

DRAFT MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
JUNE 1, 2009**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Meeting Room of the Historic Courthouse on Main Street, Hendersonville.

Those present were: Chairman William L. Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, Commissioner Mark Williams, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, Attorney Russell Burrell, and Clerk to the Board Teresa L. Wilson.

Also present were: Associate County Attorney Sarah Zambon, Sheriff Rick Davis, Finance Director J. Carey McLelland, County Engineer Marcus Jones, Planning Director Anthony Starr, Assessor/Interim Tax Collector Stan Duncan, Code Enforcement Director Toby Linville, Recreation Director Tim Hopkin, Planner Parker Sloan, Planner Matt Cable, Soil & Water Conservation Director Jonathan Wallin, Erosion Control Division Chief Natalie Berry, Research/Budget Analyst Amy Brantley, Fire Marshall/Emergency Management Coordinator Rocky Hyder, Auxiliary Business Manager Bill Blalock, PIO Intern Christina DeStefano and Officer David Pearce (Security).

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Commissioner McGrady

INVOCATION

County Manager Steve Wyatt gave the invocation.

INFORMAL PUBLIC COMMENTS

There were none.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Moyer requested the addition of a discussion item - N.C. Education Lottery Fund Application, a third Closed Session item – legal advice from the attorney, and an important date – schedule a meeting with the NCDOT in regards to secondary roads. He further suggested flexibility to the order of discussion items.

Commissioner McGrady made the motion to approve the agenda with changes noted. All voted in favor and the motion carried.

CONSENT AGENDA

There were no adjustments or changes to the consent agenda.

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

The Consent Agenda included the following:

Minutes

Draft minutes were presented for board review and approval of the following meeting(s):

April 23, 2009 – Special Called Meeting

DATE APPROVED _____

May 4, 2009 - Regularly Scheduled Meeting
May 7, 2009 – Special Called Meeting
May 20, 2009 – Regularly Scheduled Meeting

Tax Collector's Report

Stan Duncan, Interim Tax Collector, had provided the Tax Collector's Report dated May 22, 2009 for the Board's information.

Financial Report/Cash Balance Report – April 2009

Included for the Board's review and approval were the County Financial Report and Cash Balance Report for April 2009.

The fiscal YTD deficit in the Travel & Tourism Fund is due to the current economic situation and less revenues being collected in months that travel/lodging business is typically slower resulting in less occupancy tax collections. The Travel & Tourism Fund budget includes \$173,957 in appropriated fund balance for the current fiscal year.

The fiscal YTD deficit in the CDBG – Shuey Knolls Project Fund, the Lewis Creek Restoration Project Fund and the Public Transit Fund are temporary due to the timing of actual expenditures and the subsequent reimbursement of the expenditures from grant funds in succeeding months.

Suggested Motion:

I move that the Board of Commissioners approves the County's April 2009 Financial Report and Cash Balance Report as presented.

Henderson County Public Schools Financial Reports – April 2009

Provided were the Henderson County Public Schools April 2009 Financial Reports for the Board's information.

Staff requested that the Board consider approving the School System's April 2009 Financial Reports as presented.

The suggested motion was:

I move that the Board of Commissioners approves the April 2009 Henderson County Public Schools Financial Reports as presented.

Western Highlands Area Authority – Quarterly Fiscal Monitoring Report (FMR) for the period ended March 31, 2009

G.S. 122C-117(c) requires the staff of the local area mental health authority to provide the County Finance Officer with the quarterly Fiscal Monitoring Report (FMR) within 30 days of the end of the quarter. The County Finance Officer is then required to provide the FMR to the Board of Commissioners at the next regularly scheduled meeting of the board. The FMR for Western Highlands Area Authority was received by the County Finance Officer on May 8, 2009.

Suggested Motion:

I move that the Board of Commissioners approves the Western Highlands Area Authority Fiscal Monitoring Report for the period ended March 31, 2009.

Home and Community Care Block Grant for Older Adults County Funding Plan

Each year the Board of Commissioners is required to adopt a Funding Plan for the Home and Community Care Block Grant for Older Adults and identify the lead office or agency responsible for coordinating the County Funding Plan. At this time, the Funding Plan for Fiscal Year 2010 is estimated to be \$722,595,

which is an increase of \$23,380 over the amount received in FY 2009. This is a State / Federal program administered at the local level. The proposed Funding Plan supports the service priorities identified for the current planning cycle.

Suggested Motion:

I move that the Board appoints the County Manager's Office as the Lead Agency and approve the proposed FY 2010 Funding Plan.

Changes to Nursing/Adult Care Home Community Advisory Committee Bylaws

The Committee reviewed its Bylaws at a subsequent meeting and suggested editorial changes to the Bylaws.

Suggested Motion:

I move the Board approves changes to the Nursing/Adult Care Home Community Advisory Committee Bylaws as presented with any changes noted by the Board.

Offer to purchase tax-foreclosed property

The Wildwood Gardens Homeowners Association, Inc., has offered to purchase two parcels of real estate which were subject to a tax foreclosure by the County.

TRACT ONE: The property is described as Lot 5-18, Wildwood Gardens Subdivision, 0.08 acres, deed book PIN 96-42999653, with a tax value of \$1,000.00. The offered price is the sum of Ten Dollars (\$10.00).

It is believed that this lot was originally foreclosed by the County in or before 2006.

TRACT TWO: The property is described as Lot 5-19, Wildwood Gardens Subdivision, 0.08 acres, deed book PIN 96-42999653, with a tax value of \$1,000.00. The offered price is the sum of Ten Dollars (\$10.00).

If the Board agrees to provisionally accept either of these offers (or both), it/they would be subject to advertisement in The Times-News and ten-day period for upset bids pursuant to your policy, adopted 29 June 2005. Although not required as a courtesy it is the custom of the County to also give regular mail notice to adjoining property owners.

Suggested motion:

I move that the Board provisionally accepts the offer of Wildwood Gardens Homeowners Association, Inc., to purchase the parcel described in this agenda item, subject to the procedures required by this Board for tax foreclosure sales.

Consideration of Proposed Transit Service Renewal contract and Amendment

Henderson County currently has a contract with Western Carolina Community Action, Inc. (WCCA) to provide transit service on the urban fixed route and the ADA required paratransit service. The agency maintains high customer service approval ratings, a low accident rate, and has satisfied all other provisions of its operating agreement with the County. The existing three year contract expires on June 30, 2009 and specifies an option to renew for up to five additional one year periods. WCCA submitted a price proposal and staff negotiated a 3% increase for FY 2010 and a 2% increase for FY 2011. Staff recommends approval of the attached renewal contract and amendment that provides the opportunity to extend the contract for longer than a one year period and sets forth billable rates through June 30, 2011.

Henderson County legal staff has reviewed the proposed renewal contract and amendment which extends the WCCA contract by two years for the period beginning July 1, 2009 through June 30, 2011. Based on anticipated service levels, the proposed rate is within the scope of the proposed FY 2010 budget.

Formal action by the Board of Commissioners is necessary to approve extension of the Contract with WCCA.

Suggested Motion:

I move that the Board of Commissioners authorize the County Manager to execute the proposed renewal contract and amendment, which establishes new rates for the service and extends the contract with WCCA through June 30, 2011.

Water Line Extension – Etowah Town Square

The City of Hendersonville has requested that the County comment on the proposed water line extension for Etowah Town Square. The proposed water line is 1285 linear feet. The project is located within the Rural Transition Area and a Commercial Service Center. This 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, were provided for Board review and action.

Action by the Board of Commissioners is needed to either grant or deny this request. If the Board decides to approve the requested extension the following motion has been provided.

Suggested Motion:

I move that the Board approve the Etowah Town Square water line extension and direct Staff to convey the County's comments to the City of Hendersonville.

Selection of Engineering Firm for Community Development Block Grant – Warm Company sewer line improvements

The 2008 Community Development Block Grant (CDBG) Infrastructure project will assist a Henderson County business, the Warm Company, in acquiring a sewer connection. The CDBG funds will provide for approximately 2,000 linear feet of gravity sewer main with a total project budget of \$200,000. As part of the procurement requirements associated with the grant, a Request for Qualifications (RFQ) for Engineering Services was advertised. A total of 8 firms submitted qualification statements.

After review of the engineering qualification statements received by the project scoring committee, it is recommended that the Board of Commissioners select William Lapsley & Associates, P.A. for the project engineering. Lapsley & Associates received the highest ranking and appears to be the most qualified firm to complete the project. Their strong reputation for quality work, extensive experience with civil engineering, CDBG grant projects, and familiarity with the project area stand out among the other firms. The submitted qualification statements are available in the Planning Department for inspection.

The Board has previously reviewed this project and approved the grant application. Planning Staff is now implementing the grant and no County matching funds are required.

Planning Staff requests that the Board select and authorize staff to contract with Lapsley & Associates, P.A., for engineering services pursuant to CDBG #08-C-1848.

Suggested Motion:

I move that the Board select Lapsley & Associates for the project engineering and authorize staff to enter into a contract for engineering services with Lapsley & Associates regarding infrastructure improvements pursuant to CDBG #08-C-1848.

Renewal of lease – National Bicycle League Inc.

This league would continue in effect the standing lease with the National Bicycle League, Inc. ("NBL"), for the operation of the "BMX" track located at Jackson Park. Several years ago, NBL constructed and has since

maintained the track, and has operated and supervised "BMX" events there. The current lease expires 30 June 2009. This lease would extend until 30 June 2012.

Suggested Motion:

I move that the Board approves the lease for the "BMX" track at Jackson Park with National Bicycle League, Inc., and authorizes the Chairman and staff to take such actions as are necessary to execute the same for the County.

Probation and Parole Lease in 1995 Courthouse

The current lease between Henderson County and the Department of Corrections (DOC), Probation and Parole for the space in the 1995 Courthouse expired February 2008. Since the expiration of the Lease, we have been continuing month to month at the last rate of \$1080.10 per month for approximately 1,543 square feet. Previously the Board responded to the renewal of the Lease with a proposed Lease closer to the market rate of \$1,543 per month. Mr. Ron Moore with DOC responded that their policy will only allow for an increase of 4% to \$1,123.30 which is reflected in the attached proposed Lease. DOC's proposed Lease is for three years: one year with two yearly extensions. The consideration of the Lease renewal has been on hold pending the resolution of the overcrowding problem in the 1995 Courthouse. Since Probation and Parole are not identified to relocate out the Courthouse, renewing the Lease is appropriate. Also note, the Leased square footage of Probation and Parole is for 1,543 sf which is less than the actual square footage occupied. From our space studies, they are occupying approximately 7,000 sf. Mr. Moore explained that the 1,543 reflects the space allocated per policy and the remaining space is provided by the County without compensation from the State and outside of the Lease. In addition to DOC policy, the Leased space is based on specific rooms in the Courthouse. These rooms are located within the Adult Probation area.

