

6-27-06

PUBLIC INPUT SIGN UP SHEET

PUBLIC INPUT SHALL BE LIMITED TO
THREE (3) MINUTES PER PERSON.

EACH PERSON SHOULD:

- (1) STATE YOUR NAME
- (2) IN WHAT AREA OF THE COUNTY YOU LIVE
- (3) SPEAK IN A CLEAR AND COURTEOUS MANNER.

Please Print:

NAME

ADDRESS

ISSUE

1.	DICK BAIRD	511 Hidden LAKE	BUDGET ETC
2.	Patty Auwarter	231 Arbor Lane	Mills River Elementary Sch
3.	Eva Ritchey	1928 Brevard Rd	Land for T-Mills R ^{Recreation}
4.	Kieran Roe	317 N. Washington St.	Land for Tomorrow
5.	Melissa Pruitt		Mills River Sch.
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hold
for
agenda
item

June 27, 2006

Chairman and Members
Henderson County
Board of Commissioners

SUBJECT: Adequate Public Facilities

The proposed 06/07 budget showed funding of up to \$80,000 for the development of an Adequate Public Facilities Plan. To help you conserve precious county resources, I have performed an analysis of Adequate Public Facilities planning and provided a draft adapted ordinance from another county.

Since you are not paying, the analysis is short, focused and readable.

Sincerely,



Dick Baird
Management Engineer (Organization Doctor)

511 Hidden Lake Road
Hendersonville, NC 28739

692-1738

Incl: Adequate Public Facilities Analysis

*cc: BOC
Steve*

ADEQUATE PUBLIC FACILITIES ANALYSIS

What is an adequate public facilities ordinance? An Adequate Public Facilities Ordinance (APFO) is a law adopted by the local government that allows it to defer the approval of developments based upon a finding by the governing body that public facilities would not be adequate to support the proposed development at build out.

Discussion.

The Adequate Public Facilities Ordinance planning tool is a way to determine if we have the public facilities we need to serve an accelerating increase in development. It would assay schools, transportation, emergency services, utilities, parks and recreation and other critical infrastructure. An APFO would allow the County to time development to coincide with the taxpayer's ability to pay for the schools, roads, public safety and utilities upon which future development is dependent. It would set priorities to insure that development doesn't proceed at the expense of decent schools and roads, and consequently bankrupt the citizens. It forces County leaders to properly adopt capital budgets that will support growth *before the fact*. It places the burden on developers to insure that adequate public facilities are in place for the new developments they propose, or to delay development until such services are in place.

It would work something like this: Proposed development would have to get an adequacy permit before they can develop. The permit would be determined by comparing existing capacity and future needed capacity of public services in the area to serve the new development. When an applicant is denied an adequacy permit, the request is placed in a queue until additional public facilities are available. Priorities (and money) for improved facilities would be set by the Board of Commissioners.

An Adequate Public Facilities Ordinance would:

- Help prevent school overcrowding.
- Relieve excessive demands on our Sewer and Water facilities.
- Help channel growth into geographic areas that are already more capable of handling additional demand.
- Impose measurable and universal standards for roads, fire, and public safety facilities
- Provide a mechanism to "calm" the effects of volatile cycles of development and construction. Acts as a governor on the engine of growth.
- Help to maintain the fiscal integrity of government by helping to reduce the demands for excessive borrowing to finance new facilities demanded by unexpected development growth.

- Contribute to better capital planning.
- Provide more certainty in the financial forecast and budgeting process.
- Support the revitalization of older established areas where existing facilities have the ability to absorb new growth.
- Provide clear guidance to developers on where and when development will be allowed; avoiding unexpected delays.
- Annual reporting and evaluation creates accountability on the part of County government, highlighting shortfalls and needs.

An Adequate Public Facilities Ordinance would not:

- Be a mechanism to stop residential growth
- Provide a major additional source of construction funding for school or utility infrastructure
- Be simple to enact, implement, and administer

Implementation. A draft Adequate Public Facilities Ordinance, adapted from Washington County, Maryland, is attached if implementation is desired.

ADEQUATE PUBLIC FACILITIES ORDINANCE (DRAFT)

ARTICLE I - PURPOSE 1.1 SHORT TITLE This Ordinance shall be known and may be cited as the Adequate Public Facilities Ordinance of Henderson County, North Carolina.

