

MINUTES

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS
DECEMBER 4, 1995

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-Chair Vollie G. Good, Commissioner J. Michael Edney, Commissioner Bob Eklund, Commissioner Don Ward, County Manager David F. Thompson, Assistant County Manager David E. Nicholson, County Attorney Don H. Elkins, Staff Attorney Angela M. Skerrett, and Clerk to the Board Elizabeth W. Corn.

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

CALL TO ORDER/WELCOME

Clerk to the Board, Elizabeth Corn, called the meeting to order and welcomed all in attendance.

PLEDGE OF ALLEGIANCE

Commissioner Ward led the Pledge to the American Flag.

INVOCATION

David Nicholson gave the invocation.

ELECTION OF A CHAIRMAN

Elizabeth Corn opened the floor to nominations for Chairman.

Commissioner Edney nominated Renee Kumor to serve as Chairman for the next year. There were no other nominations. Commissioner Ward made the motion to close nominations. All voted in favor and the motion carried. Renee Kumor was appointed Chairman by unanimous acclamation.

ELECTION OF A VICE-CHAIRMAN

Chairman Kumor nominated Vollie Good. Commissioner Edney made the motion that nominations cease and Mr. Good be appointed as Vice-Chairman. All voted in favor and the motion carried.

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DISCUSSION/ADJUSTMENT OF AGENDA

David Thompson asked that the Award of Service Firearm be pulled from this agenda. It will be added to a future agenda.

Mr. Thompson also added #5 to the County Manager's Update, Airport Study - TIP Plan.

CONSENT AGENDA

Commissioner Eklund made the motion to approve the consent agenda. All voted in favor and the motion carried.

Consent Agenda included:

Approval of Bonds - Bonds were presented for the Board's approval for the following: Sheriff George H. Erwin, Jr.
Registrar of Deeds Nedra Whitlock Moles
Finance Director James Carey McLelland
Tax Collector Terry F. Lyda

Review of Minutes - Minutes were presented for review and approval of the following meetings: October 30, 1995 and November 6, 1995.

Henderson County Financial Report - The October 1995 Financial Report was presented for the Board's review.

Henderson County Public Schools Financial Report - The October 1995 Financial Report for the Henderson County Public School System was presented for the Board's information only.

Records Disposal - Assistant County Manager/Personnel department requested permission to destroy some old records they no longer need (Public Records Disposal Request and Destruction Log attached).

Notification of Vacancies - The Board was informed of 1 vacancy on the Hospital Board of Trustees due to a resignation. This will appear under "Nominations" on an up-coming agenda for action.

Pawnbroker's License Renewal - Mr. Bruce Gosnell had requested that his annual license be renewed for Etowah Pawn Brokers, Inc. for a year. He has supplied the necessary paperwork.

INFORMAL PUBLIC COMMENTS

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1. Alvin Barnwell - Mr. Barnwell is a Henderson County employee. He works at Parks and Recreation. He spoke in opposition of guns being allowed in county parks.

2. Jack Tate - Mr. Tate spoke on behalf of property owners in the watershed area. He requested declassification, stating that less is more and asked that WS IV be left as it.

3. Bert Lemkes - Mr. Lemkes requested the Board to choose the least restrictive of watershed classifications.

4. Carolyn Johnson - Ms. Johnson requested declassification of the lower French Broad, WS IV for the upper French Broad, and that the lower Mills River be classified whatever is least restrictive.

5. Ron Spanbauer - Mr. Spanbauer is the owner of Carolina Roses. He requested the least restrictive classification for Mills River and asked that WS IV be left as is.

6. George Cagle - Mr. Cagle spoke in opposition of guns being allowed in county parks. He stated that Jackson park has 200,000 visitors a year. Mr. Cagle is chairman of the Recreation Advisory Board.

7. Ernest Lawing - Mr. Lawing spoke regarding the watershed, asking that WS IV be kept as is.

Break - Chairman Kumor called a short break.

