

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 19 November 2008

SUBJECT: Settlement approvals

ATTACHMENT(S): Bell tax appeal settlement
Kappler civil penalty settlement

SUMMARY OF REQUEST:

Attached are three settlements of pending legal issues for final Board approval.

- 1) Bell matter: involves payment of all taxes claimed by the County to be due, plus interest on such taxes.
- 2) Kappler matter: involves upfront payment of certain penalties and costs to the County, plus additional payment over time.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Final approval of settlements.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the proposed settlements attached to this agenda item.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

DRAFT

SETTLEMENT AGREEMENT

This Agreement is made this the 31st day of October 2008 by and between the County of Henderson, North Carolina, a body corporate and politic ("the County"), and John D. Bell, a citizen and resident of Henderson County, North Carolina ("Bell").

Facts and Circumstances

1. Bell is the owner of certain real property situated in Henderson County, North Carolina, and located at 658 Sunset Drive, consisting of 0.59 acres, improved with a residential dwelling.
2. On August 1, 2005, the County sent Bell a Notice of Discovery for tax years 2000 through 2005 for additions and renovations to an existing house on the subject property. The County had not previously assessed the additions and renovations for those years. The work began in 1997 and was completed in 1998.
3. Although Bell did not list the real property improvements with the tax assessor on an abstract, Bell did obtain permits for the additions and renovations, as well as receive certificates of occupancy. The information given by Bell to receive these permits and this certificate was not transmitted to the Office of the Henderson County Assessor.
4. The total taxes due for the years discovered is \$6,920.08. The total interest (on such taxes only and not any penalties) accrued as of the date shown above is \$1,851.12. The penalties assessed in this matter for non-listing are \$2,296.81.
5. The County's imposition of taxes and penalties noted above were upheld by the North Carolina Property Tax Commission, subject to any appeal to North Carolina's appellate courts.
6. Bell indicated his desire to appeal to the Board of Commissioners of the County on the issue of the discovery of this matter.
7. After negotiation, the parties have agreed to a resolution of this matter without further litigation, as stated below.

Terms of Agreement

1. Bell shall pay to the County by not later than 21 November 2008 the sum of \$8,771.20, representing the total taxes due and the interest thereon in the Notice of Discovery noted above, accrued through 31 October 2008.
 2. The County shall upon the payment of such sum by Bell forgive any obligation for the payment of any penalties by Bell pursuant to such Notice of Discovery.
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COUNTY OF HENDERSON

By: _____
WILLIAM L. MOYER, Chairman
Henderson County Board of Commissioners

Attest:

Secretary

_____[SEAL]
JOHN D. BELL

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

AGREEMENT
For the Settlement of Civil Citations

This **AGREEMENT**, made and entered into this the 7th day of November, 2008, by and between **Henderson County**, a body politic and corporate under the laws of the State of North Carolina (hereinafter the "**County**") and Kim Kappler, a resident of Henderson County and subject to the laws of the County and the laws of the State of North Carolina (hereinafter the "**Kappler**" or "**Defendant**").

WITNESSETH:

WHEREAS the County, through its Animal Enforcement Department, has cited Kappler, alleging that Kappler violated several provisions of the Henderson County Animal Ordinance.

WHEREAS the Defendant currently resides in the municipality of Flat Rock in Henderson County and is thus a resident of Henderson County and subject to the Henderson County Animal Ordinance.

WHEREAS the Defendant appealed the original citations to the Henderson County Animals Services Appellate Board on August 7, 2008. The Board upheld all the violations and all the fines unanimously.

WHEREAS the Defendant admits to committing violations of the Henderson County Animal Ordinance and that these violations are such to prohibit her from applying for a Companion Animal Permit in Henderson County in the future.

WHEREAS both parties understand the Defendant must comply with all provisions of the Henderson County Animal Ordinance including vaccinations against rabies and a Companion Animal Permit if applicable.

WHEREAS both parties recognize that Ms. Kappler plans to move out of state and wishes to resolve matters with Henderson County prior to her move. Parties also understand the sensitivity of the issues raised and the desire of Kappler to have privacy at her new residence. For these reasons, the exact location of Ms. Kappler's new residence shall not be part of the record in this case.