Staff requests that the Board consider approving the attached Lease for Probation and Parole for office space in the 1995 Courthouse.

Suggested Motion:

I move that the Board approves the Lease for Probation and Parole for office space in the 1995 Courthouse.

WCCA Community Service Block Grant Application

The Western Carolina Community Action (WCCA) FY 2009-2010 Application for funding for the Community Services Block Grant Program was provided. WCCA requested 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 3 of a 3-year cycle. No County funds are required to fund these programs.

The Board originally approved the application at the March 2, 2009 meeting. However, the State requested that WCCA make some changes to the application. Also, an additional \$16,000 has been added to the program at the federal level since the application was originally approved by the Board.

Staff recommends that the Board of Commissioners endorses WCCA's FY2008-2009 Application for Funding and authorize the Chairman to execute the required documents.

Suggested Motion:

I move that the Board endorses this application and authorize the Chairman to execute the required documents.

NOMINATIONS

Notification of Vacancies

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

1. Dana Communities Planning Committee – 9 vac.

Nominations

1. Alliance for Human Services – 1 vac.

Commissioner McGrady nominated Amy Brantley for position #1. *Chairman Moyer made the motion to accept the appointment of Amy Brantley to position #1 by acclamation. All voted in favor and the motion carried.*

2. Blue Ridge Community College Board of Trustees – 2 vac.

Commissioner Williams nominated for reappointment William Farrell for position #1 and Chip Gould for position #3. *Chairman Moyer made the motion to accept the reappointments by acclamation. All voted in favor and the motion carried.*

3. Cane Creek Water and Sewer District Advisory Committee – 5 vac.

Commissioner Messer nominated for reappointment Charlie Messer for position #1, P. Richmond Meadows for position #2, John W. Davis for position #3, Jeff Young for position #6, and Billy Johnston for position #7. *Chairman Moyer made the motion to accept the reappointments by acclamation. All voted in favor and the motion carried.*

4. Child Fatality Prevention Team – 1 vac.

Dr. Diana Curran, Chair of the committee had made a recommendation for nomination of Diana Sierra for position #6. Chairman Moyer nominated Diana Sierra for position #6 *and further made the motion to accept the appointment of Diana Sierra to position #6 by acclamation. All voted in favor and the motion carried.*

5. CJPP (Criminal Justice Partnership Program) – 2 vac.

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

6. Environmental Advisory Committee – 4 vac.

Commissioner McGrady nominated for reappointment Jeff Jennings for position #2, Ronald Ehlinger for position #4, and Jim Fickes for position #8. *Chairman Moyer made the motion to accept the reappointments by acclamation. All voted in favor and the motion carried.* Commissioner McGrady nominated for appointment Richard Freudenberger for position #6. *Chairman Moyer made the motion to accept the appointment of Richard Freudenberger to position #6 by acclamation. All voted in favor and the motion carried.*

7. Fire and Rescue Advisory Committee – 3 vac.

Commissioner McGrady nominated for appointment John Cudd for position #1 and Chris Moore for position #5. *Chairman Moyer made the motion to accept the appointment of John Cudd to position #1 and Chris Moore to position #5 by acclamation. All voted in favor and the motion carried.* Commissioner Messer nominated Jay Alley for position #7, which is a Committee nomination position. Fire Marshal Rocky Hyder recommended Bobby Dotson for position #7. The Fire and Rescue Advisory Committee would be given both names and bring a recommendation back to the Board.

8. Henderson County Board of Health – 4 vac.

Commissioner Young nominated for reappointment Jennie Y. Hernandez for position #4, Jack Romer for position #6, and Mr. Terry Hicks for position #10. *Chairman Moyer made the motion to accept the reappointments by acclamation. All voted in favor and the motion carried.*

Commissioner Young noted that position #11 was vacant at this time and recommended that this position be

designated as a Faith Community Member. Further discussions will be held in regards to this suggestion by the Board of Health.

9. Henderson County Historic Courthouse Corporation – 3 vac.

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

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

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

11. Historic Resources Commission – 2 vac.

Commissioner McGrady nominated Dries Jansma for position #7. *Chairman Moyer made the motion to accept the reappointment of Dries Jansma to position by acclamation. All voted in favor and the motion carried.*

12. Jury Commission – 1 vac.

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

13. Juvenile Crime Prevention Council – 22 vac.

Commissioner McGrady nominated for reappointment Rob Curtis for position #1, Nathan Stallings for position #4, Rodney Wesson for position #5, Rose Stouder for position #6, Ms. Jerrie McFalls for position #7, Selena Coffey for position #8, Bill Moyer for position #11, Sheila Devine for position #16, Joseph Glowacki for position #20, and Mary Murray for position #22. *Chairman Moyer made the motion to accept the reappointments by acclamation. All voted in favor and the motion carried.* Commissioner Messer nominated for appointment Michael Cox for position #3 and Linda Carter for position #19. *Chairman Moyer made the motion to accept the appointment of Michael Cox to position #3 and Linda Carter to position #19 by acclamation. All voted in favor and the motion carried.*

14. Library Board of Trustees – 1 vac.

Commissioner Young nominated for reappointment Morton Lazarus for position #4. *Chairman Moyer made the motion to accept the reappointment of Morton Lazarus to position #4 by acclamation. All voted in favor and the motion carried.*

15. Mountain Area Workforce Development Board – 2 vac.

Chairman Moyer nominated for reappointment Dr. Molly Parkhill for position #4 *and further motioned to accept the reappointment by acclamation. All voted in favor and the motion carried.*

16. Nursing/Adult Care Home Community Advisory Committee – 4 vac.

Commissioner McGrady nominated for reappointment Julianne Kilcullen for position #2, Dauna Donato for position #7 and Calvin Titus for position #9. *Chairman Moyer made the motion to accept the reappointments by acclamation. All voted in favor and the motion carried.* Chair Nuala Fay had recommended Everett Sauer for position #17 and Chairman Moyer made the nomination. *Commissioner McGrady made the motion to accept the appointment of Everett Sauer to position #17 by acclamation. All voted in favor and the motion carried.*

17. Senior Volunteer Services Advisory Council – 1 vac.

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

18. Smartstart – 1 vac.

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

Chairman Moyer noted that a number of applications have been received for the Dana Community Planning Committee and the plan is to begin making appointments at the July 6, 2009 meeting.

N.C. EDUCATION LOTTERY FUND APPLICATION

Finance Director Carey McLelland stated that official notification has been received that Henderson County would be receiving a lottery distribution. The amount was actually \$393,540.00 which is the largest distribution we have received in 2009 thus far.

Staff requested that the Board consider approving the N.C. Education Lottery Fund Application for \$398,697.37 to pay for current fiscal year debt service on the new Sugarloaf Road Elementary School project. There is no match requirement to pull down lottery funds. This application will be presented to the Board of Education for approval at their next possible meeting.

These funds have been budgeted as revenue in the current fiscal year to pay school debt service. An application to use lottery funds requires approval from both the Board of Commissioners and the Board of Public Education.

Commissioner Young made the motion that the Board of Commissioners approves the N.C. Education Lottery Fund application as presented. All voted in favor and the motion carried.

Mr. McLelland stated that if Henderson County had received an ADM distribution for the past quarter it would have been the same date. To date he has not received any official notification that those funds are going to flow from the State budget office. He is hopeful that it has just been delayed. We are running a deficit in that particular fund at this time.

Chairman Moyer asked the County Manager if ADM funds arrive if the Board would have to take action to withdraw them.

Mr. Wyatt responded that it would have to be approved and suggested that the Board go ahead and authorize the Chairman's signature.

Commissioner Williams made the motion that the Board authorizes sending the application for any ADM monies as soon as they become available, and that the application of withdrawal may be signed and submitted by the Chairman. All voted in favor and the motion carried.

SHOP/DINE HENDERSON COUNTY UPDATE

Bob Williford, President of the Henderson County Chamber of Commerce, updated the Board on the Shop/Dine Henderson County Campaign that began on November 23, 2008. The total budget for Shop/Dine was \$23,500.00. To date \$23,427.58 has been spend with \$72.42 remaining in budget.

RECOMMENDATION FOR COMMISSION APPOINTMENT OF CAP-DA LEAD AGENCY IN HENDERSON COUNTY

Community Social Services Program Administrator 2 Penny Summey stated that staff was making a recommendation of appointment for lead agency for the Community Alternative Program for disabled adults (CAP-DA).

The Board of Commission appoints: (a) a lead agency to administer the Community Alternatives Program for Disabled Adults (CAP-DA); and, (b) provides the NC Division of Medical Assistance (DMA) a letter of designation with effective date.

Weighing the following strengths, Park Ridge Hospital is recommended for appointment as Henderson County's CAP-DA lead agency:

- Mission includes community service development and outreach services
- Large, stable hospital with extensive medical resources and service depth
- Active participation and leadership in community-based services to elderly and disabled, including Partnership for Independent Living, Health Aging Coalition, and Home and Community Care Block Grant Committee
- Medicaid procedure and billing expertise and established working relationship(s) with state and county Medicaid office(s)
- Home health provider
- Capacity to directly contract with NC DMA and handle all transitional arrangements and requirements with Pardee and NC DMA

Diane Sedgwick, Director of Home Health Agency stated that Park Ridge Hospital is truly committed to the health and wellness of Henderson County and the community. This is an opportunity for them and blends in with what they are doing.

A request was made for the appointment of Park Ridge Hospital as lead agency to administer Henderson County's CAP-DA Program.

Commissioner Williams made the motion that Park Ridge Hospital be appointed as CAP-DA lead agency for Henderson County and a letter of designation be sent to the NC Division of Medical Assistance with the effective date of July 1, 2009. All voted in favor and the motion carried.

REVIEW SPECIAL INTENSITY ALLOCATION (SIA) APPLICATION WD-2009-04-01, SUBDIVISION FOR EXISTING FLAVOR 1ST GROWERS AND PACKERS INC.

Commissioner Mark Williams requested that he be recused from both SIA Applications as he is employed by Flavor 1st Growers and Packers, Inc., the applicant.

Chairman Moyer made the motion that the Board grants Commissioner Williams request to be recused from participation and voting on WD – 2009-04-01 and WD – 2009-04-02. All voted in favor and the motion carried.

