

MINUTES

**STATE OF NORTH CAROLINA
COUNTY ON HENDERSON**

**BOARD OF COMMISSIONERS
WEDNESDAY, JUNE 20, 2012**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 9:00 a.m. in the Commissioners' Meeting Room of the Historic Courthouse on Main Street, Hendersonville.

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

Also present were: Public Information Officer Christy DeStefano, Research/Budget Analyst Amy Brantley, Finance Director J. Carey McLelland, Planning Director Anthony Starr, Environmental Programs Coordinator Megan Piner, Animal Services Community Outreach Coordinator Andy Unguris, Corporal Mike Marsteller, Sergeant Jeff Patterson, Associate County Attorney Sarah Zambon, Community Social Services Program Administrator Penny Summey, Social Work Program Administrator Jerrie McFalls, Assessor/Tax Collector Stan Duncan, Engineer Marcus Jones, and Engineering Intern Amanda Cash.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance to the American Flag was led by Commissioner Messer.

INFORMAL PUBLIC COMMENT

1. Rachel Beal – Ms. Beal is the Program Director at Pardee Hospital and spoke in regard to The Comprehensive Wound Healing Center. Their primary patients are diabetics. Pardee is the only hospital in North Carolina that has a Wound Center of Distinction.
2. Karen Rhoads – Mrs. Rhoads is not pleased with the budget passed by Henderson County or the handling of money to CPPI. She advised the Board to watch all non-profit groups.
3. Pat deLemos – Ms. deLemos is concerned about her tax dollars going to CPPI and the Flat Rock Playhouse. She feels Brad Rayfield is doing a great job at the Animal Shelter.
4. Jay Kirby – Mr. Kirby is the CEO at Pardee Hospital. The patient satisfaction scores recently reported were correct and unsatisfactory. Staff will be working to improve the numbers. Mr. Kirby will be coming back to the Board in 90 days with an update. Pardee is in process of working on their Comprehensive Plan and the Commissioners are invited to be a part of the input and guidance.
5. Patricia Gearity – Ms. Gearity thanked the Board for funding CPPI. She asked the Board not to restrict all of the funding to low income families. This is a great program and vital public service.

DISCUSSION/ADJUSTMENT OF AGENDA

Commissioner Edney requested a closed session for attorney/client privilege.

Commissioner Messer made the motion to adopt the Agenda with the addition of a closed session. All voted in favor and the motion carried.

CONSENT AGENDA

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

CONSENT AGENDA consisted of the following:

Minutes

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

June 4, 2012 – Regularly Scheduled Meeting

APPROVED: July 18, 2012

Tax Collector's Report

Tax Collector Clerk Kathy Johnson had presented the Tax Collector's Report to the Commissioners dated June 20, 2012 for information only. No action was required.

Budget Amendment for the Economic Development Fund Regarding Infrastructure at Ferncliff Industrial Park/Sierra Nevada Brewing Facility

Henderson County anticipates receiving funds from the N.C. Department of Commerce and the N.C. Rural Center (NCRC) to construct water and sewer infrastructure to Ferncliff Industrial Park. The County also anticipates receiving funds from the NCTC to construct on-site water and sewer infrastructure for the Sierra Nevada facility.

The Ferncliff Park project includes extending about 6,500 linear feet (LF) of waterline and 950 LF of sewer line to the Ferncliff Industrial Park and Sierra Nevada Brewing facility site (total cost estimated at \$533,150). This project will be funded by a Community Development Block Grant (CDBG) and the NCRC. The Sierra Nevada Brewing Company will provide the local match funding.

The Sierra Nevada on-site project includes constructing 5,600 LF of private waterline and 2,000 LF of private sewer line using funds from NCRC and Sierra Nevada Brewing (total cost estimated at \$406,768). The Sierra Nevada Brewing Company will provide the local match funding (50%).

This proposed budget amendment modifies the FY13 Budget for the Economic Development Fund to reflect the anticipated revenues and expenses associated with extending water and sewer infrastructure. The budget is divided into separate projects for grant purposes.

Motion:

I move that the Board approves the proposed budget amendment for the FY13 Economic Development Fund.

Engineering Agreements for Ferncliff Park & Sierra Nevada Water & Sewer Infrastructure

Henderson County anticipates receiving funds from the N.C. Department of Commerce and the N.C. Rural Center (NCRC) to construct water and sewer infrastructure to Ferncliff Industrial Park. The County also anticipates receiving funds from the NCRC to construct on-site water and sewer infrastructure for the Sierra Nevada facility.

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As part of the procurement requirements associated with the grants and state law, the Planning Department released and advertised two RFQs for Engineering Services. At its June 4, 2012 meeting, the Board selected Lapsley & Associates to provide the engineering services and directed staff to return with draft agreements.

Staff reviewed the draft agreements, and both meet the project budget and other applicable requirements. The proposed cost for the Sierra Nevada on-site engineering services is \$29,619.00. The proposed cost for the Ferncliff Park off-site engineering services is \$38,821.50.

Motion:

I move that the Board approves the agreements and authorize the Planning Director to execute the agreements with Lapsley & Associates.

Budget Amendments

The Board is requested to approve two budget amendments, related to debt service payments. The first is for the Henderson County Public Schools, and is for an interim interest payment required on the refinancing of Mills River/Hillandale Elementary Schools from the time of the last payment, to the refinancing date. The second is for the loan payment for new ambulances, financed after the FY12 budget was adopted.

