

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
JULY 7, 1998

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. in the Commissioners' Conference Room of the Henderson County Office Building, 100 North King Street.

Those present were: Chairman Robert D. Eklund, Vice-Chair Grady Hawkins, Commissioner Renee Kumor, Commissioner Don Ward, Assistant County Manager Angela M. Skerrett, and Acting Clerk to the Board Avalina Merrill.

Commissioner Vollie G. Good arrived at 5:40 pm.

Also present were: Planning Director Matt Matteson, Staff Attorney Jennifer O. Jackson, and Finance Director J. Carey McLelland.

Absent were: County Manager David E. Nicholson, Clerk to the Board Elizabeth W. Corn, and County Attorney Don Elkins.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

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

INVOCATION

Charles Evans, Minister at Pinecrest Presbyterian Church, gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Ward added an item to Discussion Items, Item D, Update on Pending Issues: 5. Update on Fourth of July celebration at Jackson Park.

Chairman Eklund added to Important Dates to set a date for the joint meeting with the Board of Commissioners and the Board of Education about the Schools Long-Term Capital Needs.

Due to the absence of County Attorney Elkins, Staff Report Item B, Reimbursement from NCDOT-DOA for Appraisal of Hendersonville Airport Property was pulled for inclusion on the agenda for the Commission meeting of July 15, 1998.

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INFORMAL PUBLIC COMMENTS

1. Larry Young, 2641 Haywood Road, Hendersonville NC 28791
Mr. Young expressed disgruntlement to the Commissioners about fliers distributed at the election polls in the May primary and pay raises for the Commissioners for special called meetings.
2. David Stoneman of Stoneman Construction, 10 Willow Valley Lane, Hendersonville 28739. Mr. Stoneman expressed concerns to the Commissioners regarding proceeding with the renovation of the historic courthouse.
3. Bryan Aleksich of Horse Shoe expressed concerns to the Commissioners regarding the pay raises for Commissioners for special called meetings.
4. Fielding Lucas of 50 Squirrel Trail, Hendersonville, NC.
Mr. Lucas expressed concerns about the pay raises for Commissioners for special called meetings.
5. Jerry Lindemann expressed concern regarding the hospital emergency physician contract.

CONSENT AGENDA

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

CONSENT AGENDA included the following:

Review/approval of minutes

Minutes were presented for the Board's review and approval of the following meetings:

May 13, 1998 (special called); May 28, 1998 (special called);
June 9, 1998 (special called); June 15, 1998 (special called);
June 16, 1998 (special called); June 17, 1998; June 18, 1998 am
(special called); June 18, 1998 pm (special called).

Road Petitions

Road petitions for addition to the NCDOT Maintenance System were presented for review and approval:

BroadPointe Way and Pinehurst Court (Etowah's Reach).

NOMINATIONS

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

1. Nursing/Adult Care Home Community Advisory Committee - 3 vac.

At the Commissioners meeting of June 17, 1998, Kenneth Erwin was nominated to fill a vacancy. Notice of this nomination was given to the Administrator of this Committee on June 25, 1998. Commissioner Good made the motion to suspend the rules and appoint Mr. Erwin. All voted in favor and the motion carried.

The two remaining vacancies were rolled to the mid-July meeting of July 15, 1998.

2. Henderson County Zoning Board of Adjustment - 1 vacancy

At the Commissioners meeting of 5/4/98, the Board was notified of one vacancy to be effective 7/1/98 due to the resignation of Linda Hunter, Flat Rock representative, with an unexpired term until 12/31/99. Commissioner Hawkins requested that Staff be directed to get from the City of Hendersonville the formula of County to City population ratios for determining representation on the County Zoning Board of Adjustment and report back to the Board. This nomination was rolled to the mid-July meeting of 7/15/98 for discussion and possible appointment.

3. Hendersonville City Zoning Board of Adjustment - 2 vacancies

The County Alternate Member vacancy filled by John Boyd expired on 6/30/98. Mr. Boyd did not wish to serve again. In compliance with a revised City Zoning Ordinance adopted by City Council in April 1998, the City of Hendersonville requested that vacancy not be filled by a County resident but instead be filled by a City resident. The other vacancy was due to the upcoming term expiration of Regina Heaton on 9/5/98. Ms. Heaton wishes to continue to serve another term if reappointed.

