

MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
FEBRUARY 20, 2008

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, 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, Finance Director J. Carey McLelland, Research/Budget Analyst Amy Brantley, Engineering and Facility Services Director Marcus Jones, Associate County Attorney Sarah Zambon, Communications Officer Pam Brice, Sheriff Rick Davis, Addressing Coordinator Curtis Griffin, Animal Services Director Brad Rayfield, Tax Assessor Stan Duncan, Senior Planner Autumn Radcliff, Planners Matt Card and Matt Cable.

Absent was: Deputy Clerk to the Board Terry Wilson

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

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

INVOCATION

Commissioner Mark Williams gave the invocation.

INFORMAL PUBLIC COMMENTS

1. Marian Lowery – Ms. Lowery is the Chair of the Council on Aging. She and Doris Eklund were both present in support of the request for Designation as Lead Planning Agency for the Council on Aging.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer noted that several items had been carried over from the workshop on Wednesday, February 18 which would be added under Discussion Items including F) The Edneyville Community Plan Boundary and Charter presented by Anthony Starr, G) The Seven Falls Development Agreement and H) the Revised Text Amendment Land Development Code (9A – Subdivisions over 300) by Anthony Starr. Under Important Dates a public hearing must be set for the Text and Map Amendments that have been discussed and a public hearing must be set on the realignment of Pleasant Grove Church Road. An additional Closed Session item must be added with respect to attorney/client privilege on a legal matter.

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

CONSENT AGENDA

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

**Minutes**

Draft minutes were presented for Board review and consent approval of the following meetings:  
January 24, 2008 special called meeting

DATE APPROVED:

January 29, 2008 special called meeting

**Tax Collector's Report**

Terry F. Lyda, Tax Collector, provided the Tax Collector's Report for information only dated February 8, 2008.

**Pawnshop license renewal – Etowah Pawn Brokers, Inc.**

Bruce Gosnell had applied, pursuant to §134-5 of the Henderson County Code, for a renewal of his license to conduct the business of pawnbroker within Henderson County. Mr. Gosnell had previously been granted this license. He has supplied the required documentation for such license. Under the Henderson County Ordinance, this is an annual process. 3 134-6 requires that such applications be brought “for consideration by the Board of Commissioners at a regular scheduled meeting.”

*Suggested Motion: I move that the Board grant a renewal of a pawnshop license to Bruce Gosnell, as applied for.*

**WCCA Community Services Block Grant Application**

An application was received from Western Carolina Community Action (WCCA) FY 2008-2009 for Funding for the Community Services Block Grant Program. WCCA is requesting that the Board endorse the funding application and authorize the Chairman to sign all associated forms. This is a continuing grant that supports WCCA's outreach to low-income residents as well as self-sufficiency, homeownership, and senior adult programs. This grant application represents year 2 of a 3-year cycle. No County funds are required to fund these programs.

*Suggested Motion: I move that the Board endorse this application and authorize the Chairman to execute the required documents.*

**Joint Resolution Celebrating 100 Years of County Unity**

In celebration of the North Carolina Association of County Commissioners Centennial celebration, the Association has requested the Board of Commissioners' adopt a Resolution to jointly celebrate and recognize “100 Years of County Unity.”

*Suggested Motion: I move that the Board adopt the Resolution “Celebrating 100 Years of County Unity.”*

**Resolution for permanent closure of easement on the East Flat Rock First Baptist Church Property**

North Carolina General Statute 153A-241 requires that the Board of Commissioners first adopt a resolution declaring its intent to close a public road or easement. A copy of the resolution declaring the Board's intent of closing the easement on the East Flat Rock First Baptist Church property at 2227 Spartanburg Hwy, Albert M. Moreno Jr. “et al.” property at 13 Sapling Dr., and Minute Man Anchors Inc. property at 305 W. King Street, East Flat Rock, NC is an attachment to this set of minutes.

*Suggested Motion: I move for the adoption of the resolution.*

**NOMINATIONS**

**Notification of Vacancies**

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

1. Equalization and Review, Henderson County Board of – 6 vac.
2. Industrial Facilities and Pollution Control Financing Authority – 3 vac.
3. Library Board of Trustees – 1 vac.
4. Mountain Valleys Resource Conservation & Development Program – 1 vac.
5. Solid Waste Advisory Committee (SWAC) – 3 vac.

## Nominations

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

### 1. Agriculture Advisory Board – 1 vac.

Commissioner Williams noted that position #2, Richard Lee Staton had recently been appointed and was a good addition to the committee and recommended his reappointment to position #2. *Commissioner McGrady made the motion that the Board accept the nomination by acclamation. All voted in favor and the motion carried.*

### 2. Animal Services Committee – 4 vac.

Commissioner Williams nominated Pam Hodges for position #7. Chairman Moyer nominated Lt. Ben McKay for position #9. Commissioner McGrady nominated Dr. Carrie Carman for reappointment to position #3 and Tom Johnson for reappointment to position #6. *Chairman Moyer made the motion that the Board accept Dr. Carrie Carman to position #3, Tom Johnson to position #6, Lt. Ben McKay to position #9 and Pam Hodges to position #7 by acclamation. All voted in favor and the motion carried.*

### 3. Child Fatality Prevention Team – 1 vac.

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

### 4. Fire and Rescue Advisory Committee – 1 vac.

Commissioner McGrady nominated Richard Barnwell for reappointment to position #7. *Chairman Moyer made the motion that Richard Barnwell be accepted to position #7 by acclamation. All voted in favor and the motion carried.*

### 5. Henderson County Transportation Advisory Committee – 4 vac.

Commissioner McGrady nominated Jim Crafton, Renee Kumor, David Jones and Terry Hicks to the four vacant positions. He stated that the committee chair and highly recommended a vice-chair and felt that David Jones had provided strong needed input. *Chairman Moyer made the motion that the Board accept Jim Crafton, Renee Kumor, David Jones and Terry Hicks by acclamation. All voted in favor and the motion carried.*

### 6. Hendersonville City Zoning Board of Adjustment – 1 vac.

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

### 7. Hendersonville Planning Board – 1 vac.

Commissioner Young nominated Jim Robertson for position #2. *Chairman Moyer made the motion that the Board accept Jim Robertson to position #2 by acclamation. All voted in favor and the motion carried.*

### 8. Juvenile Crime Prevention Council – 6 vac.

There are six vacancies for position #9, #10, #12, #13, #14, and #26. There are no applications on file that meet the criteria at this time so this item was rolled to the next meeting.

### 9. Library Board of Trustees – 1 vac.

Commissioner Young nominated Marilyn Gordon for position #6. Commissioner McGrady nominated Morton Lazarus for position #4. *Chairman Moyer made the motion that the Board accept Marilyn Gordon to position # 6 and Morton Lazarus to position #4 by acclamation. All voted in favor and the motion carried.*

### 10. Nursing/Adult Care Home Community Advisory Committee – 11 vac.

Commissioner McGrady nominated for reappointment Suzanne Camp-Goodman for position #4 and Pat Strickland for position #10. *Chairman Moyer made the motion that the Board accept Suzanne Camp-Goodman to position #4 and Pat Strickland to position #10 by acclamation. All voted in favor and the motion carried.*

**11. Recreation Advisory Board – 3 vac.**

Commissioner Messer nominated for reappointment Terry Maybin for position #3, Ralph King for position #4 and Gary Eblen for position #5. Commissioner Young suggested that the letter being sent out include a commitment level of interest. Commissioner McGrady requested that the number of terms served be included in information to the Commissioners. *Chairman Moyer made the motion that the Board accept Terry Maybin to position #3, Ralph King to position #4 and Gary Eblen to position #5 by acclamation. All voted in favor and the motion carried.*

**12. Senior Volunteer Services Advisory Council – 1 vac.**

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

**REQUEST FOR DESIGNATION AS LEAD PLANNING AGENCY: COUNCIL ON AGING**

Chairman Moyer stated that discussions had been held with the Council on Aging with respect to the aging programs in the community.