Motion:

I move the Board approves the budget amendments as presented.

Noise Ordinance amendments

There are only two proposed changes at this time to the Noise Ordinance:

- Based on a citizen's request, the exemption regarding members of the American Camp Association has been changed to "an appropriate national camp association". This allows camp operators to be members of any nationally recognized camp organization and not just the specific American Camp Association.
- Language regarding frivolous, unfounded, or false reports was added to prevent abuse of law enforcement resources. The exact language was also added to the Animal Ordinance that was approved by this Board at its May 16th meeting.

Motion:

I move that the Board approves the draft language to the Henderson County Noise Ordinance.

Approval of land lease/purchase

A proposed contract was provided in the agenda packet for lease and later purchase of a parcel adjacent to the former landfill.

Motion:

I move that the Board approves the contract for the lease and purchase of the parcel identified in the agenda packet.

NOMINATIONS

1. Agri-Business Development Board – 2 vac.

Chairman Thompson nominated for reappointment Roger Snyder for position #6 and Tom Cooper for position #9. *Commissioner Young made the motion to accept the reappointments of Rogers Snyder to position #6 and Tom Cooper to position #9 by acclamation. All voted in favor and the motion carried.*

2. Environmental Advisory Committee – 1 vac.

Chairman Thompson nominated Kevin Wetzel for appointment to position #5. *Chairman Thompson made the motion to accept the appointment of Kevin Wetzel to position #5 by acclamation. All voted in favor and the motion carried.*

3. Equalization and Review, Henderson County Board of – 1 vac.

Commissioner Young nominated Michael Earle for appointment to position #8 as an alternate. *Chairman Thompson made the motion to accept the appointment of Michael Earle to position #8 as an alternate. All voted in favor and the motion carried.*

4. Henderson County Board of Health – 3 vac.

Commissioner Messer nominated Beverly Hargus for appointment to position #4. *Chairman Thompson*

made the motion to accept the appointment of Beverly Hargus to position #4 by acclamation. All voted in favor and the motion carried.

5. Historic Resources Commission – 1 vac.

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

6. Juvenile Crime Prevention Council – 7 vac.

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

7. Mountain Area Workforce Development Board – 3 vac.

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

8. Mountain Valleys Resource Conservation and Development Program – 1 vac.

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

9. Nursing/Adult Care Home Community Advisory Committee – 4 vac.

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

10. Senior Volunteer Services Advisory Council – 2 vac.

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

11. Smartstart – 1 vac.

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

12. Travel & Tourism Committee – 1 vac.

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

SOCIAL SERVICES' INFORMATION UPDATE

The DSS Board is providing monthly three-minute informational updates to the Board of Commissioners regarding various Social Services issues. The June 2012 update, provided by DSS Board Chair Lee Luebbe, pertains to the issue of Foster Care/Foster Parenting in Henderson County.

Lee Luebbe, Chair of the Henderson County Board of Social Services presented information regarding Foster Care, specifically foster parenting, the fifth topic in their series on the role of DSS in the community. They appreciate the support of the Board of Commissioners for this series of presentations as part of our efforts to educate the public and advocate for the state-mandated role of DSS.

Foster parenting can be one of the most demanding jobs a person can assume...and one of the most rewarding. Foster parents provide a temporary home for abused, neglected and dependent children when their parents cannot take care of them. They provide for the day-to-day needs of the children in a safe and caring home while the parents are working with juvenile court officials, social workers, and a Guardian ad Litem on a plan for reunification.

A license is required to foster parent. Licensure requirements include 30 hours of classroom training, a mutual home assessment, criminal history checks, CPS & First Aide certification, medical clearances, and a stable income and home. A fire inspection is required as well as an Environment and Health regulations check conducted by agency staff to ensure the foster home is safe. Henderson County has on average 60 foster parents.

The basic cost for a child's room, board and other living expenses are reimbursed by Social Services. Foster parents are not paid a salary. From a monthly rate, foster parents are expected to provide for the child's day-to-day needs such as transportation, babysitting, school supplies, food, baby formula and diapers, shelter,

utilities and other basic needs. The current state approved rates are as follows: \$475 for children ages 0-5; \$581 for children ages 6-12; and \$634 for children ages 13 and older. Many Henderson County foster parents consider this rate inadequate to cover all the child's needs and expenses and often spend their own money. Most individuals become foster parents out of a sense of social obligation or religious values and a desire to enhance the life chances for a child.

Foster children have many times the developmental delays of similar children who are not in foster care. Foster parents respond to their emotional and behavioral needs, transport them to medical appointments and mental health counseling sessions, advocate on behalf of the child at school, go to court hearings and work with the child's social worker, Guardian ad Litem and parents.

Living within the foster care system can be trying. Most foster parents take care of children for a short time which can be very difficult emotionally. When a child's parents fulfill the court plan to a judge's satisfaction, the County Director of Social Services is removed as legal guardian and the child returns home.

As challenging as being a foster parent is...it can be highly rewarding. Foster parents know they have provided a good home for a child and sometimes have turned a child's entire life around.

RESOLUTION APPROVING INTEREST RATE REDUCTION

Finance Director Carey McLelland stated staff has negotiated a reduction in the interest rate of the loan which provided construction funds for the jail facility. The reduction will be from the current 3.64% (April 14, 2009 refinancing) to 2.47% for the remaining seven (7) years of the loan, resulting in a gross interest cost savings the first year of \$37,534, and for the remaining years of \$147,701. The transaction costs should be minimal.

