

MINUTES

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STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
APRIL 16, 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 Historic Courthouse.

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: Deputy Clerk Terry Wilson, Finance Director J. Carey McLelland, Communications Officer Pam Brice, Planning Director Anthony Starr, Fire Marshal Rocky Hyder, Sheriff Rick Davis, Captain Greg Cochran, Director of Engineering/Facilities Services Marcus Jones, Property Addressing Coordinator Curtis Griffin and Research/Budget Analyst Amy Brantley.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance. He stated that this was the first meeting in the new meeting room, the refurbished old courtroom.

PLEDGE OF ALLEGIANCE

Commissioner Charlie Messer led the Pledge of Allegiance to the American Flag.

INVOCATION

Commissioner Mark Williams gave the invocation.

INFORMAL PUBLIC COMMENTS

1. George Jones – Dr. Jones congratulated the Commissioners on Planning and Zoning. He requested that the bottom land not be filled in. He also stated that farm land and orchard land should be cared for and protected. He also congratulated that Board on the new Human Services building on Spartanburg Highway. He recognized the needs of the Sheriff's Department and Pardee Hospital. Dr. Jones felt that the Board was doing a good job in many areas. He also congratulated the Board of Commissioners on the remodeling of the Historic Courthouse.
2. Eva Ritchey - Ms. Ritchey stated that on April 4 an advertisement was published in the Times-News informing the community that WHKP would be airing Rush Limbaugh, political commentator, on Saturday between 1:00 – 3:00. She felt that this should not be allowed to air on the Government Channel. On the issue of Seven Falls she hoped that the Board would not allow Seven Falls to run an in-run around the twenty year vested rights that they have requested by giving it to them five years at a time.
3. Heather Stepp – Ms. Stepp is a former teacher with Henderson County public schools. She asked the Board to look at the need for additional school nurses. The national recommendation is one (1) nurse for every seven hundred and fifty (750) students. The last count our school system has one (1) nurse for every one thousand eight hundred eighty-six (1886) students. The school where her son attends has a school nurse ½ day, twice a week.
4. Tracy Cavagnaro – Ms. Cavagnaro is a parent of a child in the Henderson County school system. The school nurse at her son's school is only there one (1) day per week. She requested that the Board include more school nurses in their budget. She doesn't feel that the school staff should have to be responsible for taking care of the medical needs of children.
5. Sandi Carper – Ms. Carper is a parent specialist at the Children and Family Resource Center. She asked to Board to make the decision to allocate funding for more school nurses. She felt with the increase of health problems more school nurses were needed.

DATE APPROVED:

**DISCUSSION/ADJUSTMENT OF AGENDA**

Chairman Moyer requested that discussion item E (Inmate Work Crew Program) be moved to the beginning as Sheriff Davis had another commitment and had to leave. He also added Commercial Amendment #4 as discussion item F and two additional Closed Sessions at the end for personnel matters and attorney/client privilege.

*Commissioner Messer made a motion that the Board of Commissioners approves the agenda as modified. All voted in favor and the motion carried.*

**CONSENT AGENDA**

Chairman Moyer requested that the Election of local option sales tax distribution method be moved to discussion item G.

*Commissioner McGrady made the motion to adopt the consent agenda items A through D as modified. All voted in favor and the motion carried.*

**Tax Collector's Report**

Terry F. Lyda, Tax Collector, provided the Tax Collector's Report for information only dated April 4, 2008.

**Water Line Extension – Edneyville Post Offices**

The City of Hendersonville has requested that the County comment on the proposed water line extension for the Edneyville Post Office. The Proposed water line is 480 linear feet with one (1) fire hydrant. The project's location in the commercial service center within the urban/rural transition area is consistent with the Henderson County 2020 Comprehensive Plan. A City of Hendersonville Project Summary Sheet, with backup documents and County Review Sheet with Staff comments was included for Board review and action.

*Suggested Motion: I move the Board approves the Edneyville Post Office water line extension and direct Staff to convey the County's comments to the City of Hendersonville.*

**Criminal Justice Partnership Program Resolution**

The Criminal Justice Partnership Program (CJPP) Division 4 Community Development Specialist, Marie Bartlett, has requested time on the agenda to present a Resolution to the Board which requests full reinstatement of funding for CJPP in the State's continuation budget.

*Suggested Motion: I move the Board adopt the proposed resolution requesting full reinstatement of funding for CJPP in the State's continuation budget.*

**Adoption of 1 Historic Courthouse Square as regular Board meeting place**

N.C. Gen. Stat. §153-A-40 allows this Board, by resolution, to adopt its place of regular meeting. This resolution adopts 1 Historic Courthouse Square, Hendersonville, North Carolina, as this Board's regular meeting place.

*Suggested Motion: I move that the Board adopt the proposed resolution. I further move that a copy of this resolution be placed on the Henderson County Courthouse bulletin board, and be published to the normal notice list of media and other recipients.*

**NOMINATIONS**

**Notification of Vacancies**

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

1. CJPP Task Force (Criminal Justice Partnership Program) – 1 vac.
2. Henderson County Historic Resources Commission – 1 vac.

