

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
DECEMBER 7, 1998**

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 5:30 p.m. (on December 7, 1998) in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Commissioner Grady Hawkins, Commissioner Bill Moyer, Commissioner Renee Kumor, Commissioner Don Ward, Commissioner Marilyn Gordon, County Manager David E. Nicholson, Assistant County Manager Angela Skerrett Beeker, County Attorney Don H. Elkins, and Clerk to the Board Elizabeth W. Corn.

Also present were: Finance Director J. Carey McLelland, Planning Director Matt Matteson, County Engineer Gary Tweed, Public Information Officer Chris Coulson, Staff Attorney Jennifer O. Jackson, County Planner Karen Collins.

CALL TO ORDER/WELCOME

Clerk to the Board Elizabeth W. Corn called the meeting to order on behalf of the County Commissioners and welcomed those in attendance.

PLEDGE OF ALLEGIANCE

Commissioner Grady Hawkins led the Pledge of Allegiance to the American Flag.

INVOCATION

Rev. Charles Evans, Minister from Pinecrest Presbyterian Church, gave the invocation.

SWEARING IN - Oaths of Office for Newly Elected County Commissioners

Tommy Thompson, Clerk of Superior Court for Henderson County swore in the following

Commissioners: Donald Grady Ward, III, re-elected
William L. Moyer, newly elected
Marilyn Gordon, newly elected

Family members held the Bibles for some of the Commissioners.

Mr. Thompson then swore in the newly elected Soil & Water Conservation District Supervisors:

Mr. Joe Lee Heffner
Andrew C. Brannon

ELECTION OF CHAIRPERSON

Ms. Corn announced that the first order of business was the election of a chairperson. She opened the floor to nominations.

Commissioner Moyer nominated Commissioner Hawkins for Chairman. Commissioner Ward made the motion that nominations cease. All voted in favor and the motion carried. Ms. Corn

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asked all in favor of Grady Hawkins as the new Chairman to raise their hand. The vote was unanimous and Ms. Corn turned the meeting over to Chairman Grady Hawkins. Chairman Hawkins stated that it would be his honor to serve as the Chairman, stating it was a very important day for him and for Henderson County. The Board took a minute to move about and change chairs.

ELECTION OF VICE-CHAIRMAN

Chairman Hawkins nominated Bill Moyer for Vice-Chairman. Commissioner Kumor made the motion that the nominations cease. All voted in favor and the motion carried. Chairman Hawkins moved that the Board accept Commissioner Moyer by acclamation. All voted in favor and the motion carried.

CHAIRMAN - Announcement

Chairman Hawkins explained the two sign-up times in this agenda. Informal Public Comments will immediately follow the Discussion/Adjustment of the Agenda and twenty minutes have been set aside for that. Input will be limited to three minutes each during that time period.

The second sign-up time is for a Public Hearing at 7:00 p.m. on the moratorium. Public comments will be taken regarding the moratorium at that time.

Chairman Hawkins welcomed Representative Larry Justice and his wife Carolyn to the meeting.

DISCUSSION/ADJUSTMENT OF THE AGENDA

Commissioner Kumor stated that she had sent a memo to all the Commissioners regarding "charting our course" and suggested planning a retreat. She asked that it be added as a Discussion Item to the agenda - it was added as item "D" under Discussion Items.

Commissioner Ward asked that one item be added under Update on Pending Issues - an update on the permit situation for manufactured homes and the raceway. It was added as item #2.

There were no other adjustments requested. It was the consensus of the Board to approve the above adjustments to the agenda.

INFORMAL PUBLIC COMMENTS

1. Bill Eadie - Mr. Eadie distributed petitions signed by 950 concerned residents of north Henderson County in opposition to the racetrack. He is a representative of the North Henderson County Communities Association. Many of these are your citizens who became frightened by the threat to their quality of life, their property values, the beauty of their area, the right to worship in peace and frankly their safety. He asked the Board to please do the right thing and stop the racetrack.

2. Kay Blackwell - Ms. Blackwell distributed a couple of letters to the Board and expressed environmental concerns. The track is to be built in the flood plain and the ramifications of that

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could be devastating to the environment. She requested the Board extend the moratorium on the racetrack to allow for more public input and more research of options.

3. Anthony Peranio - Mr. Peranio read an example of an ordinance based upon the General Statutes of North Carolina - "This ordinance hereby prohibits the operation of a racetrack, speedway, dragstrip, vehicular test tract or like installation anywhere within the land area under the jurisdiction of Henderson County since the operation of such an installation will be amicable to the public health, welfare, safety, or convenience on the residents of the county". Mr. Peranio stated that such an ordinance would benefit all the residents of our county in one way or another.

Commissioner Ward stated that he felt there was a misunderstanding. When the Board put in place the moratorium it was on a noise ordinance on a variety of issues and the racetrack just happened to be one of them.

4. Dorothy Freeman - Ms. Freeman is a farmer located close to the proposed racetrack. She has farmed her property for 46.5 years. She stated that she currently has the only access to Mr. Hyder's property which is 18 feet wide. 5,000 vehicles would come over this access to the racetrack. She stated that this is a moral issue. The racetrack would be in a flood plain and over a natural gas line that has been there for 36 years. Mud Creek joins the property and sometimes the floodwaters are 8 feet deep. She had brought a video of flooding in that area for the Board's review.

5. Janis Moore - Ms. Moore lives on Howard Gap Road, within 1 mile of the proposed racetrack. She is a member of the North Henderson County Community Association. She has been an active realtor in Henderson County for 20 years. She brought a map with her with a two mile radius drawn and a five mile radius drawn around the proposed track. She stated that the five mile radius would take in half of Henderson County. A two mile radius would take in over 1,400 real estate parcels, 7 churches, Park Ridge Hospital, Heritage Hills Retirement Center, Fletcher Park Inn, 6 Assisted Living and Nursing Homes. She asked the Board to consider the feelings of thousands of residents that chose Henderson County because they wanted the peace and quiet of a small town instead of a large city.

