion that the Board approve moving forward with the Dana Project with the project bid at \$3,653,698.00 and with the understanding that there is sufficient money in the budget this year to pay the debt service for the remainder of this year and the Board will deal with the additional amount for debt service in next years budget along with other factors. All voted in favor and the motion carried.

ESTABLISHMENT OF CRITERIA FOR EVALUATING CATEGORY THREE (3) SPECIAL INTENSITY ALLOCATIONS UNDER WATER SUPPLY WATERSHED PROTECTION RULES

Henderson County administers state mandated public water supply watershed protection regulations as part of the Land Development Code. These regulations limit the amount of impervious surface areas (buildings, pavement, etc) for new developments. An approval called a special intensity allocation (SIA) allows up to 10% of the acreage of each watershed to have a higher amount of impervious surface (70% as opposed to 12% - 24%). When the regulations were adopted in 1994 the Board then divided that 10% into three categories. SIAs for categories 1 & 2 are approved by staff while SIAs for category 3 are approved by the Board of Commissioners. The regulations allow the Board to establish criteria for approval of category 3 SIA requests. No criteria have been set and staff has received SIA requests for this category.

Anthony Starr stated that the County administers State mandated water supply/watershed protection rules, that is for the areas where there is a public water system that intakes water from surface water such as French Broad or Mills River. The State requires certain rules be administered by the County. Among other requirements those regulations limit the amount of impervious surface for new construction. Impervious surface includes buildings, pavement, and graveled areas. Pervious surfaces are grassed, mulched or other areas covered with vegetation. The classifications limit impervious surface area to 12 or 24 percent of the project site.

The County may issue Special Intensity Allocations (SIA) on up to ten (10) percent of the total acreage within the balance of specific watershed overlay sub-districts. Special Intensity Allocations (SIAs) allow for the increase in impervious surface from the customary 12 or 24 percent built-upon area to 70 percent built-upon area. Special Intensity Allocations (SIAs) are granted in three (3) separate categories. Categories 1 and 2, which are approved administratively by the Watershed Administrator and together account for no more than eight (8) percent of the acreage with the balance of the watershed outside the critical area. The Board of Commissioners is the approving agency for Category 3, which includes applications for nonresidential development that come in after the allocations in Category 1 and 2 have been exhausted and may account for more than two (2) percent of the balance of the watershed outside the critical area.

Mills River Town Manager Jaime Adrignola stated "There is some concern after looking over the criteria, specifically in the WSIII. Some of the criteria gets at noise, glare and landscaping, which we have our own ordinances that look at those items since they are more of a zoning regulation as opposed to affecting water quality. And so, in looking at the recommendations, I think there could be a third recommendation. Whenever the projects, which all of the projects that have been submitted for your 32 acres fall in the town of Mills River, fall in the Town of Mills River instead of having a process that sends it to the County Planning Department and looking at the Land Development Code, they go to the Town of Mills River staff to evaluate against our zoning in our jurisdiction so that there is no conflict as to what the county staff may require for landscaping versus what we require for landscaping. Specifically looking from the standpoint of somebody trying to do a project, they would be able to follow the same process rather than having two different codes that they are trying to navigate at the same time. The other issue for watershed for Mills River to take over the watershed and try to develop our own ordinance, it could come in conflict with what the county has already implemented in trying to protect that watershed. Of course we wouldn't want to try to usurp in any way. I do think that it is probably not a bad idea, on all watershed area whenever there is a shared jurisdiction, to have some collaboration."

Processing Special Intensity Allocations (SIAs)

1. Pre-application Conference - Each applicant for an SIA shall meet with the Watershed Administrator prior to or at the time of submittal of an application.
2. Application - Each application for an SIA shall be submitted along with the appropriate fee(s) and site plan to the Watershed Administrator. The Watershed Administrator shall determine if the application is complete before it may proceed. Complete applications will be evaluated by the Watershed Administrator and Board of Commissioners in the order received.
3. Staff review – The Watershed Administrator shall process all applications for an SIA after submitted. The Watershed Administrator shall consult with the Planning Department before sending a recommendation on Category 3 SIAs to the Board of Commissioners and communicate with the municipality staff if located in their jurisdiction.
4. Formal Review – The Board of Commissioners shall consider the SIA as an administrative matter which does not require a public hearing.
5. Validity of SIA – The applicant shall have six (6) months from the date of issuance of the SIA to obtain a building permit or begin substantial construction work on the project. The Board of Commissioners may grant a single extension of this time period of up to six (6) months upon submittal by the applicant of sufficient justification for the extension via written request. An SIA may not be transferred to another parcel of land.