Karen Smith, Executive Director of the Council on Aging stated that most people were aware that Henderson County has a very large older adult population. According to the NC State Data Center the number of older adults age 60 and older is going to double between the years 2005 and 2030. Henderson County will be growing 73% during that same period of time. In 2000 older adults 65 and older made up 21.7% of the population in Henderson County. In 2010 that will have increased to 25%. In 2030 that will have increased to 30%.

The reasons for the aging population growth are lower birth rates, retiring baby boomers, longer life expectancies, and in-migration to this region. North Carolina is ahead of the nation and Henderson County is ahead in the state. In Henderson County 8% (2,280) of the older adults (60+) live below poverty, 47% (13,103) live in a rural setting, 10% (2,763) are severely disabled, and 56% (15,631) are 70 or older.

## NC Senate Bill 448

- Directed DHHS & DAAS to study programs and service levels and needs for old adults in six counties in NC
- The counties were chosen based on areas where there are currently more individuals 60+ compared to those 17 and younger or areas where that is projected to occur
- Henderson County is currently number one in counties with larger percentage of older adults than those 17 and under
- Final report due to the General Assembly in April 2008
- Develop a 4 year plan July 2008 – June 2012
- A profile of the projected growth for the older population
- A profile of the current older adult population
- An assessment of the anticipated impact on programs and services that address the needs of the older adult population
- Identification of programs and services that are currently in place
- Identification of programs and services that are needed to meet the growth projections
- Current funding sources for programs and services serving the older adult population
- Anticipated funding needs for programs and services serving the older adult population
- A delineation of the programs and services that are shared or offered jointly with another county

Karen Smith stated that the Council on Aging was asking the Board of Commissioners to designate them as the lead planning agency in Henderson County so that it may be an inclusive process rather than an exclusive process. It is a joint effort with Land of Sky Regional Council and anyone else in the county that deals with the aging population. The mission of the council is to help older adults remain independent. They currently

have 562 volunteers working with their agency. They have a 501C which means they can seek grants for the project.

The following groups participate in the Coalition:

- Council on Aging for Henderson County
- Alliance for Human Services
- AARP local chapter
- Blue Ridge Community College
- Care Partners
- Carolina Village
- Community Volunteers
- Department of Social Services
- Dispute Settlement Center
- Faith Community
- Henderson County Department of Public Health
- Hospice
- Interfaith Assistance Ministry
- Land of Sky Regional Council
- NC Cooperative Extension Service
- Pardee Hospital
- Pardee Pavilion
- Park Ridge Hospital
- Partnership for Health
- Pisgah Legal Services
- UNC-Chapel Hill
- Western Carolina University
- YMCA

Michelle Skeele stated that she has been coordinating the Healthy Aging Coalition for three (3) years. The Healthy Aging Coalition has accomplished the following:

- Completed a Healthy Aging Survey – 2006
- Completed a Funding Assessment of Resource in Henderson County for Older Adults – 2007
- Held a Lecture Series on Community Resources for Family Caregivers
- Moving towards the Wellness Health Fair – August 2007
- Active Aging Week
- Hold monthly meetings for education, information, sharing and to discuss challenges and opportunities in the aging community

As the Lead Planning Agency the Council will do the following:

- Research and combine information gained from all surveys done in our area regarding older adults including, but not limited to, reports from the Partnership for Health, MAHEC, Alliance for Human Services and the Healthy Aging Coalition.
- Develop a four-year Aging Plan for Henderson County working through the Healthy Aging Coalition that will be presented to the community
- Provide on-going leadership to assure the plan remains active and relevant to changing needs in the community
- Work to assure no duplication of service and best use of limited resources
- Support and encourage collaboration
- If directed, they will research and report findings to the Board of Commissioners on any issue or concern related to the aging community

*Commissioner McGrady made the motion to designate the Council on Aging as the lead planning agency for older adults in Henderson County. All voted in favor and the motion carried.*

Assistant County Manager Selena Coffey stated that an objective had been included in the strategic plan this year which addresses aging issues. This is directly beneficial to achieve that objective. She suggested that the Council on Aging continue to look at other plans that are out there. The Alliance for Human Services has a needs assessment that they did a couple of years ago that would still be very beneficial as the Council on Aging moves forward to gather information.

Chairman Moyer asked Marion Lowery how the Board for the Council of Aging was made up as far as who is on it, what the composition was and how they got there?

Marion Lowery stated that they are self appointed. They have a nominating committee and they try to reflect the community. They do have people with different expertise on it. She offered to provide a list to the Board of Commissioners. At this time there are sixteen (16) people on the Board however there can be as many as twenty-five (25).

### **IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE) PROGRAM**

Sheriff Rick Davis stated that after almost a year of working diligently on this project he could safely say that they would get 287(g) on board. There are some intergovernmental service agreements that need to be signed and as you know the Federal Government takes its time with everything. One thing that he felt very obligated to do was give a background on what exactly was going on with this program and why it was taking so long. He feels that it is a benefit for everybody in the county and Western North Carolina to know that Immigrations has taken some major steps forward to accommodate North Carolina. The Federal provision that provides local agencies to actually become immigration agents is 287(g). Our deputies will literally become ICE Agents once they go through the training.

Whenever we signed up for 287(g) this was one of the lead statements. "Terrorism and criminal activity are most effectively combated through a multi-agency/multi-authority approach that encompasses the skills and expertise of federal, state and local resources. State and local law enforcement agencies play a critical role in protecting our national security in part because the vast majority of criminals are taken into custody under their jurisdiction. During the course of daily duties, state and local law enforcement personnel often encounter criminal aliens and immigration violators who pose a threat to our communities."

Sheriff Davis felt this was an appropriate course of action because of the inability to identify the majority of criminal **wanted** illegal aliens, due to non-compatible databases being used by DOJ/FBI & DHS/IC. There are almost no consequences to current repeat offenders. All stages of law enforcement response & investigations are more lengthy and time consuming. An annual loss of an estimated \$750,000 to county just from the detention center, and 103 IAQs (Illegal Alien Query) since December 1, 2007 (28 are eligible for deportation, 23 actually deported so far, offenses range from NOL (no operators license), DWI (Driving While Impaired), Possible Schedule II (drug offense), armed robbery, aid and abet armed robbery, assault on a female, murder and murder. Additionally 21 deportations started by ICE agents who accompanied the Sheriff narcotic's unit and 49 persons at various stages of deportation since December 1, 2007).

Wake, Cumberland and Henderson County were recommended by ICE for the 287(g) program. Fourteen (14) other counties & the City of Wilmington have requested this program. Numerous counties have been placed on hold by ICE as North Carolina's blueprint is pending. Henderson, Wake and Cumberland Counties were chosen because of the demographics, geographics and intensive lobbying. ICE cannot support 100 individual 287 (g) programs across the state. They are going with the "Hub & Spoke" approach. They have set up an Executive Steering Committee which includes Sheriff's, ICE Agents and Technical experts. The concept is a fifty (50) mile radius where a county would support the surrounding counties. We would be actively supporting the counties of Transylvania, Buncombe, Polk, Rutherford, Haywood, McDowell, Madison and Yancey.

It is important for Henderson County to be the “HUB” first and foremost because it would give the Sheriff the discretion as to whether someone that is coming through the detention center with minor crimes would go through the deportation process. This is a relief mechanism to have someone with lower offenses to at least bond out. The majority of the people that are in our Detention Center that are wanted, illegal or not, are there because they were picked up on minor offenses. Persons under arrest will be identified. Henderson County will recover all cost then some.