Natalie Berry presented the first application submitted by Brian D. Rose, President, on property located in Mills River Township, for approval of a subdivision of an existing parcel of land where an existing business is located (331 Banner Farm Road) on March 31, 2009. The existing business Flavor 1st Growers & Packers, INC has an existing structure with associated parking and sidewalks. The total impervious surface is 120,546 Square Foot. The application (Brian D. Rose, President) has proposed to recombine two parcels and then re-subdivide to clean up property boundaries of the existing business. The applicant request that the two proposed tracts be subdivided such that tract "One" being 8.99 acres and remaining tract "Two" will be combined to another tract in application WS-2009-04-02 to create a second tract for Flavor 1st Growers & Packers, INC. Tract "One" is the tract requesting a Special Intensity Allocation (SIA) permit. Tract "B" will request a Special Intensity Allocation (SIA) permit under separate application. The proposed Tract "One" meets all criteria set for a SIA permit.

The applicant proposes to resurvey the property to include the entire manufacturing plant and associated parking to be on one parcel of land.

History of Property

The property received a Special Intensity Allocation permit on June 1, 2004. Impervious surface was 57 percent at that time and 3.12 acres was removed from the allocation. On April 19, 2005, Mountain Bean Growers applied for a watershed permit to expand the manufacturing plant. The applicant had brought a new survey combining three parcels together to create one single parcel at 24.41 acres. The watershed permit was issued and the impervious surface was at 14 percent. March 31, 2009, the applicant requested a Special

Intensity Allocation permit to redefine the property boundaries. The current property boundaries according to on-line GIS on March 31, 2009 were shown. There is a discrepancy on parcel boundaries: Plat 5450 recorded April 19, 2005 has all three parcels combined. On-line GIS does not reflect that recorded plat. The newly created parcel will be 8.99 acres. The previous 3.12 acres will be placed back into the allocation prior to removing 8.99 acres if approved. The impervious surface would be 69 percent.

Category 3 has a total of 25.593 acres; this application removes 8.99 acres from the total if approved. Since the original 3.12 acre parcel already applied for an SIA in 2005, I added back this amount so as not to remove the same 3.12 acres twice. This would leave 19.723 acres for future projects located in the WS-III Balance of Watershed district. The Watershed Administrator recommends approval of project as submitted.

Commissioner Young made the motion that the Board approves the application for Special Intensity Allocation WD-2009-04-01 (WS-III Balance of Watershed) for Flavor 1st Growers and Packers INC. as submitted. The vote passed 4-0 with Commissioner Williams being recused.

REVIEW SPECIAL INTENSITY ALLOCATION (SIA) APPLICATION WD-2009-04-02, SUBDIVISION FOR EXISTING FLAVOR 1ST GROWERS AND PACKERS INC.

Natalie Berry presented an application by Brian D. Rose, President, on property located in Mills River Township, for approval of a subdivision of an existing parcel of land where an existing business is located on March 31, 2009. The proposed business Flavor 1st Growers & Packers, INC has an (12,000 Square Foot) building with associated parking and sidewalks (171,765 Square Foot). The total impervious surface is 183,765 Square Foot. The application (Brian D. Rose, President) has proposed to combine two parcels to create the new boundary for the proposed business. The applicant request that the two proposed tracts be subdivided such that tract "Two" being 15.42 acres will be the result. Tract "Two" is the tract requesting a Special Intensity Allocation (SIA) permit. Tract "One" will request a Special Intensity Allocation (SIA) permit under separate application. The proposed Tract "Two" meets all criteria set for a SIA permit.

The applicant proposes to construct a new manufacturing plant and associated parking on one single parcel. April 19, 2009 the applicant brought in a new survey combining three parcels together to create one single parcel at 24.41 acres. March 31, 2009 the applicant requested a Special Intensity Allocation permit to redefine the property boundaries and construct a new manufacturing plant. There is a discrepancy on parcel boundaries: Plat 5450 recorded April 19, 2005 has all three parcels combined. On-line GIS does not reflect that recorded plat. The newly created parcel will be 15.42 acres. The impervious surface would be 27 percent.

Terry Baker with Associated Land Surveyors, representing Flavor 1st, stated that they now have plans to build a new building on the parcel which will not connect with the other building. The first part will be a storage type facility with room to be able to add on or add another building in the future. This will clean up the boundary lines as one building was built on the property line.

Category 3 has a total of 19.723 acres; this application removes 15.420 acres from the total if approved. This would leave 4.303 acres for future projects located in the WS-III Balance of Watershed district.

The Watershed Administrator recommends approval of project as submitted.

Commissioner McGrady inquired if this application is approved, what would happen when the remaining Watershed III area is gone.

Ms. Berry responded building stops. It goes back to 24% which is allocated by right. There would 4.3 acres left if this application is approved unless she reclaims some that does not get built on.

Commissioner McGrady made the motion that the Board approves the application for Special Intensity Allocation WD-2009-04-02 (WS-III Balance of Watershed) for Flavor 1st Growers and Packers INC. as submitted. The vote passed 4-0 with Commissioner Williams being recused.

IMPROVEMENT GUARANTEE EXTENSION FOR PHASE I AND IIA OF THE SEVEN FALLS GOLF AND RIVER CLUB DEVELOPMENT

Anthony Starr stated that on July 2, 2007 the Board of Commissioners issued an improvement guarantee for Phase I of the development known as Seven Falls Golf and River Club. The developer posted with the County an irrevocable letter of credit in excess of \$6 million to cover the cost of the improvements (\$5,067,470) and required 25% contingency (\$1,266,867). The Developer proposed completing improvements on or before June 1, 2008. The developer completed an estimated \$1.4 million of the \$5 million in improvements during the period from June 1, 2007 through June 23, 2008.

On July 23, 2008 Planning Staff issued an improvement guarantee for Phase IIA and which provided an extension of improvement guarantee approval for the remaining improvements in Phase I. The developer posted with the County a bond in the amount of \$6 million to cover the cost of the remaining improvements in Phase I (\$3,662,550) and the required improvements in Phase IIA (\$1,094,350) with a required 25% contingency (\$1,189,225). The Developer proposed completing improvements on or before June 1, 2009.

Mr. Bill Lapsley of William G. Lapsley and Associates, representative to the developer, Keith A. Vinson, Manager of Seven Falls, L.L.C. are requesting a two-year extension of the improvement guarantee for Seven Falls Phases I and IIA. The applicant has indicated the reason for the extension request is incomplete improvements resulting from lengthy delays in obtaining water and sewer system approvals. The Developer's intent is to include much of this subsurface water and sewer infrastructure beneath the internal road network which has prevented any road work beyond grading.

The developer would be required to post with the County a bond or irrevocable letter of credit in the amount of at least \$5,926,374 to cover the cost of remaining improvements \$4,741,100 (\$3,646,750 in Phase I; \$1,094,350 in Phase IIA) and the required 25% contingency (\$1,185,274). The applicant is requesting the ability to complete the improvements on or before July 1, 2011.

Planning Staff recommends the Board of Commissioners grant a one year extension of the existing improvement guarantee for Phase I and IIA to complete the improvements. Planning Staff recommends an extension requests be granted at one year intervals to evaluate the progress of the improvements. The Board has the authority to execute the bond at which point the County or a bonding company would be overseeing the remaining improvements; approximately \$5 million worth on the site. A lot of time would be involved managing this and he was not certain this would be an ideal scenario but was a consideration.

Chairman Moyer noted that the developer of Seven Falls has turned over the site for the fire station which they committed to do to the fire department; the deed will be recorded tomorrow and ownership of the land will be in the fire department. The builder for the station is hopeful to move relatively soon on the station. It was indicated that the water and sewer would also be started shortly.

Attorney Russ Burrell stated that both houses of the legislature have passed legislation that would extend all of the permits that have already been granted for Seven Falls for a period at least through 2010. There is some difference in the two houses language and this should be ironed out in conference committee. You are dealing with a situation where the odds are very good that the legislature is going to extend the permits that you have already granted without any further action by the Board. This agenda item is only for the improvements guarantees that are authorized and will continue to be authorized.

Commissioner McGrady asked if this were specific legislation to Seven Falls or general legislation specific to all developments in North Carolina.

Mr. Burrell stated it was legislation to all developments in North Carolina.

Commissioner McGrady questioned if the original approval of this subdivision came forward as a vested rights proceeding.

Mr. Burrell responded that there is a development agreement which is contractual vested rights.

Commissioner McGrady questioned if the Board extends the improvement guarantee would they not be extending the underlying agreement regarding development.

Mr. Burrell stated this is true though the legislation in the legislature expressly extends those types of agreements as well basically into 2010.

Commissioner Moyer supports the 1 year but to make sure we are protected, as part of the motion that the new bond would be in the County's hand at least 10 days and have a chance to verify it before the old bond expires.

Mr. Starr explained that as a matter of practice, planning staff requires that any letter of credit or bond be 45 days past our agreement date.

Commissioner McGrady made the motion that the Board grants a one year extension of the existing improvement guarantee for Phases I and IIA of the Seven Falls Golf and River Club Development, extending approval through June 1, 2010. All voted in favor and the motion carried.

FY2009-2010 BUDGET DISCUSSIONS

County Manager Steve Wyatt stated that on May 22, Selena Coffey and Amy Brantley put together a list of outstanding budget issues that came along during the discussions at the workshop. Thirteen issues were identified and others may have arisen since that time.

1. Along with Board direction to "unfreeze" currently frozen Social Services position, the Board asked to continue discussion regarding the proposed elimination of 2 positions within that department for the upcoming fiscal year: Volunteer Services Coordinator and Computer Support Technician. Social Services asked that these positions be funded as Income Maintenance Caseworker positions. Funding for these 2 positions is estimated at \$87,772.
2. The Sheriff's Department has requested that the county fund the repair or replacement of the fiber link between the E911 Center and the Historic Courthouse that was severed during utilities work approximately 3 years ago. Staff estimates this to cost approximately \$28,605.
3. As the Board discussed at the workshop, the 1995 courthouse does not have adequate back-up power to provide electricity to the courthouse (specifically the information technology infrastructure house there) and detention center. Staff requests that the Board discuss the addition of funds for a generator to power these functions as this is an emergency operations issue. Cost estimates for this are to be determined.
4. The Public Schools have communicated to the County that the state will be cutting its share of funding for school resource officers. The school system anticipates the difference in the contract of this to be an amount up to \$68,648. The Board may wish to subsidize the program to this level.
5. The Board discussed considering whether to "unfreeze" all currently frozen positions for the upcoming fiscal year. The estimated expense associated with unfreezing these positions is approximately \$493,995.
6. Due to the uncertainty in the economy and given last year's high fuel costs, staff budgeted for \$4.00 per gallon for fuel. These costs are allocated with the various departmental budgets.
7. The County has been approached by the Partnership for Economic Development regarding the use of a portion of the old Chamber of Commerce building on King Street for its office use.