WHEREAS the parties have agreed that the Court should enter this Agreement based upon their agreement, as reflected in the terms hereof. The fact of the Agreement of the parties is shown by the signatures hereto of the parties and their counsel.

NOW THEREFORE, for valuable consideration and mutual promises exchanged between the parties hereto, it is agreed as follows:

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A. GENERAL TERMS

1. Kappler agrees to pay the County as outlined below in Section B;
2. In return, subject to payment in full as stated below, the County releases all claims for civil penalties;
3. Kappler also waives any defenses of statute of limitations to the civil penalties claim should she not pay in full as stated below and the County files suit to enforce and collect civil penalties.

B. DEFENDANT'S FINANCIAL OBLIGATIONS

1. Agreement as to Payment. Kappler promises to pay the County as to these terms:
 - i. Total Payment of entire amount as listed in Appendix A in cash; OR
 - ii. Good faith payment with the remainder as a promissory note as secured by a second Deed Trust on the property 2731 Greenville Highway, East Flat Rock a PIN of 9577-21-8052 so that the County shall have a lien on said property.
 1. Counsel for Kappler shall provide the County with a Certified Title Opinion and Title Search for the above property and the Promissory Note and Deed of Trust with a "due on sale" clause in the deed no later than November 19, 2008;
 2. No interest on payment shall accrue for the first year after the Deed of Trust. After the first year, interest shall accrue at 8%.
 3. Final payment is due no later than three (3) years after the Deed of Trust is executed.
 4. A good faith payment of \$3647.00 shall be paid to the County by Kappler within 10 days of signing this Agreement.
 - a. \$2000 of this payment shall go to accrued boarding costs;
 - b. \$1500 of this payment shall go to fines;
 - c. \$147 shall go to the cost of microchipping and altering the returned animals;
 5. If the title search proves that a lien will be unsuitable, the Defendant must establish a consistent payment schedule with the County to pay the remainder. Failure to make a schedule payment shall make void this agreement and shall renew civil penalties against the Defendant.
2. Amount of Financial Obligation
 - i. Fines. Ms. Kappler must pay \$3500 in fines for civil violations of the Henderson County Animal Ordinance.
 - ii. Fees. Ms. Kappler shall be responsible for all boarding and other fees incurred by the County during the period of impoundment.
 1. County agrees to waive the \$30 per animal intake fee.
 2. County is entitled for \$5 per day per animal impounded until the animals are relinquished to the County. This amount shall be tolled upon the signing of this Agreement and the relinquishing of the animals. Assuming an agreement is reached by November 7, 2008, the amount of the boarding costs shall be capped at \$14,000.

The Defendant shall incur this capped cost in addition to any other fees assessed by the County.

3. Ms. Kappler must pay all medical expenses incurred by the County as described in Appendix A.

3. Additional Costs. Costs prior to release: All costs in this section must be paid by the Defendant prior to any animals being returned to her.

- i. All animals which Ms. Kappler wishes returned to her must be inoculated prior to release at Ms. Kappler's expense. Rabies vaccines are \$8 each.
- ii. All animals returned to Ms. Kappler must be microchipped at Ms. Kappler's expense if the animal is not already microchipped. The cost of microchipping is \$10 per animal.
- iii. Any unaltered animal must be spayed or neuter prior to return at Ms. Kappler's expense. Altering animals costs \$47 per animal except for male cats which are \$32 per animal.