Commissioner Messer made the motion that the Board approves the Resolution as presented. All voted in favor and the motion carried.

SPAY/NEUTER FINANCIAL ASSISTANCE

County Manager Steve Wyatt stated at the June 4, 2012 meeting, \$50,000 was approved for addition to the Animal Services budget, for spay/neuter financial assistance. The Board is requested to discuss options for how to proceed with implementation, for the best use of these funds. Animal Services Director Brad Rayfield is working on the best investment and accountability of those funds. An issue of concern is making sure the money is invested correctly where needed. In the past, low income residents have been a priority.

Verbal arrangements have been made with CPPI, and they will use Federal Poverty Level guidelines and income verification in order to qualify low income residents. The Board must determine if all funding will be utilized for low income residents or if flexibility can be used. Mr. Wyatt requested that staff (County Attorney) be authorized to develop a draft contract. The object is to maximize the number of spays/neuters for the dollar spent.

Commissioner Edney made the motion that the Board directs staff to work toward a contract for services regarding spay/neuter with at least half of the funds being utilized for low income residents, to be presented at the next regular meeting. All voted in favor and the motion carried.

NON-PROFIT PERFORMANCE AGREEMENTS

Research/Budget Analyst Amy Brantley stated at the Board's June 4, 2012 meeting, non-profit grant applications were approved for funding within the FY 2012-2013 budget. Each agency will be sent a "Not-For-Profit Funding Agreement", which outlines the conditions of the grant. Following execution of the agreement by the agency, the agreement will then be placed on the Board's agenda for final approval. Upon final execution of the funding agreement, the Finance Director will release the grants in compliance with the agreement and the budget ordinance.

A sample of the agreement was included in the agenda packet for the Board's review. A few of the specific conditions within the agreement are as follows:

- In consideration for the performance by the AGENCY of the services outlines in its application, the COUNTY agrees to pay the AGENCY up to the amount of money authorized in the COUNTY budget for the fiscal year. Payment of such amount shall be made in quarterly installments.
- The AGENCY shall submit to the COUNTY a semi-annual status report in January 2013, and an annual status report in July 2013, of all program activities including a summary of the accomplishment of stated goals and objectives.
- All books and records shall be maintained by the AGENCY for a period of at least three years from the date of the final payment under this Agreement and shall be made available for audit or evaluation upon request during regular business hours of the AGENCY.

Commissioner Young made the motion that the Board continues to utilize the non-profit performance agreement in place at this time with capabilities to audit. All voted in favor and the motion carried.

ESTABLISHMENT OF ABC BOARD

Attorney Russ Burrell stated late in the Board's last meeting, the Board voted to establish the Henderson County Alcoholic Beverage Control Board, in light of the results of May's referenda regarding alcohol.

The laws regarding the establishment of an "ABC Board" are contained in Article 7 of Chapter 18B of the General Statutes. Under these laws, you have some options:

- Number of members of board: 3 or 5
- Appointments: "on the basis of the appointees' interest in public affairs, good judgment, knowledge, ability, and good moral character."
- Term of appointees
 - If a 3 member board, initial terms are 1 year (1), 2 years (1) and 3 years (1). All subsequent appointees serve 3 years, so that two members rotate off two years out of every three, and one member rotates off the third year.
 - If a 5 member board, initial terms are 1 year (2), 2 years (2) and 3 years (1). All subsequent appointees serve 3 years, so that two members rotate off two years out of every three, and one member rotates off the third year.
 - ABC Board members may be removed by the Board of Commissioners at any time.
- The Board of Commissioners designates the chairman of the ABC Board.
- Compensation: \$150.00 per meeting, unless a different level is set by the Board of Commissioners.

The ABC Board will have many duties. Among these are:

- Selecting a General Manager, subject to confirmation by the Board of Commissioners
- Setting the General Manager's compensation and benefits.
- Following other North Carolina laws, including their powers and duties set out in N.C. Gen. Stat. §18B-701.

Commissioner O'Connor made the motion that the initial Henderson County ABC Board will have five (5) members. All voted in favor and the motion carried.

It was the consensus of the Board to have a member from each of the five districts.

Commissioner Young made the motion that compensation for the members (\$150 per meeting) of the ABC Board be deferred until the sooner of the accumulation of sufficient net income by the ABC Board for the

payment of the same, or one year from this date, and that the pay be retroactive. All voted in favor and the motion carried.

Commissioner Young made the motion that all applicants must have a background check prior to nomination. All voted in favor and the motion carried.

Nomination and appointment of membership of the Board should occur as the Board of Commissioners feels is suitable. The Commissioners will work toward finding a candidate from their district prior to the next regular meeting.

COUNTY MANAGER'S REPORT

County Manager Steve Wyatt provided a brief update to the Board in regard to improvement in traffic at Jackson Park. Additional stop signs have been ordered.

IMPORTANT DATES

The Board is requested to cancel the regularly scheduled July 2, 2012 Board meeting.

Commissioner Young made the motion that the Board cancels the regularly scheduled July 2, 2012 Board meeting. All voted in favor and the motion carried.

CLOSED SESSION

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

1. Pursuant to N.C. Gen. Stat. §143-318.11(a)(3), to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to a claim.

All voted in favor and the motion carried.

