

**DRAFT**

4/11/11

MINUTES

CC: BOC  
Steve  
Selena  
Russ  
Christy

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
MONDAY, APRIL 4, 2011

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

Those present were: Chairman Michael Edney, Vice-Chairman Tommy Thompson, Commissioner Bill O'Connor, Commissioner Larry Young, Commissioner Charlie Messer, County Manager Steve Wyatt, Assistant County Manager Selena Coffey, Attorney Russ Burrell, and Clerk to the Board Teresa Wilson.

Also present were: Public Information Officer Christy DeStefano, Finance Director J. Carey McLelland, Planning Director Anthony Starr, Construction Manager David Berry, Real Property Supervisor Nick Mazzarella, Delinquent Tax Collector Lee King, Research/Budget Analyst Amy Brantley, Associate County Attorney Sarah Zambon, Sheriff Rick Davis, and Captain Steve Carter.

CALL TO ORDER

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

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Angelina Branche of the Henderson County Hawks 4-H Club.

INVOCATION

Pastor Rick Auten of the Etowah United Methodist Church gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

*Commissioner Messer made the motion to adopt the Agenda as presented. All voted in favor and the motion carried.*

CONSENT AGENDA

*Commissioner O'Connor made the motion to adopt the Consent Agenda as presented. All voted in favor and the motion carried.*

CONSENT AGENDA consisted of the following:

**Minutes**

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

March 16, 2011– Regularly Scheduled Meeting

**Financial Report/Cash Balance Report – February 2011**

The February 2011, County Financial Report and Cash Balance Report were provided for the Board's review and approval. The following are explanations for departments/programs with higher budget to actual percentages for the month of February:

- Rescue Squad – 3<sup>rd</sup> quarter non-profit contribution paid in advance
- Tuberculosis, Risk Reduction, IAP Health Programs and DSS SmartStart – 100 percent grant funded Programs - Tuberculosis Program has a pending budget amendment due to additional funding

APPROVED: \_\_\_\_\_

- Public Education – BRCC monthly appropriation paid in advance at the end of the month; March paid in February

The YTD deficit in the Capital Reserve Fund is due to the approved transfer of fund balance to the Capital Projects Fund to be used for the Tuxedo Mill Demolition and the Recreation Parks Repair/Renovation Projects.

The YTD deficit in the CDBG – Scattered Site Housing Grant Fund, the Mud Creek Grant Project Fund and the Facilities Lighting Retrofit Grant (ARRA) Project is due to the timing difference between the expenditure of grant funds and subsequent reimbursement from the state.

The YTD deficit in the North High/Apple Valley Middle HVAC Piping Project is due to final expenditures including change orders coming in higher than anticipated to complete project. Additional costs will be covered by sales tax refunds on project expenditures to be received for FY2011.

The YTD deficit in the Solid Waste Landfill Fund is due to a decline in solid waste user fees collected through February along with fund balance being appropriated in the current fiscal year for solid waste capital improvement plan expenditures incurred.

Motion:

*I move that the Board of Commissioners approves the February 2011 County Financial Report and Cash Balance Report as presented.*

**Henderson County Public Schools Financial Reports – February 2011**

The Henderson County Public Schools February 2011 Financial Reports were provided for the Board's information.

Motion:

*I move the Board of Commissioners approves the Henderson County Public Schools February 2011 Financial Reports as presented.*

**Western Highlands Area Authority – Quarterly Fiscal Monitoring Report (FMR) for the quarter ended December 31, 2010**

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 March 18, 2011.

Motion:

*I move that the Board of Commissioners approves the Western Highlands Area Authority Fiscal Monitoring Report for the quarter ended December 31, 2010.*

**Tax Appeal – Gloria Shen on behalf of Yao T. Shen**

On behalf of her mother, Yao T. Shen, Gloria Shen has brought a request for the adjustment (remission) of the County's claim for taxes from the 2009 tax year. The relevant law is as follows:

N.C. Gen. Stat. §105-312(k) Power to Compromise. -- After a tax receipt computed and prepared as required by subsections (g) and (h) of this section has been delivered and charged to the tax collector as prescribed in subsection (j), above, the board of county

commissioners, upon the petition of the taxpayer, may compromise, settle, or adjust the county's claim for taxes arising there from. The board of commissioners may, by resolution, delegate the authority granted by this subsection to the board of equalization and review, including any board created by resolution pursuant to G.S. 105-322(a) and any special board established by local act.