Commissioner McGrady made the motion that the Board approve the criteria for Evaluating Category 3 Special Intensity Allocations with the amendment of consultation with municipalities in Staff review and striking the award of SIA in order of applications. All voted in favor of the motion.

Chairman Moyer noted that a citizen had arrived late and wanted to speak in reference to this issue. It was the consensus of the Board to allow the citizen to speak at this time.

Public Input

Dr. Stanley stated that he had moved to Henderson County in 1993 and purchased 2.25 acres on Highway 191. He had since gone through three (3) watershed revisions that were complicated. During the last 10% acreage allocation not one property owner that had done a plan had been notified. If there is a project next door to someone a sign needs to be posted to make them aware of the project so that they may question it.

NOISE ORDINANCE

At the October 9, 2007 Public Hearing, the Board of Commissioners directed that staff revisit the Noise Ordinance and determine the most effective enforcement mechanisms for the Ordinance. Staff has reviewed and revised the Ordinance based on the Board’s comments during the Public Hearing and submits a draft for Board review and discussion.

County Attorney Russ Burrell noted that the only changes to this draft of the Ordinance are as follows:

- Enforcement Authority. Designated the Sheriff’s Department as the enforcement authority and removes references to the Code Enforcement Officers and Animal Services Officers.
- Impoundment of Barking Dogs. Provides for the impoundment of barking dogs violating the Ordinance for one day. Impounded dogs would be subject to Animal Ordinance guidelines.

The Board was provided with the proposed Noise Ordinance as well as a one-page enforcement overview.

Chapter 125 of the Henderson county Code is hereby amended by striking the same.

A new Chapter 125A of the Henderson County Code is ordained, as follows:

Chapter 125A: NOISE

Sec.125A-1. Authority, title

This Chapter is hereby adopted under the power and authority granted to counties by N.C.G.S. 153A-121 and N.C.G.S. 153A-133, and shall be known and may be cited as the "Henderson County Noise Ordinance."

Sec 125A-2 Jurisdiction

This chapter shall apply to all unincorporated areas of Henderson County and to those incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C.G.S. 153A-122).

Sec. 125A-3 Loud and disturbing noise

(A) Subject to the provisions of this section, it is prohibited in Henderson County to create, cause or allow the continuance of any unreasonably loud, disturbing noise. Noise of such character, intensity and duration as to be detrimental to the health, safety or welfare of any reasonable person of ordinary firmness and sensibilities in the vicinity is prohibited. For the purposes of this section, the following definitions shall apply:

- (1) Unreasonably Loud. Noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace and food order.
- (2) Disturbing. Noise which is perceived by a person of ordinary firmness and sensibilities as interrupting the normal peace and calm of the area.

In determining whether a noise is unreasonably loud and disturbing, the following factors incident to such noise are to be considered: Time of day; proximity to residential structures; whether the noise is recurrent, intermittent or constant; the volume and intensity; whether the noise has been enhanced in volume or range by any type of mechanical means; the nature and zoning of the area; whether the noise is related to the normal operation of a business or other labor activity or is the result of some use for individual purposes; and whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

(B) The following acts, among others, are declared to be loud and disturbing in violation of this section if they annoy or disturb the quiet, comfort or repose of any reasonable person of ordinary firmness and sensibilities in the vicinity where created, caused, or continued, but this enumeration shall not be deemed to be exclusive.