ADJOURN

Commissioner O'Connor made the motion to go out of closed session and adjourn at 10:50 a.m. All voted in favor and the motion carried.

Attest:

Teresa L. Wilson, Clerk to the Board

Thomas H. Thompson, Chairman

HENDERSON COUNTY TAX COLLECTOR

200 NORTH GROVE STREET, SUITE 66
HENDERSONVILLE, NC 28792
PH: (828) 697-5595
FAX: (828) 698-6153

20 June 2012

Henderson County Board of Commissioners
1 Historic Courthouse Square, Suite 1
Hendersonville, NC 28792

Please find outlined below collections information through June 10th for the 2011 bills mailed out on 19 August 2011, as well as registered motor vehicle bills. As a point of reference, we also have included collections information as of the same date last year.

Annual Bills G01 Only:

2011 Total Charge: \$57,634,609.60
Payments & Releases: 56,276,976.71
Unpaid Taxes: 1,357,632.89
Percentage collected: 97.64%
(through 06/11/2012.)

2010 Total Charge: \$57,524,414.37
Payments & Releases 55,782,779.52
Unpaid Taxes: 1,741,634.85
Percentage Collected: 96.97%
(through 06/11/2011)

Motor Vehicle Bills G01 Only:

2011 Total Charge: \$4,179,749.84
Payments & Releases: 3,690,689.44
Unpaid Taxes: 489,060.40
Percentage collected: 88.01%
(through 06/11/2012)

2010 Total Charge: \$3,771,693.77
Payments & Releases: 3,308,930.57
Unpaid Taxes: 462,763.20
Percentage collected: 87.73%
(through 06/11/2011)

Fire Districts All Bills

2011 Total Charge: \$6,854,112.80
Payments & Releases: 6,630,841.48
Unpaid Taxes: 223,271.32
Percentage Collected: 96.73%
(through 06/11/2012)

2010 Total Charge: \$6,705,989.28
Payments & Releases: 6,456,995.32
Unpaid Taxes: 248,993.96
Percentage Collected: 96.42%
(through 06/11/2011)

Respectfully submitted,



Kathy Johnson
Tax Collections Clerk

Stan C. Duncan
Tax Collector

**LINE-ITEM TRANSFER REQUEST
HENDERSON COUNTY**



Department: Economic Development Fund - 37 (Ferncliff Public W/S)

Please make the following line-item transfers:

What expense line-item is to be increased?

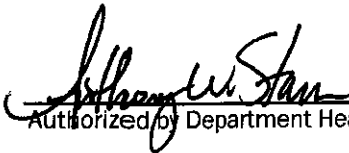
Account	Line-Item Description	Amount
<u>375498-538107-0612</u>	<u>Engineering</u>	<u>\$ 38,822</u>
<u>375498-539000-0612</u>	<u>Contracted Services (Legal/Admin)</u>	<u>\$ 19,843</u>
<u>375498-555006-0612</u>	<u>Water & Sewer Infrastructure</u>	<u>\$ 474,485</u>
_____	_____	_____

What expense line-item is to be decreased? Or what additional revenue is now expected?

Account	Line-Item Description	Amount
<u>374498-492005</u>	<u>Private Developer Contribution</u>	<u>\$ 26,658</u>
<u>374498-451102</u>	<u>CDBG Revenues</u>	<u>\$ 373,204</u>
<u>374498-454009</u>	<u>NC Rural Center Revenues</u>	<u>\$ 133,288</u>
_____	_____	_____

Justification: *Please provide a brief justification for this line-item transfer request.*

This budget amendment for FY13 provides the necessary funds to extend public water and sewer service to the Ferncliff Industrial Park which will serve the new Sierra Nevada Brewing Facility.


Authorized by Department Head

6.7.2012
Date

Authorized by Budget Office

Date

Authorized by County Manager

Date

For Budget Use Only

Batch # _____

Batch Date _____

**LINE-ITEM TRANSFER REQUEST
HENDERSON COUNTY**



Department: Economic Development Fund - 37 (Sierra Nevada On-site W/S)

Please make the following line-item transfers:

What expense line-item is to be increased?

Account	Line-Item Description	Amount
<u>375498-538107-0712</u>	<u>Engineering</u>	<u>\$ 29,619</u>
<u>375498-539000-0712</u>	<u>Contracted Services (Legal/Admin)</u>	<u>\$ 15,139</u>
<u>375498-555006-0712</u>	<u>Water & Sewer Infrastructure</u>	<u>\$ 362,010</u>
_____	_____	_____

What expense line-item is to be decreased? Or what additional revenue is now expected?

Account	Line-Item Description	Amount
<u>374498-492005</u>	<u>Private Developer Contribution</u>	<u>\$ 203,384</u>
<u>374498-454009</u>	<u>NC Rural Center Revenues</u>	<u>\$ 203,384</u>
_____	_____	_____
_____	_____	_____

Justification: *Please provide a brief justification for this line-item transfer request.*

This budget amendment for FY13 provides for the construction of on-site water and sewer infrastructure associated with the Sierra Nevada Brewing Facility in Ferncliff Industrial Park.

Anthony W. Stan
Authorized by Department Head

6.7.2012
Date

Authorized by Budget Office

Date

Authorized by County Manager

Date

For Budget Use Only	
Batch #	_____
Batch Date	_____

**LINE-ITEM TRANSFER REQUEST
HENDERSON COUNTY**



Department: HCPS Debt Service

Please make the following line-item transfers:

What expense line-item is to be increased?