Commissioner Hawkins requested that Staff be directed to contact the City of Hendersonville to address the requests made by City Clerk Tammie Drake in her letter dated May 15, 1998 and by Susan Cox, City Zoning Administrator, in her letter dated May 19, 1998 and report back to the Board. These vacancies were rolled to the

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mid-July meeting of July 15, 1998 for further discussion and possible appointment.

4. Mountain Area Workforce Development Board - 4 vacancies

Chairman Eklund reminded Board members that although four vacancies are listed with term expirations of 7/1/98, only two are Board of Commissioners appointments. The two remaining vacancies are Chamber of Commerce appointments. The Chamber requested those (2) vacancies be filled with the reappointment of Cindy Dabaibeh and Roger Wheelock with terms to expire 07/01/2000.

Chairman Eklund sent a letter to Mr. Letcher Beatty, director of NC Employment Security Commission, stating the Board appointed him to fill the vacancy formerly filled by John Murdock, retiree of ESC, whose term expired 7/1/98. Mr. Beatty agreed to serve a two year term to expire in 7/1/2000. However, Helen Beck, Executive Director of Mountain Area Workforce Development Board, requested that the Board's vacancies be filled with people from the private sector. Noel Watts, Executive Director of Something Special, was appointed at the Commissioners meeting of June 17, 1998. Gordon DeMarco also of Something Special is a Chamber appointee serving a term to expiration of 7/1/99.

Commissioner Good nominated Dr. David Sink to fill one of the Commissioners vacancies. All voted in favor and the motion carried.

The Board directed staff to contact George J. Tarnawsky inquiring if he is still interested in being considered for this vacancy.

Two vacancies for the Commissioners were rolled to the mid-July meeting of 7/15/98.

5. Youth Advisory Board - 3 vacancies

Chairman Eklund reminded the Board the 3 vacancies are the result of term expirations of 8/3/98 for Mary McDuffie, Fran Schneider and Sonja Hollingsworth. Ms. McDuffie and Ms. Schneider did not wish to serve again.

Commissioner Good made a motion to suspend the rules and appoint Sonja Hollingsworth. All voted in favor and the motion carried.

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Commissioner Ward nominated Tim Lyda. Commissioner Kumor made a motion to suspend the rules and appoint Mr. Lyda. All voted in favor and the motion carried.

One vacancy was rolled to the mid-July meeting of July 15, 1998.

6. Land-of-Sky Regional Council Advisory Council on Aging - 1 vac. Chairman Eklund reminded the Board of the term expiration on 6/30/98 of John Frier.

Chairman Eklund nominated Chuck Smith. Commissioner Kumor made a motion to suspend the rules and appoint Chuck Smith. All voted in favor and the motion carried.

Jail Project - Architect's Contract

At a specially called meeting of the Board on March 26, 1998, the Board authorized the Jail Leadership Team (comprised of Renee Kumor, David Nicholson, George Erwin and Bill Blalock) to go forward with the interviewing and preliminary selection of firms for the architectural, design and engineering work for the current Jail Project based upon a qualifications-based-selection process.

The Jail Leadership Team reported to the Board on June 17, 1998, that they interviewed three firms and that of those firms, Grier-Fripp Architects was the Leadership Team's first choice based upon qualifications. Also at the Board's June 17, 1998 meeting (which was concluded on June 18, 1998) the Board authorized an increase in the scope of the Jail Project from a \$2.8 million project to a \$4.55 million project. This increase was made possible by an ability to reduce the staffing expenses for the Project.

At the Board's request, Staff undertook contract negotiations with Grier-Fripp and presented the proposed contract for the Board's review. The contract calls for a fee of 10% of the construction costs to the architect. The 10% fee not only included the fee for the architect, but also fees for the engineers (except surveying and geotechnical) and security consultants that will be utilized on this Project but which have on previous projects been paid separately. This contract is a slightly modified version of the contract that the County has entered into for architectural services on recent projects such as the new Courthouse and the renovation of the historic Courthouse. Grier-Fripp has reviewed and approved the proposed contract.