- (3) The use of any loud, boisterous or raucous language, yelling, or shouting, whether or not amplified.
- (4) The congregation of persons at and participation in any party or gathering of people from which noise emanates of a sufficient volume or of such nature as to disturb the peace, quiet and comfort of any reasonable person of ordinary firmness and sensibilities in the vicinity.
- (5) The keeping, owing, possessing, harboring or controlling of any animal or bird which barks, bays, yelps, howls, cries, squawks or makes any other unreasonably loud disturbing noise continuously or incessantly for a period of 10 minutes or intermittently for a period of 30 minutes or more thereby causing a noise disturbance.
- (6) The playing of any radio, television, phonograph, drum, musical instrument, or sound production, reproduction or amplification equipment in such manner or with such volume, particularly during the hours between 11:00 p.m. and 7:00 a.m., so as to annoy or disturb the peace, quiet, comfort or repose of any person of ordinary firmness and sensibilities in the vicinity.
- (7) The playing of any radio, cassette player, compact disc, or other similar device for production or reproduction of sound located in or on any motor vehicle on a public street, highway, within a public vehicular area, within the motor vehicular area of any public or private parking lot or park or on the premises of a private residence in any unreasonably loud or disturbing manner as defined above.

- (8) The intentional sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle except as a danger signal or as required by law, so as to create any unreasonably loud or disturbing noise as defined above, or the sounding of such a device for an unnecessary and/or the sounding of such a device for an unreasonable period of time.
- (9) The operation of any automobile, motorcycle or other vehicle, or remote control model vehicle in such a manner as to create loud grating, grinding, rattling, screeching of tires, or other unreasonably loud or disturbing noise.
- (10) The repair, rebuilding or testing of any motor vehicle, particularly during the hours between 11:00 p.m. and 7:00 a.m. which creates unreasonably loud and disturbing noises.
- (11) Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order so as to effectively prevent loud or explosive noises there from, or which has its muffler-exhaust or other noise control equipment removed, altered or maintained in such disrepair as to create unreasonably loud and disturbing noises.
- (12) Operating or permitting the operation of any motor vehicle or motorcycle that engages in jackrabbit starts, spinning tires, racing engines or other operations which create unreasonably loud and disturbing noises.
- (13) The creation of any excessive noise on any street adjacent to any school, institution of learning, library or sanitarium, or court while the same is in session, or adjacent to any hospital or any church during services, which unreasonably interferes with the working of such institution.
- (14) The firing, shooting or discharging of any firearm for the sole purpose of making noise or disturbance.

Sec. 125A-4 Exceptions

- (A) The following uses and activities, among others, are not governed by and shall be exempt from the noise ordinance set forth in this chapter. It is expressly provided, however, that the following enumeration shall not be deemed or considered exclusive, and any activity that is not expressly prohibited as set forth in Section 125A-3 shall be exempt from this chapter.
- (1) Noise made by dogs while they are being lawfully used for hunting or taking wildlife, and noise made by dogs during the course of lawful training by hunters, pursuant to N.C.G.S. Chapter 113.
 - (2) Noise associated with or resulting from the normal operations of any facility that is properly licensed by the North Carolina Department of Agriculture, Veterinary Division, as a boarding kennel, pet shop or dealer, in accordance with the North Carolina Animal Welfare Act (N.C.G.S. Chapter 19A-20 *et seq.*), as may be amended, or from any animal shelter that is operated by Henderson County.
 - (3) Noise associated with any legal operations of any firearms club, or association legally established.
 - (4) Noise caused by the discharge of firearms by law enforcement officers in the performance of their official duties or during the course of official firearms training.
 - (5) Noise resulting from farming operations, including but not limited to noises generated by machinery, equipment and farm animals.
 - (6) Noise associated with any event held in recognition of a community celebration of national, state or county events or public festivals.
 - (7) Noise associated with any public or private school activity or camp activity (defined as any function or activity approved by or generally associated with any recognized public or private camp for children accredited by the American Camp Association, but not including activities associated with campgrounds available to the public for overnight camping), except that it shall be unlawful for any person to use any unreasonably loud, disturbing, boisterous, raucous language or shouting in violent or offensive manner while attending such activities.