Account	Line-Item Description	Amount
<u>115911-574006</u>	<u>Lease/Purch Int - Hillandale/MR</u>	<u>\$81,627</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

What expense line-item is to be decreased? Or what additional revenue is now expected?

Account	Line-Item Description	Amount
<u>115930-518500</u>	<u>Unemployment Claims</u>	<u>\$81,627</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Justification: *Please provide a brief justification for this line-item transfer request.*
Interim interest payment required on the refinancing of MR/Hillandale from the time of last payment to refinancing date. BA approved by the Board of Commissioners June 20, 2012.

Authorized by Department Head

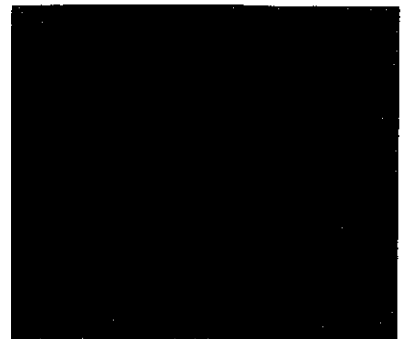
Date

Authorized by Budget Office

Date

Authorized by County Manager

Date



**LINE-ITEM TRANSFER REQUEST
HENDERSON COUNTY**



Department: EMS

Please make the following line-item transfers:

What expense line-item is to be increased?

Account	Line-Item Description	Amount
<u>115913-573005</u>	<u>Lease/Purchase Prin - Vehicles</u>	<u>\$59,499</u>
<u>115913-574005</u>	<u>Lease/Purchase Int - Vehicles</u>	<u>\$4,376</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

What expense line-item is to be decreased? Or what additional revenue is now expected?

Account	Line-Item Description	Amount
<u>115437-547400</u>	<u>Lease of Vehicles</u>	<u>\$63,875</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

Justification: Please provide a brief justification for this line-item transfer request.

Loan payment for new ambulances, financed after FY12 budget adoption. BA approved by the Board of Commissioners June 20, 2012.

Authorized by Department Head

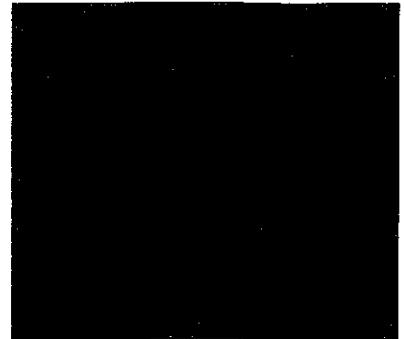
Date

Authorized by Budget Office

Date

Authorized by County Manager

Date



**Resolution Approving Interest Rate Reduction
For 2009 Detention Center Financing**

WHEREAS --

Henderson County has previously entered into an Installment Financing Contract with Branch Banking and Trust Company that refinanced the County's original detention center financing. BB&T has now agreed to modify the terms of that Contract to reduce the County's interest rate.

This resolution provides the County Board's approval of the proposed modification.

BE IT THEREFORE RESOLVED by the Board of Commissioners of Henderson County, North Carolina, as follows:

1. **Approval for Modification** - The County determines to modify the terms of its 2009 installment financing contract with BB&T to lower the County's interest rate.

2. **Authorization to Officers** -- The Board authorizes the Board's Chairman, the County Manager and the County Finance Officer to execute and deliver, on the County's behalf, all appropriate documents for the proposed modification. All County officers are authorized to take all other proper steps to complete the proposed modification. All prior actions of County officers to this end are ratified.

3. **Obligations are "Bank-Qualified"** - The County designates its principal and interest payment obligations as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3), which provides certain tax advantages for financial institutions providing financing to the County.

4. **Miscellaneous Provisions** -- Upon the absence, unavailability or refusal to act of the County Manager, the Board's Chairman or the Finance Officer, any other of such officers may assume any responsibility or carry out any function assigned in this resolution. In addition, the Vice Chairman or any Deputy or Assistant Clerk to the Board may in any event assume any responsibility or carry out any function assigned to the Chairman or the Clerk, respectively, in this resolution. All other Board proceedings, or parts thereof, in conflict with this resolution are repealed, to the extent of the conflict. This resolution takes effect immediately.

I certify as follows: that the foregoing resolution was properly adopted at a meeting of the Board of Commissioners of Henderson County, North Carolina; that this meeting was properly called and held on June 20, 2012; that a quorum was present and

acting throughout the meeting; and that this resolution has not been modified or amended, and remains in full effect as of today.

Dated this 20th day of June, 2012.

[SEAL]



Cleresa L. Wilson

Clerk, Board of Commissioners
Henderson County, North Carolina

**RESOLUTION OF HENDERSON COUNTY REGARDING THE
DESIGNATION OF AN OFFICIAL TO MAKE RECOMMENDATIONS TO
THE NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION ON ABC PERMIT APPLICATIONS**

WHEREAS, N.C. Gen. Stat. §18B-904(f) authorizes a governing body to designate an official, by name or by position, to make recommendations concerning the suitability of persons or locations for ABC permits; and

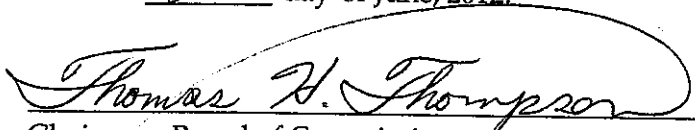
WHEREAS, Henderson County wishes to notify the North Carolina Alcoholic Beverage Control Commission of its designation under §18B-904(f);

BE IT THEREFORE RESOLVED that Charles Russell Burrell, County Attorney, is hereby designated to notify the North Carolina Alcoholic Beverage Control Commission of the recommendations of Henderson County regarding the suitability of persons and locations for Alcoholic Beverage Control permits within its jurisdiction.