C. DISPOSITION OF ANIMALS

1. Kappler may select 10 of her impounded animals to be returned to her. The remaining impounded animals must be immediately relinquished to the County in writing. Upon relinquishing these animals, the cost of boarding these animals shall toll.
2. The ten animals she selects must be removed from the shelter within 10 days of the endorsement to this Agreement. If these animals are not removed within 10 days of signing this Agreement, these animals shall be considered relinquished and become the property of Henderson County and Ms. Kappler waives all rights to these animals.
3. Once Ms. Kappler selects 10 of her impounded animals, the County shall not permit these 10 animals to be adopted by members of the public except with Ms. Kappler's permission. If in the interim between when Ms. Kappler selects the 10 animals and when these animals are returned to her, if any of the animals are adopted, die, or become sick to the point where euthanasia is the only humane alternative, Ms. Kappler may replace that animal with another animal from the impounded animals. Once Ms. Kappler removes the 10 animals from the shelter, she may not take out any more of the impounded animals from the shelter.
4. Any animal selected by Kappler must be inoculated for rabies and be microchipped and altered if not already completed, at Ms. Kappler's expense. No animals will be returned to Ms. Kappler until these steps are taken and the County has received payment for these services.
5. No animal shall be released to Kappler until the County is satisfied that Kappler has an adequate place for the animals to reside in her new home and shall be able to provide them with proper care. For the purposes of protecting Ms. Kappler's privacy and new residence, satisfaction of this requirement will be determined by the Office of the County Attorney.

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6. Upon relinquishment of the animals, the County will keep these animals for 30 days after entry of this Agreement in an effort to place all the animals in private home adoptions or with "no-kill" shelters or rescue groups. The County may take recommendations from Ms. Kappler regarding individuals or organizations but Ms. Kappler shall not be part of any agreement with these organizations or people. Ms. Kappler shall also have no part in the transportation of these animals out of the shelter.
7. The County shall take whatever avenues it thinks are appropriate to adopt out these animals or place them with organizations. This may include but is not limited to press releases, adoption events, public statements or resolutions. The County agrees to exchange any written statements with Kappler and the Defendant shall do the same regarding public statements about the resolution, including appeals to the public to adopt the remaining animals.
8. If space permits, the County shall keep the animals longer than 30 days except in cases where the animal's health is poor and euthanasia would be more humane. However, after 30 days, the County may place animals in any shelter or rescue and adopt out the animals in an effort to place all the animals.
9. The County in its discretion may allow Ms. Kappler to take animals remaining if the County is satisfied that all placement measures have been taken, that Ms. Kappler has provided an appropriate residence for the animals outside of the County, that she has the ability to care for further animals, and that housing further animals would not violate laws within Kappler's jurisdiction. This decision remains within the total discretion of the County under the County Attorney's Office in consultation with the Animal Services Director.
10. Neither County nor Kappler shall be responsible for the fate of any animal after it is adopted or placed outside of the Henderson County animal shelter.
11. All animals shall be microchipped prior to their release at the Defendant or the adopted owner's expense.
12. The Defendant must sign a statement stating that she will not house or care for any of the animals she relinquished to the County and that if she is found in the custody of these animals she will be fined \$500 per day while she is in custody of the animal and the animal will be impounded by the County and she shall have waived all further rights in the animal. Upon microchipping these animals, the microchip numbers shall be added to the statement.

D. PROCEDURE FOR RESOLUTION

1. The County and the Defendant's counsel agree to exchange any written public statements or comments regarding the resolution of this.

2. The Defendant shall provide County proof of her move out of state and proper facility to hold 10 animals. County agrees that no part of the public record will or any statement to the public will reveal the location. It is specifically understood that the move out of state is not a condition of this agreement.
3. County to stipulate that appeal date is extended to November 30, 2008 but shall become moot upon the signing of this Agreement.
4. Kappler gives the County permission to enter onto the new property and inspect within reasonable times with adequate notice to the Defendant for the period of her unsupervised probation as determined by the criminal proceedings or until the remaining funds are paid, whichever is later.

E. GENERAL PROVISIONS

1. Assignability: This Agreement is expressly non-assignable without prior written consent and approval by the non-assigning party.
2. Service of Process: Service of all notices under this Agreement shall be sufficient if given personally, by registered or certified mail, returned receipt requested, and mailed to the party involved at the address and to the attention of the person set forth below, or to such other person or address as said party may provide in writing in writing from time to time. Any such notice mailed to such address shall be effective upon the date received as shown by the returned receipt or otherwise:

For Ms. Kappler:

Wilder Wadford, Attorney
38 North Main Street
Weaverville, NC 28787

For County of Henderson

Henderson County
Office of the County Attorney
c/o Sarah Zambon, Deputy County Attorney
1 Historic Courthouse Square, Ste 5
Hendersonville, North Carolina 28792

3. Miscellaneous Provisions: The singular of any term used in this Agreement shall include the plural, and the masculine shall include the feminine and vice versa.
4. Governing Law: The laws of the State of North Carolina shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it except as provided in Paragraph C. 9.
5. Severability: If any of the provision contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such as invalidity, illegality or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

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6. Time Schedule: Both parties shall commence with their duties under the Agreement immediately upon the execution of same.
7. Parties to this Agreement: This Agreement gives no rights or benefits to anyone other than the the County or the Defendant.
8. Original: A signed copy of this Agreement shall be considered as an original.

