

**DRAFT MINUTES**

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS  
JANUARY 24, 2008**

The Henderson County Board of Commissioners met for a special called meeting at 4:00 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 Chuck McGrady, Commissioner Mark Williams, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, Associate County Attorney Sarah Zambon, and Clerk to the Board Elizabeth W. Corn.

Also present were: Communications Officer Pam Brice, Research/Grants Coordinator Amy Brantley, Public Information Officer for the Sheriff's Department Joe Johnson, and Sheriff Rick Davis.

Present from the State Department of Agriculture and Consumer Services, Veterinary Division:  
Mary Ann McBride, DVM, MS, Assistant State Veterinarian  
David T. Marshall, DVM, State Veterinarian, Director of Diagnostic Laboratory System

**CALL TO ORDER/WELCOME**

Chairman Moyer called the meeting to order and welcomed all in attendance, stating that the purpose of the meeting was for the Board to consider a request from the State for Henderson County to take possession of the animals currently housed at All Creatures Great and Small. He explained that there would be no public comment. He issued a special thank you on behalf of the Board to all the groups and individuals who have stepped up and adopted animals. His hope for the outcome of this meeting is for all the animals to be adopted out. Realistically though we have to move forward with a contingency plan just in case that plan doesn't work.

Chairman Moyer explained that when the State contacted Henderson County, the Commissioner of Agriculture asked that Henderson County get involved and take a look at the request. The State sent a letter and then sent a letter of agreement and some other information that the State will cover at this meeting. Mr. Moyer did tell those in attendance that he had placed copies of this agenda information on the side table in the meeting room, in case attendees wished to follow along. He also stated that the State is committed to working with the County to try to come up with a solution that is best for the animals and best for everyone involved. The Staff and Commissioners are equally committed to working with the State to try to come up with a solution to resolve this issue for the animals and everyone's best interest.

**REQUEST FROM NC DEPARTMENT OF AGRICULTURE FOR HENDERSON COUNTY TO TAKE POSSESSION OF THE ANIMALS CURRENTLY HOUSED AT ALL CREATURES GREAT AND SMALL**

Selena Coffey referred to Dr. Mary Ann McBride to make her presentation to the Board.

Dr. McBride echoed Chairman Moyer's comments, stating that everyone hopes that adoption of all the animals from that facility is the resolution of this situation. She stated that she has practiced veterinary medicine for almost 20 years with a firm background in veterinary medicine.

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

Dr. McBride stated their current status with their negotiations with All Creatures Great and Small – the planning operations are in place for the closure of All Creatures Great and Small. It is an endeavor called “Operation Move Out”. She stated they also will make a request for Henderson County to serve as a partner in this venture. Steve Troxler is the Commissioner of Agriculture. One of the Divisions under his control is the Veterinary Division, of which Dr. McBride is a member. Dr. David Marshall is in attendance but was actually speaking with Commissioner Troxler by cell phone at this moment on an unrelated issue. Under Troxler and McBride are four sections but the one they are present to discuss at this time is the Animal Welfare Section. The Animal Welfare Section has seven employees on staff, one veterinarian, one administrative person, and four animal health technicians. This staff has the challenge of inspecting 819 facilities in North Carolina every year. There are 195 shelters, 511 kennels, and 123 pet shops, all accomplished with seven people.

Dr. McBride started with October 2006 although there is a much longer history with All Creatures Great and Small. Settlement agreement was signed in October 2006 when All Creatures Great and Small agreed to come into compliance with the Animal Welfare Act. The North Carolina Department of Agriculture agreed to inspect, provide assistance and guidance for coming into compliance with the Animal Welfare Act and also to repeat the inspections to give them the opportunity to make progress and pass and be licensed as a facility in North Carolina as they are required to be. All Creatures Great and Small failed to come into compliance on subsequent inspections. On final inspection on June 2007 the settlement agreement was determined to be breached and ineffective at resolving the situation that we have with All Creatures. Dr. McBride stated that the next recourse that the State has taken is to take legal action against All Creatures. In September 2007 they filed two actions against All Creatures. The first action was filed by the Department of Justice. It called for the dissolution of their “Not for Profit” status based on significant numerous violations of the Secretary of State’s orders. North Carolina Department of Agriculture requested custody of the animals due to abuse and neglect under Section 19A-2. Rather than go into a long protracted court battle, both parties agreed to enter negotiations to attempt to solve this and try to solve the dual consent. The consent order was agreed to by both parties and signed by a District Judge on December 6, 2007.

