

MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
NOVEMBER 4, 1996

The Henderson County Board of Commissioners met for a regularly scheduled meeting at 7:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Renee Kumor, Vice-Chairman Vollie G. Good, Commissioner Robert D. Eklund, Commissioner J. Michael Edney, Commissioner Don Ward, County Manager David E. Nicholson, County Attorney Don H. Elkins, and Clerk to the Board Elizabeth W. Corn.

Also present were: Planning Director Matt Matteson and Finance Director J. Carey McLelland.

Absent was: Assistant County Manager/Staff Attorney Angela Skerrett.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

Commissioner Good led the pledge to the American Flag.

INVOCATION

Minister Frank Landers gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

Chairman Kumor added one item under Discussion Items "D-3" To Set a Meeting Date with the School Board regarding existing Facility Plans including the Review prepared by an outside consultant.

Chairman Kumor added one item under Discussion Items "D-4" David Nicholson will address the Board about the State Bond Match.

Commissioner Ward added one item under Discussion Items "D-5" Update on Recreational Facilities - Ball Fields as well as "D-6" Human Service Review Committee.

David Nicholson deleted item "E" from Consent Agenda - Proposed Engineering and Architectural Agreements for Construction of a Transfer Station.

The Clerk added one item under Consent Agenda that failed to get on the Printed Agenda - "Notification of Vacancy".

**CONSENT AGENDA**

Commissioner Eklund made the motion to approve the Consent Agenda. All voted in favor and the motion carried.

The Consent Agenda included the following:

**Review of Minutes: September 18 and October 16, 1996**

Minutes were presented for review and approval of the meetings of September 18, 1996 and October 16, 1996.

**Henderson County Financial Report**

The monthly financial report was presented for September 1996 for information only.

**Henderson County Public Schools Financial Report**

The monthly financial report was presented for September 1996 for information only.

**Notification of Vacancies**

These will appear under "Nominations" on an up-coming agenda for action:

1. Child Fatality Prevention Team - 1 vac. due to resignation.

**Set Public Hearing to consider a draft county-wide wireless Telecommunication Tower Ordinance**

Pursuant to the 120 day moratorium on the construction of wireless telecommunications towers imposed on October 7, 1996, the Henderson County Planning Board met, reviewed and, at their meeting on October 29, 1996, unanimously recommended for consideration, the draft ordinance intended to regulate such towers within the jurisdiction of Henderson County.

The Planning Board has not yet completed its review of possible amendments to the Henderson County Zoning Ordinance which would possibly affect construction of such towers in certain zoning districts; however, such review would not affect consideration of the county-wide ordinance.

The earliest date to hold a public hearing at an evening meeting on the draft ordinance would be December 2, 1996.

**Set Public Hearing for MBE Requirements for Building Construction Contracts**

Staff reminded the Board that N.C.G.S. 143-128 requires every county to have a verifiable percentage goal for participation by

November 4, 1996

Page 3

Minority Businesses in the total value of work for each building project. Previously, Henderson County has had a verifiable goal of five percent (5%); however, the previous guidelines establishing this goal expired in July of 1995. An updated version of the previous guidelines were presented for consideration by the Board. N.C.G.S. 143-128 requires a Public Hearing before these guidelines can be adopted. Staff recommended setting the Public Hearing for November 20, 1996 at 9:00 a.m.

**KAREN BERRY BS#603 "Communications Merit Badge"**

Karen Berry was present with Boy Scouts from Troop #603 who were working on their Communications Merit Badge and in attendance as part of that project.

**PUBLIC HEARING - TO CONSIDER ADOPTION OF AN ORDINANCE IMPLEMENTING STATUTORY VESTED RIGHT PROVISIONS**

Commissioner Ward made the motion to go into Public Hearing. All voted in favor and the motion carried.

Mr. Matteson reported that the Vested Rights Law is a means for a developer to insulate himself for a short period of time, from changes in zoning or other local land use regulations while a project is being developed. The enabling State law allows local governments to adopt a local ordinance to provide for such protection but the law also requires that a public hearing be held on the project and that a developer who chooses to pursue the Vested Rights Ordinance option may be held to the approved version of their project plans.

In 1991, the Planning Board reviewed and recommended a draft ordinance based on the State model. A public hearing was subsequently held but Board action was deferred. The 1996 version is very similar to the 1991 draft ordinance. Copies of the draft ordinance were sent to the Hendersonville Homebuilders Association for comment.