As can be determined from the documents supplied by Ms. Shen, the facts are as follows:

- Glade Residential LLC (“Glade”) constructed a condominium unit as a part of its Fox Den development. 28 December 2007, a Building Permit was applied for by Glade Land Fund, LLC, with Glade Residential LLC listed as the Contractor.
- When the unit was completed, a Certificate of Occupancy was issued by Henderson County on 4 August 2008.
- A 2009 Listing Form was sent to Glade as the owner of record on 1 January 2009. It was not returned and therefore the newly-constructed condominium unit was considered as “unlisted” by the owner of record for 2009.
- Glade did not list the property for *ad valorem* real property tax purposes, as is required by Chapter 105 of the General Statutes. NOTE: the permanent listing system required by statute and adhered to by the Henderson County Tax Department ONLY applies to the conveyance of land. It does not apply to new construction. Specifically, G.S. 105-303(b)(2) and (3) requires the reporting by the owner of record of any new construction or acquisition of improvements.
- On 15 April 2009, a Notice of Discovery stating the appraised value subject to discovery and the pending 10% penalty, was sent to Glade Residential LLC, with the stipulation that the property owner could challenge the discovery within 30-days of the date of the Notice, and that failure to challenge would result in a final determination affirming the action of discovery.
- By letter dated 19 May 2009, Glade was notified of the final determination including the 10% penalty for failure to list.
- Ms. Shen purchased real estate in the Fox Den development from Glade, with a closing date of 23 June 2009.
- At closing, the closing attorney did not charge the seller or pay any late-listing penalty.
- *Presumably* neither the title insurance nor the deed made any exception for late-listing penalties.
- Subsequently, a late listing penalty of \$80.98 was assessed by your Tax Assessor.
- With interest, the current amount owed is \$106.10.

Clearly Ms. Shen was not the culpable party for the failure to list for taxes. Glade should have listed the property. The failure should have been caught by the closing attorney, and was *likely* insured over by the title insurer. Ms. Shen has requested that the penalty and interest be forgiven.

Motion:

*I move that the Board not pursue Yao Shen for the non-listing penalty and accrued interest thereon, in the amount of \$106.10 as of 30 March 2011. No action taken hereby shall be deemed to affect any right the County may have against the party who failed to initially and properly list the real property, or any third party.*

## **NOMINATIONS**

Chairman Edney reminded the Board of Vacancies and opened the floor for nominations.

### **Notification of Vacancies**

1. Community Child Protection Team – 1 vac.
2. EMS Quality Management Committee – 19 vac.
3. Henderson County Planning Board – 3 vac.

**Nominations**

1. Apple County Greenway Commission – 4 vac.

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

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

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

3. Downtown Hendersonville, Inc. – 1 vac.

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

4. Environmental Advisory Committee – 1 vac.

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

5. Home and Community Care Block Grant Advisory Committee – 1 vac.

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

6. Juvenile Crime Prevention Council – 8 vac.

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

7. Mountain Area Workforce Development Board – 1 vac.

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

8. Senior Volunteer Services Advisory Council – 3 vac.

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

**HENDERSON COUNTY GANG ASSESSMENT PRESENTATION**

Mary Murray, Chairman of the Juvenile Crime Prevention Council, presented the recently completed Henderson County Gang Assessment to the Board, pursuant to the state requirements of the gang assessment grant. A recent survey revealed that there is a gang presence in Henderson County but did not determine if there is a gang problem.

**CONSTRUCTION CONTRACT ICE/ DETENTION CENTER VEHICLE BUILDING**

Construction Manager David Berry stated as per the proposals provided in the agenda packet, the apparent low bid for the referenced construction contract is provided for Board approval. The proposed contract is for \$69,228.00 with Carolina Specialties, LLC. The other proposal was from Cooper Construction Company, Inc. for \$85,000.00

By State Statute this project was estimated to be in the informal construction range and a formal bidding process was not required. However, both proposals are licensed appropriately for the work and insured. The bids were solicited directly from Henderson County Engineering staff, who advertised this bid online on the Henderson County webpage. The scope of the work is included in the proposals included in the agenda packets. The building will be located behind the Detention Center within the gated perimeter and on the railroad side of the parking lot. Zoning approval for the building was approved with the Law Enforcement Center application. The completion timeframe is approximately 90 days.