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Staff discussed the contract and answered questions raised by the Board.

Staff recommended that the Board award the architectural contract to Grier-Fripp Architects and approve the architectural contract as proposed.

Commissioner Kumor made a motion to approve Staff's recommendation and award the architectural contract to Grier-Fripp Architects. All voted in favor and the motion carried.

IMPORTANT DATES

Assistant County Manager Angela Skerrett encouraged the Board to select a date for a joint meeting with the Board of Education on their long-term capital needs. The Board recommended the meeting be set for Tuesday, August 4, 1998 at 5:30 pm in the Commissioners' Meeting Room 140. The Board directed Chairman Eklund to contact Dr. Lunsford about this proposed date. The Board of Commissioners will discuss at the mid-July meeting setting a workshop in preparation of this joint meeting.

ANNUAL REPORT FROM AMERICA'S PRIDE

Glenda Lancaster, one of the sponsors of America's Pride, thanked the Board of Commissioners for their support. Ms. Lancaster explained that America's Pride is a drug prevention program that is a follow up to the DARE program. Students representing local schools in which the America's Pride is instituted expressed their individual thanks to the Commissioners for their support in funding and encouraged them to continue funding.

VILLAGE OF FLAT ROCK ZONING RESOLUTION

Staff Attorney Jennifer Jackson and Planning Director Matt Matteson discussed with the Board the Village of Flat Rock Zoning Resolution that was adopted by the Village of Flat Rock on June 11, 1998 concerning the Village's readiness to take over zoning regulation within Flat Rock's municipal boundaries. Henderson County, at the request of the Village, has been enforcing the Henderson County Zoning Ordinance and the Land Development Ordinance within the Village's boundaries since their incorporation.

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NCGS 160A-360(g) allows Flat Rock to regain zoning regulation jurisdiction upon either two years notice to Henderson County or mutual agreement between Flat Rock and Henderson County. By this resolution, staff thought it appeared that Flat Rock was requesting that Henderson County relinquish zoning regulation jurisdiction sooner than the two year period specified in NCGS 160A-360(g).

Staff encouraged the Board to be cognizant of the effects that this will have on the Henderson County Zoning Board of Adjustment.

Staff recommended Board action to either (1) require the Village of Flat Rock to comply with the two year notice provision or (2) authorize Staff to meet with the Village Staff to discuss administrative issues that might be associated with a shorter notice period.

The Board directed staff to discuss with the Village of Flat Rock staff the possibility of a shorter notice period and report back to the Board at their mid-July meeting how that would impact the County Zoning Board of Adjustment.

PURCHASE OF SEWER LINE

The City of Hendersonville requested to purchase 1,500 feet of force main sewer line from Henderson County. This line is located along US 64 East and currently serves a small number of businesses, North Henderson High School and Apple Valley Middle Grade school.

Their request is due to the recent voluntary annexation of the Wolf Pen Subdivision property. The City must provide sewer service to this community. It would be less expensive for them to purchase our line under the terms of the 1986 agreement than to construct a parallel line.

The County's share of the cost of this line was approved by the Board of commissioners in December of 1992. The public schools and a number of area businesses also contributed to the cost of the construction. The County's share of the project was \$11,610.

Besides receiving reimbursement for our original share of construction, selling this line to the City of Hendersonville would free up approximately 25,000 gallons of capacity within the Mud Creek Water and Sewer District.

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Ms. Skerrett advised the Board the biggest user of this sewer line is the school system. The School paid 80% of the original cost of \$37,800 for installation of this line. The Board directed staff to contact the School Board to determine what reimbursement, if any, they would be entitled to and bring that information back to the Board at their mid-July meeting.

UPDATE ON PENDING ISSUES

Commissioner Kumor informed the Board that a meeting was held between her, County Manager David Nicholson, Assessor Robert Baird and Tax Collector Terry Lyda. Ms. Kumor reported that the working relationship between Mr. Baird and Mr. Lyda was a strong one, working together as a team and commended them for their efforts on behalf of the County's citizens.