8. At the workshop, the Board asked staff to bring back the amount of debt service remaining for the 6th Avenue Clubhouse.
9. Per the Board's request, staff has obtained estimates for paving and graveling the currently grassed space behind the Human Services Building. This space is currently being used as overflow parking for staff.
10. The public school system has asked the Board to consider funding their entire expansion requests for current and capital.
11. The Board is being asked to consider freezing the respective capital appropriation to the public schools until a determination has been made as to whether the state is taking the County's ADM funds. This amount is estimated at \$449,889.
12. The County has received notification that our property and liability insurance premium is expected to be reduced in the upcoming budget year.
13. The Board of Commissioners has now received the tax study report and asked that this issue be discussed in light of potential reorganization of the tax functions (assessor, collections, reappraisal) under one department.

County staff received late notification that we will receive an additional \$5,997 in Home and Community Care Block Grant funds in the upcoming fiscal year. Staff requests that the Board approve this addition to expenditures and revenues as there are no County dollars in this program. Additionally following information explains a change that has been requested in the overall County budget or funding for this program.

FY 2009-2010 Budget

Outstanding Issues carried from May 20th Budget Workshop

1. Two DSS positions recommended for elimination: Volunteer Services and Computer Support	Addition to budget	\$87,772
2. Repair/replace fiber link between E911 Center and Historic Courthouse	Addition to budget	\$28,605
3. Back-up generator for IT and Detention Center	Addition to budget	To be determined
4. School Budget appropriation for School Resource Officers. HCPS has budgeted \$257,859 in State At-Risk funds for four Sheriff's SROs at North, East and West High Schools and one at Balfour. Funding from the state for SROs is currently \$37,838 per school, so for four locations is \$151,352. The current funding formula of \$37,838 per SRO will be cut by the state next year, but the amount is unknown.	Possible addition to budget	Up to \$68,648
5. Status of currently frozen but funded positions following adoption of FY2020 budget	Currently funded - Subtraction if cut	\$493,995*
6. Fuels costs – amount per gallon used to compute budgeted allocation. \$4.00 a gallon used. \$850,000 total fuel budget, \$752,000 in General Fund.	If reduced it would decrease	Each \$.025 cent incremental reduction = \$47,000
7. Economic Development / Chamber Building	Net deduction	\$17,199
8. Payoff schedule for debt service on the 6 th Avenue Clubhouse	Current balance is \$197,547.61. Annual debt service payment = \$34,012 with final payment in FY2015	
9. Health Department Overflow Parking Lot	Addition to budget	Gravel = \$11,000 Pavement = \$25,000
10. Schools expansion request		Current = \$187,017 Capital = \$345,000

11. Freezing appropriation of capital funding to schools based on State ADM decision	Reduction if froze	\$449,889
12. Property/Liability Insurance reduction	Possible reduction	\$210,306
13. Tax Function consolidation	To be determined	

Frozen/Funded Positions in Fy2009-2010 Budget*

<u>Department</u>	<u>Position</u>	<u>Position #</u>	<u>TOTAL</u>
County Manager	Administrative Assistant	403002	\$60,301
Human Resources	Benefits Coordinator	405004	\$66,501
Garage	Vehicle Mechanic	420002	\$44,250
Animal Services	Office Assistant III	438010	\$35,981
Health	Phy Ext	351002	\$87,851
Health	Public Health Nurse II	351011	\$60,799
Health	Foreign Language Interpreter	351012	\$35,559
Library	Librarian II	611010	\$54,606
Revaluation Reserve	Property Appraiser	417009	\$48,148
	TOTAL		\$493,9

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Additional Issues/Amendments to Budget as proposed May 4, 2009

<u>Account</u>	<u>Item</u>	<u>Amount</u>
115513-569900	Home and Community Care Block Grant Expenditure	\$5,997
114313-455001	Home and Community Care Block Grant Revenue	(\$5,997)
115402-569900	WCCA Grant Match – 100% funding toward administrative local match	\$0
	Total \$	\$0

Changes to the inspections fee schedule requested by staff to more accurately reflect how commercial inspections are calculated.

<u>ITEM</u>	<u>FEE</u>
Commercial – Fees are based on dollar value of each building	
For the first \$10 million in value of each building	\$7.00 per \$1000.00 + \$50.00 (\$50.00 minimum)
For value over \$10 million for each building	\$3.50 per \$1,000.00
Renewal Fee	50% of original fee
Private on-site water and sewer systems	\$50.00
Straights – Electrical, Plumbing, Mechanical	\$50.00
Re-inspection Fee	\$50.00
Minimum Inspection Fee	\$50.00
Penalty for starting work without permit	100.00 + double permit fee

County Manager Steve Wyatt addressed an additional item. They have been negotiating Property liability insurance and we see a possible savings at renewal of \$210,000.

BREAK

A break was taken in order to change video tapes.

PUBLIC HEARING – 2008 COMMUNITY DEVELOPMENT BLOCK GRANT (#06-C-1600) CLOSEOUT FOR SHUEY KNOLLS PHASE III

Commissioner McGrady made the motion that the Board to go into public hearing. All voted in favor and the motion carried.

Planner Parker Sloan stated in 2006 the Board of Commissioners partnered with Habitat for Humanity by

applying for and receiving a Community Development Block Grant (CDBG, Grant # 06-C-1600) in the amount of \$189,840.00. The CDBG Housing Development project assisted Henderson County Habitat for Humanity to increase the amount of affordable housing available to county residents. In 2008, the Board of Commissioners approved Phase III for the Shuey Knolls. The CDBG funds provided 1,200 linear feet of water line and road improvements to serve 21 homes in Phase III of Shuey Knolls. The County began the request for proposal process in 2008 and the project was completed in the spring of 2009. A public hearing is required to formally closing out the grant.

Staff provided a brief presentation on the Shuey Knolls Phase III project to the Board. In 2006 the Board of Commissioners partnered with Habitat for Humanity by applying for and receiving a Community Development Block Grant (CDBG, Grant #06-C-1600) in the amount of \$189,840.00. These funds were used to assist Habitat for Humanity's Shuey Knolls development by increasing the amount of affordable housing available to county residents.

The increasing popularity of Henderson County as an area to relocate or retire to has created a shortage of affordable housing ownership and rental options for low/moderate residents of the area. The Asheville Metropolitan Statistical Area (MSA), of which Henderson County is part, has one of the highest rates of housing cost increases in the country. In many instances, the only affordable housing ownership option is manufactured housing, which does not build the equity like stick built or modular units. Henderson County Habitat for Humanity's Shuey Knolls subdivision is one attempt to offset the affordability housing gap within the county by building quality single family housing that is both affordable and builds equity for low/moderate income residents.

In July 2003 the Planning Board approved the Master Plan for the Shuey Knolls neighborhood project. Shuey Knolls neighborhood is a phased development. Over a five year period, approximately eighty (80) new single family homes, and the infrastructure needed to support the new construction will be built for sale to low to moderate residents of Henderson County.

In 2008, the Board of Commissioners approved CDBG funding for Phase III of Shuey Knolls.

The Phase 3 project assisted Habitat for Humanity in providing 1,200 feet of water line and road improvements to serve 21 homes. Increasing Henderson County's affordable housing stock.

The County began the request for proposal process in 2008 and the project was completed in the spring of 2009.

The project came in well under budget and the scope of work was increase to maximize use of the grant. As a result, additional site stabilization improvements were installed. This change will allow for better water quality and reduced long term costs in the future.

When Phase three is completely built out, the homes will look similar to the homes in Phase two.

There is one more Phase left in Shuey Knolls and construction should start sometime soon in 2009. Henderson County Habitat for Humanity's Shuey Knolls subdivision is just one attempt to offset the affordability housing gap within the county by building quality single family housing that is both affordable and available for low or moderate income residents.

The Shuey Knolls neighborhood is located in Edneyville on the south side of US Hwy. 64 and is adjacent to the new Edneyville Community Center that will also benefit community residents.

No action is required by the Board.

Public Input

There was none.

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

PUBLIC HEARING – FY2009-2010 BUDGET PUBLIC HEARING

Commissioner Messer made the motion that the Board to go into public hearing. All voted in favor and the motion carried.

The purpose of this public hearing is to receive citizen input on the FY 2009-2010 Budget.

Chairman Moyer stated the rules with respect to comment. Each citizen would be allowed to speak for four (4) minutes.

Public Input

1. Karen Mathieson – Ms. Mathieson teaches at Hendersonville High School and spoke on behalf of the teachers of Henderson County. These are challenging times. Our legislatures are charting waters that are unknown or at least unfamiliar to them and there are very unsure as to the course of state. People are afraid of the unknown. Teachers tend to be optimistic by nature and they know something about learning. It is human nature to pay closer attention and learn quicker when there are emotions involved. Rather than stand around wringing our hands, teachers in Henderson County have decided to adapt a new motto “A Challenge is a terrible thing to waste”. Educators call it learning opportunities. They know how to recognize them, utilize them, and teach them with valuable lessons. That’s what teachers are about. However, they who are not the policy and decision makers can only continue to function as teachers and citizens and role models in our schools and in our community when they have faith in our decision makers. They have faith in their superintendent, their senior staff, and their school board; and they have faith in the Board of Commissioners, who is charged with the responsibility of funding our schools. The teachers wish the Board of Commissioners could spend more time with them so that they could really see what it takes to make a difference. The teachers know how difficult it is for the Commissioners to make wise decisions with fewer resources and they want the Commissioners to know that they sincerely appreciate all they do. The teachers respect the process that the Board goes through to make the good decisions. In teaching school, the teachers work in a culture of waiting their turn, not having enough, using it carefully, using less of it, making do with or without it, and finally making something out of nothing. Talk about reduce, reuse and recycle, they were green before it became fashionable. They are not complaining, they just need to know that the Commissioners are there for them and then the teachers can help the Commissioners to create a sense of calm and confidence in these troubled times. The teachers have no money to hand out to solve financial problems but they can show others how to have faith in our democratic systems by continuing to find those learning opportunities and accepting the challenges (by teaching). From Henderson County teachers, Ms. Mathieson thanked the Board for their willingness to make the difficult decisions and leadership.
2. William Alexander – Mr. Alexander appeared on behalf of Grant investment Group, LLC. Mr. Rick Grant was present also to make comment. Specifically they were concerned with the schedule of building permit fees that the Board normally adopts as part of the budget process. They are not concerned about what will be taken from the county budget, rather what they will be putting into it.
3. Rick Grant – Mr. Grant is a local general contractor, developing a large project in Henderson County. Recently when they were putting their budgets together, he became very quickly aware that Henderson County’s building fee schedule, unlike most other municipalities, is not a graduated fee schedule. It is very much in line for lower cost projects with surrounding municipalities but it apparently never contemplated a project the size of his with the first part at \$77 million. When they calculated the building permit fee cost it quickly got their attention when it was over \$500,000 for the permit fee. They then compared this to other local municipalities and it is four times the cost in Buncombe County, two

times the cost in Asheville and three times the average cost across the state in the areas they looked at. The Planning Department was made aware of this and Anthony Starr has worked with them and held several meetings with them. The budget the Board is considering has a reduced fee schedule for larger projects, however they still believe that this fee schedule is not equitable. They do not wish to make a negative impact on the county. They want to cover the county's cost for doing the inspections for their project but they don't believe that the new schedule which requires them to pay three times the fee in Buncombe County or two times the state average is equitable. They do not believe that the county's cost will be anywhere close to these fees based on the many years of experience they have in the building industry. Within the next couple of days he would have a memo to each Commissioner stating their position and their fact finding analysis. He provided a handout that contains the fees as calculated in the other municipalities throughout the state. He feels this issue should have further discussions and hopes the Board will allow further discussions with them before approval of this part of the budget. Mr. Alexander concluded with the following: The North Carolina legislature clearly authorizes the Board to establish reasonable and necessary fees to defer cost in building inspection. They respect this and this project in no form or fashion wants to be a negative drain on county resources. They want to pay the cost for inspections but believe there is a method that can be discussed and applied which would prevent them from essentially paying the equivalent of impact fees.