**287(g) Training**

- NCSA will reimburse Henderson County a flat rate of \$4,500 per Deputy to cover overtime and travel expenses while in training
- 30 Days to complete training
- Training possibly held in Charleston, SC
- Targeted Training date is mid-late April
- 5 Deputies +/- initially trained (set by immigration enforcements)
- 2 years minimum experience for selection

District Attorney Jeff Hunt stated that you really cannot run an affective law enforcement program and reduce or control crime if you have a situation where you have a percentage of your inmates in jail in which you don't have a chance to identify. This 287(g) program has been designed or almost tailored for a situation like we have in Henderson County. We have a core group of people who are showing up and committing low level crimes and sometimes serious crimes. They show up and get incarcerated then have just enough resources to bond out. They give one identification name and without the 287(g) program we don't have adequate resources to get into the Federal program. Once they are out on bond they commit another crime and rotate through the system again. Mr. Hunt was in absolute support of the 287(g) program.

**Costs & Revenue Scenarios**

Projected ICE Income based on other North Carolina Counties

50 Beds at \$70 per day	\$1,277,500
45 Beds at \$70 per day	\$1,149,750
50 Beds at \$75 per day	\$1,368,750
45 Beds at \$75 per day	\$1,231,875
50 Beds at \$80 per day	\$1,460,000
45 Beds at \$80 per day	\$1,314,000

Estimated ICE expenses

Salaries	\$ 400,000
Overtime	25,000
Part Time	5,500
Training	4,500
Inmate Medical (Nurse)	41,000
Food	80,000
Inmate Supplies	14,000
Officer Supplies	12,000
Sub Total	\$ 582,000

Transport Van	62,300
Transport Car	28,000
Sub Total	\$ 90,300

Total \$ 672,300

Projected Income Range

50 inmates - \$51 per day	\$930,750
50 inmates - \$100 per day	\$1,825,000
Median Income (\$75.50 per day)	\$1,377,875

A Prisoner Transport Agreement has not yet been made with ICE.

#### General Revenue Proposal

- All monies placed into special revenue fund
- Deduct operational costs
- Balance to fund future capital & personnel needs

#### Getting Started: Illegal Alien Removal Unit

- 8 Deputies will be needed - 2 starting April 1, 2008 (if Inter-Governmental Service Agreement is in hand) – 6 phased in as federal revenue permits - \$25,156 is available from current detention funds
- 1 large transport van – as federal revenue permits
- 1 transport sedan – as federal revenue permits or if detention has surplus funds remaining before end of FY

County Manager Steve Wyatt explained that the \$25,000 is excess revenue, it is not expenditure money. This is county money that would go to fund balance. This is money that would be available for other purposes. If the Board wants to move forward with this, based on the revenue issues that have been addressed, perhaps as part of the plan the General Fund recovers any money that comes from it as an investment or start up funds. The project based on the plan is self-sustaining. It could be based on the projections. Down the road it would be a self-contained Revenue Fund that would basically pay for itself over that period of time. Revenue Projections are just that “projections.” You know that you’ve made those projections after the fact.

Assistant County Manager Selena Coffey stated that she and Amy Brantley have been working with Sheriff Davis and Captain Cochran on the numbers and one thing she suggested to the Board to give them more comfort level was to ask the Sheriff or Captain Cochran to provide a quarterly report which includes the revenues and expenditures as well as the number of inmates coming and going. Staff will continue to work with them to keep on track. If we do a transfer back from a special revenue fund, which is what is being discussed in the up-coming year budget to reimburse the general fund, we can show it being placed back into the fund balance.

County Manager Steve Wyatt stated that the amount being requested is the difference between the amount the Sheriff Department has in their budget now from a revenue source that has come in such as detention fees. They are requesting that we designate the \$25,000 for this purpose with a reimbursement requirement.

Captain Cochran further discussed the long term needs as follows:

#### Capital Needs

- Video camera
- Sally port redesign
- Office space for ICE agents & Ice deputies
- Generator capable of powering entire facility (required to open cell doors in emergency)
- Replace failing air compressor lines
- Modify existing housing unit doors

Addition to detention center for cell space

#### Personnel

Sheriff Davis stated that the Sheriff’s Office is fully committed to using only federal money for this plan’s operation. In his opinion this will lead to a much safer community.



After lengthy questions and discussion Chairman Moyer requested that this item be placed back on the agenda for the March 6 meeting.

Commissioner McGrady felt that the Board needed to support the Sheriff's initiative to address the issue of illegal aliens through the ICE 287(g) Program. He further felt that the Board should authorize the Sheriff to hire two (2) deputies starting April 1, 2008 from county funds, conditional upon the execution of an Inter-Governmental Service Agreement with the Federal Government, and authorize the hiring of additional deputies and expenditure funds for capital expenses such as the van and car only from our revenues provided by the Federal Government or State Grants and only after reimbursement of the cost of the hiring of the additional two (2) deputies. All of this would be conditional upon an understanding that monies generated from Federal and State sources would be placed in a special revenue fund and with the understanding that we would receive a quarterly report on the progress being made in the program, both in terms of the finances and the intention to address the criminal element.

Commissioner Williams felt that there would be greater implications than were realized. He was concerned that the Federal Government had created a problem that had now fallen into the laps of both state and local level officials. He stated that if we begin deportation for minor offenses it would create a panic among many in the community that we suspect to be here illegally. If these individuals begin to be deported it may possibly affect the construction workers, hospitality industry, agriculture, etc. These have been identified even by the Blue Ribbon Committee as being areas that we might perhaps find those folks. There could be some very major economic impacts on this county locally and the Board needs to recognize this. He feels there is a problem that needs to be fixed before we take extreme measures as a county. The problem being the need for worker programs, the potential for loss in the workforce.

Commissioner Young feels that people who hire illegal immigrants should help them by working with them and educating them to become legal immigrants with proper credentials.

Robert Heltman had waived his time to speak during public comment and spoke at this time. He had been the Chairman of the Blue Ribbon Committee on Illegal Immigration. Due to strong opinions on both sides of the issue the committee had not been able to solve any problems. The committee was however in full support of the 287(g) program.

It was the consensus of the Board to place this item on the agenda again for March 6.

#### **BREAK**

A five minute break was taken.

#### **FINANCING PROPOSALS – ELEMENTARY SCHOOLS**

Finance Director Carey McLelland stated that in preparation for the anticipated construction of the new Hillandale and Mills River Elementary Schools and the approved Phase II construction at Dana Elementary, Staff mailed out a Request for Proposal (RFP) to financial institutions for financing the construction costs associated with these three projects. Five (5) financial institutions responded to the County's RFP. A summary of the proposed financing rates was attached to the agenda for the Board's review.

The proposal from SunTrust Leasing Corporation has been certified as the lowest responsive proposal received. This bank provided a 20-year term rate of 3.92 percent and also an alternate 17.5-year term rate of 3.72 percent for consideration.

The annual debt service payment for 20 years would be \$2,909,781 and for 17.5 years, the annual payment would be \$3,081,436. These annual debt service payments are respectively \$596,219 and \$424,564 less than the \$3,506,000 annual COPs (certificates of participation) debt service payment included in the projected

budget for FY2009. Over both 20 and 17.5 year terms proposed, the interest savings from this installment contract financing over a COPs transaction would be a total of \$3,049,107 and \$5,274,825 respectively.

The maximum RFP financing amount requested was \$33,250,000. Mr. McLelland made it clear that this is not the amount that he would anticipate the county borrowing. He used a higher amount for Hillandale (\$15,272,000) and Mills River (\$15,905,000) which are MB Kahn estimates. He normally uses a higher amount in the RFP just to cover ourselves in case the Board wants to move forward and he doesn't have to come back with another resolution for them to approve. The Board has approved \$28,587,500 with the LEAD for Hillandale and Mills River. The budget that was presented to the Board at their workshop was \$3.5 million, projected annual COPs debt service.