**Public Input**

There was none.

Following discussion, Commissioner Good made the motion to close the Public Hearing. All voted in favor and the motion carried.

County Attorney, Don Elkins, recommended leaving the ordinance as is written.

Commissioner Edney made the motion to adopt the Vested Rights Ordinance with the \$100.00 application fee subject to legal review and possible technical corrections. All voted in favor and the motion carried.

**PUBLIC HEARING - TO CONSIDER REDISTRICTING FOR COMMISSION SEATS**

Commissioner Edney made the motion for the Board to go into Public Hearing. All voted in favor and the motion carried.

Chairman Kumor stated that this Public Hearing was being held because of a proposal that the Commissioners had reviewed and would like to be considered as an option for recommendation to the Legislators to amend the county district lines.

**Public Input**

1. William H. Russell - Mr. Russell served as Chairman of the Henderson County Board of Elections in the early 1970's. Senator Wilkie met with Board members at that time and lines were drawn for five fairly equal districts and a Bill was introduced in Raleigh. The Commissioners did not ask for the Bill at that time. A referendum was called about four years later (by County Commissioners) and the citizens voted for the districts to stay in effect.

Mr. Russell stated that he would like to see the districts redrawn by population. He expressed a need for seven Commissioners in Henderson County due to growth rate. He felt that two Commissioners should be elected at large. The Commissioners should appoint a study committee to work on this, if they feel the need for one.

2. Bryan Aleksich - Mr. Aleksich asked Don Elkins "What is the statutory procedure for changing the method of choosing County Commissioners?" Mr. Aleksich felt that a better way of choosing Commissioners would be to have three districts plus two at large seats for the five Commission seats or increase the number of Commissioners. He cautioned the Board to take their time and to wait until after the Holidays to concentrate on this issue.

3. Bill Endres - Mr. Endres served on the Precinct Review Committee in 1986. Mr. Endres is opposed to at large Commissioners. He recommended a new Precinct Review Committee under the auspices of the Election Board. He felt that some minor adjustments in precinct lines could be made and approved and put on the census maps for the 2000 census maps. Once we have the census data, the

November 4, 1996

Page 5

committee could then look at redrawing County Commission District lines. He felt then the proposal to the Legislature should be to grant the Board of Elections the authority to make future changes in district lines concurrent with changes in precinct lines.

4. Jonathan Parce - Mr. Parce thanked Mr. Russell for the history he presented. Mr. Parce suggested waiting until we see what the bipartisan committee can come up with.

5. Chet Parent - Mr. Parent represented the League of Property Owners in Henderson County. Henderson County's growth is the largest in North Carolina. The League feels that the lack of candidates in our elections may be related to our districting system. The League feels that Henderson County needs a review and possible change in the election procedures for County Commissioners. They also felt that an individual citizen's study commission should be formed to evaluate the current method of electing Henderson County Commissioners.

6. Don Soula - Mr. Soula also advised that the Board take their time and establish a study commission. He volunteered his services to serve on such a commission.

7. Dixie Blumer - Ms. Blumer compared the commission districts by map. She requested that the board take no action on this issue at this time. She urged the Board to appoint a committee with enough members to give bipartisan representation with different interests. Their assignment should be to decide on the purpose of election by district and to decide the best boundaries that would accomplish that purpose.

Commissioner Ward made the motion for the Board to go out of Public Hearing. All voted in favor and the motion carried.

Commissioner Edney stated that the request that the Board would like to make of the General Assembly is to allow the Board of Commissioners to make the change, not that the new districts would be adopted by the General Assembly. There was discussion of the time frame to get Bills to our local Legislators for consideration.

It was the consensus of the Board to hold a second Public Hearing on this item. It was the consensus of the Board that they would like to bring the power to make those decisions back to the Board of Commissioners locally. Chairman Kumor informed those present that the Board would be setting an additional Public Hearing at a later date.

Chairman Kumor called a five minute recess.

**INFORMAL PUBLIC COMMENTS**

1. Frank Landers - Mr. Landers asked a question referencing the grandfather clause regarding an empty mobile home space on a piece of property he owns. He also asked for a differentiation between modular homes and mobile homes. Mr. Landers asked for some assistance with his problem. 180 days had elapsed and the Zoning Board would not approve him putting another mobile home on his property.

