

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
DECEMBER 13, 1993

The Henderson County Board of Commissioners met for a special called meeting on December 13, 1993 at 7:00 p.m. at the Mountain Horticultural and Crop Research Station on Fanning Bridge Road. The purpose of the meeting was to hold three separate Public Hearings on the proposed Water Supply Watershed Ordinance, Companion Amendments to the Land Development Ordinance and Companion Zoning Ordinance Amendments regarding establishment of a Watershed Review Board.

Those present were: Chairman Vollie G. Good, Vice-Chairman Renee Kumor, Commissioner J. Michael Edney, Commissioner Hugh D. Randall, Commissioner William McKay, County Manager David F. Thompson and Assistant County Manager David Nicholson.

Also present were County Planners Matt Matteson, Karen Collins and Stuart Rohrbaugh and Zoning Administrator Sam Laughter.

Absent were County Attorney Don Elkins, Staff Attorney Angela Skerrett and Elizabeth Corn, Clerk to the Board.

CALL TO ORDER/WELCOME

Chairman Good called the meeting to order and welcomed those in attendance.

Mr. Matteson explained the purpose of the hearing and the rules under which the hearing would be conducted.

PUBLIC HEARING - Proposed Water Supply Watershed Ordinance

Commissioner Kumor made a motion to go into the public hearing on the Proposed Water Supply Watershed Ordinance. All voted in favor and the motion carried.

A. French Broad River Watershed (WS-IV District)

PUBLIC INPUT

1. Gary Morgan. Mr. Morgan is concerned with the non-residential built-upon area under the low density provisions. He feels residents in the French Board River Watershed deserve shopping centers, medical facilities, etc. and fears that land values will drop as a result of the proposed Water Supply Watershed Ordinance.

2. John McLean. Mr. McLean is concerned that property rights are being taken by State of North Carolina and Henderson County. He stated that the Constitution says that payment must be made if land is taken. Mr. McLean wants the County to get maximum utility.

3. Gary Barr. Mr. Barr and a partner own property on Highway 280. He agreed with earlier comments made that 75% of the land is being taken with no remuneration to service Buncombe county and Asheville. He stated that Henderson County needs the tax base and urged Commissioners not to restrict it to support Buncombe County.

4. John Hollamon. He and his sister, Myra Wood, own property on Butler Bridge Road. Mr. Hollamon urged Commissioners to consider the High Density Option. He stated that at the Land Use meetings, high paying industrial jobs for our children were talked about. Mr. Hollamon reminded the Commissioners that property in the French Broad River Watershed is prime for high tech, low pollution industry, especially with the 280 connector and the airport.

5. Dorothy Freeman. Ms. Freeman is a residential builder in Naples and a farmer. She stated that she gets uneasy when rights are taken away and she does not see the Commissioners bailing out her property when it floods. Ms. Freeman has to deal with increasing agricultural regulations and now her property is in the Watershed. She reminded the Commissioners that Buncombe County wants the French Broad River for industrial use, not drinking water. Ms. Freeman reminded the Commissioners that the Naples area is now getting development. She state that if Commissioners want to buy her land, it's for sale.

6. Steve Fullam. Mr. Fullam urged Commissioners to vote for the High Density option and fewer restrictions.

7. Charles Shuford. Mr. Shuford asked the Commissioners what they were going to do with the sewer line?

8. Mayor Fred Niehoff. Mayor Niehoff explained to the Commissioners that the new City Council reaffirmed the previous Council's position regarding the Watershed regulations. He stated that the City intends to move the intake and then he read a statement dated December 10, 1993 which had been submitted to the Board of Commissioners.

Chairman Good asked Mayor Niehoff to comment on Hendersonville's recent agreement to sell water to Asheville.

Commissioner Kumor requested that the City look at a Water Authority.

Mayor Niehoff responded that 80 percent of the water users do not live in the city and that there would be nothing wrong with pursuing that.

Commissioner Edney asked Mayor Niehoff if the City Council discussed using revenue from the sale of water to move the intake further up into the National Forest.