- (8) Noises associated with the chimes or bells of business, schools, camps or religious institutions in the daytime hours, provided that they operate for no more than 10 minutes in any hour.
 - (9) Non-amplified crowd noise resulting from activities by student, government, camp or community groups.
 - (10) Noise associated with or resulting from operations of any construction, commercial, industrial or agricultural activities or operations, except for electronically amplified sound and acts prohibited by Section 125A-3.
- (B) If any exceptions stated in this Chapter would limit obligation, limit liability or eliminate either an obligation or a liability, the person who would benefit from the application of the exception shall have the burden of proving that the exception applies and that the terms of the exception have been met.

Sec. 125A-5 Noise Complaint Procedure

In the event any person has reasonable grounds for believing that any provision of this Chapter is being violated, he may make a report thereof to the Henderson County Sheriff's Department, which shall investigate the alleged violation. If any such investigation reveals a violation, the investigating deputy has the authority to cause a written complaint to be made, and may obtain criminal process for violation thereof, may issue a citation for a civil penalty, and may obtain other enforcement measure as allowed in this Chapter. Criminal process for violation of this Chapter may only be obtained by personnel from the Henderson County Sheriff's Department.

Sec. 125A-6 Violations and penalties, enforcement

This chapter shall be enforced in accordance with any and all of the provisions of N.C. Gen. Stat. §153-A-123, and of Article II of Chapter I of the Henderson County Code.

In the case of second or subsequent violations of Sec. 125A-3(b)(3), any animal which upon investigation by Deputy Sheriff is found to be creating the noise which causes the violation of Sec. 125A-3(b)(3) may in the discretion of such deputy be impounded by the Sheriff's Department and confined in the county animal shelter in a humane manner until the next business day for the shelter. The owner of such animal may redeem the animal upon payment of applicable fees. If the animal is not redeemed within five days of impoundment, then such animal may be offered for adoption or destroyed in a humane manner pursuant to Section 66A-14 of the Henderson County Code. Impoundment of such an animal shall not relieve the owner thereof from any penalty, civil or criminal, which may be imposed for violation of this chapter.

Any Deputy Sheriff of Henderson County, having first investigated this matter pursuant to Sec. 125A-5, may obtain criminal process for violation of this Chapter. A violation of any noise ordinance provision shall constitute a class 3 misdemeanor, and may be punished by fine in the discretion of the Court, up to a maximum of Five Hundred Dollars (\$500.00) per offense.

NOISE ORDINANCE ENFORCEMENT OVERVIEW – Based on 12-19-07 Proposed Draft

(I) Enforcement Authority

Staff proposes that the Noise Ordinance be enforced by the Henderson County Sheriff's Department. The Ordinance provides the Sheriff's Department the authority to obtain criminal process, issue a citation for a civil penalty, and obtain other enforcement measures allowed.

(II) Violations and Penalties

- Addressing the Issue of Barking Dogs: The proposed Ordinance permits the Sheriff's Department to impound a barking dog at the County Animal Shelter at the Deputy's discretion for the second or subsequent violation until the following business day for the shelter. This should provide a "cooling off" period in which those being impacted by the barking dog are given some degree of relief. The

impoundment guidelines used in this instance would correspond with those found in the County's Animal Ordinance, Section 66A-14.

- Impoundment Guidelines (Per Animal Ordinance Section 66A-14):
 - (A) Animal must be reclaimed by owner within 5 days of impoundment.
 - (B) If the animal is not reclaimed within 5 days, the animal may be adopted out or euthanized.
 - (C) Reclaim fee is currently \$30 plus \$3 each day that the animal is kept at the shelter.
- Addressing Other Noise Violations: The proposed Ordinance permits the Sheriff's Department to obtain criminal process for noise violations. In so doing, a violation would constitute a Class 3 misdemeanor and may be punishable by fine up to a maximum of \$500.