Mr. Nicholson informed Mr. Landers that the Board will be addressing this issue sometime after the change of the calendar year. He asked Mr. Landers to give his phone number to staff and they will get in touch with him regarding his individual circumstances.

2. David MacEachern - Mr. MacEachern is a pastor at Bat Cave Baptist Church but addressed the Board as a Henderson County resident. Mr. MacEachern spoke in opposition to the homosexual agenda. A couple of weeks ago there was a protest in the Lake Lure area regarding this homosexual agenda. In January, the Rutherford County Commissioners passed a Resolution supporting the traditional lifestyle and condemning the homosexual lifestyle. He stated he would like to see Henderson County pass a Resolution that says we are opposed to same sex marriages and opposed to homosexuals adopting children. Mr. MacEachern stated that petitions are out in the community to get public support for the adoption of this kind of Resolution.

**FINANCING OF EDNEYVILLE PUBLIC LIBRARY**

Carey McLelland gave the Board the results of the October 18, 1996 Request for Proposal Opening for financing the construction of a new branch library for the Edneyville community. Staff recommended the Board approving the use of First Union National Bank to provide financing for this project based on results of the proposal opening.

A public hearing on the financing documents is required by the State of North Carolina when entering into an installment purchase contract for bank financing. Staff recommended setting a public hearing on November 20, 1996 for this purpose. Staff will bring back final draft financing documents to the Board for approval.

November 4, 1996

Page 7

Following much discussion, Commissioner Edney made the motion to reject all bids at this point. All voted in favor and the motion carried.

#### APPOINTMENT OF ACTING CLERK

As the Board of Commissioners is aware, Elizabeth Corn, Clerk to the Board, will not be able to attend the December 2, 1996 meeting. This meeting is the annual organizational meeting. According to state law, the Clerk to the Board must call this meeting to order and conduct the election of the Chairman of the Board for the upcoming year.

Ms. Avalina Merrill, Administrative Assistant to the County Manager will attend this meeting to take the minutes. However, the Board was requested to appoint David Nicholson, County Manager as the Acting Clerk to the Board to conduct the initial part of this meeting. This appointment will also assist in our need to have documents attested by the Clerk to the Board of Commissioners, if Mrs. Corn is not available.

Chairman Kumor made the motion to appoint David Nicholson as Acting Clerk to conduct the initial part of the December 2, 1996 meeting. All voted in favor and the motion carried.

#### DRAFT OF SEWER CIP PACKET

A draft copy of the proposed Capital Improvement Program for Sewer Projects was presented by David Nicholson. The basic required information and criteria for sewer projects have remained the same as in the capital building projects. However, it was suggested that we add the County's Sewer Policies to the absolute criteria and change several of the questions associated with the evaluative criteria. These changes were necessary to gather the appropriate information so that the Board could rank these projects.

Mr. Nicholson stated that following the Board's review and approval of this draft, Staff will begin the process of developing the Capital Improvements Program for Fiscal Year 1997-1998.

These packets will be copied to our municipalities, utilities department, press/media, contractors/developers.

#### UPDATE ON PENDING ISSUES

##### **1. Response to Community Center Memo**

Chairman Kumor had copied the Commissioners on a memo regarding the Community Center. The Co-Chairs of the committee would like to

know if the Commissioners still find this project to be a project the Board can support. They are eager to begin to solicit donations to the Center.

Following discussion, it was the consensus of the Board to get more information from the Community Center Committee. The Committee is currently working on a CIP proposal to present for the project.

## **2. Set Pardee meeting date**

November 19 at 5:00 p.m. has been recommended for the joint meeting to be held at the Hospital Cafeteria. Commissioner Edney made the motion to set the work session with the Hospital Board of Trustees for November 19 at 5:00 p.m. at the Pardee Cafeteria. All voted in favor and the motion carried.

## **3. School Board**

Chairman Kumor requested the Board set a meeting time to meet with the School Board. Chairman Kumor stated that we need to review the existing plans/facilities studies that already exist, and the seven priority projects. It was the consensus of the Board to set the meeting for Wednesday, November 13 at 7:00 p.m. at one of the School Cafeterias.

## **4. State Bond Match**

David Nicholson updated the Board but stated that the rules and regulations have not come out yet but are currently being written. He discussed briefly some items that can be used as a match. If we can come up with a match, it can mean \$11,000,000 for Henderson County.