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Mayor Niehoff answered that he did not think that the revenue would reach the cost of moving the intake (\$1.2 Million estimated), and that the relocation of the Fletcher reservoir would also take funds.

B. Colt Creek Watershed (WS-II District)

Matt Matteson announced that no one had signed up to speak regarding Colt Creek.

C. Mills River Watershed (WS-II District)

Mr. Matteson gave a summary of the Planning Board's recommendations regarding the Mills River Watershed.

PUBLIC INPUT

9. John Humphrey. Mr. Humphrey had a question regarding the acreage in the Mills River Watershed and the portion in the National Forest. He did not know why the Ordinance does not set a minimum lot size for non-residential uses. He feels that the 5/70 option seems to defeat water quality and that there would be an impact of cluster and multi-story development. Mr. Humphrey urged the Commissioners to protect the watershed, but to do it right.

10. Ruth Humphrey. Ms. Humphrey feels that some may have the impression that those who farm in Mills River don't want protection but she and John grow hay, protect woodlands. She urged Commissioners to keep the water as pure as possible because it can't be replaced. Mr. and Mrs. Humphrey support Mayor Niehoff's statement. She is concerned about what she read, that the County might not have the Ordinance in place by January 1st and she asked for an explanation.

Chairman Good responded that if the Commissioners are working in good faith, the State will allow them to go beyond the January 1st deadline and he knows of other cities that have been given extensions. He stated that there is an enormous amount of information and that the Board wants to go over the comments again.

11. Carolyn Whitaker. Ms. Whitaker spoke in favor of the 5/70 and high density options.

12. Wayne Carland. Mr. Carland has a small business in Mills River and owns property in two watersheds, WS-II Critical Area, WS-II Protected Area and WS-IV Protected Area. He feels the proposed Water Supply Watershed Ordinance has little to do with clean water - it is land use restrictions. Mr. Carland calculated the usable area of this property using built-upon area without the 5/70 or high density options and found he could use about 13 percent of 250 acres. He feels that this is poor utilization of land and an

infringement of property rights. He questioned the Commissioners as to who would compensate him and the County for the loss of revenue? He asked that the Board include High Density and 5/70 so that property owners can know where they stand.

13. Carolyn Carland. Ms. Carland is a business owner in Mills River and owns land in the French Broad River Watershed. She asked: that the City of Hendersonville consider moving the intake further up the river; that the rules be based on sound study and scientific data; that the rules only impact property owners to the extent that the intent be carried out; and that all options be included to insure flexibility for growth. Ms. Carland stated that the County needs a strong economic future and she feels that the land burden does not belong to Henderson County nor the City of Hendersonville. She urged the Commissioners not to take away all of the options.

14. Rick Brown. Mr. Brown feels that the number one most precious commodity is freedom. He stated that Mills River is a family-oriented community and by overregulating, the residents would not be able to build as many structures per acre. Mr. Brown feels that the residents need to be able to offer places to their children. He is also a farmer and feels that farming has been overregulated for some time. In his opinion, no zoning type ordinance is going to protect water; landowners have to take care of their portion of the river.

15. Carolyn Johnson. Ms. Johnson supports Draft 17 but all options should be included for the Mills River and French Broad River Watersheds. She stated that the 5/70 for Mills River is available but urged the Commissioners to ask for 10/70. Ms. Johnson reminded the Commissioners that Henderson County neighbors asked for 10/70 and got it and suggested that they too ask and be competitive. She feels that the current intake location is inappropriate and stated that when it is moved, it will take at least six months to declassify and that there are topographic problems, soils that won't test for septic, etc. Ms. Johnson urged Commissioners to look at the Land Use Plan and reminded them that along 280 it is prime for commercial. She feels that it is a waste of resources. Ms. Johnson feels that all options should be included. She is concerned that the previous City administration and Mayor waited until the last minute to comment. Ms. Johnson reminded the Commissioners that Article 500 of the Ordinance would answer Mayor Niehoff's question regarding public health. She then asked all in attendance who favored including the 5/70 - 10/70 and the high density options to stand. Many in the room stood. Ms. Johnson concluded by saying that he "people are speaking."