(III) Key Issues

- The Noise Ordinance provides discretion to the investigating Deputy to determine what noises are considered 'reasonable' and 'unreasonable'.
- Investigations of Ordinance violations would include the use of cameras being staged to record violations for use as evidence. This draft does not include the use of decibel meters as was written into the previous Ordinance.
- The Board of Commissioners may wish to issue an additional fine for repeat offenders regarding barking dog issues. This language is not included in this draft, but may be appropriate.

(IV) Resources

- Enforcement of the Noise Ordinance will require the purchase of 5 cameras and tripods for capturing evidence of violations.
- Additionally, the reassignment of the Animal Control function to the Sheriff's Department will provide for better service in enforcing barking dog issues covered in this Ordinance.

Sheriff Rick Davis stated that one of the reasons that the current Ordinance was not enforceable was that it depended on a particular device to measure a particular decimal of sound. That decimal was actually raised by the Board once we got them. Our deputy's were going out and trying to measure but the threshold was never tripped. The Sheriff's Department requested the removal of any provision where a type of device like that is used. To make this affective Sheriff Davis wants every Deputy in the department to be able to go out to a noise call and attempt to take action immediately. Sheriff Davis feels that the Ordinance provides the tools necessary to enforce what the Board is looking for in this area, specifically when it comes to barking dogs if Animal Services is assimilated into the Sheriff's Office.

District Attorney Jeff Hunt stated that he felt that the new draft Ordinance puts the District Attorneys in the best possible position to enforce violations of the Noise Ordinance not only as it relates to barking dogs but any kind of noise. He was concerned with the fact that an animal that was not reclaimed within 5 days may be euthanized. It was possible that the offender could win the court case after the animal had been euthanized.

Assistant County Manager Selena Coffey suggested implementation of the new Ordinance on January 1, 2008. She stated that at this time we are down staff in Animal Control. This gives us the opportunity to go ahead and hire the Deputy positions into those vacant positions as opposed to hiring officers and then putting them through Deputy training later on.

Steve Wyatt stated that a great deal of work, research, and coordination had gone into the Ordinance and that he felt confident it was as good of an approach to this situation as he had seen in the state of North Carolina. He explained that the implementation plan was to use the resources we have but shift the animal control resources to the Sheriff's Department. The Animal Shelter resource would remain separate; the facility that cares for the animals. Enforcement, being an issue of public safety, would be divided apart from that and go to the Sheriff's Department. The resources in this fiscal year would basically be maintained. He stated it is

our goal to look at the total resources in future budget years and to have that to remain basically a “hold harmless” if you will. Bringing the resources that the Sheriff’s Department brings sooner rather than later actually takes some of the pressure off of us as far as having to go out and bring in new people. You can bring in the resources and fill those vacancies in a week and a half, and then manage from a larger and more flexible department.

Commissioner McGrady made the motion that the Board of Commissioners adopt the revised Noise Ordinance and direct that enforcement begin on January 1, 2008. All voted in favor and the motion carried.

Chairman Moyer requested that a quarterly report be done to keep the Board informed on the progress of the Ordinance. He also would like to receive a memo in regards to the community education plan with respect to the Ordinance.

RESOLUTION APPROVING GRANT APPLICATION CLEAN WATER MANAGEMENT TRUST FUND GRANT

The purpose of this agenda item is to present for the Board’s approval a resolution which was provided. The resolution will be included in the County’s Clean Water Management Trust Fund Grant Application for a Stormwater Master Plan. The application was approved during the Board’s September 19, 2007 meeting. The project cost for the Stormwater Master Plan will be \$70,000. If successful, the grant will provide \$50,000. The County’s share of \$20,000 is included in the FY08 Budget.

Marcus Jones stated that this was part of the application process for the Clean Water Management Trust Fund Grant that the Board authorized at a previous meeting. Approval of the Resolution approving Grant Application was requested and will be included with the Clean Water Management Trust Fund Grant application.

Commissioner McGrady made disclosure of the fact that he sits on the Clean Water Trust Fund Board. He did not feel that there was any conflict of asking for money for the Board that he sits on. He would be recused when it comes to the matter of the Clean Water Trust Fund. The Commissioners were in agreement that there was no conflict.