CONSENT AGENDA

Commissioner Kumor made the motion to approve the consent agenda. All voted in favor and the motion carried. The CONSENT AGENDA consisted of the following:

Bond Approval for County Officials

Pursuant to the Board's Rules of Procedure, the second order of business of this organizational meeting of the Board is the annual review and approval of the bonds for county officials. The only officials required to be bonded are the following:

George H. Erwin, Sheriff

Nedra Whitlock Moles, Register of Deeds

Terry F. Lyda, Tax Collector

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J. Carey McLelland, Finance Director

The bonds and certain correspondence related to the bonds for the above-referenced officials were included in the agenda packet for board review. The Staff Attorney had reviewed the bonds and reported to the Board that they appear to be valid and in order.

Minutes

Minutes were presented to the Board for review and approval of the following meeting(s):

October 21, 1998

Road Petitions

Staff had received road petitions for the following roads to be added to the State Maintenance

System:

1. Katie Drive
2. Red Fox Trail Court
3. Tall Pines Road

It has been the practice of this Board to accept road petitions and forward them to NC Department of Transportation for their review.

Tax Collector's Report

Terry F. Lyda, Tax Collector, provided the Tax Collector's Report for the Board's review.

Henderson County Public Schools Financial Report - October 1998

The October Henderson County Public Schools Financial report was provided for the Board's information only.

Henderson County Financial Report - October 1998

The October Henderson County Financial Report was provided for the Board's information only.

NOMINATIONS

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

1. Nursing/Adult Care Home Community Advisory Committee - 4 vac.

The Board could appoint to positions #18 and # 20, but can only nominate to positions #14 and #23. There were no nominations at this time so this item was rolled to the next meeting.

2. Henderson County Zoning Board of Adjustment - 6 vac.

1 regular member (Kanuga area)
 3 alternates: East Flat Rock area
 Lake Summit area
 Bearwallow area

Two terms expire 12/31/98. (Tamra Crane and Keith Shelley)

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Commissioner Kumor nominated Tamra Crane. Commissioner Ward nominated Keith Shelley. Commissioner Kumor made the motion to suspend the rules and appoint these two. All voted in favor and the motion carried.

3. Hendersonville City Zoning Board of Adjustment - 1 vac. (alternate)

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

4. Henderson County Hospital Corporation Board of Directors - 3 vac.

Terms expire 12/31/98.

There were six nominees at the last meeting: Bill Dunn, Bill Blalock, Charlie Waters, Dr. Caldemeyer, William Jamison, and Dan Waddell.

Commissioner Kumor questioned here whether the Board would want to discuss Boards that the Commissioners have someone sitting on in a retreat setting, (#4 Henderson County Hospital Corporation Board of Directors, and #5 Henderson County Travel & Tourism Committee). She asked that any appointments be rolled until after holding a retreat.

Commissioner Kumor had been informed by the County Manager that there was a question raised about her nominee, Dr. Caldemeyer. Commissioner Hawkins had raised the issue earlier with the County Manager about Dr. Caldemeyer's contractual agreement with Pardee Hospital.

Jennifer Jackson stated that it was her understanding that Dr. Caldemeyer does have a contractual relationship with Pardee Hospital and as such it would be a conflict of interest for him to sit on the Board of Trustees.

Commissioner Kumor asked if the Board felt it was important to have a physician on that Board. She wondered what the Hospital Board would think of having a physician sitting on the Board. Chairman Hawkins is currently on the Hospital Board. There is physician representation on the Board but not a voting member.

Commissioner Kumor stated that over time we have all come to appreciate the value of Mr. Jamison and she asked if it would be agreeable to the Board to name Mr. Jamison as a Member Ameritus to the Board of the Pardee Hospital. In light of this, Commissioner Ward withdrew his nomination of William Jamison to the Hospital Corporation Board of Directors and supported such action. It was the consensus of the Board that Mr. Jamison be appointed as a Member Ameritus and Chairman Hawkins asked that the County Manager draw up that type documentation for the next meeting.

Commissioner Moyer stated that a resolution that appeared to be adopted by this Board sets up the composition of the Board of Trustees. It designates pretty clearly where the categories of people would come from and its not optional but mandatory that the Board follow it in appointing people to the Hospital Board of Trustees. It states that four trustees will occupy undesignated positions, three will be business/professional, one from a governmental agency, one

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medical/professional, one community health care provider, and one County Commissioner may be appointed. He wondered whether anyone had taken a look to see how we're lining up with respect to what appears to be what the Board said they would do in designating people for this Board.

Chairman Hawkins stated that those were areas the Board was certainly targeting but he believed it was the intent of the Board to have it as a general guideline for establishing Board membership and not a mandatory thing.

Chairman Hawkins stated that there now appear to be four nominees for the three positions.

Commissioner Kumor raised the question of whether to throw the Commissioners' seat into the pot, making four vacancies. Commissioner Hawkins had been serving during the organization of the Hospital Corporation and now the Board may choose to appoint or to not appoint a Commissioner to the Board of Trustees.

Commissioner Moyer stated that he felt this was a definite item for discussion at a Board Retreat - to discuss what the roles are for Commissioners on Boards and which Boards they should be on and not.

Chairman Hawkins asked Ms. Corn to poll the Board for three appointments from the four nominees: Bill Dunn, Bill Blalock, Charlie Waters, and Dan Waddell.

Ms. Corn polled the Board with each Commissioner getting three votes. Both Bill Dunn and Dan Waddell got four votes each so they will serve on the Hospital Board of Trustees. Ms. Corn was directed to poll the Board at the next meeting for a tie breaker between Bill Blalock and Charlie Waters.

5. Henderson County Travel & Tourism Committee - 4 vac.

Commissioner Ward and Commissioner Moyer serve on this Board. They are currently reworking the memorandum of understanding and the committee is looking at it. He asked that the Board roll this one until the next meeting so they can review the new memorandum of understanding to see if there are any changes the Board would like to be made.

Commissioner Moyer stated that one of the key things that needs to be resolved is the potential liability of members of that Board. He had asked the Staff Attorney to research that issue.