4. Linda Block – Ms. Block coordinates the Lead Poisoning Prevention Program serving both Buncombe and Henderson County. Ms. Block provided a grant proposal which was submitted for funding. This non-profit has been in existence for thirteen years and has been in Henderson County for the last five years. This program is used to try to prevent lead poisoning. They work together with the Henderson County Health Department. The Health Department works with children who already have lead in their system. Ms. Block stated that their proposal is to continue and increase inspections that they are doing in homes in Henderson County. Houses built before 1978 with small children are at risk. If this program is funded they can inspect the houses for free. More public education is needed; they do some in Henderson County however they are based in Asheville. In order to do inspection they use a piece of equipment called x-ray fluorescence spectrometer. This piece is an antique and has become obsolete this year. It continues to function and function quickly. By placing it on an object it x-rays through the object and detects any lead. The normal amount of lead in a human body is 0. Young children are especially susceptible to getting effected by lead. After visiting homes approximately 2/3 have done some action to order to improve their homes after the inspection is complete. Ms. Block is asking for funding to help buy a new XRF. The cost is approximately \$22,000 and they have raised approximately one half of it. They are asking Buncombe County and Henderson County for funds to help them to continue doing what they do and increase their services in Henderson County. They plan to do more outreach to the medical community and educate more doctors and nurses. Children are supposed to be tested on a regular basis for lead. She doesn't feel that this is being done enough in Henderson County as only 65% of the children are being tested and it should be 100%. Medicaid requires 100%. They offer education to contractors; the people who renovate old homes are poisoning themselves and the owners if they do not know how to do it correctly. A new law will force them to get training by April, 2010. (Chairman Moyer recommended that Ms. Block approach United Way or the Community Foundation for assistance) Ms. Block responded that they had received \$7000 toward the XRF from the Community Foundation. (Chairman Moyer further recommended the Alliance for Human Services who normally does the Henderson County Human Services funding.) Ms. Block responded they had not.
5. Paul Trani – Dr. Trani is a pediatrician at Blue Ridge Community Health Services in Henderson County. He has worked closely with Linda Block in the Lead Poisoning Prevention Program since he began practice in Henderson County four and one half years ago. He was not trying to convince the Commissioners to be pro or anti-lead poisoning; no one is pro lead poisoning. As a medical doctor he previewed some of the salient features of lead poisoning. Most people realize that lead is toxin and does not belong in the body. One of the more interesting things coming out in medical literature currently is information about chronic low level exposure to lead and its affect on the growing brain; specifically behavioral developmental and intelligence programs that are associated with children who have chronic low level exposure to lead. The Health Departments in both Buncombe and Henderson County operate

on the current standards set by the US Department of Health of an elevated lead level being ten micrograms per deciliter. This is considered to be a lead intoxication, not a poisoning, but could be detrimental to a child's health or development. This program goes a step beyond as they start working with families for children who have lead exposure levels between five and nine micrograms per deciliter. The Health Departments do not do site visits to try to help prevent the continued chronic exposure to lead in their homes. It is important that we are testing children on a regular basis for lead exposure. Statistics are available for the rates of testing done in various pediatric and family practices for both counties for the past thirteen years. The Lead Poisoning Prevention Program provides home visits, bilingual languages of the families being served, and free of cost.

6. Adrienne Weir – Ms. Weir is with the Lead Poisoning Prevention Program. She has been with them for three years. There is a new regulation by EPA; renovation, remodeling and paint maintenance regulation that should be in full force by April 22, 2010. This regulation was partially motivated because of the correlations that have been shown over the years between children's lead exposure, renovations being performed in their house or being in an environment where a renovation has been performed and proper safe guards were not taken into account when the work was done. There is lots of research coming out in recent years about aging and the affects of occupational lead exposure. There are correlations between dementia, cataracts, kidney disease, and high blood pressure in the aging population that had been previously exposed occupationally. A large number of people are affected by lead dust left behind. They want to continue being a resource for the whole community.

Commissioner Young made the motion for the Board to go out of public hearing. All voted in favor and the motion carried.

Chairman Moyer noted that the agenda contemplates a proposed schedule that has not been approved by the Board yet. The Board will be considering it later. The Board will finish discussion items and return to the agenda. The agenda proposes that there be a thorough discussion of all issues and then an additional meeting be set next week to approve the budget. The Board has pushed this back in order to get as much information as possible from the state but we still do not have all of the information. If a dire situation should occur we have until June 30 to complete the budget and it could be put off until that date.

RECREATION FEES: NON-COUNTY RESIDENT FEES

Recreation Director Tim Hopkin stated that staff has been asked to research the issue of charging differential fees for out-of-county residents and limiting the number of hours for usage of recreation facilities per individual (such as shelters, fields, amphitheater and community centers). The Recreation Department currently charges a \$15 participation fee for non-county residents for its programs, but does not charge a non-county resident fee for reservation of fields, shelters or community centers.

In its research, staff has determined that Buncombe County and the Town of Black Mountain charge non-resident fees for the use of their facilities, but other neighboring jurisdictions do not.

In its research, staff has determined that it would be appropriate to charge a non-county resident fee for the rental of athletic facilities (such as fields and courts), shelters and community centers, as well as limiting the amount of time that these facilities can be reserved to a 4-hour block of time per individual/group. The only exception would be for a full-day field rental for tournaments or other major sporting events. Additionally, staff proposes that a \$20 fee be assessed for non-county residents for these reserved facilities. This fee will be charged in addition to the normal fee. Proof of in-county address will be verified by Recreation staff. The fee schedule is attached for the Board's reference.

After lengthy discussion, the Board agreed that the non-county resident facility rental fee should be \$100 in addition to the regular fees.

Chairman Moyer made the motion that the Board of Commissioners approves the changes to the Recreation Department fee schedule in the FY 2010 budget to incorporate the non-county resident fee of \$100 for rental of facilities as well as the 3-hour time limit for facility reservations. Chairman Moyer amended his motion for rental of shelters to a 4-hour time limit for facility reservations. The vote passed 4-1 with Commissioner Messer voting nay.

Chairman Moyer asked that the Recreation Advisory Board study the capacity problem and see if they can find ways to address the problem.

MAINTENANCE OF EFFORT (MOE) FUND ALLOCATION

County Manager Steve Wyatt stated that Henderson County's FY 2009 budget included \$528,612 for the provision of mental health services. At the November 3, 2008 meeting, the Board of Commissioners allocated \$440,000 of those funds, but left a contingency balance which equals \$88,612.

Staff has sent out a funding availability notice to the local providers, requesting that they submit a letter outlining any request for additional MOE funding, as well the amount being requested for the remainder of the grant cycle, which runs from November 1, 2008 through October 31, 2009. The following agencies submitted requests by the due date:

Agency	Amount Requested	Amount Recommended
Blue Ridge Community Health Services	\$ 12,000	\$ 0
Henderson County Health Department	\$ 29,500	\$ 28,612
The Free Clinics	\$ 50,000	\$ 40,000
Vocational Solutions	<u>\$ 30,000</u>	<u>\$ 20,000</u>
TOTAL	\$121,500	\$ 88,612

Additionally, a draft lease between Henderson County and 6th Avenue Psychiatric Rehabilitation Partners was provided for the Board's consideration. The annual lease amount specified is for \$70,332. Staff recommends the Board approve the proposed lease as attached, and authorize the appropriation of fund balance in this amount, currently being held with Western Highlands LME, be appropriated to 6th Avenue Clubhouse to cover the lease payment.

The Board is requested to determine the allocation of the remaining Maintenance of Effort funds, and direct Staff to distribute those funds. The Board is further requested to approve the attached lease between the County and the 6th Avenue Clubhouse, and to authorize the appropriation of \$70,332 in fund balance currently being held with Western Highlands LME to 6th Avenue Clubhouse to cover the lease payment.

Mr. Wyatt stated that there is a strong indication that the legislature is looking at Mental Health LME fund balances as part of the State's larger budget. This indicates that the mental health fund balance will disappear and will end of being part of the state's budget.

Chairman Moyer made the motion that the Board approves the allocation of \$88,612 in Maintenance of Effort funds as recommended and further moved that the Board approves the lease with the 6th Avenue Clubhouse as presented, and authorize the appropriation of \$70,332 in fund balance currently being held by Western Highlands LME. All voted in favor and the motion carried.

BUDGET DISCUSSIONS CONTINUED

VETERAN'S CLINIC

Chairman Moyer noted that we have been working to try to get a veteran's clinic in Henderson County and try to improve the quality of their service. Possible ways were an extension of Pardee Hospital, separate location, and the old Health Department building (no longer an option). The information we have received

back from the Senator's offices, Health Shuler and the veterans is that because of the proximity to the Veteran's Hospital in Asheville, they may someday look at this but there are many places that have much greater distance (and they determine based on distance) and greater need than we do and the foreseeable future does not look positive. One of the issues is when veteran's go to Asheville it is normally a full day and transportation through Apple Country is usually not satisfactory. A concept that is being looked at is using some funding where you would have a dedicated van that would take Veteran's to the Veteran's Hospital in Asheville and wait to bring them back. No cost figures are available at this time.

BREAK

A break was taken to change video tapes.

IMPORTANT DATES

Chairman Moyer made the motion that the Board schedules a Special Called Meeting on Tuesday, June 9, 2009 at 7:00 p.m. to discuss budget issues. All voted in favor and the motion carried.

Commissioner McGrady made the motion that the Board schedules a Special Called Meeting on Monday, June 29, 2009 at 3:00 p.m. to discuss budget issues. All voted in favor and the motion carried.