BE IT FURTHER RESOLVED THAT notices to Henderson County should be mailed or delivered to:

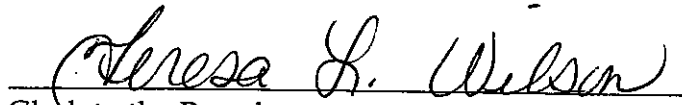
Charles Russell Burrell
Office of the County Attorney
1 Historic Courthouse Square, Suite 5
Hendersonville, North Carolina 28792

This the 20th day of June, 2012.



Chairman, Board of Commissioners

Sworn to and subscribed before me this the 20th day of June, 2012.



Clerk to the Board

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

OFFER TO PURCHASE & LEASE AGREEMENT

This **Offer to Purchase & Option** Agreement is between the County of Henderson, North Carolina, a body corporate and politic ("the County"), and Bobby Carroll Austin, and wife, Christy Ann Austin ("Austin"). This agreement is contingent only upon the approval of the Board of Commissioners of Henderson County.

Background Facts:

- A. Austin is the owner in fee simple of real property located at 54 Moonstone Lane (Henderson County PIN 9650719088) within the Township of Hendersonville, Henderson County, North Carolina ("the Property"). Austin wishes to convey the Property
* AND PIN# 9650811005
- B. The County desires to acquire the Property for procedures attendant to the closing of its adjacent former landfill.
- C. The Property is subject to a mortgage ("the loan") serviced by Ocwen Loan Servicing, LLC ("Ocwen"). The principal due on the loan is substantially more than the worth of the Property.
- D. Ocwen has made an offer to Austin to modify the loan, lowering the loan principal to \$165,300, and lowering the interest rate to 2.00%, on terms of monthly amortized payments of \$634.49 (plus escrow of \$227.75 per month, for a total monthly payment of \$862.24). Under the terms of this modification, Austin may not resell the property for twelve months without triggering the option in Ocwen to void the modification agreement.
- E. The parties have agreed to the terms stated below, subject only to the approval by the Board of Commissioners of Henderson County.

Terms of Option and Agreement:

1. Austin will execute the modification agreement with Ocwen, and comply with all provisions of the same. Austin will provide a copy of the modification agreement executed by both Austin and Ocwen to the County.
2. The County will upon the receipt of a copy of the agreement with Ocwen lease the Property from Austin for a period of thirteen (13) months from the date of the modification agreement.
3. The monthly lease payments will be \$862.24, and will be paid from the County directly to Ocwen.
4. At the end of the thirteen month from the date of the modification agreement, Henderson County will purchase the Property from Austin. The purchase price will be the remaining amount owed

under the loan, as modified, and will be paid by the County directly to Ocwen. Austin will cooperate in all ways with the County in obtaining payoff information and mortgage cancellation from Ocwen.

5. Upon the payment in full of the loan by the County as stated in 4, above, on the date of final closing, Austin will execute a North Carolina General Warranty Deed in favor of the County, in a form substantially similar to the North Carolina Bar Association's Real Property Section General Warranty Deed.

6. The County shall have the exclusive right of the use of the property beginning with the date of its first monthly lease payment.

7. The following provisions, all taken in substance from NC Bar Form 13, shall apply:

- a. **Evidence of Title:** Austin agrees to convey fee simple marketable and insurable title to the Property free and clear of all liens, encumbrances and defects of title other than: (a) zoning ordinances affecting the Property, (b) matters of record existing at the approval date that are not objected to by the County prior to the expiration of the examination period ("Permitted Exceptions"); provided that Austin shall be required to satisfy, at or prior to Closing, any encumbrances that may be satisfied by the payment of a fixed sum of money, such as deeds of trust, mortgages or statutory liens, no including the Loan serviced by Ocwen, referenced above. Austin shall not enter into or record any instrument that affects the Property after the approval date without the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned or delayed and (c) easements of rights of way of record and city and county *ad valorem* tax(es) for the year of final closing for such portion thereof after the date of final closing.
- b. **Entire Agreement:** This Agreement constitutes the sole and entire agreement among the parties hereto and no modification of this Agreement shall be binding unless in writing and signed by all parties hereto.
- c. **Enforceability:** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives.
- d. **Survival of Representations and Warranties:** All representations, warranties, covenants and agreements made by the parties hereto shall survive the Closing and delivery of the deed. Austin shall, at or within six (6) months after the Closing, and without further consideration, execute, acknowledge and deliver to the County such other documents and instruments, and take such other action as the County may reasonably request or as may be necessary to more effectively transfer to County the Property described herein in accordance with this Agreement.
- e. **Entire Agreement; No Third Party Beneficiaries:** This Agreement is the entire agreement between the Parties concerning its subject matter, supersedes all prior agreements and understandings, whether or not written, and is not intended to confer upon any person other than the Parties any rights or remedies hereunder.
- f. **Interpretation:** No provision of this agreement shall be interpreted for or against any party because that party or that party's agent or legal representative drafted the agreement or a particular provision, and the parties hereby unconditionally waive such defense or claim regarding this agreement. This stipulation may be used in court regarding any claims or defenses based on this agreement.


g. **Representation by the Signors hereof:** All persons executing this Agreement represent that each has been duly authorized to sign this Agreement in the capacity indicated, and that this Agreement shall be final and binding once approved by the Board of Commissioners.