3. Juvenile Crime Prevention Council – 1 vac.

**Nominations**

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

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

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

2. **CJPP Task Force (Criminal Justice Partnership Program) – 1 vac.**

Chairman Moyer stated that Public Defender position #5 was open and the CJPP Committee had recommended the appointment of Lauren Jean Shen to that position and he so moved. There were no other nominations. *Chairman Moyer made the motion that the Board accepts Lauren Jean Shen to position #5 by acclamation. All voted in favor and the motion carried*

3. **EMS Quality Management Committee – 5 vac.**

Chairman Moyer stated that position #11 Lisha Corn and position #18 Jim Morris were both currently serving and willing to be reappointed. Commissioner McGrady nominated both positions for reappointment. *Chairman Moyer made the motion that the Board accept Lisha Corn to position #11 and Jim Morris to position #18 by acclamation. All voted in favor and the motion carried.*

4. **Equalization and Review, Henderson County Board of – 3 vac.**

Chairman Moyer stated that he had spoken with the Tax Assesor Stan Duncan and that two (2) alternates, Vollie Good and Ted Carland had been filling in really well and suggested that these two be pulled up to full positions 1 & 4 and also nominated Marguerite Harris for position #8. *Chairman Moyer nominated the three positions 1, 4 & 8 respectfully. All voted in favor and the motion carried.*

5. **Henderson County Planning Board – 1 vac.**

Chairman Moyer stated that there had been two nominations for position #8 at the last meeting. Commissioner McGrady nominated Colette Summitt and Commissioner Young nominated Suprina Stepp. There were no other nominations. The Board was polled with the following results:

1. Chuck McGrady	2. Mark Williams	3. Bill Moyer	4. Charlie Messer	5. Larry Young
Summitt	Stepp	Stepp	Stepp	Stepp

*Colette Summitt was appointed to position #8 with the majority of votes.*

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. **Juvenile Crime Prevention Council – 6 vac.**

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

8. **Nursing/Adult Care Home Community Advisory Committee – 5 vac.**

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

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

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

**INMATE WORK CREW PROGRAM**

Chairman Moyer noted that Litter Sweep Week is April 19 – May 3<sup>rd</sup> and he asked all community groups and all the people who participate to get involved and do their part to try to help clean up our roads. We need to work on programs to try to get people to be more considerate about not throwing stuff out the windows or letting it blow out of the back of their vehicles.

Sheriff Rick Davis stated that they had received more calls lately regarding litter in the communities. For many months the Sheriff's office has been actively working on a plan for an inmate work crew. They have had to do some major revamping of their policies and have been in contact with other agencies which are using this program. One of the growing trends across that State of North Carolina is the use of inmate work crews by local law enforcement agencies. These types of programs offer tremendous opportunities for keeping our County clean through litter pick-up programs, beautification projects for schools, libraries and recreation facilities, and stream clean-up projects. The need in Henderson County is substantial.

County Manager Steve Wyatt stated that discussions were held detailing equipment purchases necessary and he believed that the Solid Waste Fund should be able to fund this. Due to the work of Marcus Jones through actively marketing our recycling, our recycling income will be up substantially. County Management supports the implementation of this program as a cost-effective strategy towards addressing longstanding needs. Staff estimates that \$8,000 - \$10,000 is needed for start-up expenses such as safety equipment and other required equipment to support the program. These expenses may be funded from recycling funds due to the efforts of County staff to maximize these revenues.

Commissioner Young asked Commissioner McGrady and County Manager Steve Wyatt to work with the Solid Waste Advisory Committee and the businesses and homeowners associations to adopt a highway program so that they can maintain their own area.

Sheriff Davis stated that the prisoners used would be at an even lower risk than even at the state. They would be at an exceedingly low risk. If somebody were to escape from custody he could assure the public that it would be very minor offenses. They will be thoroughly screened.

*Commissioner Messer made the motion that the Board support the Sheriff's efforts to implement an inmate work crew program and further moved that staff be authorized to expend up to \$10,000 from the Solid Waste – Recycling Fund to support the program. All voted in favor and the motion carried.*

#### **PARTNERSHIP FOR ECONOMIC DEVELOPMENT PRESENTATION**

The Executive Director of the Henderson County Partnership for Economic Development, Andrew Tate, had requested time on the agenda to present an update on ongoing economic development projects and activities. Mr. Tate provided a brief overview through a power-point presentation. The mission of their organization is that the partnership is the professional economic entity for Henderson County. Their responsibility is to attract and retain quality jobs, solicit new business that is compatible with assets and values of the community, promote Henderson County's business image, assist expansion of existing companies, and all together the idea that it will enhance Henderson County's overall quality of life. We do this through job creation, through more dollars circulating the local economy, and through improved and increased job opportunities for local citizens of the county.

They do take retention very seriously. Their Board Chair Sandy Tallent started the program on the first day of her term, an industrial retention and expansion program which launched in the past year. The organization decided to go above and beyond the commitment that it made for industrial visitations in the county funding requirements and would increase that to a minimum of thirty-six (36) visitations per year; these are customized assessment visitations. They will talk to an industry executive prior to the visitation to determine what their needs and concerns are. They will customize the team of folks that will go in and sit down and visit with them; whether its labor related or utility related service. This does allow us to maintain aggregate data to present to the Board of Commissioners from time to time; a broad assessment of industry and manufacturing in the county.

This will also allow them too identify common concerns and specific concerns and move forward in trouble shooting all of those. Mr. Tate feels this is significant in where the resources and efforts are placed. Since

the beginning of the organization, ninety percent total new industrial development has come from existing industry and eighty percent of all new and retained jobs come from those existing industry.

An industrial executive survey was done with anonymous feed back on issues, concerns and challenges to manufacturing. Approximately thirty industrial executives were there on February 6 including Chairman Moyer and Commissioner Williams. Topics of concern were primarily labor related; both availability of labor and the skill sets of those labor. Other issues were healthcare and cost of living and services.