Commissioner Kumor did a visual, oral presentation on Facilities Use Plan Proposal which addressed past, present and future needs. Assistant County Manager Angela Skerrett informed the Board that County Manager David Nicholson had requested that Maintenance Director Les Capps and Risk Manager Bill Byrnes compile a list of County facilities and their needs. To allow sufficient time for staff to gather this data and to analyze it, the Board proposed setting a workshop sometime in September 1998, the exact date to be determined mid-August.

Commissioner Good led a discussion regarding the fee increase of \$50 per special called meeting for the Commissioners recently adopted by the Board on 6/30/98. That increase raised the pay from \$75 to \$125 per each special called meeting. Mr. Good emphatically expressed his concern that the Board had violated Rule 25 of the Rules of Procedure by not discussing before a full Board in an open meeting the proposed pay increase. Commissioner Good inquired of Chairman Eklund as to why the pay increase proposal was not discussed before a full Board in an open meeting. Chairman Eklund stated that when the County Manager informed him of the request to include monies in the budget to cover the pay increases, he assumed that all Board members had been notified and were in agreement on it. Chairman Eklund apologized for the error in that assumption. Commissioner Good requested that it be made part of this record that he did not vote for the proposed pay increase as such. He expressed that although he saw the amount in the budget line item, it was only minutes before the Board officially adopted the budget. Commissioner Good stated that he intended to address the item but

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the budget was adopted without additional comment. Commissioner Good made a motion to rescind the pay increase and put the funds back in the budget to purchase a gas chamber for the Animal Shelter.

Commissioner Ward refuted Commissioner Good's statement that he was not aware the pay increase was in the budget stating the amount was reflected in the line item when the Commissioners reviewed the budget prior to its adoption.

A heated discussion ensued between Commissioner Ward and Commissioner Good.

Commissioner Kumor stated she was not made aware of the proposed pay increase prior to the adoption of the budget. She, too, saw it in the line item but realizing that Commissioners Ward and Hawkins were fiscally conservative, she thought it would be removed before adoption. Commissioner Kumor stated she did not even know the amount of the increase or its purpose until she was informed by media.

Commissioner Hawkins encouraged the Board to direct staff to gather data on appropriate levels and types of compensation for Commissioners from other NC counties of similar population prior to next budget cycle. Commissioner Hawkins expressed he felt the increased compensation would benefit other elected officials and aid in attracting candidates for the Commission seats. Commissioner Hawkins asked Commissioner Good if he wanted to amend his motion on the floor to review compensation for all elected officials during the next budget cycle beginning July 1999. Commissioner Good stated he would not be serving as Commissioner after December 1998 and did not wish to amend his motion to that effect.

After much discussion in which sharp comments were exchanged among the Board members, Commissioner Good made a motion to rescind the pay increase for the Commissioners in this year's budget.

Chairman Eklund asked for a vote on that motion. All voted in favor and the motion passed unanimously.

Commissioner Ward made a motion to rescind the entire budget of FY 1998-99. Chairman Eklund called for a vote on that motion. Nays: Commissioners Eklund, Hawkins, Good and Kumor; Aye-Commissioner

Ward. The motion to rescind the entire FY '98-99 budget failed 4 to 1.

Continuing with the Update on Pending Issues, Commissioner Ward lauded the praises of the staff of Parks and Recreation and its volunteers for the Fourth of July celebration that was held at Jackson Park. He also commended the traffic patrol and its volunteers for the excellent job they did in traffic control.

The Board directed Staff to send letters of commendation as an expression of gratitude to the Director of Parks and Recreation and Staff and volunteers and Sheriff Erwin and his staff and volunteers.

Chairman Eklund called a 10 minute recess at 6:50 pm.

At 7:00 pm, Chairman Eklund called the meeting back to order to begin the public hearings.