PUBLIC HEARING - to consider renewal of Industrial Park Option

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

Angela Skerrett reminded the Board that the current option on the Appleland Industrial Park will expire on December 31, 1995. The renewal would extend the option for another three month period to expire on March 31, 1996. The price to renew the option will be the quarterly interest at the Nationsbank prime rate of interest determined as of December 10, 1995 on the unpaid portion of the purchase price of \$61,854.85. (The remaining acreage to be purchased includes Lot 3A, 1.8819 acres; Lot 4A, 0.332 acres; Lot 5, 22.3709 acres; and Lot 6, 9.6484 acres.) Nationsbank prime rate

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as of November 7, 1995 was 8.75%, which would put the option payment at \$13,821.81.

The payment to renew the option for an additional three month term is due on December 20, 1995.

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

Commissioner Edney made the motion to approve renewal of the option. All voted in favor and the motion carried.

MOUNTAIN MICROENTERPRISE FUND

Mr. Christopher Just, Executive Director of Mountain Microenterprise Fund, presented information concerning the Fund and requested support for a match to a Community Development Block Grant to expand their services. Mountain Microenterprise Fund (MMF) is a not for profit organization which extends small loans to individuals who wish to start or expand locally owned small businesses.

Commissioner Eklund made the motion to approve transfer of \$1,000 from the economic development fund to approve this request for economic purposes in Henderson County. All voted in favor and the motion carried.

SALE OF PHOENIX CABLE, INC. TO NORTHLAND PREMIER CABLE, LTD.

Commissioner Edney stated that at their meeting on November 30, 1995, the Henderson County Cable TV Advisory Committee, after discussion with representatives from Northland Cable, unanimously recommended that the Board of Commissioners consent to the proposed sale of assets by Phoenix Cable, Inc., an existing franchise holder in Henderson County, to Northland Premier Cable Limited Partnership of Seattle, Washington.

Commissioner Edney made the motion to adopt the *Resolution Approving Transfer Of Cable System From Phoenix Cable Income Fund to Northland Premier Cable Limited Partnership*. All voted in favor and the motion carried.

PROPOSED WATER SUPPLY WATERSHED MAP AND CLASSIFICATION CHANGES

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At their November 15, 1995 work session, the Board directed Planning Staff to prepare separate resolutions, each taking a different position on the State's proposed watershed classifications (WS-II, WS-III, etc.) for the lower Mills River watershed only.

At their regular meeting on November 28, the Henderson County Planning Board reviewed the options on state watershed classifications for the newly described "Lower Mills River Watershed" and "Upper French Broad River Watershed". After careful review and discussion, the Planning Board unanimously voted to take the following positions:

1. The classification for the Lower Mills River Watershed should remain **WS-IV**.
2. The proposed **WS-IV** classification for the Upper French Broad River Watershed should be **supported**.
3. The Lower French Broad River Watershed should be "**declassified**" and that the Board of Commissioners should "be firm" in requesting such declassification.

The Planning Board asked that their position on these watershed matters be conveyed to the Board of Commissioners prior to the Public Hearing on December 5. The Planning Board indicated that they **will not** make formal comments directly to the State regarding this matter.

Following discussion, Commissioner Eklund made the motion to approve RESOLUTION #3 as well as the Planning Board's recommendation. All voted in favor and the motion carried.

DEADLY WEAPONS ORDINANCE

Angela Skerrett reminded the Board that at the last regular meeting, the Board approved the second reading of the Henderson County Deadly Weapons Ordinance, but directed staff to bring back revisions at this meeting to exempt County parks and parking lots of County buildings from coverage. Staff has made the revisions requested. With respect to County parks, the outdoor premises were excluded from coverage but all buildings were included. With respect to parking lots, a paragraph was added allowing concealed handguns, and any other weapon allowed under existing state laws, to be present within a vehicle, but not on a person.

The revised draft was presented to the Board for their consideration.

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Commissioner Edney made the motion to amend the Henderson County Deadly Weapons Ordinance. The motion was to exclude County parks from this Ordinance and to allow weapons in County parking lots within vehicles. The motion failed.

HISTORICAL SOCIETY REQUEST

At the Board of Commissioners' meeting of November 6, the Board reviewed a request from the Henderson County Genealogical and Historical Society for several pieces of furniture from the Historical Courthouse. These items include desks, chairs, tables, and other pieces of furniture which would be used in their new facility. Commissioner Edney requested at that time to tour the Historical Courthouse to review the list of furniture to be donated to the Historical Society.

