

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
NOVEMBER 15, 1996

The Henderson County Board of Commissioners met for a special called meeting at 11:00 a.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Renee Kumor, Vice-Chair Vollie G. Good, Commissioner J. Michael Edney, Commissioner Bob Eklund, County Manager David E. Nicholson, Assistant County Manager/Staff Attorney Angela M. Skerrett, County Attorney Don H. Elkins, and Clerk to the Board Elizabeth W. Corn.

Also present was: Finance Director J. Carey McLelland.

Absent was: Commissioner Don Ward.

CALL TO ORDER/WELCOME

Chairman Kumor called the meeting to order and welcomed all in attendance. She stated the purpose of this meeting was to discuss the issue of a contract with ITT on the placement of a facility in Henderson County.

Angela Skerrett reviewed with the Board what the General Statutes authorize Henderson County to do with regards to economic development. The statutes authorize the county to make appropriations (from tax levy or other revenues whose use is not otherwise restricted by law) NCGS 158-7.1:

- to aid and encourage the location of manufacturing enterprises
- to make industrial surveys
- to locate industrial and commercial plants in or near the county
- to encourage the building of railroads
- other purposes which, in the discretion of the Board of County Commissioners will increase the population, taxable property, agricultural industries and business prospects of the county.

She then reviewed specific economic development activity the Board may undertake:

- acquire and develop land for an industrial park from anywhere in the county, including in a city GS 158-7.1(b)(1) -installing utilities, drainage facilities, street and transportation facilities, street lighting, and

similar facilities

- demolish or rehabilitate existing structures
- prepare a site for industrial or commercial uses
- convey property located in a park pursuant to private negotiations, and subject to the covenants, conditions, or restrictions deemed necessary upon approval by the Board of County Commissioners after a public hearing
- acquire, assemble, and hold for resale property that is suitable for industrial or commercial use from anywhere in the county, including inside a city.(may use same procedures for sale as in an industrial park) GS 158-7.1(b)(2)
- acquire options on property that is suitable for industrial or commercial use. GS 158-7.1(b)(3)
 - assign the option following such procedures, for such consideration and subject to the terms and conditions as the county desires
- acquire or construct one or more "shell buildings" GS 158-7.1(b)(4)
 - convey/lease after detailed notice, public hearing, and approval by the Board of County Commissioners
- construct, extend, or own utility facilities, or assist in the extension of utilities to industry, whether the utility is publicly or privately owned GS 158-7.1(b)(5)
- extend, provide for, or assist in the extension of water and sewer lines to the industry, whether the industry is publicly or privately owned GS 158-7.1(b)(6)
- engage in site preparation for industry, whether the industry is publicly or privately owned GS158-7.1(b)(7)

Ms. Skerrett then informed the Board that they may lease or convey interests in property(held or acquired under GS 158-7.1):

- by private negotiation for fair market value (must determine fmV according to restrictions imposed, and must determine probable average hourly wage) GS 158-7.1(d)
- by private negotiation for fair market value less prospective tax revenues over not more than ten years GS 158-7.1(d)(2)
 - Board of County Commissioners must determine that conveyance will stimulate local economy, promote business, and result in the creation of a substantial number of jobs paying at or above median average wage in the County
 - Board of County Commissioners must contractually bind purchaser to construct improvements that will generate the tax revenue taken into account in arriving at the amount of consideration received within finite period of time, not to

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exceed five years, else purchaser must reconvey property to the county.

COMPARISON OF CONTRACT PROVISIONS AND REVISIONS REQUESTED BY ITT AUTOMOTIVE

At the last meeting, Public Hearing of November 7, Ms. Skerrett presented to the Board a draft contract. At that time, the Board authorized Ms Skerrett and the Chairman to finalize that draft. Ms. Skerrett and Chairman Kumor did so and received comments from ITT's corporate in house council. Ms. Skerrett felt that the changes they asked for should be authorized by the Board.

Ms. Skerrett reviewed the major points of the contract and changes, if any, that ITT had requested. If the Board had any legal questions, Ms Skerrett suggested that they go into Closed Session to ask those. A copy of the comparison of the contract provisions, as reviewed, is attached as a part of these minutes.

Harold Domkey, Manager of facilities and capital projects for ITT Automotive, addressed the Board regarding the suggested changes. He stated that ITT definitely intends to abide by NC State Law. He felt that they could negotiate the fine points.

Chairman Kumor asked a question regarding item#4, related to payment and the County's fiscal year. Mr. Domkey stated that he was unaware of the county's fiscal year. If this is an issue with the county, he can live with it.

The County Attorney was asked if he had reviewed the contract and if he recommends the agreement as to form. He had done so.

