

DRAFT MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
JANUARY 29, 2008**

The Henderson County Board of Commissioners met for a special called meeting at 3:30 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 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: Associate County Attorney Sarah Zambon, Communications Officer Pam Brice, and Research/Grants Coordinator Amy Brantley.

Present from the State Department of Agriculture and Consumer Services, Veterinary Division: Mary Ann McBride, DVM, MS, Assistant State Veterinarian and 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 to discuss a proposal from the State with respect to All Creatures Great and Small. At our last meeting there was a presentation from the State Department of Agriculture with regard to a proposed agreement which would include the involvement of Henderson County in resolution of the issues with respect to All Creatures. After hearing the presentation, the Board authorized staff to negotiate with representatives of the State with respect to the agreement and any other open issues. Chairman Moyer stated "We are here today to report to you the progress of those negotiations and where we stand and what we think is a very favorable resolution to this issue."

NC DEPARTMENT OF REVENUE

Dr. McBride stated that she presented a proposal at the January 24 meeting requesting that the County of Henderson take possession of the animals in a temporary capacity to help the State solve the closure of All Creatures Great and Small and the Board voted to direct Henderson County staff to continue negotiations. Negotiations have been on-going. Dr. McBride stated that she was to come back with the following tasks having been accomplished:

- A signed amended consent order.
- A signed document with the site owner.
- Have reached an agreement with a prepared memorandum with Henderson County.

Dr. McBride stated that in the meantime State staff has spent a tremendous amount of time planning for Operation MoveOut. All of those entities have been a part of that so in addition to negotiations directly with the County, they have moved quite a bit further down the Operation MoveOut plan that was viewed last week.

Dr. McBride addressed the three above tasks she was assigned stating that the amended consent order has not been signed, to her knowledge. All Creatures' attorney has assured her that it is being filed this

DATE APPROVED _____

afternoon. She will let the County know as soon as she knows that has been done. She stated that it may no longer be a concern because the number of animals has now dropped below 350 so that all animals on the property should fall under the current consent order. She still intends to pursue that amended consent order to fulfill that obligation to the Board of Commissioners. She stated that they do have an alternate site secured. That was arranged prior to the next situation she will discuss. An agreement has been reached with Mr. Gladieux, the current property owner who has a lease with All Creatures Great and Small. He has agreed to allow North Carolina Department of Agriculture and their designees to occupy his property and operate the facility from the dates of February 1 to March 14, 2008. The only reason for that change, the extension, is that's the date that the facility is required by other consent order to close. She fully anticipates being off that property by the end of February. She stated that she also has a mutually acceptable memorandum of agreement that was reached with Henderson County Staff and it is ready for consideration by the Board of Commissioners at this time. Dr. McBride said that based on the tentative agreement but then changed it to the firm agreement because the agreement has just been signed with Mr. Gladieux, the non-issue of the consent order at this point and acceptable State/County MOA, she respectfully requested that Henderson County accept the role of temporary ownership during the period specified.

Dr. McBride wished to make it clear that the State is committed to promoting the adoption of all animals remaining on that property. They also intend to work cooperatively and continue to work cooperatively with all parties, those listed and any others that come forward.

Chairman Moyer mentioned that there were a number of options that Dr. McBride talked about, alternative sites and other things but everyone involved in the process from county staff and state staff and staff of All Creatures felt it very important to try to keep the animals on the present location so they would not have to be moved twice and go through the stress and problems associated with that. A lot of negotiations went on between the state and Mr. Gladieux, the owner of the site. Those negotiations have proved fruitful and there is an agreement that is satisfactory and will enable the animals to stay on that site and then go forward with Operation MoveOut. The remaining piece that the County is still involved in is taking legal custody. We have that agreement. Chairman Moyer asked Selena Coffey to speak to that agreement. He stated that the Commissioners need to understand the Memorandum of Agreement that ties into the rest.