Jennifer Jackson informed the Board that the Travel & Tourism Committee is covered under the County's Insurance Policy. There is coverage for both the Board members and the staff and under a separate policy, the volunteers.

TENNIS SHELTER DONATION

David Nicholson advised the Board that the Henderson County Men's Tennis Association had

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offered to provide the funds to design and construct a small shelter at Jackson Park. This shelter would be near the tennis courts and would serve as an area for tournament registration, shade and picnicking. The members of the Association are willing to donate the funds in memory of Walt Barilari. Mr. Barilari was a member of this group who died this past summer.

The Board was given a picture of the proposed shelter and a site map.

The Parks and Recreation Advisory Board had recommended that the Board of Commissioners accept this donation and construct this shelter.

Commissioner Moyer made the motion that the Board follow the recommendation of the Parks and Recreation Advisory Board and accept this donation and build this shelter. All voted in favor and the motion carried.

CONTRACT FOR PLANNING SERVICES

Matt Matteson reminded the Board that in June of 1998, the Board of Commissioners approved a "project position" in the Planning Department's budget that was requested with the intention of putting that person in charge of rewriting the County's Zoning Ordinance, a document which had not been "overhauled from cover to cover" since it was adopted in 1981. This past summer they advertised for such a position but quickly found that filling the job would be difficult due to the temporary nature of the position (one year) and the shortage of qualified planners in the job market.

Staff has been negotiating a service contract with Benchmark, Inc., a private planning firm that specializes in writing and revising such ordinances. Benchmark has recently completed a similar zoning ordinance rewrite for Iredell County and is capable of doing the project in a timely manner. The Planning Board reviewed and endorsed the Benchmark proposal at their November 20th meeting noting that it was important that the Planning Board offer "up-front" overall policy direction on the ordinance rewrite project.

Funds for the project are available and would be taken directly from the lapsed salaries for the project position. If the proposal is accepted by the County, work could begin in early 1999.

Commissioner Moyer made the motion to accept staff's recommendation and authorize the County Manager to enter into a contract with Benchmark. All voted in favor and the motion carried.

Recess

Chairman Hawkins called a 10 minute recess.

PUBLIC HEARING - To Consider an Ordinance Imposing a Moratorium on the Development of Manufactured Home Parks in Henderson County, NC

Commissioner Ward made the motion for the Board to go into public hearing. All voted in favor

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and the motion carried.

Jennifer Jackson reminded the Board that on November 18, 1998, the Board of Commissioners set a public hearing on a proposed moratorium on the development or expansion of manufactured home parks in Henderson County. The public hearing was scheduled for this evening and was advertised on November 23, 1998 and November 30, 1998, in accordance with applicable law. The proposed moratorium is for a six month period (to expire at midnight on June 7, 1999 if adopted tonight) during which time any development or expansion of manufactured home parks would be prohibited. The purpose of the moratorium was to give the Board a reasonable amount of time to consider an ordinance which would regulate manufactured home parks.

This public hearing was being held to receive public comment on the adoption of the proposed moratorium. On December 1, 1998, the Planning Board considered the proposed moratorium but voted to send an unfavorable recommendation to the Board of Commissioners.

Public Input

Chairman Hawkins stated that there are about 26 - 30 people signed up to speak. He asked that each person limit their comments to about three minutes. He also encouraged that a single person could speak for a group of people and would be appreciated.

1. Nathan Ward - Mr. Ward lives on Jackson Road and has been there for 19 1/2 years. He stated that the trailer parks were too many people, overloading the schools and lots of other stuff that the taxpayers have to provide. He asked the Board to vote in favor of the people on Jackson Road.

2. Susan Ward - Ms. Ward just stated that she agreed with Mr. Ward's comments.

3. Jim Clayton - Mr. Clayton lives on Flynn Branch Road, off Jackson Road. He thanked the Board for the opportunity to speak and welcomed the new Commissioners to the Board. He asked the Board to consider vested rights of the citizens of the area and asked the Board if they could ignore those vested rights. He reminded the Board that they represent the majority of the people here tonight and those people want a six month moratorium on manufactured home parks to give them time to get a level of protection that the Commissioners already enjoy.

4. Sheila Franklin - Ms. Franklin lives on Jackson Road in Fletcher. She lives across the street from where there is a proposed 240 mobile home park and just a half mile up the road from that there is a proposed 440 mobile home park. Both these developers have already put in for their sewer permit. She spoke to density issues stating that the school they now have has a capacity of 500 and they are already over capacity by about 50 students. She also spoke to the issues of traffic and crime.

5. Dottie Effinger - Ms. Effinger did not speak.

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6. Lane Godsey - Mr. Godsey spoke on behalf of himself and also reflected the views and beliefs of some 400 parcel owners who have signed a Zoning Application submitted today. He urged the Board to adopt the 6 month moratorium and to extend to the City of Hendersonville the suggestion that they do likewise as regards the water permits for that same period of time. He asked for those in the audience who were in favor of the moratorium to indicate by raising their hands. It was the majority of people in the audience.

He spoke about the two massive mobile home parks that are planned for their community. They have water and sewer going out to an unzoned area. The result of that is that the land is unregulated. He spoke in opposition to the massive unregulated nature of these proposed parks.

7. Paul Prosky - Mr. Prosky is the developer of a mobile home community in Hendersonville called White Oak Park. He stated that they have a lovely community and the residents seem to be happy there. He is also President of the Western North Carolina Manufactured Housing Association. He spoke briefly in that capacity. He stated that they would prefer not to have a moratorium on the development of manufactured home parks. They feel that there would be economic and social consequences from cutting off this affordable housing. If there is a moratorium, they would like to see manufactured housing treated equally with site built housing. If there is a moratorium on the development of manufactured home parks, they would like to see the same moratorium apply to any site build housing developments. What's to stop a site builder from putting in a similar number of units in exactly the same piece of land.