1.2 PURPOSE It is the purpose of the Board of County Commissioners of Henderson County that public facilities and services needed to support new development shall be available concurrently with the impacts of such new developments. In meeting this purpose, public facility and service availability shall be deemed sufficient if the public facilities and services for new development are phased, or the new development is phased, so that the public facilities and those related services which are deemed necessary by the local government to operate the facilities necessitated by that new development, are available concurrently with the impacts of the new development.

ARTICLE II - DEFINITIONS 2.1 GENERAL

(a) For the purpose of this Ordinance, the following terms, phrases, words and their derivations shall have the meanings given herein. Words in the present tense include the future, the singular number includes the plural, and the plural includes the singular. The word "shall" is mandatory and the word "may" is permissive. The words "used for" shall include "arranged for," "designed for," "intended for," "maintained for," "constructed for", or "occupied for". The word "individual" shall mean natural person, joint venture, joint stock company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, association, club, company, corporation, limited liability company, real estate investment trust, business trust or similar legal entity or the manager, lessee, agent, servant, officer or employee of any of them. The word "land" shall include water surface and land under water. The term "Ordinance" shall refer to this Ordinance and all subsequent additions or amendments thereto.

(b) A Developer shall not avoid the intent of this Ordinance by submitting piecemeal applications for preliminary plats or site plans. However, a Developer may seek approval of only a portion of the subdivision or development, provided that the impact from all previously approved preliminaries or site plans from that development shall be considered during the adequate public facilities review of each subsequent portion of the development.

2.2 ADEQUATE PUBLIC FACILITIES For the purpose of this Ordinance, the term "Adequate Public Facilities" shall be defined as those facilities relating to roads, sewerage disposal systems, schools, water supply and distribution systems, and interim fire protection systems meeting established minimum standards.

2.3 DEFINITIONS

2.3.1 Agricultural Purposes A parcel of land that has been determined by the Henderson County Department of Assessments and Taxation as having an "Agricultural Use Assessment" or a parcel of land that is primarily involved in a bona fide and continuing agricultural activity, such as, the raising of farm products for use or sale, including animal or poultry husbandry, and the growing of crops such as grain, vegetables, fruit, grass for pasture or sod, trees, shrubs, flowers and similar products of the soil.

2.3.1.1 Background Enrollment Growth⁴ The average annual impact of equated student enrollment changes during the preceding three (3) years in the school attendance areas serving the proposed development as determined in Section 5.4 with appropriate adjustments made in the determination by the Board of Education to eliminate student enrollment changes caused solely by school redistricting.

2.3.2 Board of County Commissioners (Board) The legislative body of Henderson County, North Carolina.

2.3.3 Board of Education⁵ (BOE) The elected Board of Education of Henderson County.

2.3.4 Comprehensive Plan The Comprehensive Plan of the County.

2.3.5 County Henderson County, North Carolina.

2.3.6 County Engineer The duly designated Chief Engineer of Henderson County, North Carolina.

2.3.7 County Health Department The Henderson County Health Department.

2.3.8 Developer Any individual commencing proceedings under this Ordinance to effect a subdivision or development of land for himself or for another.

2.3.9 Extraordinary Hardship Extraordinary hardship is a condition that exists when strict compliance with this Ordinance would result in an unusually and extraordinarily severe financial economic impact on the owner or Developer.

2.3.10 Immediate Family Member Immediate family member shall mean father, mother, step-father, step-mother, son, daughter, brother, sister, stepson, stepdaughter, grandchild.

2.3.11 Improvements Improvements shall mean storm sewers, sanitary sewers, water supply lines, roads, curbs, gutters, gas lines, electricity lines, water lines, septic tanks, wells, walks, and other accessory works and appurtenances, dwellings, farm buildings, and other principal or accessory structures.

2.3.12 Lot A parcel of real property marked by the Developer as a numbered, lettered or otherwise identified tract to be utilized as a unit of land intended for building development or a lot or parcel described by metes and bounds, the description of which has been recorded among the land records of Henderson County.

2.3.12.1 Minor subdivision A minor subdivision is the division of a lot, tract or parcel into five (5) or fewer lots for the immediate or future transfer of property ownership.

2.3.13 New Development New development consists of new subdivisions and site plans for new construction received for approval by the Henderson County Planning Commission after the effective date of this Ordinance as set forth in Article XII. New development also consists of construction activity requiring a building and/or zoning permit but does not consist of construction activity for agricultural purposes provided that, after said development, the parcel does not lose the "Agricultural Use Assessment" classification as determined by the Department of Assessments and Taxation.