Selena Coffey stated that she and Sarah Zambon had spent a considerable amount of time discussing with Dr. McBride and Dr. Hunter and both of their staffs about where we go and how to get there and how we make it a situation that is as favorable as possible for the county, the state, and for the animals at All Creatures as well as for the folks that have vested interest at All Creatures. She asked Sarah Zambon to address the Board and quickly go through the agreement and offer the Commissioners time for questions.

Sarah Zambon reviewed the MOA with the Commissioners. She began with the terms as follows:

Terms.

1. **Legal custody.** The agreement states that Henderson County shall have legal custody but not physical custody of any animals taken from the shelter no later than February 1, 2008.

Provision A - Court Order. Currently they have a court order in effect from December 6. This court order authorized the Department of Agriculture to have custody of 350 animals. The reports are now that the number of animals at All Creatures is below 350 so the current consent order would allow them to take those animals. However, as Dr. McBride stated, they are negotiating and hopefully a new consent order will be signed this afternoon or tomorrow this consent order allows them to immediately go into All

Creatures and take over operations of that facility. However, the county will not take legal custody until either consent order is enforced.

Provision B - Inventory. We are requiring the Department of Agriculture, once they take control of the facility, to give Henderson County a list of all the animals that are on the premises. This also comes up in a later provision. The Department has to supplement and amend that inventory as animals are transferred out of the county or as animals are adopted out.

Provision C - Revocation of legal custody. In the event that any animals are taken outside the county, Henderson County will no longer have legal custody of them.

Provision D - Reversion of legal custody. No later than March 14, 2008 will the county have legal custody for any of these animals and at that time legal custody will transfer to the Department of Agriculture or its designee. Ms. Zambon noted that previously Henderson County had stated that it would be February 29, 2008 but after discussions amongst staff and with Mr. Gladieux and the Department of Agriculture, staff decided to extend the agreement to March 14, which is the deadline in the original consent order and the consent order that has not yet been signed. As Dr. McBride stated, there is no reason why this shouldn't be over by the end of February. This agreement would commit the county until March 14.

Provision E - Physical custody. The County will not have physical custody.

Provision F - Adoptions. The County is appointing the Department or their designee (partners or any organizations they are working with) to maintain the animal inventory and to transfer or adopt out the animals as they see fit.

2. Assessment. Within 10 days of February 1, or whenever this comes into effect, the Department of Agriculture or its designee taking over All Creatures. They must complete an inventory and give the results of that assessment to the County.

Provision A - Screening. Included in this assessment is screening of all the adoptable animals. Any animals determined not to be adoptable, either because they're too sick or because they're dangerous or for whatever other reasons there may be, must be removed from the shelter no later than midnight on February 14. Once the animals leave the designated facility they are the property of the Department, unless it's for veterinary care, assessment or some other similar purpose to that. Animals not adoptable shall be humanely destroyed. To protect the county, to prevent any kind of backflow into our shelter, all the animals must be microchipped and any animals not considered adoptable that are released somehow into the county that we can track will immediately void this agreement between the Department and the County.

Provision B - Micro chipping. All animals, adoptable or not, must be micro chipped and Henderson County must get access to all the microchip numbers as soon as they become accessible but no later than any individual animal is adopted so that any time an animal is adopted we'll be able to trace it to make sure it doesn't come back to our shelter.

Provision C - Vaccinations and alteration. All animals, adoptable or not, must be vaccinated against rabies and adoptable animals will be vaccinated to other diseases as is determined to

make them more adoptable. All animals will also be altered prior to adoption.

Provision D – Report to the County. Within 4 days of the completion of the assessment the Department must give the County a description of all the animals which gives the physical description, the micro chip number, determination of whether or not the animal is adoptable, the reason for the determination and what alternatives are appropriate, vaccination records, and any other related records that are now accessible to All Creatures.