8. Vito Montaperto - Mr. Montaperto owns Dana Hills Community in Hendersonville and developed it. He spoke in opposition to the moratorium from a fairness issue. Over the last 2 weeks he has received about 13 phone calls from individuals he could not help, individuals wanting to place their mobile home on leased land with families. Mr. Montaperto developed a retirement community. He gets calls like this all the time. He stated that the need is there. He has lived in this area over 23 years.

9. Roger Wolff - Mr. Wolff lives in the Town of Fletcher. He is not an out of town developer. He is the developer of the proposed 250 unit mobile home park on Jackson Road. He was speaking for himself only. He stated that he has been working on this property for several months and has not tried to conceal his intentions. The previous owner had contacted others to develop it before his agreement to acquire the property. He has talked to the water people, the sewer people, the State people, a myriad of people. He stated that he had acted in good faith on the rules and regulations that were in place and are in place now. He has made significant commitments based on those rules. He stated that to stop him now would be very detrimental and it would also deprive a goodly number of people in the long run of a number of very attractive places to live. Mr. Wolff did state that he supports a mobile home park ordinance and supports zoning. He feels that they are long past due. But a moratorium is something that he strongly opposes. He stated that a moratorium was in essence rezoning, at least for the period of time that the moratorium is in effect. He stated that if the Board wants to change the rules for manufactured housing parks or establish rules, he stressed that the Board needs to follow the

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notices, the hearing procedures, the Board input procedures and the vote by this group of Commissioners. He requested:

1. The Board vote not to have a moratorium tonight
2. That we proceed in reasoning and in judgement according to prescribed procedures to establish a mobile home park ordinance and zoning.

10. Monty Baker - Mr. Baker is a resident of Jackson Road. He spoke on behalf of some of his neighbors. He is a general contractor and developer. He had a copy of the Henderson County Land Development Ordinance - its stated purpose is "To establish procedures and standards for the development and subdivision of land within the jurisdiction of the County of Henderson. It is further designed to provide for the orderly growth and development of Henderson County by promoting environmental quality, protecting and enhancing property ownership and land values, coordinating and preservation of street and road rights-of-way with existing and proposed roads, providing adequate light, air, and open space and generally creating conditions essential to public health, safety, and welfare. This ordinance is designed to further facilitate adequate provision of water and sewerage and also to facilitate the further resubdivision of larger tracts into smaller parcels of land." He stated that under the General Statutes of North Carolina a development of manufactured housing for rent does not fall under the definition and the purpose of the Henderson County Land Development Ordinance. It was his strong opinion that it should or at least language of equal strength should be enacted to protect both the residents of such a community and the residents of the surrounding communities. He urged the Board to proceed with endorsing and supporting this moratorium so that the Planning Board can reconsider and re-evaluate this whole issue.

11. George Erwin, Jr. - Sheriff Erwin congratulated the new Commissioners, stating that their plate is already full with this issue tonight. He spoke not as the Sheriff but as a Fletcher resident for the past 20 years. He stated that there is a dire need for affordable housing but he stated that we must be careful of what we do to preserve the quality of life that we have. He spoke about the numbers of people that tell him that they moved to this area for the quality of life. He spoke briefly as to what a steward is, stating that the Commissioners (and himself) are stewards. He also spoke briefly to the definition of a community. He asked the Board to be cautious and not over-react. He said "Let's take some time and find solutions that everybody can work with."

12. Charles Messer - Mr. Messer is a Fletcher Councilman but spoke tonight as a resident of the Town of Fletcher. He requested the county adopt a moratorium on proposed manufactured home parks. He stated that if we average 2 ½ citizens per home, we would increase our population by more than 1,587 new residents. These two developments would increase our population by approx. 48%. He expressed concern about the added need for roads, schools, etc. The Town of Fletcher is currently in the process of changing their requirements for a conditional use for manufactured homes. Some of the items they are looking at are limiting the density to 30 units per park, limiting four units per acre, and requiring that all new manufactured home parks cannot be any closer than one mile from any existing park. The Planning Board has already made this recommendation to the Council and they will hold a public hearing on December 14 to discuss

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these matters. Fletcher is also working on an ETJ in the area in question. He asked the Board to please support the moratorium to allow the proper planning and land use controls to be put in effect before our county becomes a hodge podge of developments which will put a strain on all our limited resources.

13. Anissa Barnwell - Ms. Barnwell did not speak.

14. Neil Barnwell - Mr. Barnwell did not speak.

15. Franklin Donovan - Mr. Donovan did not speak

16. David Nichols - Mr. Nichols did not speak.

17. Carol Fonte - Ms. Fonte lives on Yellowstone Drive in Fletcher. She would like to see controlled growth, not this influx that is devastating on our schools, our road system, etc. She would like to see Hoopers Creek stay the kind of community that it is.

18. Ken Cawthorne - Mr. Cawthorne lives in Fletcher on Mountain Laurel Lane. He spoke for eight families who live off Mountain Laurel Lane. He felt that a moratorium is justified.

19. Ruth Baker - Ms. Baker did not speak.

20. Eugene Baker - Mr. Baker did not speak.

21. Cameron Garren - Mr. Garren did not speak.

22. Dick Lantrip - Mr. Lantrip represented the High Vista Property Owners Association. He stated that the County has the same obligation and responsibilities toward manufactured home park development as it does toward any other type of residential development within the county. Apparently it is falling somewhat behind. He expressed that the unregulated mobile home parks in the county are of no benefit to anyone, even those living in them. He stated that without the controls on manufactured home parks that the other types of quality residential developments are certainly going to be discouraged. He urged the Commissioners to pass a moratorium ordinance tonight. He also asked that for the proposed moratorium on manufactured home park development be highly scrutinized to consider all the permits that have been issued within the recent reasonable time, a week, 10 days, a month, 2 months, that development construction has not yet started, that those fall under this moratorium ordinance and have to cease and desist until the end of this moratorium period.

23. Doug Lassiter - Mr. Lassiter has lived in the Hoopers Creek community for 15 years. His views have already been expressed. He asked for the Board's support on a six month moratorium.