## **5. Recreation facilities**

Commissioner Ward stated that the County Commissioners gave direction to Mr. Harmon regarding Jackson Park but Mr. Ward raised the question to the County Manager of the status of our park.

Little League requested some additional ballfields. The Board of Commissioners approved about \$72,000 in the current budget. Staff is currently trying to figure out how best to utilize the eight or nine acres that sits behind the Cooperative Extension building that was donated to the County several years ago.

David Nicholson charged County Staff to review the use of all the fields. Staff came back with a proposal and they went to the Advisory Board with the proposal. The initial proposal would have meant that about an acre of trees would have had to be cut. An



November 4, 1996

Page 9

alternative option has been presented to that initial proposal which was favorable. The Advisory Board has not heard the alternative option yet but will hear it at their next meeting. The new proposal would help save some of the trees and would save some on moving of dirt.

General Electric has offered a substantial gift of lighting for this new field.

Mr. Nicholson actually made the presentation of the alternative option to the Board with maps, etc.

It was the consensus of the Board to approve this new option, contingent upon approval by the Recreation Advisory Board once they see the alternative option.

#### **6. Human Services Review Committee**

Don Ward and Renee will act as a subcommittee to bring a proposal back to the Board of Commissioners regarding county-wide human services.

#### **NOMINATIONS**

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

1. **Senior Companion Program Advisory Council of Land of Sky - 1 vac.** Helen Cohan was nominated at last meeting. There were no additional nominations at this time. A vote was taken to appoint Helen which was unanimous in favor.
2. **Henderson County Industrial Facilities & Pollution Control Authority - 1 vac.** Herb Young was nominated at last meeting. There were no additional nominations at this time. A vote was taken to appoint Herb which was unanimous in favor.
3. **Youth Services Advisory Committee.** There were no nominations at this time so this item was rolled to the next meeting.
4. **Mountain Valleys Resource Conservation & Development Program - 1 vac.** Commissioner Ward nominated Evelyn Nichols. A vote will be taken at the next meeting.
5. **Henderson County Travel & Tourism Committee - 4 vac.** John Shiery, Renee Kumor, Mike Edney and Bill Moyer were nominated at the last meeting. Commissioner Good made the motion to suspend the

rules and appoint these four nominees. All voted in favor and the motion carried.

6. **Library Board of Trustees - 1 vac.** Commissioner Eklund nominated Don Ward. Commissioner Edney made the motion to suspend the rules and appoint Don Ward. All voted in favor and the motion carried.

7. **Henderson County Zoning Board of Adjustment - 2 vac.** Commissioner Kumor nominated Linda Hunter. A vote will be taken at the next meeting.

8. **Community Child Protection Team - 5 vac.** Dottie Effinger was nominated at the last meeting. Commissioner Kumor nominated Becky Benadayga and Larry Swabe. Commissioner Eklund nominated Grace Poli. Commissioner Ward nominated Sheila Edgerton. Commissioner Ward made the motion to suspend the rules and appoint these five nominees. All voted in favor and the motion carried.

9. **Western Carolina Community Action Board of Directors - 1 vac.** There were no nominations at this time so this item was rolled to the next meeting.

**IMPORTANT DATES**

The Commissioners' calendar was reviewed.

**CLOSED SESSION**

Commissioner Edney made the motion for the Board to go into Closed Session as allowed under N.C.G.S. 143-318.11 for the following reasons:

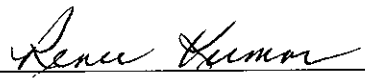
1. N.C.G.S. 143-318.11(a)(6) To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge, or grievance by or against an individual public officer or employee.

There was no action following Closed Session.

There being no further business to come before the Board, Chairman Kumor adjourned the meeting at 10:12 p.m.

ATTEST:

  
Elizabeth W. Corn, Clerk

  
Renee Kumor, Chairman

AN ORDINANCE IMPLEMENTING THE STATUTORY VESTED RIGHT  
PROVISIONS OF G.S. 153A-344.1

WHEREAS, the North Carolina General Assembly ratified Senate Bill 766 on July 20, 1990 as Chapter 996 of the 1989 Session Laws (1990 Regular Session), effective October 1, 1991; and

WHEREAS, Chapter 996 has been codified as N.C.G.S. 153A-344.1; and

WHEREAS, N.C.G.S. 153A-344.1 provides for the establishment of a statutory "vested right" upon the approval of a "sight specific development plan"; and

WHEREAS, The County of Henderson is authorized and required to identify the specific types of zoning or land use approvals that constitute a "sight specific development plan" within the meaning of N.C.G.S. 153A-344.1.