Sun Trust Proposal/Annual Debt Service:

20 years (3.92%)	\$2,909,781
17.5 years (3.72%)	\$3,081,436

Annual Debt Service Savings (Sun Trust over COPs):

20 years (3.92%)	\$ 596,219
17.5 years (3.72%)	\$ 424,564

Term Interest Savings (SunTrust over COPs):

20 years (3.92%)	\$3,049,107
17.5 years (3.72%)	\$5,274,825

The total amount for Dana Phase II is a little over \$3.6 million. We borrowed money for Phase I in 2005 and we still have some funds left over (primarily interest earnings) in the escrow account which is about \$1.6 million. We only need to borrow a little over \$2 million to finish out the Phase II construction project.

Staff requested that the Board consider awarding the financing to Sun Trust Leasing Corporation and to approve a resolution, of which a copy is attached hereto and incorporated as a part of the minutes, authorizing the negotiation of financing contract, to set a public hearing and publish a notice of the hearing on the draft financing documents for the Board's March 6<sup>th</sup> meeting at 7:00 p.m., and which makes the necessary findings for the financing and authorizes Staff to make an application with the Local Government Commission (LGC) for approval. Staff will bring back final financing documents at the March 19<sup>th</sup> regularly scheduled meeting for the Board's approval. LGC review and approval is anticipated at their April 1<sup>st</sup> meeting.

*Commissioner Williams made the motion that the Board accept the schools financing proposal from SunTrust Leasing Corporation and to approve the resolution authorizing the negotiation of financing contract, to set and publish notice of a public hearing for March 6, 2008 at 7:00 p.m. on the draft financing documents, to make the necessary findings for the financing and authorizing Staff to begin the process of making an application with the LGC for approval, specifically pursuing the term of 17.5 years @ 3.72% fixed rate. All voted in favor and the motion carried.*

**ANIMAL ORDINANCE REVISIONS: KENNEL & CATTERY ARTICLE**

Assistant County Manager Selena Coffey stated that at the Board's February 4, 2008 meeting, the Board asked staff to revisit and if necessary, revise the Kennel and Cattery Article under the Animal Ordinance. Staff has redrafted the article, changing the focus from kennels and catteries to individuals with companion animals. The idea behind this revision is to prevent animal abuse and public health problems that may arise from animal hoarding situations.

During staff review however, discussion arose as to whether or not the County's current Ordinance dealing with animal nuisances and mistreatment of animals would adequately address the issues that stem from animal hoarding. It was determined that the other sections of the Ordinance could address these issues,

which may potentially prevent the need for the Companion Animal Article. Alternatively, the Companion Animal Program gives the County another enforcement tool to prevent serious mistreatment and public health issues.

Staff suggested to the Board two possible options:

1. To consider an alternative to the Kennels and Catteries Article i.e. the Companion Animal Article included below; or
2. To consider whether or not this type of article is actually necessary and whether or not the Board wishes to regulate the number of companion animals that are permitted in a household.

**§66A-86. Companion Animal Permit.** Any individual who owns, houses, cares for more than 10 animals in their home, residence or dwelling shall first acquire a Companion Animal Permit.

- A. Standards. The Animal Service Director shall promulgate rules for the issuance of license permits, which shall include minimum requirements for humane care of all animals and for compliance with the provisions of this and other applicable laws.
- B. Maximum Number. Any permit shall be for a specified number of animals. It shall be unlawful for any party to keep companion animals in excess of the permitted amount.
  1. Violation of this provision may be grounds for permit suspension or revocation and may result in the impoundment of animals or civil or criminal penalties as discussed below.
  2. Animals impounded by Animal Services under this section must be reclaimed or the decision appealed within 24 hours of the animal impoundment. After 24 hours, the animals become the property of Henderson County.
  3. At the discretion of Animal Services and Animal Enforcement, the excess animals may be impounded at the Animal Services Center or the owner may find other homes for the animals within 14 days of notification of violation of this section.
- C. Right to Inspect. Permitted parties must allow Animal Services and Animal Enforcement staff to inspect all animals and the premises where animals are kept at any time. Refusal of inspection shall be grounds for permit revocation. Lifetime Permit Fee.
- D. Permit Denial, Suspension or Revocation. The Animal Service Director may deny, suspend or revoke any license permit if the holder refuses or fails to comply with this article, the rules promulgated by the Animal Services Director, or any law governing the protection and keeping of animals. If a permit is revoked, the individual may not apply to reinstate the permit for 6 months and must pay the permit fee again.
  1. Appeals. Appeals of permit denial or revocation must be made to the Animal Services Advisory Committee within 10 days of revocation or within 24 hours of animal impoundment when it occurs, whichever is earlier and shall be heard in a quasi-judicial proceeding at its next regularly scheduled meeting.
- E. Exclusions.
  1. No person convicted of cruelty to animals within the last 10 years shall be issued a license permit under this article.
  2. Litter. Individuals whose companion animal has a litter do not have to get a companion animal permit provided the total number of animals meets the provisions of this Article after all the animals have been weaned. Individuals may have one litter per year.

**§66A-87. Enforcement.** Failure to comply with the provisions of this Article may result in criminal or civil penalties as contemplated in §66A-19 of this Ordinance. Violators with more than 10 animals who do not have a permit or have excess animals from their permit must pay \$50 per additional animal more than 10 per day they are in violation. Excess animals may also be impounded at the owner's expense. Excess animals impounded under this Article must be reclaimed within 24 hours of impoundment and then become the immediate property of Henderson County.

**§66A-88. Compliance with Existing Laws.** Nothing in this Article shall be construed to conflict or supplant any federal, state or municipal laws, rules or regulations especially those concerning the licensing of

kennels, shelters, or pet shop. Not shall anything in this Article conflict with any state, local, or municipal laws regarding land use.

Lieutenant McKay stated that the Companion Animal Program in his opinion would be a good tool that he could use in the enforcement end. Once the Board determines the number then as he approaches someone that is unable to take care of what animals they have, he has a benchmark or number that he can present to the citizen.

County Manager Steve Wyatt stated that the animals are covered. The other issue is the neighbors and this is when we are going to receive a call. We have a nuisance ordinance. He was unsure of how he felt in regards to the county going into the issue of the number of animals an individual houses. The number of animals being housed depended on the situation.

Associate County Attorney Sarah Zambon explained that the county ordinance would not apply to anything that is regulated by the State of North Carolina. Our focus was to make sure there was not an overlap there to avoid miscommunication.

*Chairman Moyer made the motion that the Board adopt the Animal Ordinance Revision adding the Companion Animal Article as written. The motion passed 4-1 with Commissioner Young voting nay.*

#### **PROBATION AND PAROLA LEASE AGREEMENT**

Attorney Russ Burrell stated that the North Carolina Department of Corrections is seeking a lease agreement with the County for the Probation and Parole Office. The Department has leased 1543 square feet of office space in the Henderson County Courthouse since 1998, and the current five (5) year lease agreement is due to expire on February 28, 2008. By way of letter dated December 4, 2007, the Department is requesting a three year lease agreement at the current annual rate of \$12,961.

The proposed lease was provided to the Board and is a one year lease that would be due to expire on February 28, 2009. The annual lease amount would be \$18,516.00 payable in monthly installments of \$1,543 and is calculated at \$10 per square foot per year.

It was requested that the Board discuss and provide direction to Staff with respect to the amount and length of the lease. The Board is further requested to authorize the Chairman to enter into a lease with the Department of Correction for the office space located at the Henderson County Courthouse, 200 N. Grove Street, Suite 90.

County Manager Steve Wyatt questioned who the County was mandated to provide space for and who the County was mandated to provide free space for.

Attorney Burrell responded that the County was mandated to provide the Probation and Parole Office space but not free space. Other Counties did provide office space outside of the Courthouse to Probation and Parole.