### **PARDEE ANNUAL REPORT**

Bill Smith of the Hospital Board stated that Margaret R. Pardee Hospital (Henderson County Hospital Corporation) is fulfilling their mission and providing quality, compassionate and safe care for our community. This is evident in this report as well as the financial report. The dedicated Hospital Board is diligently governing the corporation. Their emphasis continues to be on the financial and quality aspects of the business. Their focus is now starting to expand to include the strategy of what they should be in the future and how they should meet the needs of the community.

Alan House and Kris Hose, from Margaret R. Pardee Memorial Hospital (Henderson County Hospital Corporation) presented their Annual Report to the Board of Commissioners. Kris Hose shared some accomplishments and activities at Pardee Hospital over the last year.

Henderson County Hospital Corporation Organizational Goals:

- Enhance the Henderson County Hospital Corporation's performance improvement and quality monitoring system, structure and results.
- Achieve the 2% net operating margin detailed in the 2008 budget approved by the board.
- Address and strengthen physician relations
- Distinguish and strengthen the HCHC culture.
- Update and operationalize the Strategic Plan for HCHC. (This will also include a Master Facility and Technology Plan.)
- Develop and pursue strategic relationships that support fulfilling HCHC's mission.

Pardee Operated Outreach Programs:

- Meals on Wheels
- Home Health
- Community Alternatives for Disabled Adults
- Perspectives Diabetes Program
- Cardiac Rehabilitation
- Business Industry/Community Wellness and Screening
- Asthma Education
- Community Based Case Management
- Community Laboratory Services
- Lifeline
- Adult Day Health
- Pardee Health Education Center
- Land-of-Sky

Alan House shared the budget with the Board of Commissioners. He stated that through February, the last publicly released data that was shared they are one half of a million dollars better than budget on their bottom line. The month of March has not been released and they are in the process of closing it now. March was a very strong month and they will continue to be better than budget.

### **HENDERSON COUNTY HOSPITAL CORPORATION FLOATING RATE BOND REFINANCING**

On 20 September 2001, Henderson County issued, on behalf of Henderson County Hospital Corporation, floating rate revenue bonds (bonds with floating interest rates paid solely from the revenues of the Corporation), in a face amount of \$15,300,000.00 (“\$15,300,000 County of Henderson, North Carolina), Hospital Revenue Bonds (Margaret R. Pardee Memorial Hospital Project) Series 2001”). These bonds have approximately 14 years until maturity.

The Corporation has contacted County staff regarding obtaining a refinancing of this debt, in order to secure a fixed interest rate in today’s lower interest rate environment. A request for proposals soliciting bids from financial institutions was prepared by the Corporation (after input from a financing consultant, the bond trustee’s counsel, and County staff). Proposals are due prior to this (the 16 April) meeting, but after the date by which this Request for Board Action is due. A report of the proposals will be made at your 16 April meeting, together with any recommendation(s).

It is anticipated that if a proposal acceptable to the Board is obtained, this matter would be reviewed by the North Carolina Local Government Commissioner at its June meeting, with closing to occur shortly thereafter. Corporation staff and the Hospital Board of Trustees Finance Committee Chair has indicated a desire to move swiftly with this endeavor, to lock in an interest rate in what appears to be a favorable environment.

The Chairman of the Board stated that one of the purposes of the meeting was to approve certain documents and other actions in connection with the issuance by the County of its Hospital Revenue Refunding Bonds (the “Bonds”) in an aggregate principal amount not exceeding \$12,250,000 to be secured by the net revenues of the hospital system for the purposes of refinancing the cost of (i) the construction, renovation and expansion of a medical office building, an emergency room facility and a parking garage, and (ii) the acquisition of equipment for those and other improvements and additions to such hospital facilities (collectively, the “Project”) through the refunding of the County’s outstanding Variable Rate Revenue Bonds, Series 2001 (the Series 2001 Bonds”); and (iii) paying certain expenses in connection with the authorization and issuance of the Bonds.

The Chairman advised the members of the Board that the first order of business was to consider and take action on a resolution (i) directing the filing of an application with the Local Government Commission for approval of the issuance of the Bonds, and (ii) the hiring of various members of the financing team.

County Attorney Russ Burrell stated that the Board had received a proposed extract of the minutes of this meeting which will include a proposed resolution that makes certain findings. He asked the Board to review this very carefully as it talks about the refinancing of this bond. As you may or may not recall in 2001 the County borrowed, on behalf of the Hospital Corporation, \$15.3 million dollars. They were on a floating interest rate on those bonds and have a little less than fourteen (14) more years to go until they are matured. The Hospital sees this as a good time to peg those interest rates to finance at a fixed rate rather than the floating rate.

The amounts shown as an estimated refunding amount (the amount to be borrowed on the new loan) would be \$12,250,000. This reflects the pay down that has occurred since the original \$15.3 million was borrowed. It includes some of the amount for the cost (a slight over estimate) as the \$12,250,000 is more than the actual amount that is being borrowed by some amount. He was not sure of the exact amount. He estimated at least \$10,000 to high and possibly as much as \$30 - \$40,000 to high. It was the best estimate to give and continue to be safe.

At the close of this item he requested that one of the Board members make a motion specifically reading the name of this resolution as shown in the extract that was shared.

Alan House shared information with the Board stating that it was very important to note that the decision that the decision that the Hospital Board had made to pursue getting a fixed rate loan by refinancing their existing



variable rate bonds is based on future concerns. RFPs (Request for Proposal) were sent to six (6) banks in the area. Three replies were received back of which one was non-conforming. Of the two banks that replied a summary was presented to the Board of Commissioners from First Citizens and BB&T including a comparison of the interest rates and the total estimated interest, estimated closing costs, and any prepayment fees.