The State consent order incorporated the consent order that the City of Hendersonville has with All Creatures Great and Small requiring them to be off the 7<sup>th</sup> Avenue premises by March 14, 2007. This consent order was signed with the City of Hendersonville three years ago and very little progress at relocating these animals has been made up until recent months. The consent order also instructs All Creatures staff to allow the State to remove 350 animals from the property to the State’s designee, to immediately ameliorate some of the crowded substandard conditions. All Creatures Great and Small agreed to strive to comply with the Animal Welfare Act. All Creatures Great and Small agreed to abide by and comply with directives provided by the NCDA (NC Dept. of Agriculture) staff. The State agreed to provide expertise and onsite support for this endeavor to try to help All Creatures come into compliance with the Animal Welfare Act. Since December 2006 eight inspections to date have been performed at the facility revealing on-going repetitive violations in many of the consent order categories: lack of veterinary care for injured animals and suffering animals, lack of appropriate husbandry, lack of proper record keeping, lack of reporting animal bites to authorities, lack of public protection from known dangerous dogs, and failure to carry out specific directives given by NCDA staff to mitigate all of those above.

Dr. McBride stated that due to the on-going inability to comply with the consent order, NCDA recommended that the State amend the consent order and in that amended consent order that is now back in All Creatures’ attorney’s hands, the State has requested the release of all of the animals on their property by January 31, 2008 to the State’s designee. All Creatures has also verbally agreed to allow

outside humane organizations to operate that facility for the month of February in an attempt to ameliorate some of the egregious violations of the Animal Welfare Act and to allow adoption of all remaining animals on that property. The goals for the federal operation are as follows:

- improve daily care of animals including husbandry and veterinary care, which is urgently needed
- evaluate animals and make available for adoption any animals that can be adopted

The consent order is still in effect. The facility still must be empty of animals by March 14. Since they have no where to take these animals and the South Carolina shelter did not materialize, there is no point in waiting until March 14 to resolve the situation. She stated that they feel a duty to go ahead and solve the problems that these animals face.

Dr. McBride stated that they had developed a program called “Operation Move Out” which is a consortium approach and will allow the stakeholders that they have worked with in the past to form a consortium to facilitate the goal of shutting down the current facility and adopting out all adoptable animals. She referred to the list of entities that they are in continual communication with as they try to bring this program together: United Animal Nations, Humane Society of the United States, Animal Legal Defense Fund, Best Friends, American Humane Association, PetSmart Charities, ASPCA, many local humane/rescue groups, several NC county animal control offices, NCSU CVM and more. There are seven counties with Animal Control Offices offering their help to solve the situation here as well as the Veterinary College offering to help.

Dr. McBride stated that Operation Move Out is a huge undertaking. Any time you’re dealing with this many animals it’s not an easy proposition. She referred to the graph of Operation Move Out. She stated that the graph is a working draft. There are still a number of issues that need to be resolved in order to put this plan in motion. She stated that the consent order designates 350 animals to be released and they are currently in that phase (Phase I). Orange County Animal Control is on the property today adopting cats to take back to Orange County to adopt through their facility. She stated that All Creatures and the Media are to be commended for getting the word out that the animals need to find new homes as soon as possible.

The second step of the operation is where Dr. McBride needs Henderson County’s support. The legal transfer of ownership for those animals when the amended Consent Order goes into place needs made to a bridging entity for a temporary on-paper assignment of those animals. Once that occurs she has seven humane organizations ready to step in and support this endeavor and remove the animals from that site. They hope to shelter on site. Under consideration for the animals that is the best option at this time. Dr. McBride stated that they are treating this as a disaster situation, much as the situations in Katrina and Floyd and any of the other events that are handled. United Animal Nations is very skilled at this. They’ve sheltered 1,700 animals in one shelter in recent months. There is a significant amount of expertise that has been offered to support this endeavor. Placement of the animals is always everyone’s concern, Dr. McBride’s as well. The Humane Society of the United States has agreed to put the word out on their network once custody of the animals is transferred out of All Creatures Great and Small’s hands. Dr. McBride has every assurance that those animals will all be adopted off the property by February 29, that is her commitment to this Board of Commissioners.