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24. Bob Parrish - Mr. Parrish is the Mayor of the Town of Fletcher. He congratulated the two new Commissioners and thanked the Board for the opportunity to speak. He stated that the Fletcher Town Council and himself fully support the Hoopers Creek people in their endeavor to try to seek this moratorium on trailers. If that is not possible, he asked for an interim zoning ordinance which would establish a status quo and would give an opportunity to then plan and produce a permanent zoning ordinance, county wide. He thinks the county needs this.

25. Phil Monk - Mr. Monk is a resident of Mountain Laurel Lane in the Hoopers Creek community. He asked the Board to protect the citizens' rights of Henderson County.

26. Boyd Massagee - Mr. Massagee spoke representing Suzanne Tiller and certain others in the group. He asked the Board two questions - "If you really have no problem about any of the issues that have been raised with you by either side, if you don't see there's a safety, fire, police protection, density of the area, if none of those in your minds are significant concerns then I think you just need to deny the moratorium and go ahead and do something else after this meeting. If any of them bear any merit. If you care what the Planning Board is that you all have appointed and your predecessors appointed, if you care what they think, I have a hard time finding any reason not to declare the moratorium and give them an opportunity to make a decision, make an investigation and then either at that time say no we're not going pass an ordinance or pass one. But if you've got a question about whether you should do something or not it's a serious question, I have a real hard time saying I'm categorically going to go this way without more study, unless you are real real sure that's the right way.

Second item that I would raise with you is the question that I've been told by my people has been raised, not infrequently, and that is about the question of whether or not there is a right on the part of Mr. Wolff to do anything. Does he have the so called vested right. As you know there are two ways that can happen. You've got an ordinance passed and simply provides that if you want to get and determine if you have a vested right for any kind of a project you can come to you with a written documentation and certain specifications in there and you have a right to hold a hearing, got to hold a hearing first under your ordinance, then you gotta pass the determination of yes that's gonna be a vested right. If that's done and you have the hearing and you so pass then that person has a vested right. If you don't do that, he still have responsibility under what we call the old common law, that is the law before you pass the ordinance - to the effect that he's got to go so far in a project - you all cannot say when he's 9/10 through you can't do this, we're not going to let you do that. The court said his rights are vested. I suspect everybody in the room knows that. The questions to me that I wanted you to look at are these - under the law there is a burden on Mr. Wolff to show you that he has a vested interest. I couldn't help but get intrigued with the parallel of the basketball franchise and yet I ain't heard no evidence about him buying a franchise, hadn't heard any evidence about him hiring a player, I hadn't heard any evidence about him buying a uniform and I ain't heard he's bought up the first basketball yet. Now he may have a contract to buy some property, may have talked to, I was intrigued with his verbiage - I talked to the water people, I talked to the sewer people. You gotta get a permit from these kinda folks. And categorically and clearly our courts have said not only do you have to apply for them, you've

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got to get these permits before you're gonna be vested. I have handed to your City Attorney or County Attorney just a little brief - which - I suspect she knows the law more than I do. She's gonna present to you her thoughts I assume at the end. I would ask her to give you a letter if you would to hand up - I've got a copy of that for each of you all. You're gonna find, the new ones are gonna find and the old ones remember that you go out of here with more paper than you came in with and if you're short of paper I just wanted to help you and make sure you had enough. I don't think there's any question about the fact that this man does not have a vested right and I would ask you to declare a moratorium. Thank you."

Staff Comments

Jennifer Jackson informed the Board that staff met the end of the week last week. She informed the Board that there are approx. 250 manufactured home parks in the county. Our health department is getting approx. 100 improvement permits monthly, which is an improvement to put in a septic tank and of those, approx. 60 end up in the inspections office for set up permits for manufactured homes. Of those, about 35 end up with actual completed manufactured home complete installations. The manufactured home industry is seeing a fairly substantial increase in Henderson County. She stated that it was perfectly appropriate for the Board to consider a manufactured home park ordinance to address many of the concerns that have been expressed to the Board this evening. Since we have so many manufactured home parks and to date there has not been any regulation of them, except perhaps in the zoning areas, you can essentially have a piece of property in the unzoned area, apply to get a septic tank permit and get an electrical pole put on and you are capable of putting a manufactured home on that space. Because there is a distinction between an actual unit and a space, staff had proposed changes in the proposed moratorium.

Ms. Jackson asked the Board whether they wished to regulate spaces or actual manufactured home units. They would be treated differently. Staff proposed that the Board regulate spaces. One of the reasons for that is that under the proposed manufactured home park ordinance you are regulating spaces. Anybody that has a space would be grandfathered and therefore not subject to the new regulations. If you regulate spaces it becomes a little bit harder to enforce or administer because it is harder to identify on the ground where the actual spaces are.

She reviewed two definitions that were proposed to be added to the proposed moratorium:

"Manufactured Home" means a dwelling unit typically built in accordance with construction requirements of the U.S. Department of Housing and Urban Development (HUD) Housing Code, but not constructed in accordance with the standards set forth in the North Carolina State Building Code, and which is composed of one or more sections, each of which was substantially assembled in a manufacturing plant and which is designed to be transported to the home site on its own chassis, and which, in the traveling mode, is more than forty feet in length or more than eight feet in width, and which is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and which includes the plumbing, heating, air conditioning and electrical systems contained therein.

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“Manufactured Home Space” means an area of land within a Manufactured Home Park designed for the exclusive use of one Manufactured Home and associated accessory buildings and which shall be defined on the ground by the presence of water and sewer service connections and electric service equipment, collectively referred to as “Requisite Utility Connections”. A lot or lot of record, as those terms are defined in Section 170-5(B) of the Henderson County Code, without the Requisite Utility Connections shall not establish a Manufactured Home Space.