Commissioner McGrady made the motion that the Board cancels the Regular Scheduled Meeting on June 17, 2009. All voted in favor and the motion carried.

CONSTRUCTION CONTROL CORPORATION – PROJECT MANAGEMENT

Chairman Moyer stated that the Board has been trying to deal with the issue of not having a project manager. This would also involve the maintenance issues and capital projects with the schools, not to do the job for them, but to have someone to work with them representing the Board, and keep us informed for good coordination in order to come out where we both want to be.

County Manager Steve Wyatt shared a copy of a project management proposal from the Construction Control Corporation. He met with two individuals with Construction Control the prior week and based on the Board's interest in looking at the cost effectiveness of the building programs that the County Commissioners approved in April, we asked for a proposal for construction control to look at different things they could bring to the table as far as project management cost control and those type of things. This is not the cost for one person.

1. Owner Representation by providing a Project Manager for two or possibly three days a week to protect the County's interest on their building projects;
2. To implement a Cost Management Program to both reduce and control building costs; and
3. To provide complete Construction Program Management Services and assume the overall management responsibility for the building program.

Owner Representation Services

Provide a highly qualified Project Manager who is acceptable to the County and is qualified to provide all of the duties listed in the list provided, Description of Owner Representation Services. This individual will serve as your project consultant and devote an average of two or three days per week (at BOC option) to your building program. This service is offered for the following total cost:

Two days per week	\$ 9,236
Three days per week	\$12,632

This cost included all travel, secretarial support and report printing costs. In addition, it includes central office technical support for their Project Manager. Their staff will be available to support the Project Manager with any technical problems that may require additional assistance.

Their role will be to see that you get everything that you are paying for, that you do not pay more than you should. Their Project Manager serves as your advocate, completely committed to looking out for your interests and keeping you fully informed.

Cost Management Program

As a rule, if you do not reduce costs during the design phase, then you do not reduce costs. To effectively reduce costs and assure keeping the designs within their budgets, the Cost Management Program needs to be done during the design phase. For this program they are recommending the following services:

Schematic Design Cost Review – This is a review of the Architects design and schematic design estimate. It relates to evaluating options, providing value engineering input and making early decision on major design systems such as structural, architectural, mechanical and electrical.

Design Development Estimate – The schematic design is largely conceptual and of necessity, usually includes a number of assumptions. At the end of the design development phase, the design is sufficiently complete and most of the assumptions have been eliminated. The design development estimate is a detailed quantity survey estimate which confirms where the project currently stands on cost and serves as the basis for the major value engineering review. This should be considered the most important estimate.

Major Value Engineering Review- This occurs at the completion of the design development phase and is an in-depth review of all aspects of the design. When changes are recommended to reduce costs that represent a change in quality, they are supported by a life cycle evaluation to show any impact on operating, maintenance, and replacement costs.

Full Construction Program Services

Construction Control Corporation assumes the responsibility for the management and success of your building program. They manage the program; handle the problems and details while keeping you fully informed and bringing to you any questions or issues that require Owner decisions. They work as an extension of our staff. During construction, they provide a full time on-site Senior Site Manager and full time on-site Clerk/Contract Administrator located in an office trailer on one of the construction sites. They assign a Senior Project Manager who will support the Senior Site Manager and visit the site every two weeks. The Project Manager will handle all reporting and see that all of their management procedures are being followed.

Additional information was provided in a handout.

Chairman Moyer stated that this information would require a lot of reading, thought, and study. There are many implications of which way to go. He felt that the Board talked mostly about having them involved as an owner/representative to work as the Board's eyes and ears and work with the County Manager. Most of the rest of this information has been put on the table by them.

Mr. Wyatt stated that Mr. McClure and one of his engineering staff members would be here on Thursday and Friday and also Monday evening to get with the Board in individual sessions.

REQUEST FOR ARCHITECT QUALIFICATIONS

Chairman Moyer was concerned that a Request for Qualifications for the Henderson County Law Enforcement Center was on our website prior to approval of the budget. He did not feel that this type of request would go out without the Board being aware. Also, the Law Enforcement Center was lumped with all of the other county projects into one large project and this should require discussion of the Board. He felt that a lot of the projects could be done by local architects as they were small projects.

County Manager Steve Wyatt stated that when the Board instructed staff, and his interpretation “approved the projects – gave the go ahead” they developed a schedule to enable the county to proceed after the beginning of the fiscal year knowing that it was subject to the availability of funds that would be contingent on the final option of the budget. Staff developed the RFP that ran through the month of May. There is a five or six person review team that will go over and rank the six responding firms in the month of June and report back to the Commissioners in July. He thought it was in the first of May that he communicated to the Board that their idea was to bundle the projects together in the effort to secure cost savings with the architectural fees. This was communicated in the Manager’s Communication. Conversations he had with folks in the industry, given the size of the smaller projects, by bundling with the larger projects it would enable us to get down into the tentative target of a 5% fee. The decision obviously will be the Board’s decision but to get us to the position to where we can bring the information to the BOC’s after the beginning of the fiscal year, we have moved along based on the actions taken at the April 23 meeting. In the Capital Facilities meeting we discussed and the Board voted on about a half dozen individual type issues. The ones that were voted for were packaged in an effort to try to save the fees because there will be some architectural services that are necessary in each of the projects. Again, this was communicated to the Board around the first of May. It will be the Board’s decision if you decide to unbundle them. In the April motion it was to move forward with the planning and to include that in the budget. The money for planning part of the Law Enforcement Center is in the proposed next year’s budget. It has not been approved yet but staff wants to be in a position, should the Board approve the budget, to move ahead in a timely and cost effective manner. The Board has the discretion to recommend a different course of action. Mr. Wyatt noted that he did not receive any feedback contrary to the communication that he sent to the Board about the idea of bundling them to try to save money. With no feedback he authorized the engineer to move forward.

Chairman Moyer stated that Mr. Wyatt had spoke with him about it and he thought that it would be unfair to the local architects and he did not feel that the Board would sit well with it based on the policy adopted to try to help local firms where ever possible.

Mr. Wyatt stated this was after they had put the RFP’s out.

Commissioner Williams felt that some of these issues were discussed earlier and at that time the Board did authorize the County Manager to go ahead with the planning part of the Law Enforcement Center. We need to move forward in a timely manner to take advantage of where we are. In terms of architects, he questioned if the Board was tying themselves up as far as the discretion of the work being done.

Commissioner Messer was not aware it was all going to be bundled.

Mr. Wyatt discussed the design and planning stages. He stated that RFQ’s can be resented and the projects can be broken down into smaller parcels.

Commissioner Young understood that we were going to look at the architectural and engineering part of the new Law Enforcement Center to have it “shovel ready” for the 2010 budget cycle so that while the window on construction is still open at a lower square footage price and while the interest rates are lower, we would be ready to go after we retire the \$3 million of debt service payments next year.

Commissioner Williams understood the same and the following year he thought an additional \$2.2 million would be coming off of the debt servicing. The plans would be laid and if we choose to go forward that we would be ready to go forward quickly. He would like to see the smaller projects broken out to provide options for local construction companies to take part.

Commissioner McGrady was surprised about the RFP’s and spoke with the County Manager. Mr. Wyatt directed him back to the May report and the direction being taken was evident. Mr. McGrady had not

responded to it. He does not see any harm in what has occurred but the Board will have information that they may not act on.

Chairman Moyer felt that there was an issue.

Commissioner Williams would like to see a total figure in regards to the budget, and work off of that figure from where we presently are and then as we go through each item see where it puts us.

STAFF REPORTS

County Attorney's Report

There was nothing further at this time.

County Manager's Report

There was nothing further at this time.

IMPORTANT DATES CONTINUED

Commissioner McGrady made the motion that the Board schedules a Special Called Meeting on Tuesday, July 14, 2009 at 9:00 a.m. for discussion of secondary roads with the NCDOT. 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(s):

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, which privilege is hereby acknowledged. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to a claim.
2. (a)(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.
3. (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.

ADJOURN

Commissioner McGrady made the motion to adjourn the meeting at 11:05 p.m. All voted in favor and the motion carried.

Attest:

Teresa L. Wilson, 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

May 22, 2009

Henderson County Board of Commissioners
1 Historic Courthouse Square; Suite 1
Hendersonville, NC 28792

Re: Tax Collector's Report to Commissioners – 06/01/09 Meeting

Please find outlined below collections information through May 21st for the 2008 bills mailed out on August 15th, as well as registered motor vehicle bills. As a point of reference, we also have included collections information as of the same date last year.

Annual Bills G01 Only:

2008 Total Charge \$55,850,131.09
Payments & Releases: 54,393,861.16
Unpaid Taxes: 1,456,269.93
Percentage collected: **97.39%**
(through 05/21/09)

2007 Total Charge: \$53,561,208.65
Payments & Releases: 52,351,546.04
Unpaid Taxes: 1,209,662.61
Percentage Collected: **97.74%**
(through 05/21/08)

Motor Vehicle Bills G01 Only:

2008 Total Charge: \$4,141,471.05
Payments & Releases: 3,509,712.43
Unpaid Taxes: 631,758.62
Percentage collected: **84.75%**
(through 05/21/09)

2007 Total Charge: \$4,661,615.19
Payments & Releases: 3,893,022.37
Unpaid Taxes: 768,592.82
Percentage collected: **83.51%**
(through 05/21/08)

Fire Districts All Bills

2008 Total Charge: \$6,541,099.23
Payments & Releases: 6,291,395.63
Unpaid Taxes: 249,703.60
Percentage collected: **96.32%**
(through 05/21/09)

2007 Total Charge: \$6,225,928.09
Payments & Releases: 5,991,813.83
Unpaid Taxes: 234,114.26
Percentage collected: **96.38%**
(through 05/21/08)