Commissioner McGrady suggested calling a meeting between the Staff of the Parole Office and County Staff to hear what everyone's long term needs are, looking at statutory obligations both in terms of space, telephones, etc., and then come back with a process to get everything on the table.

*Commissioner McGrady made the motion that the Board authorize the Chairman to enter into a lease with the Department of Correction for the office space located at the Henderson County Courthouse, 200 N. Grove Street, Suite 90. Chairman Moyer amended the motion asking that Staff look to verify that we are at or close to a market rate before sending out the agreement. All voted in favor and the motion carried.*

**BREAK**

A five minute break was taken to change video tapes.

### **Nominations**

Commissioner McGrady explained that during nominations it was his intention to nominate Jim Crafton as the Chairman of the Transportation Advisory Committee. *He therefore made the motion to nominate Jim Crafton as the Chairman of the Henderson County Transportation Advisory Committee. All voted in favor and the motion carried.*

### **Consideration of the EDNEYVILLE COMMUNITY PLAN BOUNDARIES AND CHARTER**

Anthony Starr stated that at the workshop on February 18<sup>th</sup> the Board had asked Staff to make amendments to the boundary to remove the Hooper's Creek area and look at some of the other areas to see if there were adjustments that were needed. Commissioners Messer and Williams worked with Planning Staff to tweak the boundaries and Mr. Starr thanked them. He felt that the boundaries now seemed logical. The Charter was written almost identical to the Etowah/Horse Shoe Charter.

*Commissioner Williams made the motion that the Board approve the Charter and Boundary Map for the Edneyville Community Planning Committee and allow minor changes to take place in respect to the boundaries without the Board's consent. All voted in favor and the motion carried.*

### **Relocation of a section of Pleasant Grove Church Road on the SEVEN FALLS DEVELOPMENT property**

Anthony Starr stated that the Board had discussed this topic at the workshop on the 18<sup>th</sup> and at this point he felt that the Board wished to further discuss the item. If the Board is willing to move forward the next step in the process would be to set up a public hearing for consideration of the draft agreement. That process does not bind the Board into what the draft says at the time. Additional amendment could be made based on the public input. A draft is put out and is available for public inspection prior to the public hearing. After the hearing, under state law, you can then enact or modify that agreement or choose not to go forward with the agreement at all.

Chairman Moyer stated that the Board would be setting a date for a public hearing.

### **REVISED LAND DEVELOPMENT CODE TEXT AMENDMENT 9A**

The Board of Commissioners at its meeting on Monday, February 18, 2008, directed staff to revise the language for the proposed text amendment 9A concerning the review of subsequent development plans for subdivisions proposing 300 or more lots. Subdivisions with 300 or more proposed lots are reviewed and approved by the Board of Commissioners. This includes master plans and all subsequent development plans. As per the Board's request, Staff recommends adding the following language to §200A-308 to give the Board the option to defer the review and approval for any subsequent development plans to Planning Board, Technical Review Committee, or the Subdivision Administrator.

Anthony Starr stated that the Board had received a draft of the revised text for section of the Land Development Code. The following would be added to the existing text:

Subsequent development plans shall be reviewed and approved by the Board of Commissioners. However, the Board of Commissioners may delegate this approval authority, on a project by project basis, to the Planning Board or Subdivision Administrator provided all conditions of approval are met and the development plan is consistent with the approved master plan. Development plans shall meet all requirements of the Chapter. Final plats shall be reviewed following the processes and procedures outlined in §200A-76 and §200A-311.

### **COUNTY ATTORNEY'S REPORT**

There was nothing further at this time.

### **COUNTY MANAGER'S REPORT**

Steve Wyatt briefly updated the Board stating that the prior day Henderson County and the Municipalities met at LGCCA (Local Government Committee for Co-operative Action) and had a lengthy discussion in regards to the sales tax. Finance Director Carey McLelland and County Attorney Russ Burrell explained the Per Capita, Ad Valorem, and the Agreement Methods. Based on how he read the consensus he felt that the Municipalities would not take action this year to undo the agreement. This will be the last year of the agreement. LGCCA will meet again in the next 60-90 days to determine which method would be used in the future. The Board should be able to give a report in an official capacity by the March 6 meeting.

**IMPORTANT DATES**

Chairman Moyer stated that the Legislative Conference in Washington was March 1 – 5 and Commissioner Messer, Commissioner McGrady and himself would be attending.

**Set Public Hearing on permanent closing of easements**

*Commissioner McGrady made the motion that the Board set a public hearing on permanent closing of easements for Monday, April 7 @ 7:00 p.m. at 100 N. King Street. All voted in favor and the motion carried.*

**Set Public Hearing on Land Development Code Text and Map Amendments**

*Commissioner McGrady made the motion that the Board set a public hearing on Land Development Code and Comprehensive Plan Text and Map Amendments for Thursday, March 27 @ 7:00 p.m. at 100 N. King Street. All voted in favor and the motion carried.*

**Set Public Hearing on relocation of Pleasant Grove Church Road on the Seven Falls property and the Seven Falls Development Agreement**

*Commissioner McGrady made the motion that the Board set a public hearing on the relocation of Pleasant Grove Church Road on the Seven Falls property and the Seven Falls Development Agreement for Tuesday, April 1 @ 6:00 p.m. at 100 N. King Street. All voted in favor and the motion carried.*

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

**CLOSED SESSION**

*Commissioner McGrady made the motion for the Board to go into closed session as allowed pursuant to NCGS 143-318.11 for the following reason: (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 and (a)(4) To discuss matters relating to the location or expansion of industries or other business in the area served by the public body. All voted in favor and the motion carried.*

Attest:

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Teresa L. Wilson, Deputy Clerk to the Board

---

William L. Moyer, Chairman

# HENDERSON COUNTY TAX COLLECTOR

200 NORTH GROVE STREET, SUITE 66

HENDERSONVILLE, NC 28792

PH: (828) 697-5595

FAX: (828) 698-6153

February 8, 2008

Henderson County Board of Commissioners  
100 N. King Street  
Hendersonville, NC 28792

Re: Tax Collector's Report to Commissioners -02/20/08 Meeting

Please find outlined below collections information through February 7<sup>th</sup> for the 2007 bills, as well as vehicle bills.

**Annual Bills G01 Only:**

2007 Total Charge: \$53,561,208.65  
Payments & Releases: 49,961,741.16  
Unpaid Taxes: 3,599,467.49  
**Percentage collected: 93.28%**  
(through 02/07/08)

**Motor Vehicle Bills G01 Only:**

2007 Total Charge: \$3,657,017.56  
Payments & Releases: 2,771,827.73  
Unpaid Taxes: 885,189.83  
**Percentage collected: 75.79%**  
(through 02/07/08)

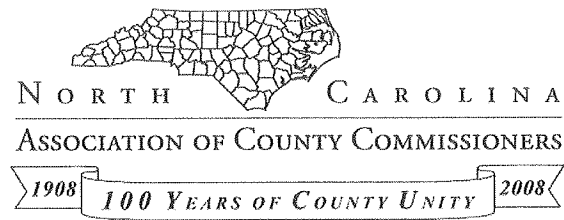
**Fire Districts All Bills**

2007 Total Charge: 6,100,029.71  
Payments & Releases: 5,579,240.57  
Unpaid Taxes: 520,789.14  
**Percentage collected: 91.79%**  
(through 02/07/08)

Respectfully submitted,



Terry F. Lyda,  
Henderson County Tax Collector



**Joint Resolution Celebrating 100 Years of County Unity in  
Recognition of Our Association's Centennial**

**WHEREAS**, the North Carolina Association of County Commissioners is an advocacy and service organization made up of all one-hundred (100) North Carolina counties; and

**WHEREAS**, the active participation and engagement of all 100 counties have directed, strengthened and enhanced our Association; and

**WHEREAS**, the dedication and talents of individual county commissioners and county staff have led our Association's success in advocacy, county-centered services and educational programs; and

**WHEREAS**, an informal agreement to form our Association was made by a handful of county commissioners who, at the behest of Craven County Commissioner C.E. Foy, met in New Bern in 1908, to discuss county issues of common interest; and

**WHEREAS**, the first session of our unofficial Association was held at the Atlantic Hotel in Morehead City on August 19, 1908, where C.E. Foy was elected as president; and

**WHEREAS**, the North Carolina General Assembly passed an act on March 8, 1909 establishing our Association on behalf of counties;

**NOW, THEREFORE BE IT RESOLVED**, that the North Carolina Association of County Commissioners and each Board of County Commissioners jointly recognize and celebrate "100 Years of County Unity" in tribute to our Association's Centennial.