Since the meeting of November 6, Commissioners Edney and Ward have toured the Historical Courthouse to review this request.

Commissioner Edney made the motion to approve the recommended list allowing the transfer of this equipment and furniture to the Historical Society with the understanding that the County may, in the future, request that this equipment/furniture be returned.

All voted in favor and the motion carried.

DUKE POWER EASEMENT ACROSS LANDFILL

Angela Skerrett reminded the Board that in June of 1995, the County entered into a Professional Services Agreement with North Carolina Municipal Landfill Gas, LLC, for the remediation and removal of methane gas from the Henderson County Landfill. The system to be installed will require the installation of underground power to a pump to be located on the landfill. Duke Power has therefore requested that the County grant a utilities easement allowing the installation of this underground power.

Staff requested approval of an easement to Duke Power for the installation of underground power at the Henderson County Landfill and authorization for execution by the Chairman.

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Commissioner Eklund made the motion to grant Duke Power an easement across the landfill and to authorize the chairman to execute said easement. All voted in favor and the motion carried.

OFFER TO PURCHASE/FORECLOSED PROPERTY

Don Elkins informed the Board of two offers to purchase properties foreclosed in the name of Henderson County:

1. Sammie Lee Williams offered \$1,000
PIN #99-03965
previous owner - J. L. Barnwell
lot #6, block #10, Green Meadows subdivision

2. Lorimer & Daniela Keathley offered \$1,200
PIN #00956739178655
previous owner - Barbara Dee Connor
lot #12, block #18, Osceola Lake

Don Elkins recommended preliminary approval of both.

Commissioner Edney made the motion for the Board to receive the offers and direct the Clerk to cause legal notice thereof to be published one time in the Times-News. In the event that an increased bid is filed, the Clerk is directed to re-advertise as required by law, and to repeat this procedure until ten days have elapsed from date of last publication without a qualifying upset bid having been received.

All voted in favor and the motion carried.

COUNTY MANAGER'S UPDATE

Preliminary Engineering Reports for Wastewater and Water Service for Justice Academy Site.

David Thompson up-dated the Board regarding the scope of work for sewer service at the Justice Academy Site. He has been working with Jon Laughter on that project.

David Thompson requested and received approval from Board to hire William Lapsley to do a preliminary sewer service report for Mills River.

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Update on Youth Development Group Home.

David Thompson informed the Board that the Henderson County Group Home would close December 31, 1995, as per the Board's 1995-1996 adopted budget. Henderson County will work to review the placement needs of children in Henderson County and will be negotiating a contract with Park Ridge Hospital.

NOMINATIONS

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

1. Hendersonville City Zoning Board of Adjustment - 1 vac.

There were no nominations at this time so the item was rolled to the next meeting. Commissioners were encouraged to review the list of citizens who live in the ETJ as this appointment must be from the ETJ.

2. Henderson County Zoning Board of Adjustment - 4 vac.

Commissioner Edney nominated Diane Grant for an additional 3 year term, Debra Stierwalt to be moved from an alternate to a regular member, and Dale Caldwell to be moved from an alternate to a regular member. He also moved that Keith Shelley be reappointed as an alternate for an additional 3 year term. All voted in favor and the motion carried.

3. Henderson County Travel & Tourism Committee - 3 vac.

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

4. Henderson County Board of Health - 2 vac.

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

5. Nursing Home/Domiciliary Home Advisory Committee - 1 vac.

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

SETTING A SECOND PUBLIC HEARING ON THE PROPOSED ZONING FOR THE I-26/UPWARD ROAD INTERCHANGE STUDY AREA

Commissioner Edney made the motion to set a work session for Monday, January 8, at 6:00 p.m. with the Public Hearing to follow

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at 7:00 p.m., both to be held at Upward Elementary School. All voted in favor and the motion carried.

Important Dates calendar was reviewed and it was the consensus of the Board to have a work session at 1:00 at the mid-month meeting of January 17, 1996 on wastewater issues.