2.3.14 Original Tract of Land. A parcel of real estate unsubdivided as of the date of adoption of this Ordinance.

2.3.15 Planning Commission (Commission). The Henderson County Planning Commission.

2.3.16 Plat A map, plan, chart or drawing indicating the subdivision or resubdivision of land filed or intended to be filed for the record.

2.3.16.1 Remaining Lands The residual portion or tract of land which remains after lots or parcels have been subdivided from the original tract of land.

2.3.17 Residential Development The term "residential development" as used in this Ordinance means any lot, building or portion thereof used exclusively for dwelling units, including concomitant uses, and other uses of a residential nature for the individuals residing in said dwelling units.

2.3.18 Right-of-Way A land area designated, dedicated, or reserved for use as a highway, street, alley, interior walk, or for a drainage channel, or other public use.

2.3.19 Road A public right-of-way, intended for vehicular traffic, including freeways, expressways, arterials, parkways, thoroughfares, collector streets, local streets, cul-de-sacs, marginal access streets, avenues, boulevards, lanes and other public ways, and as now or hereafter or otherwise designated.

2.3.20 Simplified Plat The term “simplified plat” as used in this Ordinance is a map, plan, chart or drawing indicating the proposed subdivision or resubdivision of land filed or intended to be filed with the Planning Commission and where the intent of the subdivider is neither to develop the land nor to divide land containing existing development.

2.3.21 Site Plan A drawing that shows all of the existing conditions of a specified area (the site) and all of the improvements and changes proposed to be made on the site. A site plan is the drawing required by the Zoning Ordinance for all new development and certain additions and must contain all applicable information as specified in the Zoning Ordinance.

2.3.21.1 State Rated Capacity As used in this Ordinance, State Rated Capacity shall refer to the capacity of each school as determined by the state of North Carolina. Portable classrooms shall not be used in computing the school capacity for the purposes of this Ordinance.

2.3.22 Subdivision Ordinance The Henderson County, North Carolina Subdivision Ordinance, and all subsequent additions or amendments thereto.

2.3.23 Zoning Ordinance The Zoning Ordinance of Henderson County, North Carolina, and all subsequent additions or amendments thereto.

ARTICLE III - ADMINISTRATION

3.1 ADMINISTRATION OF ORDINANCE This Ordinance shall be administered by the Planning Commission. All applications, maps, and documents relative to subdivision or site plan approval coming under the provisions of this Ordinance shall be submitted to the Planning Commission.

3.2 JURISDICTION This Ordinance does not apply to land within a municipal corporation.

3.3 NEW DEVELOPMENT This Ordinance applies to all new subdivisions and site plans for new construction received for preliminary approval, not to include preliminary consultations under the Subdivision Ordinance or Zoning Ordinance, by the Planning Commission after the effective date of this Ordinance, as set forth in Article XII. Except as provided in this Section or Section 3.5 of this Ordinance, all new development shall meet the requirements set forth in this Ordinance prior to final approval. Nothing in this Ordinance shall prevent the Planning Commission from approving portions of subdivisions or site plans of new development if the portions of the subdivision or site plan comply with the provisions of this Ordinance. If the Planning Director of the Henderson County Planning Department determines that a site plan contains minor additions to existing development, the site plan is not subject to the requirements of this Ordinance.

3.4 DISAPPROVAL New development not meeting the requirements for adequate public facilities contained within this Ordinance shall not be approved by the Planning Commission unless the Developer reaches an agreement with the Board of County Commissioners for the purpose of advancing the adequacy of public facilities, pursuant to Section 9.1.

3.5 SIMPLIFIED PLATS EXEMPT Subdivisions which can be approved by the simplified plat procedure described in Section 318 of the Henderson County Subdivision Ordinance are not subject to the requirements of this Ordinance.

3.6 APPEALS 3.6.1 Appeals from any decision of the Planning Commission under this Ordinance shall be *de*

novus to the Board of Appeals in accordance with Article 25 of the Zoning Ordinance of Henderson County. The Board of Appeals may grant a variance from the requirements of this Ordinance only if the variance meets the following requirements: (a) The requirements imposed by the Ordinance would result in extraordinary hardship as defined in Section 2.3.9; (b) The physical features and characteristics of the proposed plat or site plan are such that granting a variance would not impair the intent and purpose of the requirement; (c) The variance will not endanger or present a threat to the public health, safety, or welfare; and (d) Granting the variance would observe the spirit of the Ordinance and secure public safety and welfare. 3.6.2 The standards contained in Article 25 of the Zoning Ordinance for "Variances" are not applicable to appeals from decisions of the Planning Commission under this Ordinance to the Board of Appeals.