*Commissioner McGrady then introduced the following resolution, which was read by title, and moved that it be adopted:*

RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE  
COUNTY OF HENDERSON, NORTH CAROLINA DIRECTING THE  
FILING OF AN APPLICATION WITH THE LOCAL GOVERNMENT  
COMMISSION FOR APPROVAL OF THE ISSUANCE OF HOSPITAL  
REVENUE REFUNDING BONDS AND CERTAIN RELATED MATTERS

WHEREAS, the Board hereby determines that the refunding of the Bonds must be undertaken by the County at an estimated cost not to exceed \$12,250,000, including the cost of refinancing the Project;

WHEREAS, the Board desires to authorize the County Manager and the Finance Director of the County to apply to the North Carolina Local Government Commission for its approval of the issuance of the Bonds to refinance the Project and to take all other action necessary in connection therewith;

WHEREAS, the Board desires to retain Dewey & LeBoeuf LLP, as bond counsel, Branch Banking & Trust Co. Governmental Finance as the "Purchaser", Prince, Youngblood & Massagee as counsel to the Henderson County Hospital Corporation (the "Corporation"), and Efficient Capital Corp., as financial advisor.

NOW, THEREFORE, BE IT RESOLVED by the Board as follows:

Section 1. That the County Manger and the Finance Director of the County are hereby authorized, directed and designated to file and application with the North Carolina Local Government Commission for its approval of the issuance by the County of the Bonds.

Section 2. That the Board finds and determines and asks that the Lcoal Government Commission find and determine from the County's application and supporting documentation:

- (a) That the issuance of the Bonds is necessary and expedient;
- (b) That the amount of Bonds will be sufficient but is not excessive, when added to other monies available to the County and the Corporation, for the refinancing of the Project and the Series 2001 Bonds;
- (c) That the refinancing of the Project and the Bonds are feasible;
- (d) That the County's debt management procedures and policies are good; and
- (e) That the Bonds can be marketed at a reasonable interest cost to the County.

Section 3. The Board authorized and requests that the Bonds be sold with a fixed interest rate at a private sale without advertisement to the Bank, at a rate per annum not to exceed 4.09% and a maturity not to exceed thirteen and one-half (13 ½) years from the date of closing.

Section 4. That the Chairman and Vice Chairman of the Board, the County Manager, the County Attorney, the Finance Director, and the Clerk to the Board are hereby authorized to do any and all things necessary to effectuate for the issuance of the Bonds.

Section 5. That Dewey & LeBoeuf LLP shall be retained to serve as bond counsel, Branch Banking & Trust Co. Governmental Finance shall be retained to serve as Purchaser of the Bonds, Prince, Youngblood & Massagee as counsel to the Corporation, and Efficient Capital Corp., as financial advisor.

Section 6. That the Board requests that the Local Government Commission sell the Bonds through negotiation to Branch Banking & Trust Co. Governmental Finance, or such terms as may be agreed.

Section 7. That this Resolution shall become effective on the date of its adoption.

*Commissioner Williams seconded the motion and, after discussion, the Resolution was adopted by a 5-0 vote.*

*Commissioners Williams made the motion that the Board approve the proposal of BB&T for the fixed rate refinancing of the County's floating rate revenue bond indebtedness concerning the Henderson County Hospital Corporation. All voted in favor and the motion carried.*

Adopted this the 16<sup>th</sup> day of April, 2008

HENDERSON COUNTY BOARD OF COMMISSSIONERS

BY: \_\_\_\_\_  
William L. Moyer, Chairman

ATTESTED BY:

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

[SEAL]

**CONTRACT FOR SALE OF PARDEE CARE CENTER**

This Board previously on 5 November, 2007 voted to allow the Board of Trustees of Henderson County Hospital Corporation to pursue the sale of the Pardee Care Center, with the proceeds of any resulting sale to be retained by the Hospital Corporation.

The Trustees have pursued a bid proves, resulting in a recommended bid offer, with proposed contract. The Trustees meet 15 April 2008 to formally recommend a bid offer and contract to this Board, which will be distributed to this Board on 16 April, for consideration. A first draft of this item was presented to the Board of Commissioners on 11 April 2008.

The process, if this Board preliminarily approves the offer and contract documents, would be to require notice of the preliminary approval, and solicitation of upset bids. If no upset bids were obtained, or at the end of the upset bidding process, the matter would come back on before the Board for final approval.

Preliminary approval of the bid and contract documents was recommended by the Board of Trustees of Henderson County Hospital Corporation.

County Attorney Russ Burrell shared two draft contracts with the Commissioners and stated that since they were printed there had been a couple more revisions. On November 5, 2007 the Board authorized Pardee Hospital to move forward with the process by putting out requests for proposals, getting the bids back, and



then negotiating a contract for the sale of Pardee Care Center. Since that time they have gone forward and have identified Hendersonville Physicians and Associates as the high bidder. They have driven forward with negotiating contracts. One of the proposed agreements involves the Board of Commissioners specifically; the agreements with the sale of the real estate and the condominium units that make up Pardee Care Center. By the arrangement with Pardee, this Board holds title to those real estates parcels. The second proposed agreement is the asset purchase agreement. Henderson County Hospital Corporation actually holds title to those assets and the Board of Commissioners basically controls the Hospital Corporation. Technically the contract is with the Hospital Corporation and not the Board of Commissioners. These two contracts were presented to the Board for preliminary approval at this meeting. Since this involves the sale of real estate there will be a solicitation of upset bids. Both contracts will be posted on the hospital and county websites and available at the hospital for any potential upset bidders review. They would need to match not only the dollars of the bid but also the terms of the contract; and they would have to bid more in terms of dollars or bid some other significantly improved provision over and above what are in these contracts. The hospital is asking that the Board review these contracts and if found acceptable, give preliminary approval subject to final approval after the upset bid process on these contracts.