NOW, THEREFORE, BE IT ORDAINED, by the Board of Commissioners of the County of Henderson, State of North Carolina:

Section 1. Purpose.

The purpose of this Ordinance is to implement the provisions of G.S. 153A-344.1 pursuant to which a statutory vested right is established upon the approval of a site specific development plan.

Section 2. Definitions.

As used in this chapter, the following terms shall have the meaning indicated unless a different meaning is apparent from the context used:

Approval authority - The Board of County Commissioners of Henderson County.

Board - Henderson County Board of Commissioners.

Site specific development plan - a plan which has been submitted to the Board by a landowner describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not limited to, any of the following plans: A planned unit development plan, a subdivision plat, a conditional or special use district zoning plan. Such plan shall include the legal boundaries of the site, significant topographical and other natural features affecting development of the site, the approximate location on the site of the proposed buildings, structures, and other improvement; the approximate dimensions, including height, of proposed buildings and other structures; the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, bicycle paths, and pedestrian walkways.

002307

THIS PAGE INTENTIONALLY LEFT BLANK

Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with a reasonable certainty the type and intensity of use for a specified parcel of property shall constitute a site specific development plan.

Development vested right - A right pursuant to N.C.G.S. 153A-344.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

Landowner - Any owner of a legal or equitable interest in real property, including heirs, devisees, successors, assigns, and personal representatives of such owner. The landowner may allow an Attorney, licensed to practice in the State of North Carolina, an Engineer, licensed to practice in the State of North Carolina or a person holding a valid option to purchase, to act as his agent or representative for purposes of submitting a proposed site specific development plan.

Property - All real property located in Henderson County, North Carolina, within the planning and zoning, whether or not the area is zoned, jurisdiction of the Henderson County Board of Commissioners.

### Section 3. Establishment of a Development Vested Right.

(A) A development vested right shall be deemed established upon the valid approval, or conditional approval, by the Board of a site specific development plan, following a properly noticed public hearing.

(B) The Board may approve or disapprove a site specific development plan based upon the need to protect the public health, safety, and welfare. The Board may require such terms and conditions as it may deem necessary to protect the public health, safety and welfare.

(C) Failure to abide by any terms or conditions imposed shall result in a forfeiture of development vested rights.

(D) The establishment of a development vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land-use regulation by the County of Henderson, including, but not limited to building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this ordinance.

002309

THIS PAGE INTENTIONALLY LEFT BLANK

(E) A development vested right is not a personal right, but shall attach to and run with the real property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

Section 4. Approval Procedures.

A site specific development plan shall be processed in accordance with the following procedures:

(1) The landowner must apply, on a form to be provided by the County, for a development vested right.

(2) All such applications shall be made through the Henderson County Planning Department.

(3) An application fee, to be established by the Board, shall be required upon submission of the application.

(4) Each application shall be accompanied by one copy of the site specific development plan. Each site specific development plan shall contain the following notation in the uppermost right hand corner:

THIS SITE SPECIFIC DEVELOPMENT PLAN  
ESTABLISHES A DEVELOPMENT VESTED RIGHT  
PURSUANT TO N.C.G.S. 153A-344.1.  
UNLESS TERMINATED AT AN EARLIER DATE  
THE DEVELOPMENT VESTED RIGHT SHALL  
BE VALID UNTIL \_\_\_\_\_.

\_\_\_\_\_  
CHAIRMAN, BOARD OF COMMISSIONERS

(4) Following approval or conditional approval of a site specific development plan, nothing in this ordinance shall exempt such plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

(5) Nothing in this ordinance shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and-conditions of the approval.

(6) Within 45 days of the application for a development vested right the Board shall hold a public hearing. A notice of the public hearing shall be published in a newspaper of general circulation within the County twice per week for the two successive weeks prior to the hearing. The public hearing shall be conducted and may be continued pursuant to the provisions of N.C.G.S. 153A-52.