CLOSED SESSION

Commissioner Good made the motion for the Board to go into Closed Session as allowed under NCGS 143-318.11 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 and to discuss the case of Henderson County v. City of Hendersonville. To consult with an attorney employed or retained by the public body in order to consider and give instructions to the attorney with respect to a claim.

2. (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 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.

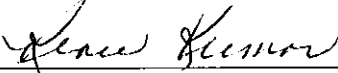
Chairman Kumor made the motion for the Board to go out of Closed Session.

There being no further business to come before the Board, the meeting was adjourned at 11:15 p.m.

ATTEST:



Elizabeth W. Corn, Clerk



Renee Kumor, Chairman

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

100 NORTH KING STREET
HENDERSONVILLE, N.C. 28792-5097
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RENEE KUMOR
CHAIRMAN
VOLLIE G. GOOD
J. MICHAEL EDNEY
BOB EKLUND
DON WARD

DAVID F. THOMPSON
COUNTY MANAGER

**RESOLUTION APPROVING TRANSFER OF
CABLE SYSTEM FROM PHOENIX CABLE INCOME FUND
TO NORTHLAND PREMIER CABLE LIMITED PARTNERSHIP**

WHEREAS, Henderson County, North Carolina (the "County"), acting by and through its Board of Commissioners, passed and enacted that certain Ordinance Granting Franchise to Phoenix Cable Incorporated to Provide Cable Television Service in Henderson County, dated August 8, 1988, granting to Phoenix Cable Incorporated the authority to construct, operate and maintain a cable television system within the County (the "Franchise"); and

WHEREAS, Phoenix Cable Incorporated subsequently assigned its rights to Phoenix Cable Income Fund ("Phoenix Cable"), and Phoenix Cable now intends to sell substantially all of its assets, including all of its right, title, and interest in the Franchise to Northland Premier Cable Limited Partnership, a Washington limited partnership ("Northland"); and

WHEREAS, Phoenix Cable and Northland have requested approval of the transfer of the Franchise by the County; and

WHEREAS, the Henderson County Cable Television Advisory Committee met on Thursday, November 30, 1995, and unanimously voted to recommend approval of the transfer of the Franchise to the County Board of Commissioners; and

WHEREAS, the County Board of Commissioners has determined that it is in the best interest of the County and its citizens to consent to the above referenced assignment and transfer of the Franchise.

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

1. The County hereby approves and consents to the transfer and assignment of the Franchise from Phoenix Cable to Northland.
2. The County hereby approves of (i) the encumbrance of the Franchise and the assets of the cable television system, and the assignment of same for security purposes, in connection with the acquisition and operation of the system and the financing and refinancing, from time to time, of the business operations of Northland, and (ii) the future assignment of the Franchise to Northland's managing general partner, Northland Communications Corporation ("NCC"), or to an affiliate of NCC.

3. Except as specifically set forth herein, the assignment and transfer of the franchise shall not alter, affect or otherwise change any of the terms or conditions of the Franchise.

4. In connection with the assignment and transfer of the Franchise to Northland the County certifies to Phoenix Cable and Northland that:

(a) Upon information and belief, the Franchise was duly and validly issued by the County, and upon its assignment to Northland, the duly authorized franchisee will be Northland.

(b) Upon information and belief, the Franchise is in full force and effect as of the date hereof, is valid and enforceable in accordance with its terms and will not expire until at least August 8, 2008.

(c) Upon information and belief, other than the payment of franchise fees owed by Phoenix Cable pursuant to the terms of the Franchise up through and including the date of closing for the transfer referenced hereinabove, no event of default under the Franchise, and no event which could become an event of default with the passage of time or the giving of notice, or both, has occurred and is continuing as of the date hereof.

(d) The franchise fee of five percent (5%) payable to the County under the terms of the Franchise is calculated on the franchisee's gross receipts collected during each six month period ending on June 30 and December 31 of each calendar year, and such fee is due, in arrears, within thirty (30) days after each June 30 and December 31 while the Franchise is in effect.