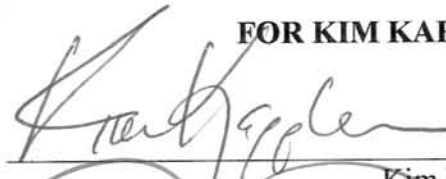
IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on the day and year first above written and if corporate, by their duly authorized representative.

On this the 7th day of November, 2008.

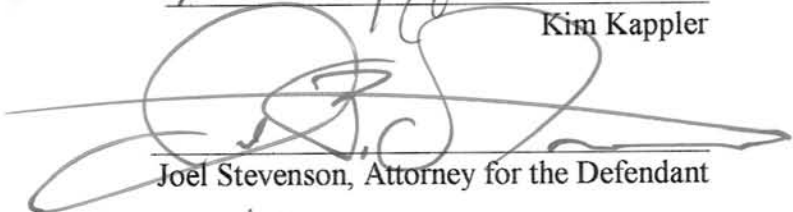
FOR HENDERSON COUNTY

Attorney for Henderson County

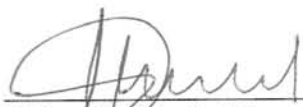
FOR KIM KAPPLER:



Kim Kappler



Joel Stevenson, Attorney for the Defendant



Wilder Wadford, Attorney for the Defendant

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON COUNTY

I, DONNA GODLESKI, a Notary Public for said County and State, do hereby certify that **Kim Kappler** personally appeared before me this day and acknowledged the due execution of the foregoing instrument.



Witness my hand and official seal, this the 7th of Nov., 2008.

Donna Godleski
Notary Public

My Commission Expires 1-17-2009

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON COUNTY

I, _____, a Notary Public for said County and State, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the _____ of _____, 2008.

(Official Seal)

Notary Public

My Commission Expires _____

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APPENDIX A
DESCRIPTION OF KAPPLER'S FINANCIAL OBLIGATION

Fines	\$3500.00
Boarding	\$14,000.00
Medical Costs	\$435.74
Release Costs	\$147.00
TOTAL EXPENSES	\$18,082.74

GOOD FAITH PAYMENT UPON ENDORSING THIS AGREEMENT: \$3647.00

REMAINING AMOUNT FOR PROMISSORY NOTE AND DEED OF TRUST: \$14435.74

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Pet Relinquishment Form

I, Kim Kappler, do hereby transfer ownership of the below described animal(s). I either own or have the legal right and authority to relinquish or release to the Henderson County Animal Services Center (ASC), to be adopted into a new home as per the Consent Order dated 11/7/08. I also agree to surrender with animal(s) all medical/veterinary records pertaining to said animal(s) and will inform ASC of any instances of animal or human bites by the animal and a general description of the reason for relinquishment. I do further release ASC and any person who may obtain the possession or ownership of said animal(s) through ASC, from any kind of claim arising out of my title to or control of such animal(s) and I agree to indemnify and hold Henderson County harmless for fees, by reason of destruction of, or placement for adoption of, said animal. I understand and agree that by signing this document I transfer ownership of said animal(s) to ASC and release the County from any and all future claims with respect to said animal(s).

I acknowledge that all the animals shall be microchipped and understand that if I am found in possession of any of the relinquished animals or house or care for these animals, I must pay \$500 per day until the animals are no longer in my custody and upon impoundment by Henderson County Animal Services, I waive all further rights to these animals.

I hereby acknowledge that I have read and understand the above conditions and all information provided is true, complete and correct.