Permits that would be permitted under the moratorium would be septic tank permits, the improvement permits issued by the Health Department because they are not under the Board’s jurisdiction to administer or to dictate to them what they can and cannot permit. Well permits because they are issued by the Health Department and governed by the Board of Health. Any permits that the state would issue such as a discharge permit for a wastewater treatment package plant. Sedimentation, erosion, and control permits which would be issued by the state, we have no control over that and therefore this moratorium would not govern. Any City sewer and water permits. The Board does not have jurisdiction to control those matters. Any other permit that would be issued by another local government would not be affected by this moratorium.

At this time, Ms. Jackson distributed the memo to the Commissioners from Boyd Massagee regarding vested rights. He relayed to the Board two types of ways a developer can obtain a vested right. One is through the vested rights ordinance which the Board is charged with administering. The other is the common law vested rights which is where determination would have to be made based on substantial expenditures and good faith and reliance on a governmental approval for a project. Ms. Jackson stated that another way to establish a vested right is through a building permit. If a building permit or a set up permit has been issued that grants them a vested right to continue with that project to completion.

Speaking to the vested rights in this particular case, Ms. Jackson was not sure that staff had a completed application yet from the developer and therefore she encouraged the Board hold any discussion on that until an application is put forward to the Board and then to consult with the County Attorney on how that should be handled at the time.

Ms. Jackson stated that it was unclear whether the Board wished the moratorium to apply in the ETJ of a municipality that is currently exercising its powers under the land use powers. Staff recommended that the period for the moratorium be reduced to 90 days. The Planning Board has a very good working draft and have been working very diligently to get a manufactured home park ordinance to the Board that would regulate these issues. They hope to get that to the Board some time in early January.

Ms. Jackson reviewed the proposed changes to the drafted Ordinance imposing a moratorium on the development or expansion of manufactured home parks in Henderson County, NC.

Ms. Jackson informed the Board that the Planning Board did consider this matter at their meeting on December 1 and at that time there was a lot of good discussion but the Planning Board did

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vote unanimously to send an unfavorable recommendation to the Board of Commissioners.

Ms. Beeker stated that it was staff's feeling that if you were implementing a manufactured home park ordinance to offer a level of protection to the residents that would be moving in the park, that you would want to offer people who buy the lots the same level of protection as people who lease the lots. Currently in an unzoned area there is no minimum lot size. If you're thinking about controlling density, they could slice it up into little tiny pieces and sell those lots whereas, she believed the issue that the Planning Board is working on is how close together should those manufactured homes be and how many should be allowed to go in there and things like that.

Ms. Beeker offered one other clarification - as written if there is a park that exists currently that already has spaces ready for mobile homes to go on those spaces. With the changes recommended, they would allow people to go ahead and move into the park. It would not preclude spaces that are already established with utility connections and power from being filled.

Chairman Hawkins asked if anyone else wished to speak, as the Board was about ready to close the public hearing. There was one more:

27. Joe Kilpatrick - Mr. Kilpatrick lives off Jackson Road and he spoke in support of the moratorium. He asked that the Board consider that 90 days might not be enough time for our zoning ordinance to take effect. He asked that the Board consider a 6 month moratorium on mobile home parks.

Commissioner Kumor made the motion for the Board to go out of public hearing. All voted in favor and the motion carried.

For purposes of discussion, Commissioner Kumor made the motion to adopt the amended moratorium as presented by Jennifer Jackson at this meeting.

Commissioner Ward raised a question concerning 90 days being enough time to let a zoning overrule a mobile home park. The County Attorney was not prepared to answer that question.

Commissioner Gordon stated that in her thinking the moratorium that we are considering tonight doesn't pertain to zoning, it pertains to the development of a manufactured home park ordinance. Zoning and whether or not it could be put in place within some time frame shouldn't be a part of the discussion.

Commissioner Moyer stated that from a philosophical standpoint he is personally opposed to moratoriums. He thinks the citizens are entitled to know the rules that apply to their land whether they be purchasers or sellers and he thinks on the basis of fairness, to throw in a moratorium at the last minute is not a fair thing to do. He is particularly concerned when it identifies a type of housing and whether a moratorium can ever be appropriate when targeted against a particular type of housing which may adversely affect many citizens in the county and

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other areas other than Hoopers Creek. He also is concerned about false expectations as Commissioner Ward mentioned - that the moratorium is going to create with respect to a lot of things. On the other hand, he thinks it is very unfortunate that the proper planning tools had not been put in place to protect these various areas and he thinks the Board has to share some of the responsibility for that. He offered another suggestion, realizing that there was a motion on the floor. He was concerned whether 90 days was sufficient to get the ordinance from the Planning Board some time in January and then for the Board to review and act upon it, he felt that 120 days would be more appropriate and he felt the Commission's feet should be kept to the fire to get that done. He also asked that the Board consider changing in the definition #3 to #30 so that we are only dealing with parks with more than 30 spaces.

Commissioner Gordon stated that she can agree with what Commissioner Moyer proposed as amendments to the motion but stated that there are other factors that go into size. If you try to limit size across the board through an ordinance too artificially low, they could preclude manufactured home park development and could make the cost of development so high that it wouldn't be economically feasible. The Board could really limit a housing segment that they should be servicing. If the board is addressing amenities, supervision, etc. in a mobile home park, Commissioner Gordon stated that they can be more effectively done in larger parks - the more units the more services that could be provided by the park developer. If we keep it too low its going to be very difficult for them to provide amenities in that park and keep the rental per unit competitive.

Commissioner Kumor stated that one thing that has to be looked at is the implications of that dense a development going into a community with only one road in and the implications to a gradual influx of families that demand that our future of looking at \$100 million for schools has now gone up by \$12,000,000 - \$15,000,000 and we haven't even started on the first school yet. She mentioned also the impact that it has on all the infrastructure within the community.

Commissioner Gordon stated that she had asked our Zoning Administrator how many mobile home parks have been permitted in our zoned areas and she couldn't remember the last one. She didn't know of any being placed in a zoned area in Henderson County. As Hoopers Creek and other areas of the county are looking at zoning she asked that they bear in mind all these issues.

Commissioner Kumor stated that this Board of Commissioners through the last 5 years has only wanted to regulate manufactured home parks with regard to public health and safety issues so that folks who live and select this method of habitation have every right to expect their health and safety to be as much prized as it is in some of our high priced developments.