Commissioner Young made the motion that the Board approve the “Resolution Approving Grant Application” for the Clean Water Management Trust Fund Grant Application for a Stormwater Master Plan. All voted in favor and the motion carried.

BREAK

A five minute break was taken.

HIGHWAY 64 WEST LETTER OF SUPPORT

NCDOT Project U-4428 is designed to widen Highway 64 to relieve traffic congestion along that route. Specifically, the project is designed to allow for three lanes the length of the project. A center turn lane at Valley Street, which connects Hendersonville Middle and Elementary Schools, is planned due to the heavy eastward traffic associated with parents dropping their children off at those two schools.

Commissioner Young made the motion that the Board authorize the Chairman to sign a letter in support of the Highway 64 West widening project. All voted in favor and the motion carried.

ANIMAL ORDINANCE REVISIONS

At the December 11, 2007 Public Hearing on the Animal Ordinance, the Board of Commissioners asked that this issue be placed on this agenda in order to provide direction to staff with regard to the Animal Ordinance revisions.

Selena Coffey stated that the Board had heard from the public at the December 11 Public Hearing on the Animal Ordinance. There have been no changes to the Ordinance at this point since the hearing and staff requests that the Board give them direction as to how they would like to proceed; to send the ordinance back to the Advisory Committee to make changes or not.

Chairman Moyer stated that when the public hearing was held the Board had decided to give direction to staff at this meeting with respect to the matter. He had sent memos to each staff member after going over the comments and discussion. He was not ready to move forward at this time with mandatory spay/neutering throughout the entire county and felt the draft ordinance of revisions should be sent back to staff and asked that they make revisions and bring it back to the Board by February 4, if possible. He hopes the Board will be able to adopt the ordinance at that time. Chairman Moyer suggested that staff strike the countywide spay/neuter requirement except for the animals which are adopted from the shelter. As to Commissioner Williams comments, he agreed that the livestock section should be sent to the Agriculture Advisory Board to see if they have any comments or suggested revisions. The fee schedule needs to be cleaned up with necessary changes to accommodate and make sure the county has adequate enforcement with whatever staff may recommend, and any other changes that may be necessary to reflect the recently adopted Land Development Code.

Commissioner McGrady stated that the spay/neutering provision in the draft ordinance included a micro-chipping provision. He questioned what the Boards thoughts were if they were not doing spay/neuter for offenders, what about the micro-chipping provision?

Chairman Moyer stated that he felt staff would recommend that the micro-chipping be kept in the process.

Discussion followed.

COUNTY ATTORNEY'S REPORT

There was nothing further at this time.

COUNTY MANAGER'S REPORT

County Manager Steve Wyatt stated that copies were available of the annual report for the public which included highlights of the past fiscal year and statistical information regarding county operations.

Via email he had received a report that Western Highlands and Pardee have reached an agreement on the first phase of the project to evaluate the continuation of the detoxification facility and looking at the possibility of developing a crisis intervention or crisis bed capacity here in Henderson County.

The final walk through for the Etowah Branch Library is scheduled for December 20, 2007 with the Construction Manager Gary Tweed, contractors, and architects. This project is nearing its completion. Staff continues to receive inquiries about the current facility and he requested that the Board think about the future of this facility down the road.

IMPORTANT DATES

The Board was reminded of the January 17, 2008 Board of Commissioners Retreat (workshop) at the Justice Academy at 9:00 a.m.

CANE CREEK WATER & SEWER DISTRICT

Commissioner McGrady made the motion that the Board adjourn as the Henderson County Board of Commissioners and convene as the Cane Creek Water & Sewer District. All voted in favor and the motion carried.

Commissioner McGrady made the motion that the Board adjourn as Cane Creek Water & Sewer District and reconvene as the Henderson County Board of Commissioners. All voted in favor and the motion carried.

CLOSED SESSION

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

1. (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.*

All voted in favor and the motion carried.

ADJOURN

Commissioner McGrady made the motion to adjourn the meeting at 12:12 p.m. All voted in favor and the motion carried.

Attest:

Teresa L. Wilson, Deputy Clerk to the Board

William L. Moyer, Chairman