Dr. McBride mentioned possible activities that they hope to engage during the occupation. They intend to have the Veterinary College come in and spay/neuter the animals, provide spay/neuter support, vaccinate, microchip, bring them into compliance with Henderson County standards. They also have behaviorists waiting in the wings to come and assess these animals and determine what their adoptable status is. She stated that there are a number of animals that have known bite histories and she cannot recommend that

those animals be adopted out to families. They also have commitments from HSUS (Humane Society of the United States) and PetSmart Charities who want to bring their large transport trucks into the county to move animals out of the county and PetSmart wants to bring one of their 53 foot trailers full of food, equipment, medical supplies, and anything else that the State asks them to put in that trailer, at no cost to the State and no cost to the county.

Dr. McBride stated that they intend to do their very best to make sure that this is portrayed as a positive event for every party involved. Contrary to what was printed in the paper, the State would certainly like very much to have a cooperative relationship with the county. There has been a good relationship so far and they wish to continue that relationship. "This is a win situation for everybody if we keep it focused on the animals which is the entire problem we're dealing with." Dr. McBride addressed financial management stating that the current intent is not to cost the county any additional funds other than Selena and Mr. Wyatt and others who much engage in getting the agreement made with the State. They are not asking for county shelter support. They would welcome it but are not asking for county shelter support because they understand that the county shelter, like many in the state, is overwhelmed already with the current situations. There should be no cost to the county other than staff time committed to this. They have commitments from two of the National Humane Organizations that have made significant financial contributions and are ready to put that money into North Carolina State Animal Response Teams 501 C-3 account which is the account that would be used by the State should they have a disaster. The Humane Organizations understand that this is a disaster situation that we are in at this time. The State has committed a tremendous amount of resources to this effort. The NC Agriculture Departments eight staff, including Dr. McBride, are committing probably 90% of their time to this endeavor. The State has committed to seeing this all the way through and need to get closure on this event. They have been working with All Creatures for years and need to get resolution to this.

Dr. McBride stated that there are two places where she has asked for specific county support. One – she is asking the County of Henderson Animal Control to assume on-paper the legal ownership of these animals to make a clean break from their current ownership to the authority of the county with the understanding that this is an on-paper transfer only. Dr. McBride understands that there are other concerns and issues that need to be resolved in this agreement. Two - she has asked for county support in site security and law enforcement. Over the years there have been numerous threats made back and forth amongst different humane groups and she fully expects this emotional issue to become a little bit contentious at times. She hopes that can be mitigated. She believes that the presence of an officer on site or a frequent drive-by will solve that. Dr. McBride has been in communication with Captain Jones and he has assured her that the Hendersonville Police will provide whatever support is needed. The State will also employ off-duty Deputies and Police officers as needed to secure that facility while State staff are present and any other public folks on the property or Humane Organizations because safety is a significant concern of the State.

In conclusion Dr. McBride stated they request the county be a partner in Operation Move Out. They ask that the county take legal ownership of surrendered animals in a temporary capacity, in name only, with that responsibility to expire on February 29 because Dr. McBride has full confidence that all the animals will be removed from that facility by that time. She thinks we will have far more adopters than we do adoptees. That is a typical situation when you have this kind of situation with the media. "It's a status symbol to have a Katrina dog now... I will give you my word, the Commissioner says they are all coming home with me if we do not resolve this by February 29 and I promise my homeowners association will not allow me to have this many animals." She requests law enforcement, putting that into the county request because she wasn't certain as to how the relationship works within Henderson County between Sheriff Department and the Police Department. The State is negotiating that now. "Any other role that

Henderson County wishes to play in this operation, we welcome your participation. We ask for your participation.” All the entities discussed so far are ready to move on phase II which is where the legal transfer of all the animals on the property would occur. It is depending on two issues on the table right now, one is the temporary ownership issue and the other is to be certain that the site for the temporary shelter can be determined.