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Signed, this the _____ day of June, 2012.


Sellers:


BOBBY CARROLL AUSTIN


CHRISTY ANN AUSTIN

Buyer:

COUNTY OF HENDERSON

By: 
County Manager

APPROVAL BY BOARD OF COMMISSIONERS


This is to certify that the foregoing Agreement has been approved, adopted and ratified by the Board of Commissioners of Henderson County, the date and year shown below.

This the 7th day of June, 2012.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: 
THOMAS H. THOMPSON, Chairman

Attest:


TERESA L. WILSON, Clerk to the Board

CHAPTER 125A. NOISE

[HISTORY: Adopted by the Board of Commissioners of Henderson County 12-19-2007.
Editor's Note: This ordinance also repealed former Ch. 125, Noise, adopted 2-15-1999, as amended. **Amendments noted where applicable.]**

GENERAL REFERENCES

Animals — See Ch. 66A.

Nuisances — See Ch. 126.

Parks and recreation — See Ch. 130A.

§ 125A-1. Authority; title.

This chapter is hereby adopted under the power and authority granted to counties by N.C.G.S. 153A-121 and N.C.G.S. 153A-133 and shall be known and may be cited as the "Henderson County Noise Ordinance."

§ 125A-2. Jurisdiction.

This chapter shall apply to all unincorporated areas of Henderson County and to those incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C.G.S. 153A-122.)

§ 125A-3. Loud and disturbing noise prohibited.

A. Subject to the provisions of this section, it is prohibited in Henderson County to create, cause or allow the continuance of any unreasonably loud, disturbing noise. Noise of such character, intensity and duration as to be detrimental to the health, safety or welfare of any reasonable person of ordinary firmness and sensibilities in the vicinity is prohibited. For the purposes of this section, the following definitions shall apply:

(1) "Unreasonably loud": noise which is substantially incompatible with the time and location where created to the extent that it creates an actual or imminent interference with peace and good order.

(2) "Disturbing": noise which is perceived by a person of ordinary firmness and sensibilities as interrupting the normal peace and calm of the area.

B. In determining whether a noise is unreasonably loud and disturbing, the following factors incident to such noise are to be considered:

(1) Time of day;

(2) Proximity to residential structures;

- (3) Whether the noise is recurrent, intermittent or constant;
- (4) The volume and intensity;
- (5) Whether the noise has been enhanced in volume or range by any type of mechanical means;
- (6) The nature and zoning of the area;
- (7) Whether the noise is related to the normal operation of a business or other labor activity or is the result of some use for individual purposes; and
- (8) Whether the noise is subject to being controlled without unreasonable effort or expense to the creator thereof.

C. The following acts, among others, are declared to be loud and disturbing in violation of this section if they annoy or disturb the quiet, comfort or repose of any reasonable person of ordinary firmness and sensibilities in the vicinity where created, caused, or continued, but this enumeration shall not be deemed to be exclusive.

- (1) The use of any loud, boisterous or raucous language, yelling, or shouting, whether or not amplified.
- (2) The congregation of persons at and participation in any party or gathering of people from which noise emanates of a sufficient volume or of such nature as to disturb the peace, quiet and comfort of any reasonable person of ordinary firmness and sensibilities in the vicinity.
- (3) The keeping, owning, possessing, harboring or controlling of any animal or bird which barks, bays, yelps, howls, cries, squawks or makes any other unreasonably loud, disturbing noise continuously or incessantly for a period of 10 minutes or intermittently for a period of 30 minutes or more, thereby causing a noise disturbance. Editor's Note: See also Ch. 66A, Animals.
- (4) The playing of any radio, television, phonograph, drum, musical instrument, or sound production, reproduction or amplification equipment in such manner or with such volume, particularly during the hours between 11:00 p.m. and 7:00 a.m., so as to annoy or disturb the peace, quiet, comfort or repose of any person of ordinary firmness and sensibilities in the vicinity.
- (5) The playing of any radio, cassette player, compact disc, or other similar device for production or reproduction of sound located in or on any motor vehicle on a public street, highway, within a public vehicular area, within the motor vehicular area of any public or private parking lot or park or on the premises of a private residence in any unreasonably loud or disturbing manner as defined above.

(6) The intentional sounding of any horn or signal device on any automobile, motorcycle, bus or other vehicle except as a danger signal or as required by law, so as to create any unreasonably loud or disturbing noise as defined above, or the sounding of such a device for an unnecessary and/or the sounding of such a device for an unreasonable period of time.

(7) The operation of any automobile, motorcycle or other vehicle, or remote control model vehicle in such a manner as to create loud grating, grinding, rattling, screeching of tires, or other unreasonably loud or disturbing noise.

(8) The repair, rebuilding or testing of any motor vehicle, particularly during the hours between 11:00 p.m. and 7:00 a.m., which creates unreasonably loud and disturbing noises.

(9) Operating or permitting the operation of any motor vehicle or motorcycle not equipped with a muffler or other device in good working order so as to effectively prevent loud or explosive noises therefrom or which has its muffler-exhaust or other noise control equipment removed, altered or maintained in such disrepair as to create unreasonably loud and disturbing noises.