16. Tom Moore. Mr. Moore has property in the critical area and protected area of the Mills River Watersheds as well as in WS-IV. He's a dairy farmer in the critical area. Mr. Moore stated that he has regulations to comply with by 1994 which will cost him between

\$70,000 and \$100,000. He feels that the City has been deaf to requests to reevaluate the intake location. Mr. Moore told the Commissioners in order to survive the residents must know their options.

17. Jeff Young. Mr. Young supports 5/70 and High Density options and he feels that the 280 is crucial to economic growth.

18. Ed Ingle. Mr. Ingle stated that walls can't be erected around the county and that everyone uses the water somewhere else. He supports the Low Density option. Mr. Ingle urged the Commissioners to protect 4% of the County and the remainder can be developed and asked the Board to consider the 40,000 others who did not stand.

19. Bill Price. Mr. Price supports 5/70, more options and moving the intake.

20. Ellen Carland. Ms. Carland owns property in French Broad River and Mills River Watersheds. She feels that knowing we must enact regulations, the County should meet the minimum state requirements with high density and 5/70 options allowed. Ms. Carland feels that is necessary for economic growth and expansion of the tax base.

21. Max Carland. Mr. Carland has a cattle operation and he owns property in both watersheds. He hopes his son and grandson can farm but if they can't, he hopes they have the option to use land to benefit Henderson County. Mr. Carland urged the Commissioners to adopt minimum state standards with the 5/70 and high density options.

22. Unknown speaker. This citizen stated that citizens were already regulated to death and urged the Commissioners to keep regulations to a minimum.

23. Phillip Brittain. Mr. Brittain feels that the people of the County would be better served if the intake can be moved. He urged the Commissioners to pass minimum rules to preserve property rights.

24. Tommy Moore. Mr. Moore supports High Density and 5/70 options because he may not always be a dairy farmer.

25. Leon Lamb. Mr. Lamb spoke in favor of High Density and 5/70 options and urged the Commissioners to consider moving the intake.

26. Janet Moore. Ms. Moore feels there is a need to keep up to date on what the state is saying, especially if changes are made. She supports 10/70. She stated that the community is not on trial nor are the Commissioners on trial but the rules are and she urged the Commissioners as the judges to keep them fair. Ms. Moore urged the Commissioners to get the City to move the intake upstream.

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Chairman Good called for a 5 to 10 minute break at 8:33 p.m.

Chairman Good called the meeting back to order at 8:44 p.m. and repeated that the that the meeting would be adjourned no later than 10:00 p.m. He announced that anyone who had not signed up to speak and wanted to do so would be given that opportunity.

C. General Comments - no specified district.

PUBLIC INPUT

27. Fred Ulchar. Mr. Ulchar was critical about the announcement regarding this hearing. He received the notice about a week ago and was concerned that now the Board has to approve the rules by January 1st. Mr. Ulchar felt that more input was needed. He questioned the Commissioners as to why the County is concerned about the French Broad River because based on information he has, it could not be used for drinking purposes.

28. Dawn Wood. She and her father (? Hall) have keen interest in Henderson County. Ms. Wood is concerned about the water quality but she felt that the Board should consider High Density since retention ponds could be used as well as other filtration systems. She felt that the cost would be to property owners, not the County.

29. Jack Tate. Mr. Tate owns property in French Broad River Watershed and was representing Pete Green and the Carlands. Mr. Tate felt that this is a property rights issue - using it as a land use issue. He urged the Commissioners to tell the people that's what it is if the watersheds were going to be zoned. Mr. Tate felt that there is a need for the options to preserve the tax base and help provide jobs. He reminded the Commissioners that surrounding counties have enacted High Density.

30. Roger Hill. Mr. Hill represented the Greater Hendersonville Chamber of Commerce and the Board of Realtors. He read a letter from both supporting the least restrictive approach.