Sheriff Davis noted no local tax dollars were being used, only ICE funds. The building will house three transport vehicles, an inmate work crew vehicle and trailer.

Project Location:



*Commissioner Messer made the motion that the Board of Commissioners approves the construction contract for construction of the ICE / Detention Center Vehicle Building with the apparent low bidder Carolina Specialties Construction, LLC for \$69,228.00. All voted in favor and the motion carried.*

**AN OVERVIEW OF THE CONDITIONAL ZONING PROCESS AND A PREVIEW OF APPLIATION #R-2010-03-C**

Planning Director Anthony Starr stated that Billy Corn, owner of subject parcel, submitted rezoning application #R-2010-03-C for the County to rezone approximately 2.42 acres of land, located off of Howard Gap Road (US 176), from an R1 (Residential One) zoning district to an I-CD (Industrial Conditional District).

Conditional zoning districts are different from traditional zoning districts because they require a site plan for the proposed use(s) of the property and certain conditions or restrictions are placed on the property based on the proposed or allowable use(s). Conditional zoning district decisions are a legislative process subject to the same procedures as traditional zoning map amendments (rezoning).

The Henderson County Planning Board considered rezoning application #R-2010-03-C at its regularly scheduled meeting on February 17, 2011. During that meeting, the Planning Board voted 5-2 to send the Board of Commissioners a favorable recommendation on rezoning application #R-2010-03-C to zone the Subject Area to an I-CD (Industrial Conditional District).

Before taking action on the rezoning application, the Board of Commissioners must hold a public hearing. Staff proposes that the public hearing be scheduled for May 2, 2011, at 5:30 P.M. Staff will provide the Board with brief overview of conditional zoning districts and a preview of the rezoning application.

Planning Staff recommends that the Board of Commissioners schedule the public hearing for rezoning application #R-2010-03-C and for Monday, May 2, 2011, at 5:30 P.M., or schedule a special called meeting on or after that date.

#### **What is a Conditional Zoning District?**

- A Conditional Zoning District (CD) is a site specific zoning district that limits the allowed uses of the general zoning district and applies conditions on the property.
- Similar to “conditional use permits” but is a legislative process and is not quasi-judicial in nature.
- The CD is tied to a “general zoning district.”
- Conditions can be placed on the property provided these conditions are:
  - “fair and reasonable”
  - Agreed upon by the BOC and the applicant
- The LDC allows CD’s in the general zoning districts.

#### **Why CD’s are important?**

- CD’s are created for the purpose of providing an optional rezoning choice.
- Allows for special limitation and conditions on the use of the property proposed for rezoning.
- These limitations/conditions allow for appropriate developments to occur while removing the ability to develop other allowed uses of the general zoning district that may not be appropriate for a particular site.
- Protects adjacent neighbors and addresses their concerns
- Gives the BOC the ability to discuss the specifics about a development and respond to specific development concerns.

#### **How is a CD approved?**

- Applied to property by rezoning request/application
- Legislative decision by Board of Commissioners
  - Requires a public hearing (not quasi-judicial)
  - Approval is linked with a site specific development plan
- Applies special limitations & conditions on the use of an individual development project
- Conditions agreed upon by Commissioners and applicant
- Rezoned property is identified on Official Zoning Map
- BOC approves an order specifying the conditions of the rezoning application.

#### **Changes to the Site Plan**

- Changes to an approved CD or site plan shall be treated the same as text or map amendments and must be approved by the BOC (except as stated below).
- The Planning Director shall have the delegated authority to approve the following as described in the LDC:
  - Amendments to the site plan provided it is in writing and does not significantly alter the site plan or its conditions;
  - Increase structure size for non-residential development by 10% or 1,000 sq ft (whichever is less);
  - Increased density for residential developments up to 10% of the development and no more than 5 dwelling units (whichever is less).

- The Planning Director may decline to exercise the delegated authority if a public hearing is deemed appropriate.