Pardee Hospital Attorney Sharon Alexander reviewed a couple of substantive changes. In the real property purchase agreement in Section 5.5D additional language was added that requires the management company (Hendersonville Health and Rehabilitation Company) to come to the closing with a one million dollar (\$1,000,000) letter of credit for the purpose of making the one million dollar capital improvements that are required by this contract within the first twenty-four (24) months of the contract. In the asset purchase agreement in Section 6E additional language was added which creates an objective measurement for the quality of care primarily in terms of nursing care hours per patient day.

#### **SALIENT TERMS OF CONTRACT**

Attorney Alexander gave a summary of the salient terms of each contract. She stated that basically the contracts have language in them that speak to the quality of care that creates the measurements of that and some teeth. They speak to continuing the key relationships the Care Center has with Hospice, the Pavilion, and the Hospital in terms of hospital discharge planning. They create security for all the employees with the associates of the Care Center; the purchase is required to offer each of them a job upon the day of closing at the same seniority level and basically the same pay rate. The only difference might be the benefit package but it will be very similar. They will not be allowed to maintain the name of Pardee, but there have donors who have signage in rooms or facilities named. The contract requires a purchaser to comply with those donors wishes in terms of continuing that or not continuing that. There is a restrictive covenant where the Hospital (not the County) agrees that it will not go into this business within five (5) miles for a period of five (5) years. That is enforceable only as long as they are in compliance with their obligations under both contracts. The closing is to take place within sixty (60) days of the expiration of the last upset bid period or when the purchaser has been able to obtain all of the licenses, certifications and consents that it needs. If they are not able to do this within sixty (60) days of end of the upset bid period they have to close. The Hospital will enter into a revenue neutral lease agreement so that the Hospital can continue to operate it during a period of time in which they are waiting on some governmental agency to complete its work.

#### **PURCHASE PRICE**

The purchase price is allocated with seven million dollars (\$7,000,000) being allocated to the asset purchase agreement and one million four hundred fifty thousand (\$1,450,000) being allocated to the real estate, which in this case is a condominium unit.

Chairman Moyer felt that this process had gone on for quiet a while and the hospital has done a tremendous job of putting the welfare of the organization and the people at the forefront, as you will see in the agreement, which was very significant.

Commissioner McGrady disclosed that he chaired the condominium association and did not feel that it created a conflict of any sort.

Commissioner Williams disclosed that he has a grandmother who is a patient at the facility.

It was the consensus of the board that they did not believe that the items disclosed by Commissioners McGrady or Williams create a conflict that would prevent them from voting on this matter.

*Commissioner Young made the motion that the Board accept the contract with the Physicians and Associates for the Pardee Care Center as written in the contract. Chairman Moyer further moved that the Board give preliminary approval of the bid and offer presented by the Trustees of Henderson County Hospital Corporation for the sale of Pardee Care Center. All voted in favor and the motion carried.*

**BREAK**

A five minute break was taken.

**COMMERCIAL AMENDMENT #4**

On Thursday, March 27, 2008, the Board of Commissioners held a public hearing on proposed text and map amendments to Chapter 200A, Land Development Code (LDC) and Official Zoning Map. On April 7, 2008, the Board tabled Commercial Map Amendment 4 at the request of one of the property owners in the Subject Area. Due to neighbors concerns and opposition to the rezoning, the property owners of the Subject Area submitted a revised boundary eliminating two of the parcels that encroached into the adjoining subdivision. The applicants requested that the Board reconsider Commercial Map Amendment 4 with the proposed revised boundary.

Chairman Moyer stated that a request had been made by Chris Lamb to modify this Amendment to include the Snyder property.

Attorney Sam Neill was present representing Bradley Snyder. Mr. Neill stated that he had not done a title search on each of the parcels but that he had spoken with the adjoining property owners and had no opposition.

Chairman Moyer suggested that further discussions be held with Chris Lamb and explain that this item could be delayed once again but would definitely take action at the next meeting.

Attorney Sam Neill stated that this would be agreeable with his client.

After further discussion this item was tabled until the next board meeting.

**ELECTION OF LOCAL OPTION SALES TAX DISTRIBUTION METHOD**

N.C. Gen. Stat. §105-472(b) sets out two possible methods of distribution of local option sales taxes - "ad valorem" and "per capita". This Board has previously indicated in its meetings on this subject that it wishes to adopt the ad valorem method of distribution of local option sales taxes.

Chairman Moyer stated that the next item was pulled from the consent agenda. It is a resolution adopting the "ad valorem" distribution method. This was done in March but under the law it technically has to be done in April. Discussions had been held with various fire chiefs and the Fire Chief Association and they are very concerned with respect to this issue and asked to have the opportunity to speak to the Board with respect to that.

Head of the Fire Chief's Association Jay Alley and Leroy Nicholson from the Fire and Rescue Advisory Committee were called to the podium to speak to the issue.

Mr. Alley stated that they had a meeting on April 8 and talked about the sales tax and how it would affect their budget and finances. They fire chiefs offered the following proposal:

“The standard method of ad valorem sales tax distribution increased several concerns for the fire service. The first is sales tax revenue creates a volatile uncertainty in long term planning positions for the fire department. Things like buying fire trucks, construction contracts, and even staffing with this volatility could create some problems. Fire trucks and fire stations are very expensive and require us to finance purchases and sometimes having such a volatile revenue source could cause us problems getting that financing. In the first 5 to 7 years of this implementation of the ad valorem, we see there will be several tax rate adjustments up and down which is going to cause confusion and concern among our roles and the people that we have to serve. We also feel like many of our departments have contracts with the cities or municipalities where the contract rate is actually tied to the county tax rate. A reduction in rate could create a significant loss of revenue for our fire departments. The rate variation in the first few years of implementation could cause some very serious problems for the cities and the fire departments. For us to have stability we feel for the provision of fire services the county fire chiefs will have to propose an interlocal agreement with the County Commissioners for sales tax distribution. This agreement would maintain the current stable funding formula for fire protection and return the more volatile sales tax back to the County. This proposal does come with unanimous support of all fire departments in Henderson County.”