Following much discussion, Commissioner Kumor amended her motion to add an amendment to include 120 days as the length of the moratorium as opposed to 90 days and 30 spaces in a park as opposed to 3 spaces. All voted in favor and the motion carried.

Chairman Hawkins explained that the moratorium is in effect for 120 days. Applause followed.

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Recess

Chairman Hawkins called a five minute break.

IMPORTANT DATES

The Commissioners reviewed the "Important Dates" calendar.

David Nicholson reminded the Board that this Wednesday is the annual Employee Holiday Luncheon and encouraged each Commissioner to attend. At 1:30 that afternoon Mr. Nicholson is meeting with the Senior Center group and invited any Commissioners to come to that meeting.

David also reminded the Commissioners that Buncombe County is hosting a reception for the NACo Board on December 11 at 8:00 p.m. at the Grove Park Inn. He asked anyone wishing to attend to contact Ms. Corn to make reservations.

The date was mentioned for the 1999 Legislative Goals Conference as being January 14 & 15. The Board also needs to delegate their voting delegate for the conference.

Mr. Nicholson also informed the Board that the Day Reporting Center Advisory Board is having a retreat at Highland Lake Inn on December 14 and they have invited any Commissioners who would like to come to their lunch that day.

Commissioner Kumor had asked the Board earlier to think about a retreat date for the Board. Following discussion, it was decided to have a retreat workshop for the Board on December 15 at 12:30 p.m. for about three hours. The Board will likely set a formal retreat date following that workshop.

Commissioner Ward left the meeting at this point. Chairman Hawkins had excused him to make a business trip.

GENERAL OBLIGATION REFUNDING BONDS, Series 1998

Carey McLelland informed the Board that the packet for this item included meeting extracts and an escrow deposit agreement for the 1999 General Obligation Refunding Bonds. These were drafted by bond counsel in New York. The meeting extracts contain a Resolution that prescribes the details and provides for the sale of the county's refunding bonds as well as approval of the terms of the escrow agreement between the County and First Citizens Bank & Trust. The bonds are set to be sold on December 15 by the LGC. The savings numbers over the term of the bonds are still in the neighborhood of over \$1,000,000.

Finance Director J. Carey McLelland presented the following resolution and Grady Hawkins moved that it be adopted. Commissioner Kumor seconded the motion. All voted in favor and the motion carried (4 ayes, no nays). The documents are hereby attached as a part of these minutes.

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SET PUBLIC HEARING - Schedule of Values

Robert Baird asked the Board to set a Public Hearing on the proposal of the 1999 Schedule of Rules, Standards, and Values and the 1999 Present-Use Value Schedules for December 16, 1998.

Pursuant to NCGS 105-317(c)(2)(b), the Henderson County Board of Commissioner will hold a public hearing on the proposal of the 1999 Schedule of Rules, Standards, and Values and the 1999 Present-Use Value Schedules.

Commissioner Kumor made the motion to set the public hearing as requested for December 16 at 9:00 a.m. All voted in favor and the motion carried.

The 1999 Schedule of Rules, Standards, and Values and the 1999 Present-Use Value Schedules are on file for the public to review at the Henderson County Assessor's Office, 200 North Grove Street, Suite 102, Hendersonville, NC 28792.

UPDATE ON PENDING ISSUES

Annexation

Chairman Hawkins had spoken to Carey McLelland about making an update to the report the Board received last December on annexation. Chairman Hawkins distributed copies of last year's report.

Carey McLelland explained that annexation or incorporation by municipalities in the county has a negative impact on the amount of sales tax revenues the County will have available in future budgets. Sales tax revenues are distributed to Henderson County quarterly by the N.C. Department of Revenue on a per capita basis. When a municipality incorporates or annexes an unincorporated area within the County, this reduces the per capita percentage allocation distributed to the County and increases that which is distributed to the city or town. However, this reduction does not take effect immediately. The population numbers are adjusted at the beginning of each fiscal year based on annexations or incorporations that take place during the preceding fiscal year.

Fiscal Year 1995-1996 was the largest reduction in sales tax revenues for the county in the most recent past. The Village of Flat Rock incorporated (1,778 persons) and the City of Hendersonville annexed unincorporated property (1,287 persons) prior to June 30, 1995. This resulted in a loss of \$429,023 in sales tax revenue per year distributed to Henderson County during FY 1995-1996.

No annexations or incorporations by municipalities occurred which significantly affected sales tax revenues during FY 1996-1997.

At June 30, 1997 the Town of Laurel Park annexed unincorporated property (336 persons). The projected loss due to this annexation is \$51,507 per year. This loss was factored into sales tax revenue projections for the County's FY 1997-1998 budget.

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The City of Hendersonville, the Town of Fletcher, and the Town of Laurel Park are all considering further annexations during FY 1997-1998 that may affect sales tax revenue projections for the FY 1998-1999 budget. There is not enough information available at this time to determine if these municipalities will annex other areas or the population numbers that will be affected.

The Planning Department had provided information for the Board's review on past and proposed annexations by the City of Hendersonville and the Towns of Fletcher and Laurel Park.

Chairman Hawkins asked the Board's opinion on a response to the municipalities regarding their annexation policies and to ask in that request if the City of Hendersonville is going to be as fair to the citizens as they are to businesses referencing the Senate Bill (SB #198) that passed last year that allowed selected businesses not to be annexed in lieu of portions of tax payments.

Commissioner Kumor stated that this is a good topic for the Board's up-coming retreat. She felt that the City of Hendersonville annexes at their own risk because at some point they will lose their current small town identity.

Commissioner Moyer stated that he is opposed to annexation. He stated that you have to look at what is the appropriate role for the Commissioners to play and how to best play it. He felt that the Chairman or representatives from the Board should start by meeting with Mayor Niehoff and/or their representatives and see if there is a way to work this out that we could be involved in a positive fashion and go forward working together.