There was a question regarding item#10 - "At least 101 of the new positions must pay at or above the median average wage for all insured industries in the county" (note: statute requires a "substantial number".) ITT Automotive did not agree with this number but had not suggested an alternative number. Mr. Domkey stated that this was more of an accounting detail. Their intent is definitely to comply but they had a problem with the fact that if they did not have 101 complying jobs they would have to revert to the county. This is a big financial problem.

CLOSED SESSION

Commissioner Edney made the motion for the Board to go into Closed Session as allowed under NCGS 143-318 for the following reasons:

1. (a)(3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged.
2. (a)(4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.
3. (a)(5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (1) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.

All voted in favor and the motion carried.

Commissioner Edney made the motion for the Board to go out of Closed Session. All voted in favor and the motion carried.

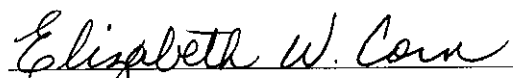
ACTION following Closed Session

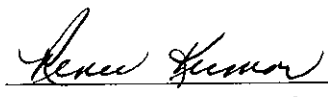
Chairman Kumor moved the following motion - that the Henderson County Board of Commissioners accept the draft changes as presented on the list with the exception of #4 where the county would like the accommodation made to the county's fiscal year and on item#10 the county will substitute substantial number of jobs for the number of jobs listed at 101 on the draft copy and Henderson County will give Henderson County council the authority to negotiate any other issues that may arise that are in their opinion are in accordance with the law.

All voted in favor and the motion carried.

There being no further business to come before the Board, the meeting was adjourned.

ATTEST:


Elizabeth W. Corn, Clerk


Renee Kumor, Chairman

COMPARISON OF CONTRACT PROVISIONS AND
REVISIONS REQUESTED BY ITT AUTOMOTIVE
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002336
*attachment
to min. of
11-15-96*

<u>Contract Provision As Proposed</u>	<u>Revision Requested by ITT</u>
1. County must purchase Industrial Site and convey by December 1, 1996	1. None
2. County must purchase and dedicate Roadway	2. None
3. County must provide water (120,000 gpd) and sewer (100,000 gpd) to the site	3. None
4. County must reimburse ITT Automotive for site preparation and grading in an amount of \$800,000, to be paid over five years, first payment to be made December 1, 1997. (Est. payment amount of \$160,000)	4. ITT Automotive has requested that the first payment be made in FY 1996.
5. County to secure permission for temporary construction access to the Industrial Site from property owners.	5. None.
6. County to cooperate in securing restrictive covenants to the Industrial Site, and surrounding 58 acres.	6. None.
7. ITT Automotive to construct Manufacturing Facility in Henderson County, to result in taxable capital investment of at least \$65 Million.	7. None.
8. ITT Automotive to complete construction of Manufacturing Facility and remaining capital investment within 3 years of date of Agreement (the "Term").	8. ITT Automotive has requested the Term be extended to 4 years.
9. ITT Automotive to create 200 new positions within the Term.	9. None, except that again ITT Automotive has requested that Term = 4 years.
10. At least 101 of the new positions must pay at or above the median average wage for all insured industries in the County. (Note: Statute requires a "substantial" number.)	10. ITT Automotive doesn't agree with this number, but has not suggested an alternative number.
11. ITT Automotive to retain positions created for a period of 10 years from the date of agreement.	11. ITT Automotive has requested that all mention of "retaining" positions be stricken from the Agreement.
12. ITT Automotive must certify to the County that obligations for capital investment and job creation have been met at the end of the Term, and must annually thereafter certify that 200 jobs exist and are not vacant for the remainder of the 10 year period.	12. None, except that if the obligation of retaining jobs is removed, only one certification should be received (at the end of the Term.)
13. If ITT Automotive closes operations before the end of the Term, ITT Automotive must repay the County's costs incurred for the Economic Incentives 100%. If ITT Automotive closes operations after the end of the Term, ITT Automotive must repay the County's costs, minus the property taxes paid by ITT Automotive.	13. ITT Automotive has requested that they be given credit for property taxes paid regardless of whether operations cease before or after the end of the Term.
14. In any event that ITT Automotive continues in operation but does not fulfill its capital investment obligation or job creation obligation, ITT Automotive must repay the County's costs incurred for the Economic Incentives 100%.	14. ITT Automotive has requested that they be given credit for property taxes paid.
15. ITT Automotive may at any time repay the County's costs incurred for the Economic Incentives 100% and be relieved of <u>all</u> obligations under the Agreement.	15. ITT Automotive has requested that they be given credit for property taxes paid. In other words, ITT Automotive would like to be relieved of all obligations under the Agreement when their property taxes paid = County's costs for the Economic Incentives.
16. ITT Automotive must secure the prior consent of the County before assigning the Agreement to another entity.	16. ITT Automotive has requested to be required to notify the County of an assignment, but not to be required to have the County's consent, so long as ITT Automotive guarantees that the other entity will perform the obligations of the Agreement.

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