Leroy Nicholson stated that the Fire and Rescue Advisory Committee totally supports the plan that has been presented.

Chairman Moyer reiterated the proposal stating that the County would enter an interlocal agreement with each and every one of the fire departments which would provide that they would continue assessing an ad valorem tax as they are doing now. It would be approved by the Fire and Rescue Advisory Board and the Commission. Any sales tax revenue that would be approved to the fire department would be returned to the County.

County Attorney Russ Burrell stated that this would be an annual agreement.

*Commissioner McGrady made the motion that the Board adopt the proposed resolution electing the ad valorem method of local option sales tax distribution pursuant to N.C. Gen. Stat. §105-472(b), and that a certified copy of said resolution to be delivered to the North Carolina Secretary of Revenue, and further move that the Chairman and Staff be authorized to enter into an interlocal agreement with the various fire departments as discussed and put forth in proposal form to the Board in this meeting. After discussion the board voted unanimously in favor of the motion.*

Chairman Moyer directed staff to prepare a draft of an agreement. He would then contact Jay Alley and Leroy Nicholson to take a look at it.

**PUBLIC HEARING – CONTINUATION OF THE APRIL 1<sup>ST</sup> PUBLIC HEARING FOR THE CONSIDERATION OF A DEVELOPMENT AGREEMENT FOR THE SEVEN FALLS GOLF AND RIVER CLUB**

*Commissioner McGrady made the motion that the Board go back into public hearing with respect to the consideration of a development agreement for the Seven Falls Golf and River Club. All voted in favor and the motion carried.*

The developers of Seven Falls Golf and River Club (Seven Falls), Seven Falls, LLC and Mountain Development Company, LLC, resubmitted a development agreement for the Board of Commissioners to consider. The Board last considered a development agreement for Seven Falls at its regularly scheduled meeting on July 2, 2007.

The granting of a development agreement allows a landowner to proceed with the development of a project for a certain period of time under specific terms and conditions regardless of whether there is a change in land use regulations. The developer is requesting to be vested for a period of five years with an additional

five years if the terms of the agreement have been met. According to NCGS 153A-349.5 the County can enter into a development agreement after holding a public hearing on the proposed agreement.

Seven Falls is located on approximately 1,398 acres of land off Pleasant Grove Road and Pleasant Grove Church Road. A total of 900 dwelling units are proposed. Single-family residential dwelling units, multi-family residential dwelling units, a golf course, recreational uses, club service uses and community service uses are all proposed. It is anticipated that the development will be built in multiple phases. The Planning Board conditionally approved the Master Plan for Seven Falls on April 19, 2007. The Phase I Development Plan was conditionally approved by the Planning Board on June 21, 2007 and the Phase II Development Plan was approved on September 21, 2007.

Notices of the April 1, 2008 public hearing were sent to Hendersonville Times-News to be published on March 12, 2008 and March 19, 2008.

Chairman Moyer stated that the Board was in the process and had dealt with everything except the development agreement. Due to technical difficulties it was continued. He explained that each person that had signed up to speak would be allowed 3 minutes to speak.

#### **Public Input**

1. Richard Frudenberger – Mr. Frudenberger brought one item to attention in regards to the agreement. Within the terms of the agreement, specifically item eleven (Protected Ridge Ordinance on page 5) the developers are requesting future protection from any county jurisdiction regarding construction and development and elevation below 2400 feet; although it would appear that no property within the Seven Falls master plan exceeds 2400 feet. If this agreement were to be approved unchallenged the developers respectively deny the County the ability to exercise regulations in a very sensitive area of slope development. The Mountain Ridge Protection Act of 1983, which is stipulated in N.C.G.S. §113A clearly defines the risks and hazards derivative to construction in high elevation including but not limited to water supply, sewerage disposal, infringements on ground water rights on persons at lower elevations and detractions from the natural beauty of the mountains. In 1998 the North Carolina Department of Emergency Management classified twenty-one counties (including Henderson County) in Western North Carolina at high risk for the dangers of landslides. The effects of Hurricanes Francis and Ivan in 2004 were death of 5 individuals and local destruction. Ridge and slope development is an area of jurisdiction that we need to be more rigorous about as we move into the future. He requested that the Board amend the development agreement so that it did not relinquish control on such a sensitive matter.
2. Marijane Pell – Ms. Pell was against giving Seven Falls vested rights. She did not feel that they had been good neighbors as they had not shown concern for laws, environment, or Government.
3. Bruce Hatfield – Mr. Hatfield was against giving Seven Falls vested right. The community needed to be protected and preserved.
4. Angela Fernandini – Ms. Fernandini was against giving Seven Falls vested rights. She brought a couple of violations by Seven Falls to attention. She felt that the road replacing Pleasant Grove Church Road was built without approval and burning had been done during bans.
5. Darlene Brown – Ms. Brown lived in the area of Seven Falls and complained about the silt that Seven Falls had allowed to be released into the local creek. She did not feel that Seven Falls were good neighbors and did not want the Board to allow vested rights. Ms. Brown was also having problems with beavers.
6. Martha Sachs – Ms. Sachs was in agreement with the previous speakers and against giving Seven Falls vested rights.