**Monitoring of a CD**

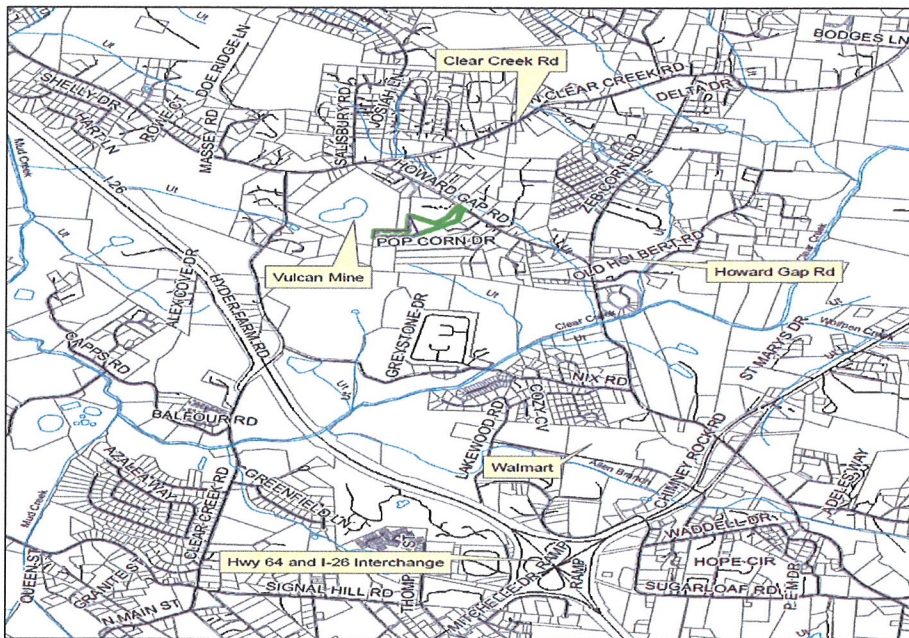
- After 3 years, the Planning Board may examine progress of an approved CD.
- If no progress has been made:
  - The Planning Board shall forward a report to the Commissioners and
  - May recommend that the property be reclassified to another district

**Previous CD zoning approved by County**

- The County currently has only 1 approved CD district.
  - District: Local Commercial Conditional District (LC-CD)
  - Use: County owned storage facility for the Emergency Services Department
  - Location: In the Foxwood Subdivision, adjacent to the Henderson County Landfill
  - Approved by the BOC in 2008

**Rezoning Application #R-2010-03-C Preview**

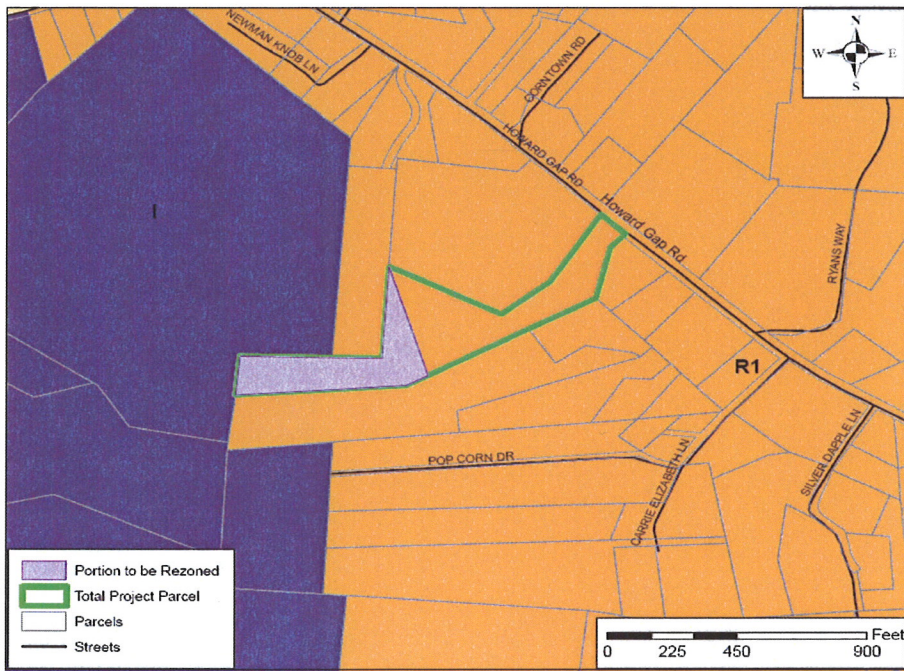
- Billy Corn, Owner and Applicant.
- Rezone approximately 2.42 acre of a 6.26 acre tract from Residential One (R1) to Industrial Conditional (I-CD).
- Property is located off Howard Gap Road.
- The proposed use shall be for the temporary storage of vehicles associated with the applicants automotive towing business.
- This would be the only use allowed in the I-CD and would have additional conditions as approved by the BOC.
- The proposed use is supported by the 2020 CCP.
- For this case, the CD process eliminates the need for 2 public hearings (rezoning & special use permit).
- A traditional Industrial rezoning could generate significant neighborhood concern and opposition due to all potential uses of the regular Industrial District.