**FURTHER BE IT RESOLVED**, that the Association communicate its copy of this joint resolution to each Board of County Commissioners.

**FURTHER BE IT RESOLVED**, that the Henderson County Board of County Commissioners communicate its copy of this joint resolution to the North Carolina Association of County Commissioners.

In witness whereof I have hereunto set my hand and caused the seal of the County of Henderson to be affixed.

Adopted this the 20<sup>th</sup> day of February, 2008.

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William L. Moyer, Chairman

---

Elizabeth W. Corn, Clerk to the Board



**RESOLUTION OF INTENTION TO CLOSE EASEMENT ON THE PROPERTY OF  
ALBERT M MORENO JR "et al.", PARCEL IDENTIFICATION NUMBER 9577758714**

**WHEREAS**, North Carolina General Statute 153A-241 requires the County Board of Commissioners to adopt a resolution for the intention of closing an easement on property;

**WHEREAS**, The Henderson County Board of Commissioners proposed to hold a public hearing on the closing of easement on the Albert M Moreno Jr. "et al." property;

**NOW, THEREFORE, BE IT RESOLVED** by the Henderson County Board of Commissioners, as follows:

1. The Henderson County Board of Commissioners, which is authorized to close public roads and easements, hereby makes the following declaration which is intended to constitute a Declaration of Official Intent:
  - (a) **Hold a public hearing.** The Henderson County Board of Commissioners intend to hold a public hearing on the closure of easements on the property of Albert M Moreno Jr "et al.", if the easement exists as shown by the red line on the attached map.
2. This resolution shall take effect immediately upon its passage.

ADPTED THIS the 20<sup>th</sup> day of February, 2008

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: \_\_\_\_\_

*William L. Moyer*  
William L. Moyer, Chairman

ATTESTED BY:

*Elizabeth W. Corn*  
Elizabeth W. Corn, Clerk to the Board

[OFFICIAL SEAL]



**RESOLUTION OF INTENTION TO CLOSE EASEMENT ON THE PROPERTY OF  
EAST FLAT ROCK FIRST BAPTIST CHURCH, PARCEL IDENTIFICATION  
NUMBER 9577862171**

**WHEREAS,** North Carolina General Statute 153A-241 requires the County Board of Commissioners to adopt a resolution for the intention of closing an easement on property;

**WHEREAS,** The Henderson County Board of Commissioners proposed to hold a public hearing on the closing of easement on the East Flat Rock First Baptist Church property;

**NOW, THEREFORE, BE IT RESOLVED** by the Henderson County Board of Commissioners, as follows:

1. The Henderson County Board of Commissioners, which is authorized to close public roads and easements, hereby makes the following declaration which is intended to constitute a Declaration of Official Intent:
  - (a) **Hold a public hearing.** The Henderson County Board of Commissioners intend to hold a public hearing on the closure of easements on the property of East Flat Rock First Baptist Church, as shown as the red line in the attached map.
2. This resolution shall take effect immediately upon its passage.

ADPTED THIS the 20<sup>th</sup> day of February, 2008

**HENDERSON COUNTY BOARD OF COMMISSIONERS**

BY: \_\_\_\_\_

*William L. Moyer*  
William L. Moyer, Chairman

ATTESTED BY:

*Elizabeth W. Corn*  
Elizabeth W. Corn, Clerk to the Board

[OFFICIAL SEAL]



**RESOLUTION OF INTENTION TO CLOSE EASEMENT ON THE PROPERTY OF  
MINUTE MAN ANCHORS INC, PARCEL IDENTIFICATION NUMBER 9577753655**

**WHEREAS,** North Carolina General Statute 153A-241 requires the County Board of Commissioners to adopt a resolution for the intention of closing an easement on property;

**WHEREAS,** The Henderson County Board of Commissioners proposed to hold a public hearing on the closing of easement on the Minute Man Anchors Inc. property;

**NOW, THEREFORE, BE IT RESOLVED** by the Henderson County Board of Commissioners, as follows:

1. The Henderson County Board of Commissioners, which is authorized to close public roads and easements, hereby makes the following declaration which is intended to constitute a Declaration of Official Intent:
  - (a) **Hold a public hearing.** The Henderson County Board of Commissioners intend to hold a public hearing on the closure of easements on the property of Minute Man Anchors Inc., if the easement exists as shown by the red line on the attached map.
2. This resolution shall take effect immediately upon its passage.

ADPTED THIS the 20<sup>th</sup> day of February, 2008

HENDERSON COUNTY BOARD OF COMMISSIONERS

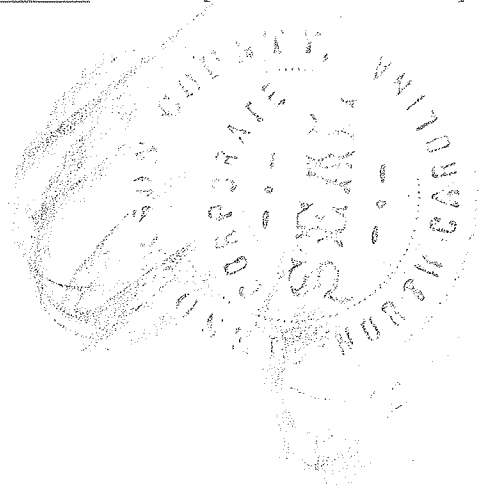
BY: \_\_\_\_\_

*William L. Moyer*  
William L. Moyer, Chairman

ATTESTED BY:

*Elizabeth W. Corn*  
Elizabeth W. Corn, Clerk to the Board

[OFFICIAL SEAL]



Extract from Minutes of a regular meeting of the Board of Commissioners (the "Board") of the County of Henderson, North Carolina held in the Commissioners' Meeting Room, 100 North King Street, Hendersonville, North Carolina 28792, at 9:00 a.m. on February 20, 2008.

The following members were present:

Chairman William L. Moyer; Vice Chairman Charlie Messer; Chuck McGrady; Larry Young; Mark Williams.

The following members were absent:

None.

Also present:

County Manager Steven Wyatt; Assistant County Manager Selena Coffey; County Attorney Russell Burrell; Clerk to the Board Elizabeth Corn; and Finance Director Carey McLelland.