### **Commissioner discussion/questions**

Commissioner Young stated that he is starting his sixth year as Commissioner and before that he served three years on the Hendersonville Zoning Board of Adjustment. He stated that this came before the Board of Adjustment while he was a member, several times. The City Board of Adjustment said that All Creatures must operate within the State guidelines, must keep a permit from the State Veterinarian’s Association. That decision got appealed to Superior Court by their attorney. Superior Court overruled the Zoning Board’s decision. “Why has this situation been allowed to fester this long and nothing done about it?”

Dr. McBride stated that review of the Statutes that they operate under will show that they have no ability to close the facility directly per any of the General Statutes. Their only remedy in the current Statutes in place currently is to levy a \$5,000 civil penalty. The first thing All Creatures did was appeal that. County Animal Control is typically the one that has the responsibility for the animals in the county, it is not a State role. The State is more than willing to support the county in any capacity that they can.

Commissioner McGrady stated that from the presentation it doesn’t appear to him that there is any reason why the county ought not to step into this role. Aside from the States inability to place these animals, what are the other downside risks to the county in doing what the State is asking the county to do?

Dr. McBride stated that she doesn’t see any downside risks of the county stepping up to fulfill that role. She felt that the County Manager could better answer that.

Chairman Moyer answered that All Creatures over the years has done a great job of taking in the dogs and cats that most other places would not want. There are a lot of them that are not adoptable. We don’t know the percentage of unadoptable animals. The State is taking a look at that. They are going to bring in behaviorists and see which animals are adoptable based on behavior and health. We don’t know what that bottom line figure will be. These groups will come in and take out the animals that they want but it is possible Henderson County will end up with the hard core of 150-200 animals that are not adoptable and we would be responsible which means after a certain number of days those animals would be euthanized so a lot of animals would be put down. That will cause some concern in the public. Chairman Moyer stated that he felt that is the biggest downside. He thinks the plan is great and that Henderson County should work with the State on the plan. He hopes that Dr. McBride is correct in that there will be no animals left to be euthanized but he feels there is a good possibility that there will be 200 or more animals left.

Commissioner McGrady stated that the reason for the question was to put that issue on the table, to be transparent and explicit about what the issue is.

Commissioner Young told Dr. McBride that she needed to explain to the public that there is this possibility that a lot of the animals would be put down and “we’re not the bad guys.”

Dr. McBride stated that she is not asking the Commissioners to assume the role of the being the bad guy in this situation. The bad guys are the ones that put the animals in the situation that they’re in. The State

did not put the animals in this situation and the County did not put the animals in this situation. "This is more than any county could be expected to resolve on their own. Your county has done a tremendous job in trying to resolve this issue. It's an overwhelming issue. If you think about 300 cats in airline crates stacked, that never get out of the crate, never have a chance to stretch, then you understand where the problems are in this situation. Is it fair to the animals for them to be confined in a crate to go cage crazy? Is that an acceptable option? It's not an acceptable option to me as a Veterinarian nor is it an acceptable option to me as a State employee but my Veterinary heart rules so I will explain to the public that there will be animals that will have to be euthanized because they are so aggressive that we can't even handle the animals. I have asked other county animal control will you help us with these animals and they have said yes because they handle these bad dogs every day, not these specific ones, but bad dogs just like them every day. I physically can't handle some of these big dogs. I'm not capable of doing it and if I can't handle a dog how can I in good conscious recommend that those animals be adopted. There have been significant numbers of bite injuries at the facility. She has not checked the records at the Health Department. They have endured three in just the seven weeks that they have been on the property, three significant dog bites. One was to a member of the public. Minors have been allowed to adopt pit bulls. She cannot phantom how that could happen. She asked for the county's support in resolving this. There are right ways and wrong ways to shelter animals. Look to the Animal Welfare Act and that is the minimum standard that the State finds acceptable. For at least 5 years All Creatures has never come into compliance with minimum acceptable standards.