3.7 VIOLATIONS AND PENALTIES Any violation of this Ordinance shall constitute a misdemeanor and shall be punishable upon conviction by a fine of not less than Two Hundred (\$200.00) Dollars or more than One Thousand (\$1,000.00) Dollars. Each day that a violation continues shall be deemed a separate offense. In addition to any other remedies, the Board of County Commissioners may institute any appropriate actions or proceedings to compel compliance with this Ordinance.

ARTICLE IV - ROADS All new development shall be served by an adequate network of existing and proposed new roads.

4.1 EXEMPTIONS

4.1.1 The Planning Commission may exempt from the terms of this Article the subdivision of an original tract of land into no more than five (5) lots provided: 19 20 (a) There exists in the original tract of land twenty-five (25) acres per each lot subdivided; and (b) The road in front of each lot to be subdivided is no less than sixteen (16) feet. Any subdivision which results in the maximum number of lots allowed under 4.1.1 shall contain a statement on the plat, signed by the owner, that certifies that any transfer of the remaining lands cannot be developed upon or subdivided for the purpose of development until such time that the County road has been improved and determined to be adequate under the terms of this Ordinance nor can said remaining lands be used to qualify for additional exemptions under this subsection.

4.1.2 The Planning Commission may exempt from the terms of this Article the subdivision of land used for transfer to a member of the immediate family of the owner(s) of the original tract of land provided the road width in front of the lots to be subdivided is no less than sixteen (16) feet. Any such subdivision shall contain a statement on the plat, signed by the owner, that: 22 (a) Certifies the intent of the owner to transfer the land only to a member of the immediate family; and (b) Expressly warrants that no conveyance of the lot will be made to anyone not a member of the immediate family for a period of ten (10) years, except as may be required to satisfy a mortgagee in case of loan foreclosure.

4.1.3 Where the Planning Commission finds that extraordinary hardship will result from strict compliance with this Article of the Ordinance because of alteration to existing historic structures, including bridges, as determined by the Historic District Commission, the Planning Commission may approve a subdivision so that substantial justice may be done and the public interest secured.

4.2 NEW PUBLIC ROADS New public roads to be built as part of the new development shall be constructed to the standards adopted by the Board of County Commissioners contained in the Henderson County Engineering Department's Specifications for Highway and Street Improvements, as amended or design and construction specifications as adopted by the State Highway Administration. 4.2.1 The type of road to be built shall be based on the projected volume of traffic determined by the County Engineer and/or the State Highway Administration that will be generated by the new development in accordance with the aforementioned standards, as amended. 23 4.2.2 The County Engineer and/or the State Highway Administration may require a traffic impact study for proposed commercial or residential development to be provided by the Developer in order to determine which specification set forth in Section 4.2 above are applicable to the new development.

4.3 EXISTING PUBLIC ROADS

4.3.1 The portion of the existing roads required to be adequate for the proposed new development shall be from its intersection with any new road in the new development, in the direction of traffic flow determined by the Planning Commission after receiving a recommendation from the County Engineer and/or the State Highway Administration to the nearest designated intersection with a road determined by the Planning Commission to be adequate to support the projected traffic volume generated by the development.

4.3.2 The portion of the existing roads to be adequate for proposed new development that does not include the construction of new public streets shall be the road frontage of all new or existing lot(s) containing the proposed new development and the remainder of the roads in the anticipated direction of traffic flow as determined by the Planning Commission after receiving the recommendation from the County Engineer and/or the State Highway Administration to the nearest designated intersection with a road determined to be adequate to support the projected traffic volume generated by the new development. The Planning Commission may require that roads be adequate in several directions or in any one direction from the location of the proposed new development.

4.3.3 In evaluating the adequacy of the existing roads or the improvements necessary to make the existing roads adequate, the Planning Commission shall consider the following:²⁷ (a) Existing traffic, (b) Traffic projected to be generated by the development, (c) Traffic projected to be generated by other approved but not constructed development, (d) Improvements scheduled or approved and funded in the adopted Henderson County Capital Improvements Program to take place within two (2) years from the anticipated date of final plat approval, (e) Improvements with full funding within the six (6) year schedule in the North Carolina Department of Transportation Consolidated Transportation Program, (f) Traffic studies that may be required by the County Engineer and/or the State Highway Administration, (g) Any other information that may reasonably be required by the County Engineer, State Highway Administration, or the Planning Commission to effectively evaluate the road network or information supplied by the Developer.