Chairman Moyer invited Bill Lapsley to comment on the problems addressed.

Bill Lapsley addressed the following:

- Ridge law – The applicant’s proposal in the draft agreement is to follow the current State Ridge Law. The Master Plan included some single home family developments and some duplex units on some of the ridge lines. It was made clear that this was in the plan prior to Planning Board approval.
- Pleasant Grove Church Road – The applicant applied for and received all permits that were required to construct the road. It has a county issued erosion control permit and approval was received from DOT that should this Commission decide to adopt closing the existing section of road and relocating to the new one, DOT (if the road was constructed in accordance with the plans that they approved) would accept it into their maintenance program.
- Erosion Control & Water Quality violations – This issue has been brought up a number of times. Approximately one year ago when this project went before the Planning Board and when the owner/applicant was clearing and cleaning up a number of distressed properties the N.C. Division of Water Quality and the N.C. Division of Land Quality came on site and issued six (6) notices to the applicant. Of those six notices, two were for actions that were not done by the applicant. They were done by previous landowners without the applicant’s knowledge or approval. Two of the other issues were when the applicant was clearing the site the contractor pulled an old abandoned mobile home across the creek to get it near the road and disturbed the creek (probably a width of about 20 feet). This was a violation and should not have been done. Once they were made aware, the stream was restored under the guidance of DWQ and DLQ and the issues were resolved. They have never denied that these actions occurred and all corrections were made. There have been issued eleven soil erosion control permits; 4 by the State of North Carolina, and 7 by Henderson County which were issued based on soil erosion and sedimentation control plans that they prepared. All of the activities that are taking place on the property at this time are within those permitted areas. There have been no violations from any soil and erosion on the property since. Erosion problems upstream of the applicant’s property have been brought to the attention of the County and State folks to make sure that everyone knows that these problems are not occurring on our site, but off site. They have not had any DWQ or DLQ violations on any permits since they were issued.
- Flooding – The applicant applied for and received a flood zone development permit from Henderson County based on their plan. There will be no construction in the floodway. Actions are occurring in the flood fringe area only which is under County permit.
- Cemetery Access – The applicant has stated numerous times over the last twelve months that public access will be allowed and this has been included in the language of the agreement which provides clarification. There is only one (1) cemetery on the property that the applicant is aware of and it has been cleaned up and restored properly and a deed placed on it. Any additional cemeteries that may be found will not be disturbed but be protected.
- Ms. Brown (Beaver problems) – Mr. Lapsley knows where her property is but was unaware of any activity around it. He will meet with Ms. Brown and they will go to the site together and check out the problem. They are aware that there are beavers in the creek and they have migrated from an upstream area down closer to the Brown property. The permits the applicant has acquired to do stream restoration on Little River Creek should help. The project started approximately ten days prior.

Commissioner McGrady stated the primary reason that is motivating the developer to seek this agreement relates to the triples or quadplex issue. He asked Mr. Lapsley what parts of the current or former code needed to be in place for this development to go forward.

Mr. Lapsley deferred to Jay DeVaney, Council for Seven Falls, Inc.

Mr. Jay DeVaney stated, in addition to the items Mr. Lapsley had addressed, the developer does seek stability of the project. This is an extensive project that will take many years to work through all of the phases. It helps the developer to know that the rules today aren’t going to change tomorrow. It also helps the developer with any financing for the project. There is a State Statute that grants two (2) year vested rights without any offering of incentives to the County that are in the development agreement.

*Commissioner McGrady made the motion that the Board go out of public hearing. All voted in favor and the motion carried.*

#### **BREAK**

A short break was taken to change video tapes.

#### **CONTINUATION OF CONSIDERATION OF A DEVELOPMENT AGREEMENT FOR THE SEVEN FALLS GOLF AND RIVER CLUB**

Chairman Moyer called the meeting back to order. He stated that the Board was out of public hearing and open for discussion among the Board members in regards to the development agreement for Seven Falls.

Commissioner Young addressed the burning issue and burning bans. He had spoken with Fire Marshall Rocky Hyder and he said that burning permit was issued by the State Forest Service and that the developer had began burning a pile before the ban and the State Forest Service had allowed them to finish burning that pile after the ban.

Planning Director Anthony Starr highlighted proposed changes to the development agreement in response to the questions received. At the last meeting the Board had received changes in language by the County Attorney in regards to section 16 to address the construction of the fire station. There are two (2) new changes that were presented to the Board including language changes to section 4 (open space). At the last meeting some of the Board members expressed concern about the way that open space was defined and how it would count. The original language proposal by the developer would count all the golf course area and would still count most of it but the revised language is closer to what the definition is in the Land Development Code in that it is limited to pervious services located within the golf course. The second change would be the addition of number four (4) which would provide that any cemetery would have to be surveyed and submitted to the County within 90 days after the effective date of this agreement. Along with that survey they would provide restricted covenants that would provide for the permanent preservation and maintenance of those cemeteries and daily access by the public to the cemeteries.

In regards to the protected ridge ordinance, the paragraph attempted to put a specific number on the elevation for which they would be subject to. The statute does not establish twenty-four hundred feet it just establishes a distance from the ridge top to the adjacent valley floor. In section 13 in the middle of the paragraph it says "no vested rights are granted regarding any environmental ordinances including but not limited to any storm water ordinance, sedimentation and erosion ordinance, watershed protection ordinance, or similar ordinances hereafter adopted by Henderson County. If there are further environmental regulations adopted by Henderson County at some point in the future, this development would be subject to them.