Commissioner Williams moved that the following resolution (the "*Resolution*"), a copy of which was made available to the Board and which was read by title:

**RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT, DIRECTING THE PUBLICATION OF NOTICE WITH RESPECT THERETO AND MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH**

**I. UNDERTAKINGS**

WHEREAS, the Board of Commissioners (the "Board") of the County of Henderson, North Carolina (the "County"), desires to provide for the design, acquisition, construction, renovation and equipping of the new Hillandale and the new Mills River Elementary Schools that will replace the existing Hillandale and Mills River Elementary Schools and the construction, renovation and equipping of phase two of the existing Dana Elementary School (collectively, the "School Facilities"); and

WHEREAS, the Board now proposes to finance the School Facilities through an installment financing contract (the "Contract") with SunTrust Equipment Finance & Leasing Corporation (the "Corporation"), obligating the County to repay in installments the amount financed at a fixed annual interest rate of not more than 3.72% over a term not exceeding 17.5 years, resulting in a total amount financed not to exceed \$33,250,000 (excluding reserves); and

WHEREAS, pursuant to N.C.G.S. Section 160A-20, the County is authorized to finance the design, acquisition, construction, renovation and equipping of the School Facilities by entering into the Contract and a deed of trust (the "Deed of Trust") that create in the School Facilities (other than the Dana Elementary School) and the sites on which they are located a security interest to secure payment of the obligation thereby created; and

WHEREAS, subject to the prior approval of the Local Government Commission of North Carolina (the "LGC") pursuant to N.C.G.S. Section 159-148, the County intends to finance the cost of the School Facilities pursuant to N.C.G.S. Section 160A-20 by executing and delivering to the Corporation or other financing entity the Contract providing for the financing of a principal amount not to exceed \$33,250,000 (excluding reserves); and

## II. UNDERTAKINGS NECESSARY

WHEREAS, the County staff has advised the Board, and the Board hereby finds and determines, that the County must design, acquire, construct, renovate and/or equip the School Facilities in order to maintain and enhance the County's public school and certain administrative School Facilities to enable the County to perform its public functions, and that the School Facilities will benefit the County and its residents; and

WHEREAS, a public hearing must be held to receive public comment on the desirability of (a) the County acquiring the fee or any lesser interest in the real and personal property included in the School Facilities for use by the Henderson County Board of Public Education for school purposes and (b) the installment financing of the School Facilities, of which the Board received evidence supporting the need for such financing; and

WHEREAS, the Board finds and determines that the undertakings are necessary and expedient for the aforesaid reasons and that the School Facilities be financed under the terms, conditions and parameters heretofore stated and to be further determined with more particularity at a later date; and

## III. FUNDS NOT EXCESSIVE

WHEREAS, the sums to fall due under the Contract can be included in the County's budget without difficulty; and

WHEREAS, the above factors lead to the conclusion that the payments under the Contract are not excessive for the stated purposes of designing, acquiring, constructing, renovating and/or equipping the School Facilities; and

## IV. TRANSACTION A PUBLIC PURPOSE

WHEREAS, the County Attorney has advised the County that the School Facilities are authorized by law and are purposes for which public funds may be expended pursuant to the Constitution and laws of the State of North Carolina; and

## V. INSTALLMENT PURCHASE FINANCING DESIRABLE

WHEREAS, the Board finds and determines that short term or pay-as-you-go financing for the School Facilities would place strains on the County's ability to fund general operations and education without a significant tax increase; and

WHEREAS, use of the County's unobligated fund balance to finance the School Facilities would reduce the fund below the guideline established by the LGC and would not be in the County's best interest; and

WHEREAS, the use of non-voted debt would not provide sufficient funds to complete the School Facilities in a timely manner; and

WHEREAS, although the cost of financing under the proposed Contract is greater than the cost of general obligation bond financing, installment contract financing would be preferable to general obligation bond financing because a general obligation bond authorization probably could not be perfected in a timely manner and would not permit the alternative financing structures and repayment provisions available in the proposed negotiated installment contract financing; and

WHEREAS, the proposed cost of financing the School Facilities is too great an amount to be funded by current appropriations; and

WHEREAS, the Board finds and determines that installment contract financing is therefore the most viable and efficient alternative and that the cost of such financing is reasonable; and

## VI. COMPLIANCE WITH DEBT MANAGEMENT CONTROLS

WHEREAS, past audit reports of the County indicate that its debt management and contract obligations payment policies have been carried out in strict compliance with the law and the County has not been censured by the LGC, external auditors, or any other regulatory agencies in connection with such management; and

## VII. ESTIMATED TAX INCREASE

WHEREAS, the Board estimates that the County's ad valorem tax rate will not be significantly increased in order to sustain the proposed financing; and

## VIII. NO DEFAULT

WHEREAS, the County is not in default in meeting any of its debt service or contract obligations; and

## IX. APPLICATION

WHEREAS, it is the Board's intention to adopt this Resolution for the purpose of authorizing the design, acquisition, construction, renovation and/or equipping of the School Facilities, making certain findings and determinations; approving the submission of an application for approval of the Contract to the LGC and authorizing such other acts deemed necessary and advisable to carry out the design, acquisition, construction, renovation and/or equipping of the School Facilities.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, as follows:

Section 1. The Chairman of the Board, the County Manager, the Finance Director and the Clerk to the Board are hereby authorized and directed on behalf of the County to proceed with the preparation of the Contract providing for the financing of an amount not to exceed \$33,250,000 (excluding reserves) at an annual interest rate not to exceed 3.72% and a term not to exceed 17.5 years, and otherwise proceed with the plan of financing for the School Facilities described at this meeting.

Section 2. The Chairman of the Board, the County Manager, the Finance Director and the Clerk to the Board are hereby authorized and directed to submit an application for the LGC's approval of the Contract pursuant to N.C.G.S. Section 160A-20 and Section 159-148, and to execute a sworn statement of debt of the County pursuant to N.C.G.S. Section 159-150, in connection with the financing of the School Facilities.

Section 3. The financing team of Dewey & LeBoeuf LLP, as special counsel, SunTrust Equipment Finance & Leasing Corporation, as lender, and Roberts & Stevens, P.A., as Board of Education counsel, and McGuireWoods LLP, as counsel to the lender, is approved.

Section 4. This Resolution shall become effective immediately upon its adoption and shall supersede any and all previous resolutions regarding the design, acquisition, construction, renovation and/or equipping of the School Facilities on an installment financing basis.

Section 5. That a public hearing (the "Public Hearing") shall be conducted by the Board of Commissioners on March 6, 2008 at 7:00 p.m. in the Commissioners' Meeting Room of the County Administration Building at 100 North King Street, Hendersonville, North Carolina, concerning the Contract, the Deed of Trust, the proposed design, acquisition, construction, renovation and/or equipping of the School Facilities, the acquisition of the sites for the School Facilities, where appropriate, for use by the Henderson County Board of Public Education for school purposes and any other transactions contemplated therein and associated therewith.

Section 6. The Clerk to the Board is hereby directed to cause a notice of the Public Hearing to be published once in a qualified newspaper of general circulation within the County on February 23, 2008.

On motion of Commissioner Williams, the foregoing resolution entitled "RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF HENDERSON, NORTH CAROLINA, AUTHORIZING THE NEGOTIATION OF AN INSTALLMENT FINANCING CONTRACT, DIRECTING THE PUBLICATION OF NOTICE WITH RESPECT THERETO AND PROVIDING FOR CERTAIN OTHER RELATED MATTERS THERETO AND MAKING CERTAIN FINDINGS AND DETERMINATIONS IN CONNECTION THEREWITH" was duly adopted by the following vote:

AYES: Chairman William L. Moyer; Vice Chairman Charlie Messer; Chuck McGrady; Larry Young; Mark Williams.

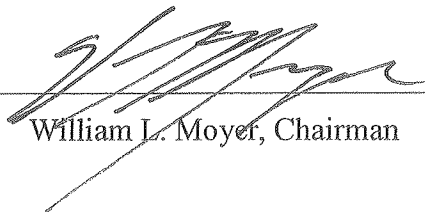
NAYS: None

This Resolution shall become effective immediately upon its adoption.