Respectfully submitted,



Carol McCraw,
Deputy Tax Collector

Stan C. Duncan,
Interim Tax Collector

PARKS AND RECREATION

Item	Fee
Youth Sports	
Youth Sports Leagues/Clinics/Classes (Individual participants)	\$30/\$35/\$45/\$55/\$65/\$100
Children's Camps	
Sports Camps	
Half Day	\$45/\$55/\$65
Full Day	\$90/\$100/\$110
Summer Day Camp	\$100.00
Teen Adventure Camp	
Per week	\$110.00
Day Trips	\$30/\$45
Adults Programs	
Adult Sports Leagues/Clinics/Classes (Individual participants)	\$30/\$35/\$45/\$55/\$65/\$100
Adult Softball (Team Fee)	\$465/\$475/\$550
Adult Tennis	\$5/\$10/\$20/\$40
Senior Games/Silver Arts	\$15
General Programs/Events & Other	
Recreation Center Programs	\$3/\$5/\$20/\$25/\$27/\$35
Special Event Fees	\$1/\$5/\$10/\$15/\$20/\$25/\$30
Outdoor Rec Workshops	\$15 - \$65
Non-County Resident Fee (participation fee for out of county residents)	\$15
Facility Rental Fees	
Non-County Resident Facility Rental Fees	\$100.00 per rental period
Small Shelter: Jackson, Dana, Edneyville – Flat Rate Fee (4 hour period)	\$30.00
Large Shelter: Jackson, E. Flat Rock, Etowah – Flat Rate Fee (4 hour period)	\$40.00
Dana Community Center (Fee + \$125 security deposit - 4 hour period)	
Rental Fee	\$100.00 + \$125.00 security dep.
2 hours or less (for meetings)	\$35.00 + \$125.00 security dep.
Edneyville Community Center (Fee + \$125 security deposit - 4 hour period)	
Rental Fee	\$100.00 + \$125.00 security dep.
2 hours or less (for meetings)	\$35.00 + \$125.00 security dep.
Amphitheater (Fee + \$50.00 security deposit - 4 hour period)	
Up to 4 hours	\$55.00 + \$50.00 security dep.
Full Day	\$110.00 + \$50.00 security dep.
Ballfield Rental	
Per field	\$100.00
Per Game/Hour Per Field (2 hour limit)	\$35.00
Ballfield Rental for Tournament	
Per field per day	\$125.00
Soccer Field Rental (Regulation Size)	
Per field	\$100.00 per day
Per Game/Hour Per Field (2 hour limit)	\$25.00
Tennis Court Rental	
Per court	\$5.00 per hour
Outside Sports Organizations	
Little League Baseball	\$10.00 per player/per season
Girls Youth Softball	\$10.00 per player/per season
Middle School Baseball Program	\$13.00 per player/per season
Jackson Park/EFR/Etowah Park Ballfield Practice Reservation	\$10.00 per hour
Park Wide Sporting Events (Non-Designated Athletic Fields)	\$150.00 per day

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

HENDERSON COUNTY TRANSIT RENEWAL CONTRACT
AND AMENDMENT

This Agreement made and entered this the 1st of June, 2009, by and between **Henderson County**, a body politic and corporate under the laws of the State of North Carolina (hereinafter the "COUNTY") and **Western Carolina Community Action** (hereinafter the "SERVICE PROVIDER"), a nonprofit organization is a renewal of the original agreement signed on August 1, 2006 by the parties and the Memorandum of Understanding dated April 19, 2007.

Witnesseth

WHEREAS the County and the Service Provider have had an agreement for transit services since August 1, 2006;

WHEREAS the County is desirous to contract with the Service Provider for the continuance of these services; and

WHEREAS the previous agreement allows the County and the Service Provider to renew the Agreement;

NOW THEREFORE, for valuable consideration and mutual promises, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **DURATION:** This renewal agreement shall last for two years from July 1, 2009 to June 30, 2011. This is an amendment from the original contract that allowed five one-year renewals. After this renewal the original contract may be renewed for a total of three additional years.
2. **HOURS AND RATE:** The following table shall reflect the cost rate and approximate number of revenue hours for this renewal agreement:

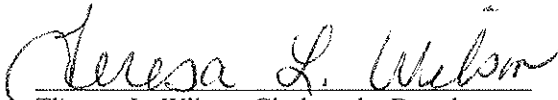
	FY2010	FY2011
Transit Revenue Hours (Not to Exceed)	9,144	9,180
Cost per Revenue Hour	\$44.28	\$45.30
Paratransit Revenue Hours (Not to Exceed)	1,800	1,800
Paratransit Cost per Revenue Hour	\$36	\$36.3

3. ORIGINAL TERMS: All terms established in the Original Agreement except as modified above, shall remain in effect for the duration of this Agreement.

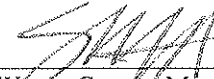
IN WITNESS WHEREOF, each party has caused this Amendment to be duly executed on the day and year first above written and if corporate, by their duly authorized representative.

On this the 1st day of June, 2009.

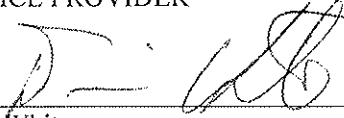
Attest:


Theresa L. Wilson, Clerk to the Board
(official seal)

HENDERSON COUNTY

By: 
Steven Wyatt, County Manager
Henderson County

SERVICE PROVIDER

By: 
David White,
Executive Director, WCCA, Inc



STATE OF NORTH CAROLINA
COUNTY OF HENDERSON POIK

TERESA

I, Theresa L. Wilson, Notary Public of the County and State aforesaid certify that Steven Wyatt personally came before me this day and acknowledged that he is the County Manager of the Henderson County, a corporation and body politic, and that by authority duly given the foregoing instrument was signed in its name by the County Manager and attested by me as its Clerk.

WITNESS my hand and notarial seal this 2nd day of JUNE, 2009

Notary Public: Theresa L. Wilson
Print or type name: TERESA L. WILSON
My Commission Expires: 10/15/2011

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Notary Public of the County and State aforesaid certify that DAVID WHITE personally came before me this day and acknowledged that he is the Exe. DIR. of Western Carolina Community Action (WCCA), a lawful corporation under the regulations of North Carolina, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by himself as its Exe. Director

WITNESS my hand and notarial seal this 3RD day of JUNE, 2009.

Kathleen R. Scanlan
Notary Public:
KATHLEEN R. SCANLAN
Print or type name:
10-24-2010
My Commission Expires:

PRE-AUDIT CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act N.C.G.S. 159-28(a)

By: Carey McLelland
Carey McLelland
Henderson County Finance Director

Date: 8/1/09

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made this the 1st day of ~~April~~ ^{June}, 2009, by and between Henderson County, a body politic and corporate having its principal office located at 100 North King Street, Hendersonville, NC 28792 (the "Lessor") and the National Bicycle League, Inc. a non-profit Ohio corporation located at 3958 Brown Park Drive, Suite D, Hilliard, OH 43026 (the "Lessee"):

WITNESSETH:

WHEREAS, Lessor is the owner of that parcel of land consisting of 244 acres, more or less known as Jackson Park, located in Hendersonville, North Carolina; and

WHEREAS, Lessor, by and through its Parks and Recreation Department, is desirous of pursuing alternative forms of recreation for its citizens, in particular its children and youth; and

WHEREAS, the Lessee is desirous of continuing to operate a non-motorized bicycle dirt track in Henderson County, specifically within Jackson Park and has requested to lease property within Jackson Park for such a purpose; and

WHEREAS, the Lessee has operated such a dirt track within Jackson Park pursuant to a lease with substantially identical terms as contained herein since at least 2004; and,

WHEREAS, N.C.G.S. 160A-272 and 153A-176 authorize the Lessor to lease any property for such terms and upon such conditions as Lessor may determine if the Lessor determines that the property will not be needed for the term of the lease, by adopting a resolution authorizing the execution of the lease upon 10 days public notice describing the property to be leased, stating the annual rental or lease payments and announcing Lessor's intent to authorize the lease at its next regular meeting; and

WHEREAS, that portion of Jackson Park formerly known as Field 8, consisting of approximately 2.2 acres is the current location for a non-motorized bicycle dirt tract; and,

WHEREAS, the parties wish to extend their current lease for a period up to and including 30 June, 2012.

NOW THEREFORE THIS LEASE, that for and in consideration of the annual rental sum of \$1.00 and the mutual promises as contained herein below, Lessor hereby leases to Lessee the Leased Premises as defined herinbelow.

IT IS FURTHER STIPULATED AND AGREED AS FOLLOWS:

1. The term of this Lease shall be for the period commencing the date of its execution, and ending on 30 June, 2012.
2. The Leased Premises shall consist of that portion of the Jackson Park Property formerly known as Field 8 as shown on the map attached hereto as Exhibit A, and incorporated by reference as if fully set forth herein, consisting of approximately +/- 2.2 acres, more or less (the

"Leased Premises"). It is hereby understood and agreed to by Lessee that this Lease shall not, now or in the future, entitle Lessee to expand the Leased Premises in any manner.

3. Lessee's use of the Leased Premises shall be limited to the construction and operation of a non-motorized bicycle dirt track and for no other purpose. To this end, at no expense to Lessor, Lessee shall cause to be constructed a non-motorized bicycle dirt track on the Leased Premises (the "BMX Track"), designed in accordance with the generally applicable standards of Lessee. Lessor shall be required to operate the BMX Track and conduct practice events and racing events during the BMX season in accordance with the frequency and duration generally conducted for BMX racing facilities, but not less than two evenings per week for practice events, and one evening per week for racing events during the BMX season. If Lessee is unable to conduct a practice event or racing event during a particular week, Lessee can request that the requirements of this Paragraph 3 be waived for that particular week. Lessee shall notify Lessor of cancellations if more than one event is cancelled in succession. The Parks and Recreation Director shall have the authority to consent to such a waiver in writing, said consent to not be unreasonably withheld. Additionally, if Lessee's inability to comply with the requirements of this Paragraph 3 is due to weather conditions, said consent shall be presumed. The failure of Lessee to conduct the operations of the BMX Track with the specified duration and frequency during the BMX season shall be grounds for immediate termination of the Lease by the Lessor if not corrected by Lessee within thirty (30) days of being notified by Lessor of Lessee's non-compliance with this Paragraph 3.