Commissioner Kumor brought up the issue of the cost of sewer installation and the investment cost for that. "Maybe we want to ask that if citizens are willing to be annexed to be provided sewer that they be given some ...".

Following much discussion, it was the consensus of the Board to add this as an issue to a retreat setting.

Permit Situation/Raceway add-on by Commissioner Ward

David Nicholson informed the Board that we have received sewer applications for both the 250 mobile home park unit and a 440 mobile home park unit in the Hoopers Creek area, however; those applications are not complete and they have not paid their impact fees and there has been no allocation granted to those two applications. During the last break he met with some of his staff and told them that tomorrow morning we need to contact everybody who has a permit issuing capability in county government to conform with this Board's actions and it will be our staff's position that these should not be worked upon anymore because they were not provided to us complete nor were the fees paid to begin with. We will discontinue any looking at those until the moratorium is complete. If the individuals who are developing these wish to come to this Board of Commissioners and ask to be considered for a vested right or whatever, then they can certainly do that.

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David Nicholson also informed the Board that Henderson County is getting no contact from the people who are talking about developing the raceway at all. They have not been in to talk with our sewer folks, our building folks, or anybody like that at this point in time. Staff did follow up on the State permits and he asked the County Engineer to inform the Board about that.

Gary Tweed had talked with the Regional Engineer for the State Sedimentation and Erosion Control and their inspectors found a small violation on the site. They were clearing brush and the clearing had gotten out to more than an acre, which would require an Erosion Control Plan. The Consultant for the racetrack developer is submitting a two phased Erosion Control Plan, the first phase being under the current property owners name for this clearing activity with a second phase to be coming later. The second phase would be for the racetrack development. Neither of those plans had been submitted as of about noon today.

WATER LINE EXTENSIONS

David Nicholson informed the Board that staff had assumed that the Chairman was receiving requests for the water line extensions. Come to find out they were being sent to the Planning Department. The Planning Department had just been saying someone was in a zoned area or whether it was a residential or commercial type environment. All the rest of the sewer line extensions were going to either the Mayors or the Town Managers. For some reason, it was not coming to this office.

Mr. Nicholson informed the Board that we have received three water line extension applications as follows and according to the City Manager, the Hendersonville City Council will consider these extensions at their December 10 meeting:

1. Whitemark, Inc., Housing Development

Mr. Nicholson explained that this is a 440 mobile home park unit. His suggestion to the Board was to write the same letter to the City of Hendersonville that the Board has put a moratorium in place and let that be the only comment to them.

2. South Crossing Business Park

The Planning Board has already seen this one. This is on the corner of US #176 and Hwy. #25 intersection and is a seven unit commercial business park.

3. Cummings Cove, Phase III

The Planning Board has already seen this one. This is for section one of phase III and is another phase of residential homes being built in the Cummings Cove development.

It was the Board's consensus to write a letter to the City about #1 and let them know that the Board has put a moratorium in place and not to respond to # 2 and #3.

Chairman Hawkins informed the Board that from the December 3 meeting of ABHWA, effective today the City of Hendersonville started selling to ABHWA 2,000,000 gallons of water which is

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about 9.7% of the ABHWA's daily water usage. He stated that the City of Asheville felt that they are down to about a 90 day water supply. He stated that if we're looking at any new water allocations, the next 60 days is really going to be critical, based on whether we get any rain.

ELECTED OFFICIALS SALARIES

David Nicholson reminded the Board that the Board of Commissioners sets the salaries for several locally elected officials. It would be appropriate for the Board to establish these salaries at tonight's meeting. To assist the Board with this discussion, staff had provided charts of similar size counties and their compensation for most of these positions. They have not been able to locate a statewide listing of the salaries of school board members. Staff will continue to research this issue.

In December of 1997 and prior to their filing period, the Board established the base salaries for the Sheriff, Register of Deeds and Tax Collector. The base salary and the incumbent's current salary are shown below:

<u>Position</u>	<u>Base Salary</u>	<u>Current Salary</u>
Sheriff	\$52,424	\$55,995
Register of Deeds	\$38,305	\$43,256
Tax Collector	\$43,089	\$50,845

The Board may also wish to review the compensation of both the Board of Commissioners and Board of Public Education at this time. The current salary of the members of these Boards is listed below:

<u>Board Member</u>	<u>Salary</u>
County Commissioner	\$ 7,442 (+\$75 per special called meeting)
County Commissioner Chair	\$14,884 (+\$75 per special called meeting)
Board of Public Education member	\$ 2,100
Board of Public Education Chair	\$ 2,800

Following discussion, Chairman Hawkins made the motion that the Board accept the current salaries as presented. All voted in favor and the motion carried.

Chairman Hawkins stated that the information on the Board of Education members and the Commissioners is something the Commissioners can study between now and budget time for further discussions.

PETITION TO ABANDON CAVE INN DRIVE (SR #1661)

The County had received a petition from William Cone and Randy Evans asking that the County request NC DOT to abandon and remove from the State maintenance system Cave Inn Drive (SR #1661). This petition, along with various letters of support and maps of the area were submitted

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for the Board's review. The comments of the Planning Department were also included as was a summary of the request and certain issues raised by the request.

NCGS 136-63 sets out the procedure by which a road may be abandoned. This statute requires that before NCDOT abandons a road in the manner requested, the Board of Commissioners must adopt a resolution requesting that the road be abandoned. The adoption of such a resolution must be based upon a finding that "the best interest of the people of the County will be served thereby."

Although no public hearing is required to abandon a road, it would be appropriate to hear from the interested public, as well as public safety officials before making such a determination. Staff offered the date of January 4 at 7:00 p.m. for a public hearing on this item.


Chairman Hawkins made the motion to set a public hearing for January 4, 1999 at 7:00 p.m. for this item. All voted in favor and the motion carried.

CLOSED SESSION

There was none.

There being no further business to come before the Board, Chairman Hawkins adjourned the meeting at 9:38 p.m.

Attest:


Elizabeth W. Corn, Clerk to the Board


Grady Hawkins, Chairman