4.4 ROADS DETERMINED INADEQUATE Except as otherwise provided in this Ordinance, if an existing road is determined by the Planning Commission to be inadequate to accommodate the traffic flow projected to be generated from the new development when combined with existing traffic flow, the new development shall not be approved. In instances where the existing county road is determined to be below the minimum standards as set forth in Section 4.3, the Planning Director, acting on behalf of the Planning Commission, shall disapprove any proposed application for new development.

ARTICLE V - SCHOOLS

5.1 ADEQUACY All residential new development shall be served by public schools that: (a) Are currently adequate; (b) Have funded construction capacity, exclusive of any capacity created pursuant to a Developer-funded mitigation program, scheduled for completion within the same school attendance area in the current or the next year of the approved Henderson County Capital Improvement Program (CIP) following final plat or site plan approval to be adequate based upon 90% of elementary school State Rated Capacity and to be adequate based on 100% of State Rated Capacity for middle schools and high schools;³¹ or (c) Have been identified by the Board of Education (BOE) as part of an approved redistricting plan scheduled to occur in the current or the next year of final plat or site plan approval that will render the public schools adequate.

5.1.1 CAPACITY CREATED BY MITIGATION PROGRAM Funded construction capacity to be created by a mitigation program may not be used in a determination of adequacy for any Developer other than the Developers who are parties to the mitigation program.

5.2 EXEMPTIONS Article V of this Ordinance does not apply to: (a) New development to be developed exclusively for non-residential uses; (b) New development to be developed according to federal regulations restricting occupancy in the dwelling units to elderly persons; (c) Public or private elementary and secondary

schools, and public safety facilities; or (d) Minor Subdivisions.

5.3 DATA ON WHICH ADEQUACY SHALL BE DETERMINED. The BOE shall provide actual enrollment data to the Board of County Commissioners for the last school day of September, December, March and June and the State Rated Capacity for each elementary and secondary school.

5.4 DETERMINATION OF ADEQUACY

5.4.1 The Planning Commission shall determine whether public school facilities are adequate for the proposed new development upon recommendation by the Planning Department after evaluating enrollment information provided by the BOE. The Planning Commission shall determine that a school is adequate if the school has the capacity as follows: (a) Elementary schools are adequate if the school has available capacity to accommodate student enrollment, including new development without exceeding 90% of the State Rated Capacity (SRC) for each school. (b) Middle schools and high schools are adequate if the school has available capacity to accommodate student enrollment, including new development without exceeding the State Rated Capacity established for each school. (c) Available capacity for individual schools shall be determined in accordance with Section 5.5, below. (d) Final approval will not be granted for developments in the review process until the affected schools obtain adequate status.

5.5 MEASURING FOR AVAILABLE CAPACITY (a) Adequacy of every elementary, middle and high school serving the proposed development shall be tentatively measured at the time of preliminary consultation and preliminary plat review, and shall be finally measured and determined as of the date of final plan submission, or the first date upon which all necessary documentation and materials have been submitted, whichever occurs last, based upon data as published by the BOE. (b) If approval has not been received from the Planning Commission within six (6) months of the date of plan submission, the most recent quarterly school enrollment data must be utilized by the Commission for APFO review unless a delay occurs not attributable to the applicant. (c) For determining adequacy, enrollment shall mean the total of the BOE official enrollment figures, background enrollment, pupils generated from the proposed development, and other previously approved developments, including municipalities. (d) Pupil generation rates shall be determined using the formulas proposed by the BOE and adopted by the Board of County Commissioners and shall reflect the characteristics of the school attendance area within which the proposed development is located. (e) If a school is not adequate as defined in section 5.4.1 and an adjoining school district at the same level is at least twenty (20) percent below State Rated Capacity, then the applicant may request the BOE to determine the viability of redistricting to accommodate the new development. If the BOE determines that redistricting is a viable alternative, and the BOE approves a specific redistricting plan that would result in all the schools serving the proposed development meeting the standards established in Section 5.4.1, then the school shall be considered adequate. (f) If a school is not adequate, and the BOE has not approved a specific redistricting plan that would result in the school meeting the standards established in Section 5.4.1, then the final subdivision or site plan approval shall be denied, except as provided for in Section 9.3A. (g) Any Developer proposal to create improvements to meet adequacy shall be submitted to the Board of Education for recommendations and reviewed under any BOE adopted mitigation policy then in effect and be subject to the standards and review processes of the Interagency Committee on School Construction (IAC) of the North Carolina Board of Public Works. (h) Background enrollment growth³³ will be extrapolated over the number of years for which approval is requested. Included in the calculations shall be any additional approved but unplatted major preliminary plan developments in the affected area which might impact the historical growth trend to make it inaccurate or obsolete. (i) The Planning Commission may require phasing or an annual maximum build-out rate to plan for future adequacy.