Vicinity Map



Ariel Photo



Current Zoning

Commissioner Messer made the motion that the Board schedules a public hearing for Rezoning Application #R-2010-03-C for Monday, May 2, 2011, at 5:30 P.M. All voted in favor and the motion carried.

**HOUSE BILL 472 – ELECTRONIC NOTICE**

County Attorney Russ Burrell explained that Representative McGrady has introduced House Bill 472, “An Act To Allow All Cities And Counties To Give Electronic Notice”.



If adopted, H472 would allow you to adopt an ordinance allowing electronic, rather than paper-published, notice to be given. Such an ordinance could save the County in excess of \$100,000.00 each year.

(Note: Also pending in the House is a bill (H307) that only allows electronic instead of paper-published notice to a very few counties, and then only after a Board of Commissioners adopts a resolution allow the same. Your county attorney asked Representative McGrady to consider adding Henderson County to *that* bill, as well, to give you as commissioners the option to adopt such a resolution.)

Consideration of whether the Board should direct drafting, execution and delivery of a resolution expressing its recommendations regarding electronic notice.

*Commissioner O'Connor made the motion that the Board directs staff to draft and the Chairman to approve, execute and deliver to the Legislature this Board's recommendation in favor of the electronic notice, House Bill 472, and also ask Representative McGrady to include Henderson County on the Local Bill. All voted in favor and the motion carried.*

### **OFFICE RELOCATION**

Commissioner Thompson had requested discussion of upcoming office relocations. Commissioner Thompson feels that the Tax Assessor's/Collector's Office should be combined and remain in the 1995 Courthouse, located on the ground floor, and security increased. The entry and exits of the building should be changed to allow 1 entry and 1 exit. The Child Support Offices should be moved to the new Human Services Building. Probation and Parole, Juvenile Services Division, and the Guardian Ad-Litem Offices should be moved into the old Health Department. This, he feels, would save an estimated \$500,000 in expenditures. He asked the Commissioners to look at the direction we are taking and see if there are changes that may possibly save money. Commissioner Thompson noted that these changes were his idea, and he was not approached by anyone in regards to these changes. The only pro with moving the Tax Offices to King Street is that they would have enough space to hold the Board of Equalization and Review meetings. Commissioner Thompson asked that staff make sure the Tax Offices is provided with a suitable space for these meetings.

The Commissioners agreed that a study should be done to determine whether to move Probation and Parole to King Street or Spartanburg Highway.

County Manager Steve Wyatt will have staff work up plans including options along with security while minimizing costs, and present it to the Board at the first meeting in May.

### **STAFF REPORTS**

There was nothing further at this time.

### **IMPORTANT DATES**

#### **Set public hearing date regarding the re-naming of a portion of Bronco Pass**

Planning Department staff requests the Board to set a public hearing to consider re-naming a portion of Bronco Pass to Maplewood Knoll Drive. Bronco Pass is currently an impassable road broken into two distinct sections. NCDOT will be improving the intersection of these two streets making them in sense one complete road (Maplewood Knoll Drive). The re-naming of this road segment requires the assignment of a new property address for 1 home.

The naming or renaming of the street is required by the Henderson County Property Addressing Ordinance (Chapter 142). North Carolina General Statute 153A-239.1 and the Property Addressing

*Commissioner Messer made the motion that the Board set the public hearing for May 2, 2011 at 5:30 p.m. to discuss the proposed road name assignments. All voted in favor and the motion carried.*

Chairman Edney requested that the time of the Board's first Monday evening meeting be put on a future agenda, after the budget process, for discussion.

**CLOSED SESSION**

*Commissioner O'Connor made the motion for the Board to go into closed session as allowed pursuant to NCGS 143-318.11 for the following reasons:*

1. Pursuant to N.C. Gen. Stat. § 143-318.11(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.
1. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(4), to discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.
2. Pursuant to N.C. Gen. Stat. § 143-318.11(a)(5), to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange or lease.