4. Lessee shall be solely responsible for the operation, supervision, and maintenance of the BMX Track, and all facilities associated therewith. The operation of the BMX shall be in accordance with the following limitations and privileges:

a. Absolutely no motorized vehicles, motorcycles, dirt bikes, or other motorized equipment shall be used in any racing event, practice event or other use of the BMX Track. However, the Lessee shall be permitted use of a motorized four-wheeled quad cycle when deemed necessary by Lessee for the sole purpose of track maintenance.

b. Lessee shall surround the BMX Track and the Leased Premises with a secured, gated, and locked fence, the location and height to be determined and agreed upon by Lessor by and through its Parks and Recreation Director and Lessee. The existing fencing was removed by the Parks Department; fencing will be replaced when feasible by either the Lessor or by the Lessee.

c. Lessee, and Lessee's guests and invitees, shall be entitled to use the existing parking areas adjacent to the Leased Premises; however such use must be coordinated with the Lessor by and through its Parks and Recreation Director, or his/her designee. Lessee will notify Lessor when a large event is being held at said premises to coordinate additional parking. Attendees for local events shall have the right to use said adjacent parking on an as needed basis by submission of a race/practice schedule to Lessor

d. Lessee shall operate and maintain the Leased Premises and the BMX Track in a safe manner, in accordance with the generally applicable standards of Lessee. Additionally, Lessee shall be required to keep the Leased Premises clean and neat, mowed, and free from debris, trash and litter. Lessee shall be required to remove all debris, trash and litter from the areas surrounding the Leased Premises, including but not limited to the parking areas, resulting in the operation of the BMX Track.

e. Lessor will be responsible for mowing the parking areas and other areas adjacent to the Leased Premises.

f. Lessee shall be responsible for adopting rules and regulations governing the use of the BMX Track, including the hours of operation. However, Lessee shall coordinate the operation of the BMX Track, including racing events, practice events, and public programs with the Henderson County Parks and Recreation Director so as not to unreasonably interfere with other programs or events being held within Jackson Park.

g. Lessee shall appoint local personnel as its agent for the supervision, operation and maintenance of the BMX Track. Lessee shall notify Lessor in writing of the name of Lessee's authorized agent.

h. Lessee shall annually conduct a minimum of four public programs for the Citizens of Henderson County, at least two of which shall consist of open event days. Lessee shall coordinate these public programs with the Henderson County Parks and Recreation Director or his/her designee. Lessee may charge a nominal fee to the participants of these public programs to cover the expenses associated therewith, including, but not limited to, insurance costs, maintenance and cleanup costs, operational costs, trophies, ribbons and prizes. During open events the public is invited to use the BMX facility upon signing a completed waiver in a form and executed in a manner acceptable to Lessor as a one day trial basis without receiving NBL BMX points, awards or prizes unless fees are collected to cover costs of such awards and prizes.

i. Except for the public programs to be offered by Lessee, use of the Track shall be limited to NBL licensed members on scheduled practice days, competitive events, and workshops.

j. Lessee shall be responsible for all costs and expenses associated with the operation of the BMX Track, including but not limited to insurance costs, personnel costs, racing officials, public relations, advertising, public utilities (including water, sewer, and electricity), and any other sales, use or other taxes or fees that may be legally due and owing to any governmental agency for the operation of the BMX Track. Lessee may charge a nominal fee to the participants of these public programs to cover the expenses associated therewith, including, but not limited to, insurance costs, maintenance and cleanup costs, operational costs, trophies, ribbons and prizes.

k. Lessee shall have the sole right to provide concessions and vending on the Leased Premises to benefit the BMX Track. In addition, Lessee may hang advertising banners on the fencing surrounding the Leased Premises, or within the Leased Premises, as allowed by local laws.

l. Since the track is an athletic facility for use by children and young adults, the use of alcoholic beverages is prohibited. Lessee shall be required to post and maintain signs stating this prohibition. Lessee shall remove persons refusing to cooperate.

m. Lessee shall not discriminate among participants in the operation of the BMX Track on the basis of race, religion, creed, national origin, sex, or physical or mental handicap unless such physical or mental handicap shall be deemed by Lessee to potentially cause injury to the participant or other participants.

- n. Lessee shall operate the lease in conformance with all applicable Federal, State, and Local laws, rules, regulations and/or ordinances.
5. It is understood by Lessee that the Leased Premise is located directly on top of an old solid waste dump, and Lessee hereby assumes all risk resulting therefrom, except further pollution liability associated with the operation of the BMX Track on the Leased Premises.
6. It is understood and agreed that the operation of a BMX racing facility is a public purpose which could be conducted by Lessor pursuant to N.C.G.S. 153A-444 and N.C.G.S. 160A Article 18. Therefore the operation of the BMX Track by Lessee in accordance with the requirements and limitations of this Lease for the entire Term of this Lease shall be good, valuable and sufficient consideration for this Lease. Lessee shall therefore operate the BMX Track to provide alternative recreation programs for the citizens of Henderson County. It is understood; however, that use of the track shall not be limited solely to citizens of Henderson County, conduct racing events on the BMX Track which are sanctioned by Lessee, on a local, regional, statewide, and/or national basis.
7. Lessor, upon the construction of the BMX Track in accordance with the terms of the Lease and performing all of the stipulations, agreements, and covenants, shall and may peaceably and quietly have, hold, and enjoy said premises during the Term, free from adverse claims of any person, firm or corporation, except that noise associated with the programs and activities being held within Jackson Park shall not be a breach of this Lease by Lessor.
8. Lessee shall not have any authority to sublease the Leased Premises in whole or in part, nor to assign this Lease for any purpose without the express written consent of Lessor.
9. Lessee shall make an annual report to the Hendersonville County Parks and Recreation Advisory Board during the month of January of, 2009, 2010, 2011 and 2012 concerning the operation of the BMX Track. This report shall include, but not limited to, the programs offered, races conducted, number of participants, fees charges, and other related accomplishments or matters connected with the BMX Track.
10. Lessee shall procure and maintain throughout the term of this Lease and any extensions or renewals thereof at its own expense such public liability and other insurance as will protect the Lessee, the Lessor, its officers and employees from any claims for damages to property and for bodily injuries, including death, which may arise from the operation of the BMX Track by Lessee. A Certificate of Insurance shall be delivered to the Lessor before proceeding under this Lease (and annually thereafter) and shall be subject to the approval of the Lessor for adequacy and for form of protection. Said Certificate shall name the Lessor, its officers and employees as additional insureds. Insurance requirements under this license shall be Two Million Dollars (\$2,000,000.00) combined single limit for bodily injury and property damage and shall include the following types of coverage:
 - a. Comprehensive General Liability
 - b. Premises Operations
 - c. Products/Completed Operations
 - d. Contractual
 - e. Independent Contractors
 - f. Broad Form Property Damage
 - g. Personal Injury
 - h. Participant Injury Liability

i. Participant Accident Coverage

Participant Accident Coverage with a deductible of not more than One Thousand Dollars (\$1,000.00), and providing accidental death benefits and medical excess, each in the sum of Three Thousand Dollars (\$3,000.00)

Certificates of Insurance shall include a thirty (30) day notice of cancellation to the Lessor, Attn: Parks and Recreation Director, 801 Glover Street, Hendersonville, NC 28792.

11. It is understood and agreed that Lessee is neither an agency nor an agent of Lessor and Lessee is not responsible for any operations of Lessee, nor for the operation of the BMX Track.

12. Lessee agrees to indemnify, defend and hold harmless Lessor, its officers, agents and employees for any acts or omissions of Lessee, its officers, agents, employees and volunteers, and from any loss, damage and liability arising out of the construction, reconstruction, configuration, and/or operation of the BMX Track by Lessee, its officers, agents, employees, and volunteers.

13. This lease shall continue until its expiration on 30 June, 2012 unless sooner terminated as provided for below. If at any time, Lessee breaches any provision contained herein, Lessor shall have the right to terminate this Lease upon seven (7) days written notice to Lessee's authorized agent. Additionally, Lessee shall have the right to terminate this Lease upon thirty (30) days written notice to Lessor. At the expiration or termination of this Lease, Lessee shall be responsible for returning the Leased Premises to its original condition, immediately preceding the commencement of this Lease, and shall surrender the Leased Premises to the Lessor.

14. This Lease shall be construed in accordance with the Laws of the State of North Carolina.

15. A memorandum of this Lease may be recorded in the Register of Deeds Office in Henderson County, North Carolina.

16. This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understanding or written or oral agreement between the parties respecting the within subject matter.

17. No modification, amendment or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly approved and executed by the parties.

18. No waiver by the parties of any default or breach of any term, condition or covenant of this agreement shall be deemed to be a waiver of any breach of the same or an other term, condition or covenant.

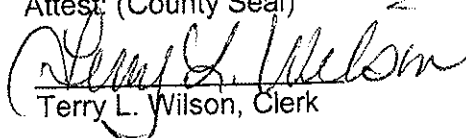
19. It is further understood and agreed that the stipulations, agreements, and covenants herein contained are binding upon the parties hereto and their respective successors and assigns.

Both parties have caused this Lease Agreement to be duly approved and executed in duplicate, each to constitute an original, the last party having executed this Lease Agreement on this the date stated above.

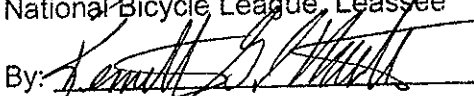
HENDERSON COUNTY, Lessor

By: 
William L. Moyer, Chairman

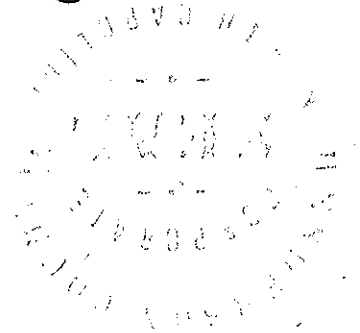
Attest: (County Seal)


Terry L. Wilson, Clerk

National Bicycle League, Lessee

By: 
~~Bob Tedesco~~
~~Managing Director~~

KEN MASTERS
PRESIDENT



**APPLICATION
PUBLIC SCHOOL BUILDING CAPITAL FUND
NORTH CAROLINA EDUCATION LOTTERY**

Approved: _____

Date: _____

County: Henderson County

Contact Person: J. Carey McLelland

LEA: Henderson (450)

Title: Finance Director

Address: 113 N. Main St., Hendersonville, NC 28792

Phone: 828-697-4821

Project Title: Debt service on financing used for new Sugarloaf Rd Elementary School

Location: Henderson County

Type of Facility: Elementary School

North Carolina General Statutes, Chapter 18C, provides that a portion of the proceeds of the North Carolina State Lottery Fund be transferred to the Public School Building Capital Fund in accordance with G.S. 115C-546.2. Further, G.S. 115C-546.2 (d) has been amended to include the following:

(3) No county shall have to provide matching funds...

(4) A county may use monies in this Fund to pay for school construction projects in local school administrative units and to retire indebtedness incurred for school construction projects incurred on or after January 1, 2003.

(5) A county may not use monies in this Fund to pay for school technology needs.

As used in this section, "Public School Buildings" shall include only facilities for individual schools that are used for instructional and related purposes, and does not include central administration, maintenance, or other facilities.

Short description of Construction Project: Current fiscal year debt service on financing used for construction of a new elementary school.

Estimated Costs:

Purchase of Land _____	\$ _____
Planning and Design Services _____	_____
New Construction _____	_____
Additions / Renovations _____	_____
Repair _____	_____
Debt Payment / Bond Payment _____	<u>398,697.37</u>
TOTAL _____	\$ <u>398,697.37</u>

Estimated Project Beginning Date: May 2006

Est. Project Completion Date: August 2008

We, the undersigned, agree to submit a statement of state monies expended for this project within 60 days following completion of the project.

The County Commissioners and the Board of Education do hereby jointly request approval of the above project, and request release of \$ 398,697.37 from the Public School Building Capital Fund (Lottery Distribution). We certify that the project herein described is within the parameters of G.S. 115C-546.

(Signature — Chair, County Commissioners)

(Date)

(Signature — Chair, Board of Education)

(Date)