5.6 RESIDENTIAL BUILDING PERMIT APPROVAL

5.6.1 The Board of County Commissioners shall have the authority to limit the number of building permits in any school attendance area. The decision to limit building permits shall be based on the recommendation of the Planning Commission upon receipt of a recommendation from the BOE taking into consideration of the adequacy of the school attendance area and enrollment capacity in immediately adjacent school attendance areas.

5.6.2 The Board of County Commissioners shall have the authority to cap the number of residential building lots approved for development on an annual basis.

ARTICLE VI - SEWAGE DISPOSAL SYSTEMS All new subdivisions shall be served by adequate sewage disposal systems.

6.1 ADEQUACY DETERMINED

6.1.1 The adequacy of a lot to accommodate a private, individual, on-site septic disposal system shall be determined by the Planning Commission upon recommendation by the Henderson County Health Department taking into consideration the standards, guidelines and procedures contained in the Henderson County On-Site Sewage Disposal Ordinance.

6.1.2 The adequacy of existing community or multi-use sewage disposal system to accommodate the flow projected to be generated by the new development shall be determined by the Planning Commission after receiving a recommendation and evaluation by the agency or municipal government with responsibility to construct, maintain, improve and permit hook-up to the disposal system. Adequacy shall be evaluated according to the agency's adopted guidelines, standards, policies or procedures and any other applicable County, State, or Federal regulation.

6.1.3 The adequacy of a new community or multi-use sewage disposal system shall be determined by the Planning Commission after receiving the recommendation and evaluation by the Hendersonville Water Pollution Control Department where the land may be served by the municipal utility system operated by the City of Hendersonville or by the Henderson County Water & Sewer Department and the North Carolina Department of Environment. Adequacy shall be evaluated according to the Department's Sewer Service Policy, where applicable in an established Water & Sewer Department, and Standard Specifications for Construction of Sanitary Sewers, as amended. Where the Hendersonville Water Pollution Control Department has jurisdiction, adequacy shall be evaluated according to the City's Revised Policy Statement Regarding the Distribution of Remaining Water Pollution Control Plan Capacity Allocation Among Development Projects and the Water Pollution Control Department Sanitary Sewer Standards and Specifications. Establishment of new community or multi-use sewage disposal systems shall be consistent with the Henderson County Water and Sewerage Plan and the Comprehensive Plan for Henderson County.

6.1.4 In evaluating the adequacy of any sewage disposal system (other than a private, individual, on-site system), all parts of the system affected by the projected flow generated from the new development shall be considered including, but not limited to, laterals, interceptors, pumping stations, force mains, treatment plants, points of discharge, flow meters and rights-of-way.

6.1.5 In evaluating the adequacy of sewage disposal systems, the responsible agency shall consider the following items: (a) Design Capacity; (b) Available Capacity; (c) The agency's adopted standards, guidelines, policies, and procedures; (d) The projected flow to be generated by the new developments; (e) Other proposed or expected connections to the system reasonably probable of fruition; (f) Other variables found to have an effect on the system's ability to accept the projected flow.

6.2 **DETERMINATION OF EXPECTED FLOW** The projected flow expected to be generated by the proposed new development shall be determined by the Planning Commission after receiving recommendations from the responsible governmental agency involved.

6.3 **SEWAGE DISPOSAL SYSTEMS DETERMINED INADEQUATE** Except as otherwise provided in this Ordinance, if the Planning Commission, upon recommendation of the responsible agency determines that the sewage disposal site or system is inadequate to accommodate the sewage disposal needs of the new development when considered together with existing development and development which is reasonably probably of fruition, the

new development shall not be approved.

ARTICLE VII - WATER SUPPLY AND DISTRIBUTION SYSTEMS All new development shall be served by an adequate water supply and distribution system that provides sufficient water and service pressure for domestic consumption and fire protection.

7.1 ADEQUACY DETERMINED

7.1.1 The adequacy of an on-site water supply distribution system shall be evaluated by a North Carolina Registered Professional Engineer and a complete report submitted to the agency having jurisdiction for review. The engineer shall be provided by the Developer. Adequacy of the system shall then be determined by the Planning Commission upon recommendations by the North Carolina County Health Department.