PUBLIC HEARING-PROPOSED AMENDMENT TO THE HENDERSON COUNTY ZONING ORDINANCE REGARDING THE MINIMUM AREA FOR PLANNED UNIT DEVELOPMENTS

Commissioner Hawkins made a motion to go into this Public Hearing. All voted in favor and the motion carried.

Karen Collins reminded the Board of Commissioners they scheduled for this date a public hearing on an application submitted by Joe Crowell Construction, Inc., for a proposed amendment to the text of the Henderson County Zoning Ordinance.

The application requests a change to Section 700.01(4) of the Zoning Ordinance which specifies that the minimum area required for a Planned Unit Development is fifteen (15) contiguous acres. On May 4, 1998, the Board of Commissioners reviewed the application and referred it to the Planning Board for a recommendation. The applicant originally requested that the minimum area be changed to ten (10) contiguous acres; however, during review of the amendment on May 26, 1998, the Henderson County Planning Board asked if the applicant would consider changing the minimum area to five (5) acres. The applicant decided to amend the application and request that the minimum area be changed to five contiguous (5) acres. The Planning Board subsequently voted unanimously (6 to 0) to send the Board of Commissioners a favorable recommendation on the application as amended.

In accordance with Section 1204 of the Henderson County Zoning Ordinance and State law, notices of the public hearing were published in the June 19 and June 26, 1998 editions of the Times-News.

No one signed up to speak to this issue under public comment.

Chairman Eklund made a motion to accept the Planning Board recommendation to change the minimum area required for a PUD from 15 contiguous acres to 5 contiguous acres.

All voted in favor and the motion carried.

Commissioner Ward made a motion to go out of public hearing.

PUBLIC HEARING - PROPOSED AMENDMENTS TO THE HENDERSON COUNTY ZONING ORDINANCE REGARDING FAMILY CARE HOMES - FILE # TX-02-98

Commissioner Ward made a motion to go into this public hearing. All voted in favor and the motion carried.

The Board of Commissioners scheduled for this date a public hearing on proposed amendments to the Henderson County Zoning Ordinance regarding family care homes. The Henderson County Planning Board initiated the proposed amendments to specifically allow "family care homes," as defined in State law, in residential zoning districts provided that new family care homes be separated from existing family care homes by one-half mile. N.C.G.S. 168-22 requires that local governments treat family care homes as residential uses for zoning purposes and that family care homes be allowed by right in all residential zoning districts. Local governments cannot require that such homes obtain a conditional or special use permit, special exception or variance from a zoning ordinance; however, they may prohibit a family care home from being located within a one-half mile radius of an existing family care home.

Planning Staff drafted two related amendments for Planning Board consideration. The first amendment would add definitions of "family care home" and "handicapped person" to the Zoning Ordinance. Such definitions are based on similar definitions in N.C.G.S. 168-21. The second amendment would add family care homes as a permitted use in residential districts provided that new family care homes are separated from existing family care homes by one-half mile. On May 26, 1998, the Planning Board voted unanimously (6-0) to send a favorable recommendation on both amendments to the Board of Commissioners.

In accordance with Section 1204 of the Henderson County Zoning Ordinance and State law, notices of the public hearing were published in the June 19 and June 26, 1998 editions of the Times-News.

Public Comment:

1. Lewis Staton of East Flat Rock addressed the Board, reading from a prepared two page letter, with his concerns about alleged misinterpretation of the Zoning Ordinance by Planning Director Matt Matteson regarding placement of family-care homes in allowing the construction of Pleasant Place, a multi-unit family care home in East Flat Rock. Mr. Staton stated a moratorium was in effect on family care homes placement when the building permit was issued to the developer of Pleasant Place. However, that moratorium was not considered by Planning Staff either due to ignorance of its existence or by simple negligence in this matter. Mr. Staton thanked the Commissioners for listening to some of his earlier concerns about this matter and encouraged the Board to adopt these proposed amendments to the Zoning Ordinance to regulate placement of family care homes in the County. In his final comments, Mr. Staton expressed that these amendments would not help in the Pleasant Place matter but the citizens of the County would reap its benefits in the future regarding family care homes placement.