*Commissioner Young made the motion that the Board approves the proposed development agreement subject to any condition and changes made today as part of this meeting and that the amendment to the development agreement be included. After discussion a vote was taken and the motion passed 4-1 with Commissioner McGrady voting nay.*

#### **PUBLIC HEARING – NEW ROAD NAMES**

*Commissioner Williams made the motion that the Board go into public hearing with respect to new road names. All voted in favor and the motion carried.*

Property Addressing Coordinator Curtis Griffin stated that two (2) new road names were being presented. One is a change from a previous name of Thermacraft Lane to Mossy Oak Lane and the second is a new road name, Old Southside Road.



**Public Input**

There was none.

*Commissioner Messer made the motion that the Board approves the new road name of Mossy Oak Lane replacing Thermacraft Lane and new road name Old Southside Road. All voted in favor and the motion carried.*

*Commissioner Williams made the motion that the Board go out of public hearing. All voted in favor and the motion carried.*

**COUNTY ATTORNEY'S REPORT**

There was nothing further at this time.

**COUNTY MANAGER'S REPORT**

The County Manager informed the Board that he should have the proposed budget to the Board by mid May or sooner.

Commissioner Messer gave an update on the NCACC District Meeting which he had attended. He felt that the States races were going to revolve to the counties. The number that NCACC provided could cost the counties as much as fourteen cents if everything were to go through. In his opinion it is obvious that the State is guilty of not spending the money wisely.

Chairman Moyer thanked the staff for their considerable effort put forth in the rededication ceremony of the Historic courthouse the prior weekend.

**IMPORTANT DATES**

Chairman Moyer reminded the Board that the special called meeting for the Sugarloaf School would be held April 17 at the school at 10:00 am.

**CANE CREEK WATER & SEWER DISTRICT - none**

**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 reasons:*

1. *(a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body.  
"NCDOT versus Henderson County"*
2. *(a)(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.*

*All voted in favor and the motion carried.*

*Commissioner McGrady made the motion that the Board go out of closed session. All voted in favor and the motion carried.*

**ADJOURN**

*Commissioner McGrady made the motion to adjourn at 12:35 pm. All voted in favor and the motion carried.*

Attest:

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Teresa L. Wilson, Deputy Clerk to the Board

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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

April 4, 2008

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

Re: Tax Collector's Report to Commissioners -04/16/08 Meeting

Please find outlined below collections information through April 3rd for the 2007 bills, as well as vehicle bills.

**Annual Bills G01 Only:**

2007 Total Charge: \$53,561,208.65  
Payments & Releases: 51,876,182.41  
Unpaid Taxes: 1,685,026.24  
**Percentage collected: 96.85%**  
(through 04/03/08)

**Motor Vehicle Bills G01 Only:**

2007 Total Charge: \$4,321,939.44  
Payments & Releases: 3,344,964.37  
Unpaid Taxes: 976,975.07  
**Percentage collected: 77.39%**  
(through 04/03/08)

**Fire Districts All Bills**

2007 Total Charge: 6,183,881.91  
Payments & Releases: 5,872,025.34  
Unpaid Taxes: 331,856.57  
**Percentage collected: 95.15%**  
(through 04/03/08)

Respectfully submitted,



Terry F. Lyda,  
Henderson County Tax Collector

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

**RESOLUTION ADOPTING *AD VALOREM*  
METHOD OF LOCAL OPTION SALES TAX DISTRIBUTION**

WHEREAS N.C. Gen. Stat. §105-472(b) empowers the Board of Commissioners of Henderson County to elect the method of distribution between Henderson County and its municipalities of local option sales tax revenues; and,

WHEREAS, the Board is convinced that the *ad valorem* method of distribution set out in N.C. Gen. Stat. §105-472(b)(2) is now most advantageous for Henderson County, allowing County government to best meet the various fiscal needs of its citizenry.

**NOW, THEREFORE, BE IT RESOLVED** that the Board of Commissioners of Henderson County hereby elects the *ad valorem* method of local option sales tax distribution for the fiscal year beginning 1 July 2008, pursuant to N.C. Gen. Stat. §105-472(b). **IT IS FURTHER RESOLVED** that a certified copy of this Resolution shall be delivered to the North Carolina Secretary of Revenue not later than fifteen (15) calendar days after adoption.


Unanimously adopted after motion, this the 16<sup>th</sup> day of April, 2008.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_

  
WILLIAM MOYER, Chairman

Attest: \_\_\_\_\_

  
Elizabeth W. Corn  
Clerk to the Board of Commissioners

[SEAL]

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

**RESOLUTION OF LOCATION  
OF REGULAR MEETING PLACE  
OF HENDERSON COUNTY BOARD OF COMMISSIONERS**

WHEREAS, the regular meeting place of the Henderson County Board of Commissioners has until this date been 100 North King Street, Hendersonville, North Carolina; and,

WHEREAS, the Historic Courthouse structure in Hendersonville has been renovated in order to return to it as the site of County government administration in Henderson County; and,

WHEREAS, such renovation is now complete, and the Historic Courthouse structure is ready to once again house County government administration; and

WHEREAS, N.C. Gen. Stat. §153A-40 allows this Board by resolution to set the regular place of its meetings.

**NOW, THEREFORE, BE IT RESOLVED** that the Henderson County Historic Courthouse, located at 1 Historic Courthouse Square, in Hendersonville, North Carolina is hereby named as the regular meeting place of the Henderson County Board of Commissioners, and absent further notice, all future regular meetings of said Board will occur in the Historic Courthouse structure.

Unanimously adopted after motion, this the 16<sup>th</sup> day of April, 2008.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: \_\_\_\_\_

  
WILLIAM MOYER, Chairman

Attest:

  
  
Elizabeth W. Corn  
Clerk to the Board of Commissioners