3. **Required Documentation**. The Department must provide the County with the following plans and procedures prior to legal custody transfer to Henderson County or within two days of taking legal custody, subject to amendment and refinement by Department and the animal welfare and control organizations participating in care and assessment of the animals:
 - a. General Objectives, Plans and Procedures for Phase 2: Operation MoveOut;
 - b. List of the animal welfare and animal control organizations that have signed memoranda of agreement with the Department indicating willingness to help care for and assess the animals and promote their adoption as part of the process of closing ACGS' facility;
 - c. List of groups anticipated to accept or adopt animals, an estimate of how many animals each group will take and when each group is anticipated to accept possession of the animals they select, when such information becomes available to the Department;
 - d. Procedures for adoptions directly from the shelter facility to individuals and organizations;
 - e. Criteria for determining whether animals are adoptable or not; and
 - f. Procedures for animal disposal when necessary including who will make the decision, who will euthanize the animal, and how the animal will be euthanized and the manner in which the deceased animals shall be disposed.
4. **Financial Responsibility**. The County shall take no financial responsibility for the animals obtained from ACGS including but not limited to any sheltering expenses, food, personnel costs, disposition costs, husbandry care, socialization and training and medical attention. The parties understand that the Department shall have discretion concerning the nature and extent of goods and services used in the assessment and care of the animals.
5. **Notification of Partners**. The Department agrees to notify Henderson County of any groups, individuals, organizations, or agencies entering Henderson County in order to work on Operation MoveOut including but not limited to those signing a memorandum of agreement with the Department.
6. **Local Law**. Requires the Department to abide by the Henderson County Animal Ordinance and all provisions of the Henderson County Code while the Department has an operation in Henderson County.

7. **Location.** The parties understand and agree that the Department shall use either the ACGS facility or an alternative site of the Department's choosing.

Ms. Zambon stated that "b" of this section is now moot given the agreement between Mr. Gladieux and the Department of Agriculture.

- a. If the ACGS facility is used (as is now anticipated), it shall be used in "as is" condition, without sufficient resources to bring said facility into full compliance with applicable building and fire codes and accomplish the objectives of Operation MoveOut, simultaneously. The Department shall take reasonable steps to ensure that conditions in the facility are reasonably safe for its employees and those employees, agents, volunteers and other personnel of its designees, as well as members of the public who visit the facility during Department's operation.
8. **Management of the Temporary Shelter.** Henderson County does not take any responsibility for the management or operation of Operation MoveOut. It is totally within the responsibility of the Department.
9. **Treatment of Animals.** All animals will be treated humanely, safe and in a sanitary way and they must all comply with North Carolina General Statute 19A, which is the Animal Welfare Act, and Henderson County Code 66A, which is our Animal Ordinance.
10. **Information to County.** The Department shall keep the county informed of progress toward operational goals, unexpected problems, and any significant events that occur during Operation MoveOut. Specifically, a representative of the County shall be invited to participate in any periodic or regularly scheduled meetings, conference calls, or the like that the Department shall hold during the Operation. At such times, County staff may provide the Department with input regarding procedures or policies. It shall be in the Department's discretion as to how to proceed with this input.
11. **Appointment of Designee.** The Department shall ensure there is a secondary designee(s) to take legal custody of the animals in case of default on this agreement, to take legal custody on midnight of March 14, 2008 and in all other instances as referred to by this Agreement.
12. **Additional Security.** Requires the Department to gain adequate security for their staff, volunteers, the animals, and the facility.
13. **Records.** The Department shall submit to the County by March 31, 2008 a summary report providing the final disposition of all the animals taken into legal custody by the County and a final report of the outcome of Operation MoveOut shall be provided to the County by April 15, 2008.