7.1.2 The adequacy of an existing public or multi-use water supply and distribution system to provide the projected water needs of the new development shall be evaluated by a Registered Professional Engineer and a report submitted to the agency having jurisdiction for review. The engineer shall be provided by the developer. Adequacy of the system shall then be determined by the Planning Commission upon consideration of the recommendations made by the Hendersonville Water Department, where applicable, the Henderson County Water & Sewer Department, where applicable, municipal governments or any other properly established agency with the responsibility to construct, maintain, improve or permit hook up to the water supply system. Adequacy shall be determined according to the agency's adopted guidelines, standards, policies or procedures and all other applicable County, State, or Federal regulations.

7.1.3 The adequacy of a new community or multi-use water supply and distribution system shall be determined by the Planning Commission upon recommendations made by the Hendersonville Water Department, the Henderson County Water & Sewer Department and the North Carolina Department of Environment. Adequacy shall be determined according to the North Carolina Department of Environment's adopted guidelines, standards, procedures and policies. Establishment of new public or multi-use water supply and distribution systems shall be consistent with the Henderson County Water and Sewerage Plan and the Comprehensive Plan.

7.1.4 When evaluating the adequacy of any water supply and distribution system for domestic consumption and fire protection other than a private, individual on-site water supply (well), all parts of the system affected by the projected water needs of the new development shall be considered, including but not necessarily limited to the water source, quality, distribution or collection system, treatment system, pumping facilities, and metering devices.

7.1.5 When evaluating the adequacy of a water supply and distribution system the responsible agency shall consider the following items: (a) The system's design capacity; (b) The system's water supply source; (c) The system's available capacity; (d) The responsible agency's adopted guidelines, standards, procedures and policies regarding water service; (e) The projected water needs of the proposed development including domestic consumption and fire protection; (f) Other proposed or expected connections to the system reasonably probable of fruition; (g) The evaluations and recommendations of the Fire Department that provides fire protection service in the new development; (h) Other variables found to have an effect on the ability of the water system to deliver the projected water needs of the development; (i) The applicable guidelines concerning fire protection provisions in areas where public water supplies are inaccessible as set forth in Article VIII of this Ordinance. (j) Existing storage, treatment, and pumping facilities affected by the proposed development.

7.2 DETERMINATION OF PROJECTED WATER NEEDS The projected water needs of the new development for domestic consumption and fire protection shall be determined by the Planning Commission, after reviewing the recommendation of the agency having jurisdiction over the water supply and distribution system.

7.3 WATER SUPPLY AND DISTRIBUTION SYSTEM DETERMINED INADEQUATE Except as otherwise provided in this Ordinance, if the Planning Commission, upon recommendation from the responsible agencies

determines that the community or multi-use water supply and distribution system is inadequate to accommodate the projected needs of the new development, the development shall not be approved.

ARTICLE VIII - FIRE PROTECTION IN ADOPTED AREAS WHERE PUBLIC OR MULTI-USE WATER SYSTEM IS NOT AVAILABLE It is the intent of this Article of the Ordinance to ensure that adequate fire protection capability is provided in new commercial and industrial developments in adopted Urban or Town Growth Areas designated in the Comprehensive Growth Plan of Henderson County, North Carolina where public water is not currently available but is expected to be available within two (2) years. These systems shall be known as interim fire protection systems.

8.1 DETERMINATION OF NEED FOR INTERIM FIRE PROTECTION SYSTEMS A commercial or industrial development shall provide an interim fire protection system if:

8.1.1 The Planning Commission determines that the commercial or industrial development is located substantially within adopted growth areas, and

8.1.2 A public water supply and distribution system is not available or scheduled in the Capital Improvements Program of any responsible agency to be in service within two (2) years, and

8.1.3 The commercial or industrial development proposes more than 2,000 square feet of new commercial, industrial or institutional enclosed area.

8.2 ADEQUACY DETERMINED

8.2.1 The adequacy of an interim fire protection system in the proposed commercial or industrial development shall be determined by the Planning Commission after receiving the recommendations from the Hendersonville Water Department, the Henderson County Water & Sewer Department, municipal governments or any other properly established agency including organizations charged with fire protection with the legal authority and responsibility to construct, maintain, improve or permit hook up to the water supply system.

8.3 GENERAL DESIGN The interim fire protection system shall be capable of providing the same level of fire protection service as if it were hooked up to a public water supply and distribution system.