Chairman Moyer said that we have to admit that there is the potential for this problem at the end of the time. Dr. McBride stated that is not a downside for the county. She stated that the State will take full ownership of those animals on February 29 if there are animals that remain. "I will absolve the county of that responsibility because I am committed to solving this problem and I want to make sure you understand that because I truly mean that, I have ... as the Commissioner said my jobs on the line to solve this and I intend to solve it and I intend to make it fair to the county and to the State and you have my word that if the animals are not off the property we will be responsible for them."

Commissioner Young stated that we want to do what's right for the animals first of all and to help the State solve this problem as well.

Commissioner McGrady said he was asked today by a citizen why the county needs to take legal ownership now as opposed to the state taking it now rather than after February 29, what's the answer?

Dr. McBride stated that the State does not have animal control authority. They do not have sheltering capacity, that's typically handled at the county level. The state is not asking the county to shelter these animals but only asking the county to accept surrendered animals as the county does every day on paper, surrender them to the State. The State only needs the county to take the animals on paper and commit to the State that the County will allow the State to adopt the animals out. "I guarantee you that the State will not take possession of any of these animals. It will come to my house. That's clear because as you understand, I don't know how it works in Henderson County, anything that the State purchases or accepts has to be distributed through state surplus when it's over. I don't have a tool to distribute these animals among other humane organizations as a State agency. I have to do it through surplus and I don't think an auction of dogs and cats like we do our cars is an effective way to do that. It's far better to have a bridge and a capacity that's a familiar capacity to your county and allow the humane organizations to come in and do what they do best, a proven track record. And you have my word that you will not get stuck with the animals."

Chairman Moyer assured the public that the emphasis from the State and from the County is to adopt everything out and to have the best procedure and adopt them out in the best possible way. We have to look at the risks and the exposure so we don't expose our County or the State. What we're trying to agree to do is adopt these animals out and make sure the animals find good homes wherever possible.

Commissioner Messer questioned what the number is of unadoptable animals at the shelter today?

Dr. McBride stated that she would have to render a very genetic opinion because she is not a behaviorist. Those animals are in such a situation that it is really unfair to even try to do a behavioral assessment in that situation. When you have 200 dogs all barking and shrieking and carrying on because you're talking to one dog, that dog is not going to behave as he would at home. "Put my German Shepherd in that situation and he's gonna be a difficult dog too because that's the 'pack mentality'. You're asking me something I really can't give you an honest answer on and I apologize, I can't give you an honest answer as to how many are adoptable. As far as the cats go, I would say that almost, I can make a blanket statement that all of the cats are adoptable. Now some of them have some health issues that anyone adopting those cats needs to be aware of but there are no temperament problems with cats at the facility. That I can already assure you cause I've handled the cats. The dogs are a different story. You've got 80 pound rowdy boys in a high density situation, they're not gonna behave as they would outside the facility... I'm sorry to not give you a straight answer."

Steve Wyatt explained that there is a process that the State has developed. It would take about 10 days to make that assessment and that would be one of the first orders of business. He asked Dr. McBride to describe that briefly.

Dr. McBride explained that Tuft's University Veterinary College has a schooling system in place, a behavioral assessment for animals housed in situations such as these, how to best assess those animals and determine their adoptability. A Veterinary College has agreed to spearhead the behavioral assessments to coordinate with behaviors from the ASPCA and across the company to come in and in approximately a 10 day period and assess all those dogs, understanding it's not going to be as good an assessment as if they were here or somewhere quiet but to the best of their ability. They are the experts and that's who we want to rely on to give a good opinion. "The last thing any of us want to do is to adopt a dangerous dog to a family. That would be the worst situation. The other side of that situation is that the rest of the good dogs will get a fair assessment and will get a good home. I can assure you of that."

Chairman Moyer explained that what he thinks needs to happen by the end of this meeting if it's the Board's pleasure, is authorization to have staff continue to work with the State to develop an agreement along the lines of which has been discussed today. There are still some issues that need to be resolved but the State is working with the Staff, Selena, and Sarah. He hopes by the end of the day, that we're in a position to say yes we want to continue to work towards having an agreement with the State to help resolve this issue. "We will not be able to button down every issue at this time but I want the Board to be comfortable that we're ready to move forward in this direction or not and to give staff advice in that regard. That's where I'm trying to get."