002311

THIS PAGE INTENTIONALLY LEFT BLANK



(7) Within 30 days after the date of completion of the public hearing the Board shall either approve the development vested right, deny the development vested right or conditionally approve the development vested right.

Section 5. Duration.

(a) A development vested right that has been vested as provided in this ordinance shall remain vested for a period of two years unless otherwise terminated and unless specifically and unambiguously provided otherwise pursuant to the following paragraph. This vesting shall not be extended by any amendment or modification to a site specific development plan unless expressly provided by the Board at the time the amendment or modification is approved.

(b) Notwithstanding the provisions of the proceeding paragraph, the Board may provide that rights shall be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not necessarily limited to; the size of the development, the level of investment, economic cycles, and market conditions. These determinations shall be in the sole sound discretion of the Board at the time the site specific development plan is approved.

Section 6. Termination.

A development vested right that has been vested as provided in this ordinance shall terminate with any one of the following being satisfied:

(a) Upon the issuance of a building permit, the expiration provisions of G.S. 153A-358 and the revocation provisions of G.S. 153A-362 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a development vested right under this section is outstanding.

(b) At the end of the applicable vesting period with respect to building and uses for which no valid building permit application has been filed.

(c) With the written consent of the affected landowner.

(d) Upon a finding by the Board, by ordinance after notice and public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site specific development plan, provided however, that no landowner in the immediate vicinity shall intentionally create or allow to be created any hazards, subsequent to the vesting hereunder, for the purpose of causing the termination of a development vested right.

002313

THIS PAGE INTENTIONALLY LEFT BLANK

(e) Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not necessarily limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the county, together with interest thereon at the legal rate until paid. Compensation shall include any diminution in value of the property which is caused by such action.

(f) Upon findings by the Board, by ordinance after notice and public hearing, that the landowner or his or her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Board of the site specific development plan.

(g) Upon enactment or promulgation of a State or Federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the Board may modify the affected provisions, upon finding that the change in State or Federal law has a fundamental effect on the plan, by ordinance after notice and public hearing.

(h) Upon the repeal of N.C.G.S. 153A-344.1.

Section 7. Limitations.

Nothing in this ordinance is intended or shall be deemed to create any vested right other than those established pursuant to N.C.G.S. 153A-344.1. Nothing in this ordinance shall preclude judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided herein, nothing in this ordinance shall be construed to alter the existing common law.

Section 8. Repealer.

In the event that N.C.G.S. 153A-344.1 is repealed, this ordinance shall be deemed repealed and the provisions hereof no longer effective.

Section 9. Severability.

This ordinance is severable, in the event that any section of this ordinance shall be found to be unenforceable by a court of competent jurisdiction the remaining sections shall remain in full force and effect.

Section 10. Effective Date.

002315

THIS PAGE INTENTIONALLY LEFT BLANK

This ordinance shall be effective upon adoption and shall only apply to site specific development plans approved on or after the effective date of this ordinance.

Section 11. Name.

This ordinance may be cited as "The Henderson County Vested Rights Ordinance."

This ordinance adopted by the Henderson County Board of Commissioners this \_\_\_\_ day of \_\_\_\_\_, 1996.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By; \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Elizabeth W. Corn, Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Don H. Elkins, County Attorney

002317

THIS PAGE INTENTIONALLY LEFT BLANK

APPLICATION FOR VESTED RIGHT  
PURSUANT TO N.C.G.S. 153A-344.1

NAME

\_\_\_\_\_

ADDRESS

\_\_\_\_\_

PROPERTY ADDRESS

\_\_\_\_\_

\_\_\_\_\_

PROPERTY PIN NUMBER

\_\_\_\_\_

CERTIFICATION

I, \_\_\_\_\_, hereby certify that I am seeking to acquire a vested right pursuant to N.C.G.G. 153A-344.1 and the Henderson County Vested Rights Ordinance. I understand and agree that my application will be considered by the Board of County Commissioners following notice and a public hearing and that I am under a duty to provide complete and accurate information to the Board of Commissioners.

This \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

\_\_\_\_\_  
Applicant

\_\_\_\_\_  
OFFICIAL USE ONLY  
\_\_\_\_\_

DATE RECEIVED:

\_\_\_\_\_

By:

\_\_\_\_\_

002819

THIS PAGE INTENTIONALLY LEFT BLANK