Name of Animal	Species and Breed	Gender	Age/DOB	Spay/Neuter	Last Rabies	Microchip Number
Bea	123804	F	7	S	5-6-08	
Chase	123801	M	15	N	5-6-08	
Jazy	123805	F	8	S	9-12-08	
Sheena	123808	F	4	S	5-6-08	
Yahoo	123796	M	10	N	5-6-08	
Buddy	123798	M	8	N	2-5-08	
Coramel	123802	F	5	S	5-5-08	
Missy	123818	F	7	S	5-6-08	
Penny	123792	F	5	S	7-8-08	
Riley	123799	M	5	N	2-5-08	
Tater	123807	M	12	N	1-21-08	
Tonka	123795	M	7	N	5-9-08	
Alleigh	123841	F	2	S	7-8-08	
Apple	123844	F	4	S	7-17-08	
Carley	123850	F	4	S	9-12-08	
Chloe	123826	F	1 1/2	S	9-12-08	
Hess	123847	M	6	N	7-17-08	
Midnight	123856	M	7	N	7-10-08	

I hereby acknowledge that I have read and understand the above terms and conditions, and that all information provided herein complete and correct.

I agree to relinquish the animal(s) as of 11/07/08 (date).

Kim Kappler
Owner/Agent Name (PRINT)

[Signature]
Signature of Owner/Agent

11/07/08
Date

Walter Wadford
Owner Attorney Name (PRINT)

[Signature]
Signature of Attorney

11/07/08
Date

Brad Rayfield
Name of ASC Staff (PRINT)

[Signature]
Signature of ASC Staff

11/7/08
Date

Additional Relinquished Animals

[illegible]

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Pet Relinquishment Form

I, Kim Kappler, do hereby transfer ownership of the below described animal(s). I either own or have the legal right and authority to relinquish or release to the Henderson County Animal Services Center (ASC), to be adopted into a new home as per the Consent Order dated 11/7/08. I also agree to surrender with animal(s) all medical/veterinary records pertaining to said animal(s) and will inform ASC of any instances of animal or human bites by the animal and a general description of the reason for relinquishment. I do further release ASC and any person who may obtain the possession or ownership of said animal(s) through ASC, from any kind of claim arising out of my title to or control of such animal(s) and I agree to indemnify and hold Henderson County harmless for fees, by reason of destruction of, or placement for adoption of, said animal. I understand and agree that by signing this document I transfer ownership of said animal(s) to ASC and release the County from any and all future claims with respect to said animal(s).

I acknowledge that all the animals shall be microchipped and understand that if I am found in possession of any of the relinquished animals or house or care for these animals, I must pay \$500 per day until the animals are no longer in my custody and upon impoundment by Henderson County Animal Services, I waive all further rights to these animals.

I hereby acknowledge that I have read and understand the above conditions and all information provided is true, complete and correct.

Name of Animal	Species and Breed	Gender	Age/DOB	Spay/Neuter	Last Rabies	Microchip Number
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Sheena	123808	F	4	S	5-6-08	
Yahoo	123796	M	10	N	5-6-08	
Buddy	123798	M	8	N	2-5-08	
Coramel	123802	F	5	S	5-5-08	
Missy	123818	F	7	S	5-6-08	
Penny	123792	F	5	S	7-8-08	
Riley	123799	M	5	N	2-5-08	
Tater	123807	M	12	N	1-21-08	
Tonka	123795	M	7	N	5-9-08	
Allegh	123841	F	2	S	7-8-08	
Apple	123844	F	4	S	7-17-08	
Carley	123850	F	4	S	9-12-08	
Chloe	123826	F	1 1/2	S	9-12-08	
Hess	123847	M	6	N	7-17-08	
Midnight	123856	M	7	N	7-10-08	

I hereby acknowledge that I have read and understand the above terms and conditions, and that all information provided herein complete and correct.

I agree to relinquish the animal(s) as of 11/07/08 (date).

Kim Kappler
Owner/Agent Name (PRINT)

[Signature]
Signature of Owner/Agent

11/07/08
Date

Walter Wadford
Owner Attorney Name (PRINT)

[Signature]
Signature of Attorney

11/07/08
Date

Brad Rayfield
Name of ASC Staff (PRINT)

[Signature]
Signature of ASC Staff

11/7/08
Date

Additional Relinquished Animals

[illegible]

BR

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