8.4 PROCEDURES AND STANDARDS The procedures and standards established by the North Carolina State Fire Marshal shall be used in the design, review, approval and installation of the interim fire protection system.

ARTICLE IX - EXCEPTIONS, AGENCY PARTICIPATION

9.1 Nothing under the terms of this Ordinance shall prohibit or prevent the Board of County Commissioners or any governmental body from reaching an agreement as to a mitigation program with a Developer for the purpose of advancing the adequacy of public facilities as required by this Ordinance. Prior to entering any such agreement, the Board shall invite comment from the BOE regarding same.

9.2 Notwithstanding any other provision or term of this Ordinance, neither the Board of County Commissioners nor any governmental body shall be compelled to enter into an agreement as to a mitigation program with a Developer for the purpose of advancing the adequacy of public facilities as required by this Ordinance.

9.3 A mitigation program providing for deferred payment of fees shall include the types, methods and schedules for the implementation of the mitigation program for the purpose of advancing the adequacy of public facilities.

9.4 In its sole discretion, the Board of County Commissioners or its designee may approve a mitigation program that allows a development to proceed in a school district otherwise designated as inadequate for development under the following conditions: (a) The Board of County Commissioners determines that approving this development

benefits the community by encouraging certain types of development that offer advantages to the community, including but not limited to the following: (1) development in designated revitalization areas; (2) renovation of abandoned or under-utilized structures; (3) affordable or workforce housing or community revitalization projects; or (4) developments with preliminary plat approval prior to _____. (b) Development occurring while a particular school is in an inadequate status must not cause the enrollment level at that school to reach a level where temporary measures such as portable classrooms are not sufficient to prevent the average class size from rising beyond the class size based on State Rated Capacity or prevent the school's core services from serving the increased number of students in an acceptable manner. (c) A mitigation program for major subdivisions under this section must provide for improvements that will occur within three years in order to return a school attendance area to adequate status. (d) A mitigation program proposed under this section must include an acceptable phasing program for the development that is approved by the Board of County Commissioners or designee. (e) Any Developer-funded mitigation program construction project shall be excluded from the adequacy testing calculation in Article 5 of this Ordinance.

9.5 With regard to any public facility required to be adequate under the terms of this Ordinance, the Board of County Commissioners for Henderson County, the mayor and council of any incorporated municipality in Henderson County, the Henderson County Water & Sewer Department, the state of North Carolina, or any other governmental body, may elect to participate in the cost of any necessary improvements to advance the adequacy of facilities as required by this Ordinance.

9.6 Any mitigation program providing for deferred payment of fees shall be contained in a legal, binding, adequate public facilities agreement between the Developer or other responsible party and the Board of County Commissioners. Such agreement must have been approved for form and content by the Office of the County Attorney.

9.7 A mitigation program providing for deferred payment of fees shall be binding on the heirs, successors, and assigns of a project and shall run with the land. The deed or title for a property shall contain references to the mitigation program.

9.8 If a Developer fails to agree to a mitigation program to assure adequacy of public facilities, the Planning Commission shall disapprove the project for want of adequate public facilities as required by this Ordinance.

9.9 The Board of County Commissioners shall require security as appropriate to cover the costs of the facilities and lands not under the Developer's ownership that are part of a mitigation program providing for deferred payment of fees, in a form acceptable to the Board. The amount of the security shall be reduced as payments are made under the mitigation program. Upon default, the Board of County Commissioners shall have the authority to redeem the security in addition to any other remedy provided by law.

ARTICLE X - VALIDITY If validity of any section, subsection, paragraph, sentence, clause, or phrase of this Ordinance is, for any reason, held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

ARTICLE XI - PERIODIC REPORTS The Planning Department of Henderson County, beginning six (6) months from the date of the effective date of this Ordinance, shall periodically review whether there is a continuing need for this Ordinance or suggested amendments at an open, public, advertised meeting.

ARTICLE XII - EFFECTIVE DATE This Ordinance is effective as of _____. Adopted this ____ day of _____.

June 27, 2006

Chairman and Members
Henderson County
Board of Commissioners

SUBJECT: Annual Spending Figures

Please provide me the annual Henderson County spending figures from fiscal year 95/96 to the present. All figures should be relatable to the \$95,130,650 figure quoted on page 14 of the county manager's proposed 06/07 budget.

I also request that you provide a point of contact in case I have questions on your submission.

Sincerely,



Dick Baird
Management Engineer (Organization Doctor)

511 Hidden Lake Road
Hendersonville, NC 28739

692-1738

cc: BAC
Steve