(e) The County anticipates receipt of a check from Phoenix Cable for payment of all franchise fees owed under the terms of the Franchise through October 31, 1995. Further, the County anticipates receipt of payment for all franchise fees owed under the terms of the Franchise up through and including the date of closing of the transfer referenced hereinabove within a reasonable time after the date of closing from Phoenix Cable or Northland. Payment of all Franchise fees under the terms of the Franchise will become the responsibility of Northland after the date of closing for the transfer referenced hereinabove.

(f) The County acknowledges receipt of a completed FCC Form 394 from Phoenix Cable and Northland.

5. The Franchise and this Resolution were and are adopted in accordance with the notice and procedure requirements of the laws of the State of North Carolina governing Counties and with the notice and procedure requirements prescribed by the County. The Franchise and this Resolution, including without limitation the grant of and the consent to the assignment of the Franchise, were and are adopted in accordance with and do not conflict with the laws, ordinances, resolutions and other

regulations of the County, as presently in effect or as the same were in effect the time the particular action was taken.

6. This Resolution shall be effective immediately upon approval by the Board.

RESOLVED, this the 4th day of December, 19 95.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: *Gene Turner*
Chairman

ATTEST: (County Seal)

Elizabeth W. Corn
Clerk to the Board

**HENDERSON COUNTY
PUBLIC RECORDS DISPOSAL REQUEST AND DESTRUCTION LOG**

DEPARTMENT: ASSISTANT COUNTY MANAGER/PERSONNEL

RECORD TITLE & DESCRIPTION, INCLUSIVE DATES, & QUANTITY	RECORDS WILL BE		RECORDS RETENTION SECTION	IF APPROVED, DATE DESTROYED
	DESTROYED	*DUPLICATED		
1991-1992 Accident Report Forms/Claims (Property/Liability)	✓		Standard-1 1. Accident Reports File	
1989-1992 Insurance Correspondence	✓		Standard-1 8. Correspondence; Memorandums	
1993 Applications/Resume File	✓		Standard-10 4. Applications Files	

*If duplication is required, indicate method.

Approval is requested for the records listed above to be destroyed in accordance with the provisions of G.S. 121 and 132. The period for retention of these records, as prescribed by the Department of Cultural Resources has expired; **OR** where the period for retention has not expired, the original records have been duplicated on microfilm, microfiche, data processing or word processing equipment, with the understanding that said duplication shall be maintained for the specified period of retention. **NONE** of the original records listed above have been scheduled for permanent preservation by the Department of Cultural Resources.

David E. Nicholson
Department Head/Records Custodian

12-4-95
Date

Submitted to the Henderson County Board of Commissioners. The Board:

APPROVED
DISAPPROVED

the destruction/duplication of the above records and such approval/disapproval has been entered into the official minutes of the Board Meeting held on the 4th day of December, 1995.

Elizabeth W. Corn
Clerk to the Board

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

100 NORTH KING STREET
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DAVID F. THOMPSON
COUNTY MANAGER

RENEE KUMOR
CHAIRMAN
VOLLIE G. GOOD
J. MICHAEL EDNEY
BOB EKLUND
DON WARD

**RESOLUTION CONCERNING THE APPLICATION FOR A CDBG FROM
THE NORTH CAROLINA DEPARTMENT OF COMMERCE**

WHEREAS, Mountain Microenterprise Fund, INC. (MMF) has for six years been serving Western North Carolina, and

WHEREAS, MMF desires to expand its services in Henderson County, and

WHEREAS, the CITY OF BLACK MOUNTAIN has authorized MMF to prepare and submit an application for CDBG monies to the NC COMMERCE FINANCE CENTER showing the applicant to be the CITY OF BLACK MOUNTAIN.

NOW THEREFORE, BE IT RESOLVED:

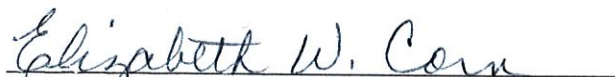
Henderson County Commissioners support the CITY OF BLACK MOUNTAIN and MMF in their efforts to obtain CDBG funds and provide MMF's services to Henderson County.

Adopted this 4th day of December, 1995.



Renee Kumor, Chairman

ATTEST:



Elizabeth W. Corn, Clerk