*All voted in favor and the motion carried.*

**ADJOURN**

*Commissioner Young made the motion to go out of closed session and adjourn at 8:00 p.m. All voted in favor and the motion carried.*

Attest:

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Teresa L. Wilson, Clerk to the Board

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J. Michael Edney, Chairman

# HENDERSON COUNTY TAX DEPARTMENT

## Collector's Office

200 North Grove Street

Suite 66

Hendersonville, NC 28792

Phone: 828/697-5595

Fax: 828/698-6153

[www.hendersoncountync.org/tc/](http://www.hendersoncountync.org/tc/)

Stan C. Duncan

County Assessor & Tax Collector

Sandy Allison

Administrative Assistant II

March 28, 2011

### Re: Tax Collector's Report to Commissioners – 04/04/11 Meeting

Please find outlined below collections information through March 27th for the 2010 bills, which were mailed out on August 13<sup>th</sup>, 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:

2010 Total Charge \$57,524,414.37  
Payments & Releases: 55,153,079.33  
Unpaid Taxes: 2,371,335.04  
**Percentage Collected: 95.88%**  
(through 03/27/11)

2009 Total Charge: \$57,024,352.18  
Payments & Releases: 54,681,348.40  
Unpaid Taxes: 2,343,003.78  
**Percentage Collected: 95.89%**  
(through 03/27/10)

#### Motor Vehicle Bills G01 Only:

2010 Total Charge: \$3,128,773.01  
Payments & Releases: 2,641,990.15  
Unpaid Taxes: 486,782.86  
**Percentage Collected: 84.44%**  
(through 03/27/11)

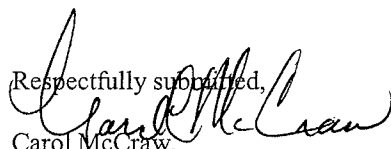
2009 Total Charge: \$3,233,437.44  
Payments & Releases: 2,730,542.44  
Unpaid Taxes: 502,895.00  
**Percentage Collected: 84.45%**  
(through 03/27/10)

#### Fire Districts All Bills

2010 Total Charge: \$6,625,264.05  
Payments & Releases: 6,309,203.84  
Unpaid Taxes: 316,060.21  
**Percentage Collected: 95.40%**  
(through 03/27/11)

2009 Total Charge: \$6,511,709.93  
Payments & Releases: 6,203,191.91  
Unpaid Taxes: 308,518.02  
**Percentage Collected: 95.44%**  
(through 03/27/10)

Respectfully submitted,

  
Carol McCraw,  
Deputy Tax Collector

Stan C. Duncan,  
Tax Collector



**HENDERSON COUNTY BOARD OF  
COMMISSIONERS**

1 Historic Courthouse Square, Suite 1  
Hendersonville, North Carolina 28792-5097  
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[www.hendersoncountync.org](http://www.hendersoncountync.org)

J. MICHAEL EDNEY  
Chairman  
THOMAS THOMPSON  
Vice Chairman

CHARLIE MESSER  
WILLIAM O'CONNOR  
LARRY YOUNG

April 7, 2011

Senator Thomas Apodaca  
North Carolina Senate  
16 West Jones St., Room 2010  
Raleigh, NC 27601-2808

Representative W. David Guice  
North Carolina House of Representatives  
300 N. Salisbury St., Room 528  
Raleigh, NC 27603-5925

Representative Charles W. McGrady  
North Carolina House of Representatives  
300 N. Salisbury St., Room 418A  
Raleigh, NC 27603-5925

RE: H.472 – “AN ACT TO ALLOW ALL CITIES AND COUNTIES TO GIVE  
ELECTRONIC NOTICE”

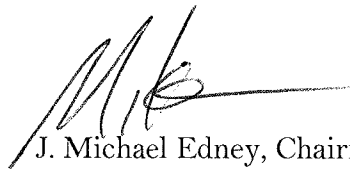
Gentlemen:

First, let me thank you all for your service, and for your strong advocacy of the needs and interests of the people of Henderson County.

At our meeting on April 4, 2011, the Henderson County Board of Commissioners voted unanimously to support and recommend passage of House Bill 472 (and equivalent legislation in the Senate). The adoption of this act would allow Henderson County the option of saving well over a hundred thousand dollars each year, while in no way substantially impairing the public's right to full, prompt and widely (and, in this case, freely) available notice of county government meetings and proceedings. We ask that you support this act, and seek to obtain its prompt passage.

If you have any questions regarding this Board's support of the adoption of this act, please contact me or Henderson

Sincerely,

  
J. Michael Edney, Chairman  
Henderson County  
Board of Commissioners