31. James Beardsley. Mr. Beardsley represented the League of Property Owners. He felt that the Watershed protection is important and he supports the recommendations by the City of Hendersonville.

32. Chuck McGrady. Represented the ECO. (See written statement). The ECO supports the City of Hendersonville's position and the Planning Board's recommendation and Low Density. The ECO has reservations about 5/70. Mr. McGrady urged the Commissioners to delay it to develop criteria, timetable. He felt that when first come, first serve, it could promote conversion of farmland and timberland. Mr. McGrady expressed concern about the Board of Adjustment serving as Watershed Review Board.

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33. Mary Jo Padgett. Ms. Padgett lives in Hendersonville and can't use her well legally (has to use City water). Therefore, she wants high quality water. She urged Commissioners to put the most restrictive limitations on water quality and she felt that Mills River is a great natural resource.

34. Kenneth Gaylord. Mr. Gaylord is a resident of Hendersonville. As an architect, he makes his living in construction but her urged the Commissioners most restrictive rules. He felt that clean water is more of a right than a profit from land.

35. W.R. Gemmel. Mr. Gemmel represented the League of Property Owners. He read a statement supporting the position of the City of Hendersonville.

36. Debbie Handt. Ms. Handt is a resident of East Flat Rock area. She drinks and uses City water and therefore wants most restrictive rules.

37. Ken Weitzen. Mr. Weitzen is a Green River resident and member of Land Use Plan Steering Committee. He feels that this is a land use planning issue and that the County is growing too fast. Mr. Weitzen feels that the Commissioners need to guide and manage growth, otherwise all will ultimately suffer. He stated that the high quality of life here is what supports our economy and if we lose our natural assets, our economy will suffer. He reminded the Commissioners that in order to attract high quality industry, we need to offer a high quality community.

38. Dixie Blumer. Ms. Blumer is the Natural Resources Chairman of the League of Women Voters. She read a statement submitted to Board. Ms. Blumer reminded the Commissioners that the rules could be repealed or weakened. She feels that zoning could protect the water supply and control the type of development in Mills River. Ms. Blumer feels that the 5/70 option should be available for churches, schools, etc. on a case by case basis and areas could be identified for higher density. She urged the Commissioners not to include High Density in French Broad River now but to study it carefully.

39. Janet Beam. Ms. Beam is a resident of Haywood Knolls and she feels that she is fortunate to have city water. She reminded the Commissioners that it is easier to keep clean water clean. Ms. Beam feels that the lowest density is the best course.

40. Don Soula. Mr. Soula reminded the Commissioners that the water system is owned by 40,000 Henderson County residents and once our water quality is gone, it is gone forever.

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41. Marian Dziuda, Ns, Dzuyda and the residents of Essex Subdivision support the stand taken by the city of Hendersonville and the League of Women Voters.

42. Charles Diehl. Mr. Diehl is from the North Carolina Farm Bureau Federation in Raleigh. He was asked to come to the hearing by the Henderson County Farm Bureau. Mr. Diehl stated that to be fair, the City should move the intake to the National Forest or compensate the owners. He feels that these people are having their investment interest diminished and that farmers have their investment tied up in the land and equipment. He reminded the Commissioners that if the land is over restricted and they need to sell, it is not worth much. Mr. Diehl realized that the County's hands are tied on some issues, but urged the Board to make the ordinance the least restrictive on property owners. He reminded the Board that the 5/70 option should be automatic and 10/70 is available if they did some work. He urged them to do this in the interest of the property owners and tax base.

Vollie Good asked if anyone else wished to speak. No one responded.

Renee Kumor made a motion to close the hearing. All voted in favor and the motion carried.

PUBLIC HEARING - Companion Land Development Ordinance Amendments

Chairman Good asked for a motion to go into the hearing on the Land Development Ordinance amendments. Commissioner Kumor said she wanted an explanation of the amendments.

Mr. Matteson summarized the amendments and the reasons for them.