Adopted this the 20<sup>th</sup> day of February, 2008.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: \_\_\_\_\_

  
William L. Moyer, Chairman

ATTESTED BY:

  
\_\_\_\_\_

Elizabeth W. Corn, Clerk to the Board

[SEAL]





STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

LEASE AGREEMENT

**THIS LEASE AGREEMENT**, made and entered into this the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between **HENDERSON COUNTY**, hereinafter "the Lessor" and the **STATE OF NORTH CAROLINA**, hereinafter "the Lessee";

**WITNESSETH:**

**WHEREAS** the Department of Corrections, Division of Probation and Parole, has requested and approved the execution of this instrument for the purposes herein specified; and,

**WHEREAS** the execution of this agreement for and on behalf of the State of North Carolina has been duly approved by the Governor and Council of State at a meeting held in the City of Raleigh, North Carolina, on the \_\_\_ day of \_\_\_\_\_, 2008;

**WHEREAS** the parties hereto have mutually agreed to the terms of this Lease Agreement as hereinafter set out;

**NOW THEREFORE** in consideration of the premises and the promises and covenants contained in the terms and conditions hereinafter set forth, Lessor does hereby rent, lease, and demise unto Lessee for and during the term and under the terms and conditions hereinafter set forth those premises or office space, with all rights, privileges, and appurtenances thereto belonging, lying, and being in the City of Hendersonville, County of Henderson, North Carolina, and more particularly described as follows:

BEING approximately 1,543 square feet of office space located at the Henderson County Historic Courthouse, 200 N. Grove Street, Suite 90, Hendersonville, Henderson County, North Carolina

**TERMS AND CONDITIONS**

1. **TERM.** The Lessee shall have said lease premises for a term of one (1) year; commencing on the 1st day of March, 2008 or as soon thereafter as possession of the leased premises is ceded to Lessee, and terminating on the 28th day of February, 2009.
2. **RENTAL AMOUNT.** The Lessee shall pay to the Lessor as rental for said premises the following sums of EIGHTEEN THOUSAND FIVE HUNDRED AND SIXTEEN (\$18,516) DOLLARS per annum, which sum shall be paid in equal monthly installments of ONE THOUSAND FIVE HUNDRED AND FORTY THREE (\$1,543) DOLLARS.
  - a. Said rental payment shall be payable within fifteen (15) days from receipt of invoice in triplicate.
  - b. If possession of said premises is not ceded to Lessee upon the 1<sup>st</sup> day of March, 2008, then the first payment of rental shall be made within fifteen (15) days after occupancy by Lessee and upon receipt of invoice in triplicate from Lessor, and shall be for a pro rata part of the first month's rent.
3. **INCLUDED AMENITIES.** The Lessor shall furnish to the Lessee during the lease term at Lessor's sole cost and to the satisfaction of the Lessee the following:

- a. Heating facilities, air conditioning facilities, hot and cold water facilities, adequate lighting fixtures, electrical sockets, adequate toilet facilities, and proper ventilation;
  - b. Lessor to provide required fire extinguishers and servicing, pest control, and outside trash disposal including provision for the handling of recyclable items such as aluminum cans, cardboard, and paper;
  - c. All utilities except telephone;
  - d. Janitorial and cleaning services and supplies. This shall include maintenance and cleaning of lawns, shrubbery, sidewalks, and parking areas if applicable.
  - e. Elevator service if applicable;
  - f. Parking;
  - g. The Lessor covenants that the leased premises are accessible to persons with disabilities. This shall include access into the premises from the parking area (where applicable), into the premises via any common areas of the building and access to an accessible restroom.
4. MAINTENANCE. During the Lease term, the Lessor shall keep the leased premises in good repair and tenantable condition, to the end that all facilities are kept in an operative condition. Maintenance shall include but is not limited to furnishing and replacing electrical light fixture ballasts, air conditioning and ventilating equipment filter pads, if applicable, and broken glass. In case, Lessor shall, after notice in writing from the Lessee in regard to a specified condition, fail, refuse, or neglect to correct said condition or in the event of an emergency constituting a hazard to the health or safety of the Lessee's employees, property, or invitees, it shall then be lawful for the Lessee, in addition to any other remedy the Lessee may have to make such repair at its own cost and to deduct the amount thereof from the rent that may be or thereafter become due hereunder. The Lessor reserves the right to enter and inspect the leased premises at reasonable times, and to make necessary repairs to the premises.
5. CONDITION OF LEASED PREMISES. It is understood and agreed that Lessor shall, at the beginning of said lease term as hereinabove set forth, have the leased premises in a condition satisfactory to the Lessee, including but not limited to repairs, painting, partitioning, remodeling, plumbing, and electrical wiring suitable for the purposes for which the leased premises will be used by Lessee.
6. ADDITION OF STRUCTURES OR FIXTURES. The Lessee shall have the right during the existence of this lease, with the Lessor's prior consent, to make alterations, attach fixtures, and erect additions, structures, or signs in or upon the leased premises. Such fixtures, additions, structures, or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and remain the property of the Lessee and may be removed therefrom by the Lessee prior to the termination of this lease or any renewal or extension thereof, or within a reasonable time thereafter.
7. DAMAGE TO PREMISES. If the said premises be destroyed by fire or other casualty, without fault of the Lessee, this lease shall immediately terminate and the rent shall be apportioned to the time of the damage. In case of partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenable in whole or in part, there shall be an apportionment of the rent until the damage has been repaired. During such period of repair, Lessee shall have the right to obtain similar office space at

the expense of the Lessee or the Lessee may terminate the lease by giving fifteen (15) days written notice to the Lessor.

8. DAMAGES. Lessor shall be liable to Lessee for any loss or damages suffered by Lessee which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement.
9. TERMINATION OF LEASE. Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use, and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted. The Lessee shall have no duty to remove any improvement or fixture place by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.
10. NOTICES. All notices herein provided to be given or which may be given by either party to the other shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified, and postage prepaid and addressed as follows:

LESSOR	LESSEE
c/o County Manager 100 North King Street Hendersonville, NC 28792	c/o DOC Purchasing P.O. Box 29540 Raleigh, NC 27626-28792

Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

11. ASSIGNMENT. The Lessee shall not assign this lease without written consent of the Lessor, which shall not be unreasonably withheld but shall have the right to sublet the leased premises.
12. FREE FROM ADVERSE CLAIMS. The Lessor agrees that the Lessee upon keeping and performing the covenants and agreements herein contained shall at all times during the existence of this lease peaceably and quietly have, hold, and enjoy the leased premises free from the adverse claims of any person.
13. WAIVER, MODIFICATION, CANCELLATION. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender hereof shall be valid unless in writing and signed and agreed to by both parties.
14. HOLD-OVER. Any holding over after the expiration of the said term or any extension thereof, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either party shall give not less than sixty (60) days written notice to terminate the tenancy.

15. RELIANCE ON FUNDING. The parties to this lease agree and understand that the continuation of this Lease Agreement for the term set forth herein or any extension or renewal thereof, is dependent upon and subject to the appropriation, allocation, or availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also agree that in the event the agency of the Lessee or that body responsible for the appropriation of said funds, in its sole discretion, determines in view of its total local office operations that available funding for the payments of rents is insufficient to continue the operation of its local office on the premises leased herein, it may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination and the lease agreement shall terminate immediately without any further liability to Lessee.

In witness hereof, all parties have caused this Lease Agreement to be duly approved, and to be executed in duplicate, each to have the force and effect of an original.

**HENDERSON COUNTY**

BY: \_\_\_\_\_  
Bill Moyer, Chairman  
Henderson County Board of Commissioners

Attest: (County Seal)

\_\_\_\_\_  
Elizabeth W. Corn, Clerk to the Board

(Corporate Seal)

**STATE OF NORTH CAROLINA**

BY: \_\_\_\_\_  
Governor

Attest:

\_\_\_\_\_  
Secretary of State

APPROVED AS TO FORM:

ROY COOPER  
Attorney General

\_\_\_\_\_  
Assistant Attorney General

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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON COUNTY

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that Elizabeth Corn personally appeared before me this day and acknowledged that she is the Clerk for the Board of Commissioners.

Witness my hand and official seal, this the \_\_\_\_\_ of \_\_\_\_\_, 2008.

(Official Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_

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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON COUNTY

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the \_\_\_\_\_ of \_\_\_\_\_, 2008.

(Official Seal)

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_