(10) Operating or permitting the operation of any motor vehicle or motorcycle that engages in jackrabbit starts, spinning tires, racing engines, or other operations which create unreasonably loud and disturbing noises.

(11) The creation of any excessive noise on any street adjacent to any school, institution of learning, library or sanitarium, or court while the same is in session, or adjacent to any hospital or any church during services, which unreasonably interferes with the working of such institution.

(12) The firing, shooting or discharging of any firearm for the sole purpose of making noise or disturbance.

§ 125A-4. Exceptions.

A. The following uses and activities, among others, are not governed by and shall be exempt from the noise ordinance set forth in this chapter. It is expressly provided, however, that the following enumeration shall not be deemed or considered exclusive, and any activity that is not expressly prohibited as set forth in § 125A-3 shall be exempt from this chapter.

(1) Noise made by dogs while they are being lawfully used for hunting or taking wildlife, and noise made by dogs during the course of lawful training by hunters, pursuant to N.C.G.S. Chapter 113.

(2) Noise associated with or resulting from the normal operations of any facility that is properly licensed by the North Carolina Department of Agriculture, Veterinary Division, as a boarding kennel, pet shop or dealer, in accordance with the North Carolina Animal Welfare Act (N.C.G.S. 19A-20 et seq.), as may be amended, or from any animal shelter that is operated by Henderson County.

(3) Noise associated with any legal operations of any firearms club or association legally established.

(4) Noise caused by the discharge of firearms by law enforcement officers in the performance of their official duties or during the course of official firearms training.

(5) Noise resulting from farming operations, including but not limited to noises generated by machinery, equipment and farm animals.

(6) Noise associated with any event held in recognition of a community celebration of national, state or county events or public festivals.

(7) Noise associated with any public or private school activity or camp activity (defined as any function or activity approved by or generally associated with any recognized public or private camp for children accredited by an appropriate national camp association, but not including activities associated with campgrounds available to the public for overnight camping), except that it shall be unlawful for any person to use any unreasonably loud, disturbing, boisterous, raucous language or shouting in violent or offensive manner while attending such activities.

(8) Noise associated with the chimes or bells of businesses, schools, camps or religious institutions in the daytime hours, provided that they operate for no more than 10 minutes in any hour.

(9) Nonamplified crowd noise resulting from activities by student, government, camp or community groups.

(10) Noise associated with or resulting from operations of any construction, commercial, industrial or agricultural activities or operations, except for electronically amplified sound and acts prohibited by § 125A-3.

B. If any exceptions stated in this chapter would limit obligation, limit liability or eliminate either an obligation or a liability, the person who would benefit from the application of the exception shall have the burden of proving that the exception applies and that the terms of the exception have been met.

§ 125A-5. Noise complaint procedure.

In the event any person has reasonable grounds for believing that any provision of this chapter is being violated, he may make a report thereof to the Henderson County Sheriff's Department, which shall investigate the alleged violation. If any such investigation reveals a violation, the investigating deputy has the authority to cause a written complaint to be made and may obtain criminal process for violation thereof, may issue a citation for a civil penalty, and may obtain other enforcement measure as allowed in this chapter. Criminal process for violation of this chapter may only be obtained by personnel from the Henderson County Sheriff's Department.

A. Filing false reports. It shall be unlawful for any person to file a false report with law enforcement, or to provide false information to an officer involving any investigation of any reported violation of this article. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00.

B. Frivolous or unfounded complaints. It shall be unlawful for any person to repeatedly file frivolous or unfounded complaints with law enforcement in order to intimidate or harass any member of such department or any animal owner, or to otherwise hinder or interfere with any function of the department of animal control. Any person found violating this provision shall be guilty of a Class 3 misdemeanor and shall be fined not more than \$500.00.

§ 125A-6. Violations and penalties; enforcement.

A. This chapter shall be enforced in accordance with any and all of the provisions of N.C.G.S. § 153A-123 and of Article II of Chapter 1 of the Henderson County Code.

B. In the case of second or subsequent violations of § 125A-3C(3), any animal which upon investigation by Deputy Sheriff is found to be creating the noise which causes the violation of § 125A-3C(3) may, in the discretion of such Deputy, be impounded by the Sheriff's Department and confined in the county animal shelter in a humane manner until the next business day for the shelter. Editor's Note: See Ch. 66A, Animals, § 66A-14, Impoundment. The owner of such animal may redeem the animal upon payment of applicable fees. If the animal is not redeemed within five days of impoundment, then such animal may be offered for adoption or destroyed in a humane manner pursuant to § 66A-14 of the Henderson County Code. Impoundment of such an animal shall not relieve the owner thereof from any penalty, civil or criminal, which may be imposed for violation of this chapter.

C. Any Deputy Sheriff of Henderson County, having first investigated this matter pursuant to § 125A-5, may obtain criminal process for violation of this chapter. A violation of any noise ordinance provision shall constitute a Class 3 misdemeanor and may be punished by fine in the discretion of the Court, up to a maximum of \$500 per offense.

These revisions to the Noise Ordinance were approved by the Henderson County Board of Commissioners on this the 20th day of June, 2012.

Attest: (County Seal)-



Teresa L. Wilson

Teresa L. Wilson, Clerk to the Board



Thomas H. Thompson

Thomas H. Thompson, Chairman