Commissioner Randall asked if the Water Supply Watershed Ordinance would take precedence.

Mr. Matteson said that the most restrictive regulations would. For example, he pointed to minimum lot sizes.

Chairman Good asked if the shaded areas in the test indicated the changes.

Mr. Matteson said this was correct.

Chairman Good called for a motion. Commissioner McKay made a motion to go into the public hearing on the Land Development Ordinance amendments. All voted in favor and the motion carried.

Mr. Matteson stated that no one had signed up to speak on this item.

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Chairman Good asked if anyone wished to speak.

Chairman Good asked if the hearing on these amendments had been advertised.

Mr. Matteson responded that it had, but differently from the Water Supply Watershed Ordinance hearing since these were test amendments.

Mr. Thompson clarified that this hearing had nothing to do with the options available under the state rules for the Water Supply Watershed Ordinance but that the County is required to have a hearing on amendments to the Land Development Ordinance.

Commissioner Kumor made a motion to close the hearing. All voted in favor and the motion carried.

PUBLIC HEARING - Companion Zoning Ordinance Amendments - Establishment of Watershed Review Board

Chairman Good called for a motion to open the hearing regarding the establishment of a Watershed Review Board.

Mr. Matteson stated that the Board of Commissioners should be given the flexibility to appoint the Board of Adjustment to act as the Watershed Review Board. This would have to be included in the Zoning Ordinance as a duty of the Board of Adjustment.

Commissioner Kumor asked about the workload to the Board of Adjustment.

Mr. Matteson responded that he had discussed this with the Board of Adjustment. If the Board's workload became overwhelming, the Board of Commissioners could reconsider the appointment and establish a new Watershed Review Board. Since this is new to North Carolina, Mr. Matteson said he did not know what the workload would be.

Commissioner Randall asked if the Watershed Administrator would have to have a Review Board.

Mr. Thompson stated that the duties of the Board of Adjustment and the Watershed Review board are very similar. What the Board of Commissioners decide regarding the High Density and 5/70 options could affect the number of cases. He reminded the Board that the proceedings of the Watershed Review Board would be quasi-judicial and detailed.

Commissioner Randall asked how soon after the adoption of the Water Supply Watershed Ordinance would a Review Board have to be appointed.

Mr. Matteson and Mr. Thompson stated soon after or simultaneously. Chairman Good stated that no action would be taken on this at this meeting.

Commissioner Kumor made a motion to go into the hearing on regarding the establishment of a Watershed Review Board. All voted in favor and the motion carried.

Mr. Matteson stated that no one had signed up to speak on this matter.

Chairman Good asked if anyone wished to speak.

PUBLIC INPUT

43. John Humphrey. Mr. Humphrey asked if the Board does adopt the Water Supply Watershed Ordinance and has the Zoning Board of Adjustment serve as the Watershed Review Board, then it would be desirable to have residents of the watersheds serve on the Board.

Commissioner Kumor made a motion to close the hearing. All voted in favor and the motion carried.

Chairman Good stated that they had heard from many people at this meeting and that the Board had also received many letters and written statements. The Board will read and reread these and the comments prior to making a decision. The Board knows it can't please everyone but they will make a decision which is in the best interest of those in Henderson County.

Chairman Good asked if they needed to schedule their next meeting on the proposed Water Supply Watershed Ordinance.

Commissioner McKay asked if they could defer setting a meeting date until their regular meeting on Wednesday, December 15th.

Chairman Good asked Mr. Matteson if they could wait until Wednesday.

Mr. Matteson said yes.

Commissioner Kumor asked if this would be a work session.

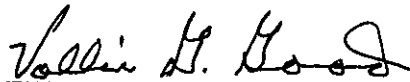
Chairman Good stated that it would not be another hearing.

At 9:29 p.m. Commissioner McKay made a motion to adjourn the meeting. All voted in favor and the motion carried.

Attest:



Elizabeth W. Corn, Clerk



Vollie G. Good, Chairman