Selena Coffey stated that she and Sarah Zambon had spent a good bit of time today and have spent a good bit of time over the last few days, especially talking about this issue. They met with Dr. McBride, Dr. Hunter and Dr. Marshall this afternoon and spent a good deal of time with them going over the situation. Ms. Coffey stated that she had several pages of questions that the State folks took the time to answer. She wanted to share that information at this time to make sure that everything had been covered. She stated that they asked very pointed questions about very specific things from the physical maintenance of the

building wherever they are housing the animals for the temporary shelter to who is operating the shelter to who is allowed on the premises, who is financially responsible, who they are partnering with, they asked for a list of the partners in this process. Our staff also tried to make sure that these State folks and the non-profits that they are proposing to work with want to adopt out animals that are spayed and neutered, adopt out animals that are micro-chipped, that are current on their vaccinations and current on medical care. Ms. Coffey stated that Ms. Zambon had done a fantastic job of drafting an agreement that has all these things in it. Ms. Coffey stated that if the Board and staff can come to an agreement with Dr. McBride and her folks, that she fairly comfortable with the draft agreement at this point. Staff has not gone through the agreement completely because they spent a lot of time asking and answering questions. After meeting with these folks today, Ms. Coffey stated that she has some level of comfort with the answers. She wants to make sure that Henderson County is protected in any way we can be, financially, legally, and in every way. Her recommendation was for the Board to allow staff the opportunity to work with the State folks. She felt that we're headed in a good direction and feels more comfortable with their plan today than she has and still would like more specifics.

Commissioner Williams asked what law enforcement might be needed? Do we have the resources available?

Selena Coffey answered that was a very good question and one that she and Ms. Zambon had asked. Essentially what this question came down to was that Dr. McBride was not familiar with the way that City Police Departments and County Sheriff's Departments work as far as jurisdictions and that sort of thing. After having an earlier conversation with the Sheriff, he went to the City Police Department and spoke with them and decided that because All Creatures in their current location is within the City that would require the City to provide security on the premises there. The Sheriff will offer help (mutual aide) per se to the City of Hendersonville but the City of Hendersonville truly does have jurisdiction there. It was her understanding that it is a workable situation as well as far as the City providing that security on site. What level is yet to be determined. It could be as simple as riding by more regularly and making sure that things are secure but it also could mean that someone is sitting there in the parking lot in a marked car the entire time for that month. Those are issues that are still to be worked out.

Chairman Moyer remembered that Dr. McBride had said in her comments that if was required, we certainly don't foresee it or want that to happen but if it required full time security, the State would recognize that and that would be dealt with.

Dr. McBride said absolutely, the safety of all involved is paramount and whatever measures they need to take, they will. Security is a significant concern for all parties involved and the State is prepared to do whatever is necessary.

Commissioner Messer said that the Commissioners had received e-mails, phone calls, personal conversations with people about this problem on-going. He has been on this Board almost seven and half years. He said that there are two sides to the story. All Creatures did a tremendous job at times by taking care of animals that no one else wanted. He thinks that the County needs to work with the State and hopes that the number of animals left with be a minimum.

*Commissioner McGrady made a motion based on the presentation received, to authorize staff to continue with negotiations moving towards an agreement which would provide quick legal ownership of the animals at All Creatures with the county consistent with the discussion today and the presentation.*

Following additional discussion, A vote was taken. *All voted in favor and the motion carried.*



January 24, 2008

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Chairman Moyer said there are some additional obstacles but hopefully we can work through all them and if necessary at the appropriate time a full agreement will be brought back to the Board for ratification and approval. The State would like to be in a position to wrap this up by the end of this month.

*Commissioner McGrady made the motion to adjourn the meeting at 4:55 p.m. All voted in favor and the motion carried.*

Attest:

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Elizabeth W. Corn, Clerk to the Board

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William L. Moyer, Chairman