2. Roy Burrell of East Flat Rock addressed the Board about his concern about Pleasant Place in East Flat Rock and he too encouraged the Commissioners to adopt these amendments to the Zoning Ordinance to regulate the placement of family care homes in Henderson County.

3. Lucy King of East Flat Rock addressed the Board about her concerns related to Planning Director Matt Matteson's alleged laxness to detail on the Pleasant Place project and alleged willful misinterpretation of the Zoning Ordinance. Ms. King urged the Board to reprimand Mr. Matteson openly for this alleged misconduct and inform the community in an open meeting of their actions in this matter. Assistant County Manager Skerrett informed the Board those allegations were serious and the decision for any deemed reprimand for Mr. Matteson would be under the authority of the County Manager and were personnel issues and would not be discussed with the public.

Commissioner Hawkins made a motion to go out of public hearing. All voted in favor and the motion carried.

Commissioner Hawkins made a motion to accept the proposed amendments as recommended by the Planning Board to the Zoning Ordinance prohibiting family care homes from being located within a one-half mile radius of an existing family care home.

Commissioner Ward requested the Board to direct staff to request a letter from Chairman Bill Moyer of the County Planning Board

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regarding the Pleasant Place issue. Board directed staff to comply with Commissioner Ward's request.

PUBLIC HEARING - TO CONSIDER AN OFFER TO PURCHASE LOT 5B OF APPLELAND BUSINESS PARK

Commissioner Kumor made a motion to go into public hearing. All voted in favor and the motion carried.

This public hearing was set to consider the Offer to Purchase and Contract that the Board has received from Duraline Imaging, Inc. for the purchase of Lot 5B, a 6.0158 acre lot, in Appleland Business Park. NCGS 158-7.1 requires that at least ten (10) days prior notice be given to the public prior to the public hearing. This requirement has been satisfied by the notice being advertised on June 24, 1998.

In order to pursue this Offer, the County must purchase Lot 5B from Cynthia Whitted pursuant to its Option which the County currently holds for the remaining acreage (approximately 16 acres) in Appleland. The Board extended this Option through September 30, 1998. The County's purchase price for Lot 5B is \$19,520.00 per acre, or a total of \$117,428.41. As a reminder, this price was arrived at based upon the fair market value for the entire Business Park of \$1.5 million. Duraline Imaging, Inc.'s Offer is based upon a per acre price of \$25,000.00, or a total purchase price of \$150,395.00.

Public Comment:

1. Jim Maher, President of Committee of 100, urged the Commissioners to grant this purchase option to Dura-Line.
2. Tom Dunn, President and sole stock holder of Dura-Line, urged the Commissioners to allow his purchase of this Lot 5B at Appleland Business Park to relocate his business. Mr. Dunn explained that Dura-Line was established in Henderson County in 1970 and certainly plans to remain here. This company manufacturers new and recyclable business images such as printer cartridges, printer ribbons, toner cartridges, etc. The work force currently consists of forty workers and as the business expands more jobs will be added.
3. Ray Cantrell, Vice-President of Committee of 100, urged the Commissioners to grant this purchase option to Dura-Line.

Commissioner Good made a motion to go out of public hearing.

Commissioner Kumor made a motion to accept the offer on Lot 5B submitted by Dura-Line. All voted in favor and the motion carried.

CLOSED SESSION

Commissioner Hawkins made the motion for the Board to go into Closed Session as allowed under NCGS 143-318.11 for the following reasons:

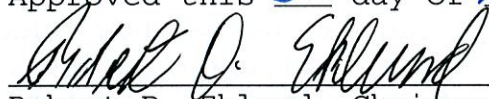
1. (a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. To consult with an attorney employed or retained by the public body to consider and give instructions 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)(4) 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.

There was no action taken by the Commissioners following Closed Session.

Commissioner Hawkins made the motion to adjourn the meeting at approximately 9:10 pm. All voted in favor and the motion carried.

Approved this 3RD day of AUGUST, 1998



Robert D. Eklund, Chairman
Henderson County Board of Commissioners

ATTEST:



Avalina B. Merrill
Acting Clerk