14. **Duration.** This Agreement will end midnight on March 14, 2008 or at such earlier or later date as the County and the Department may mutually agree to, by formal supplemental memorandum. Upon termination the legal custody of any remaining animals obtained from ACGS shall immediately revert to the Department of Agriculture' designee(s).
15. **Termination.** If either party fails to meet any of the provisions of this agreement in good faith, the entire agreement becomes invalid. Either party may terminate this agreement at any time with 3 day notification of the other party. However, any failure to satisfy a provision in this agreement may be remedied or cured within the notice period and the agreement shall continue in place. In any instance where this agreement terminates prior to March 14, 2008, legal custody of the animals shall immediately revert to the North Carolina Department of Agriculture's designees and Henderson County holds no responsibility except as provided by law for the animals obtained from ACGS or for Operation MoveOut.
16. **Mutual Aid Agreement.** The Sheriff's Department shall consider any mutual aid agreements with authorized partners of the Department of Agriculture.
17. **Indemnification.** Work to be performed as provided herein shall be done by the Department as a separate and independent organization. The County shall not be liable for claims for damages or losses arising out of the performances of the Agreement by the Department, its employees, officers, agents, or partners and the Department shall indemnify and hold harmless, to the extent allowed by law, the County, its officers, employees, and agents from all such claims arising under this Agreement. The Department's liability, if any, arising from its operation of the facility and from Operation MoveOut shall be determined under the North Carolina Tort Claims Act.
18. **Designation of Third Party.** The designation by either the County or the Department of a third party or parties to undertake all or any part of this Agreement shall not relieve the designating party from liability for compliance with the terms of the Agreement. All third parties must be bound in writing to comply with substantially similar provisions appearing in this Agreement.
19. **Assignability.** This Agreement is expressly non-assignable without prior written consent and approval by the non-assigning party. The Project may not be continued by a successor to either party without the prior written consent of the non-moving party.
20. **Service of Process.** Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, returned receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below, or to such other person or address as said party may provide in writing from time to time. Faxed notice mailed to such address shall be effective upon the date received as shown

by the returned receipt or otherwise:

For Department of Agriculture

Barry Bloch
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629

For County of Henderson County

c/o Selena Coffey
100 North King Street
Hendersonville, North Carolina
28792

21. **Miscellaneous Provisions.** The singular of any term used in this Agreement shall include the plural, and the masculine shall include the feminine and vice versa.
22. **Governing Law.** The laws of the State of North Carolina shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.
23. **Compliance with Applicable Law.** The Department of Agriculture and the County shall comply with any and all applicable federal, state, and local statutes, regulations, laws, and ordinances.
24. **Parties to this Agreement.** This Agreement gives no rights or benefits to anyone other than the Department of Agriculture or the County.
25. **Original.** A signed copy of this Agreement shall be considered as an Original.

Discussion followed. A question was raised about any involvement by the City since ACGS is in the City limits. Ms. Zambon stated that as far as she knew there are no problems. This agreement, under the additional securities provision, does encourage the State to work with the City as Hendersonville Police Department in security Police. However, they can also get private security if the need is seen. Dr. McBride shared with Ms. Zambon that she had spoken with the Police Department last week and they were having on-going conversations about what level of security would be needed.

Selena Coffey added that Sheriff Davis has had conversations with Captain Jones at the City Police Department. They have discussed the issue and how the interoffice agreement between the City Police and the Sheriff's Department will work. Ms. Coffey stated this doesn't necessarily require Sheriff's presence but in the event that the Sheriff's Department is requested to be there as an additional force to secure the site, the Sheriff has said that he is amenable to that.

Chairman Moyer thanked Dr. McBride and the people from the State for their cooperation in working with County staff. He felt that we had as good a solution as we could have found with all the circumstances that exist.

Chairman Moyer made the motion to approve the Memorandum of Agreement and authorize the signing of it with any minor changes as necessary to move the process forward. A vote was

January 29, 2008

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taken and the motion passed unanimously.

Commissioner McGrady made the motion to adjourn the meeting at 4:00 p.m. All voted in favor and the motion carried.

Attest:

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman