

MINUTES**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON****BOARD OF COMMISSIONERS
NOVEMBER 6, 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, Planning Director Matt Matteson, and Planner Stuart Rohrbaugh.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

Commissioner Edney led the Pledge to the American Flag.

INVOCATION

Deacon Eugenia Dowdeswell, from St. James Episcopal Church, gave the invocation.

DISCUSSION/ADJUSTMENT OF AGENDA

There was none.

CONSENT AGENDA

Commissioner Edney made the motion to approve the consent agenda as presented. All voted in favor and the motion carried.

Consent Agenda included the following:

Review of Minutes - Minutes were presented for review and approval of the August 16 and the August 29, 1995 meetings.

Notification of Vacancies - The Board was notified of up-coming vacancies. This was for information only. They will appear on the next agenda as "Nominations":

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1. Henderson County Zoning Board of Adjustment - 4 vac.
2. Library Board of Trustees - 1 vac.
3. Nursing Home/Domiciliary Home Advisory Committee - 2 vac.
4. Henderson County Travel & Tourism Committee - 4 vac.
5. Henderson County Regional Water Forum - 1 vac.

Road Petition for addition to State Maintenance System - One road petition had been received for addition to the state maintenance system: Meadow Drive.

Henderson County Financial Report - The September Financial Report was given for review.

Henderson County Public Schools Financial Report - The September Financial Report was given from Henderson County Public Schools for the Board's review only.

Resolution - Land of Sky Regional Council - Land Of Sky Regional Council had requested that the Henderson County Board of Commissioners adopt a Resolution allowing Land Of Sky Regional Council to receive planning funds. The request is made on an annual basis. The resolution will allow them to receive funds from the General Assembly in the amount of \$48,015.00. This grant is used by Land Of Sky Regional Council for grant assistance, infrastructure assistance, economic development planning assistance, labor force training, and other programs in this region. Staff recommended adoption of the proposed Resolution.

Order Granting a Variance for a Special Subdivision by Charles D. Ponder - After a quasi-judicial proceeding on September 20, 1995, the Board unanimously granted a variance request for a special subdivision by Charles D. Ponder. The Order with the required findings of fact and conclusions was presented for review. Staff felt it appropriate to place this item on the consent agenda for the Board's approval, as it appeared to be a non-controversial item.

INFORMAL PUBLIC COMMENTS

There was none.

AMERICA'S PRIDE REPORT

Two sponsor's of the group "America's Pride" were present as well as members of the group. They reported to the Commissioners on their Leadership Training and future plans of their organization.

Present were: Glenda Lancaster, sponsor
Rebecca Poole, sponsor

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Carrie Durren, Hendersonville High School
Neeley House, Rugby Junior High
Allison Ashbrook, Rugby Junior High
Patrice Goldston, Rugby Junior High
Craig Conner, Rugby Junior High
Natalie Galtieri, Rugby Junior High

They were very gracious in thanking the Board for their support of America's Pride.

**PUBLIC HEARING - Community Block Grant Application
Economic Development Loan**

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

This was a second public hearing to receive citizen comments regarding a proposed Community Development Block Grant (CDBG) Economic Development application to be submitted to the North Carolina Department of Commerce. The application is a request for a loan in the amount of \$2.0 million for the purpose of providing capital to Manual Woodworkers and Weavers, Inc. (Sunset Mills) to purchase specialized industrial equipment for its Henderson County Manufacturing facility. Upon purchase of the equipment and subsequent employee training by Blue Ridge Community College, a total of 67 jobs will be created, of which 41 will be filled with low and moderate income persons.

Matt Matteson handed out a new draft of the grant application for review. Henderson County must join with the industry as an applicant. Henderson County will contribute \$10,000 as in-kind services.

Public Input - There was none.

Commissioner Edney 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 submittal of the CDBG economic development grant application for a participation loan for the expansion of the Manual Woodworkers and Weavers, Inc. The motion was seconded by Commissioner Ward. All voted in favor and the motion carried.

**PUBLIC HEARING - Proposed Zoning Map Amendment for a Portion of the Village
of Flat Rock, NC (New County R-40 Zoning)**

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

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On August 16, 1995, the Board of Commissioners referred to the Planning Board a request by the Interim Village Council of Flat Rock for a zoning map amendment. The proposed amendment would add to the County zoning jurisdiction a portion of the Village of Flat Rock (approximately 122 acres) which was previously within the zoning jurisdiction of the City of Hendersonville. On August 29, 1995, the Henderson County Planning Board unanimously voted to recommend that the subject 122 acres in the Village of Flat Rock be zoned R-40 (Estate Residential) by the County.

Public Input - There was none.

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

Commissioner Eklund made the motion to approve the requested zoning of this portion and to amend the zoning map. All voted in favor and the motion carried.

APPROVAL - The proposed amendment, requested by the Interim Village Council of Flat Rock, would extend a County R-40 (Estate Residential) zoning district to approximately 122 acres in the northern portion of the Village of Flat Rock, NC. The subject area, located between Mud Creek, Erkwood Drive, Cemetery Road and the former southerly boundary line of the Extra Territorial Jurisdiction of the City of Hendersonville, was previously within the zoning jurisdiction of the City of Hendersonville and carried a City R-40 (Estate Residential) zoning designation.

PUBLIC HEARING - To consider the purchase and sale of Lot 3-A of the Appleland Business Park

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

This Public Hearing was held as required by NCGS 158-7.1 to consider the purchase of Lot 3-A of Appleland Business Park pursuant to the County's option with Cynthia Whitted, and to consider the sale of Lot 3-A to the Margaret D. McKibbin Revocable Trust.

Henderson County has received an Offer to Purchase from the Margaret D. McKibbin Revocable Trust for Lot 3-A of the Appleland Business Park. The Trust requested to purchase this property because this lot is needed to combine with the property previously purchased from the County by the Trust.

The offer for Lot 3-A is for an amount of \$38,675.00. The County's purchase price for Lot 3-A is \$16,433.89. The difference between the County's purchase price and selling price is therefore \$22,241.11.

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Public Input - There was none.

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

Commissioner Good made the motion to approve the purchase and sale of Lot 3-A to the Margaret D. McKibbin Revocable Trust. All voted in favor and the motion carried.

PUBLIC HEARING - To consider the Purchase and Sale of Lot 4-A of the Appleland Business Park

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

This Public Hearing was held as required by NCGS 158-7.1 to consider the purchase of Lot 4-A of Appleland Business Park pursuant to the County's option with Cynthia Whitted, and to consider the sale of Lot 4-A to Ty Rhodes.

Henderson County has received an Offer to Purchase from Mr. Rhodes for Lot 4-A of the Appleland Business Park. Mr. Rhodes requested to purchase this property because this lot is needed to combine with the property previously purchased by Mr. Rhodes for a Holiday Inn Express.

The offer for Lot 4-A is for an amount of \$49,500.00. The County's purchase price for Lot 4-A is \$6,480.64. The difference between the County's purchase price and selling price is therefore \$43,019.36.

Public Input - There was none.

Commissioner Ward 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 the purchase and sale of Lot 4-A as presented. All voted in favor and the motion carried.

PUBLIC HEARING - To consider the purchase and sale of Lot 6 of the Appleland Business Park

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

This Public Hearing was held as required by NCGS 158-7.1 to consider the purchase of Lot 6 of Appleland Business Park pursuant to the County's option with Cynthia Whitted,

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and to consider the sale of Lot 6 to Fred Fox, owner of Leman's Corporation. Mr. Fox will convey Lot 60 to a trust, which will then lease the property to Leman's Corporation. Leman's Corporation, headquartered in Jansfield, Wisconsin, is a corporation that sells and distributes parts for the motorcycle, watercraft, all terrain vehicle and sports apparel business. The company expects to make a \$4.5 million capital investment in Henderson County and to employ a minimum of 75 employees. Base salary for beginning employees is estimated to be in the \$6.00-6.50 range, and maintenance employees in the \$12.00-15.00 range.

Henderson County has received an Offer to Purchase by David MacDougall, attorney in fact for Fred Fox, acting on Mr. Fox's behalf.

The offer for Lot 6 is for an amount of \$267,210.00. The County's purchase price for Lot 6 is \$208,637.57. The difference between the County's purchase price and selling price is therefore \$58,572.43.

Public Input - There was none.

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

Commissioner Ward made the motion to approve the purchase and sale of Lot 6 with the additional condition being attached that in the event the applicant fails to acquire a conditional use permit for an industrial warehousing distribution center and office, they don't have to close on the property. All voted in favor and the motion carried.

PUBLIC HEARING - To consider an Amendment to the Restrictive Covenants for Appleland Business Park

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

This public hearing was held to consider an amendment to the Restrictive Covenants for Appleland Business Park. Under the terms of the Restrictive Covenants, the Board of Commissioners sits as the Park Owner's Association, and has the authority to amend the Restrictive Covenants after giving the park owners thirty days in which to comment.

The proposed amendment would require a park owner to receive approval from the Park Owner's Association before leasing any park property they own to another person. Staff recommended this amendment to protect the County's investment in the park.

Public Input - There was none.

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

No action was taken at this time, to allow the park owners thirty days to comment. This will come back before the Board for approval at a later date.

APPEAL OF PLANNING BOARD DECISION ON STONERIDGE ESTATES SUBDIVISION REQUEST

Chairman Kumor began the quasi-judicial proceeding with introductory comments and asked if anyone in the audience, other than the petitioner, wished to become a participant in the proceeding. No one requested to be a participant, therefore Chairman Kumor recognized Craig Justus, attorney for petitioner Grant Mountain Properties, Inc.

Mr. Justus stated that he would not be testifying, but would be orchestrating petitioner's appeal. Mr. Justus made opening comments and then recognized Luther Smith.

Mr. Smith was sworn in. Mr. Smith presented the application for Stoneridge Estates on behalf of Grant Mountain Properties, Inc., and its owner, Mr. Randall Grant. Mr. Smith gave a general overview of Stoneridge Estates, as shown on the Preliminary Plan for Phase I which was part of the application. Mr. Smith stated that the property to be developed as Stoneridge Estates is in Bat Cave, NC. He stated that the Preliminary Plan for Phase I covers a sixteen acre portion of the property to be developed, and will contain fourteen single family lots. He stated that the Planning Board had reviewed the Preliminary Plan for Phase I, but had denied the application for approval. He stated that the plan shows a road cross section showing a 45' and 50' right of way. The actual road construction area is a 16 foot bench, with a 10' stoneway in the center. He stated that in his opinion, the plan met line and grade standards of the North Carolina Department of Transportation as required by the Land Development Ordinance. He further felt that the petitioner had met all the requirements under the Land Development Ordinance to have the road system proposed for Phase I of Stoneridge Estates as shown on the preliminary plan approved as private roads.

Through a series of questions, the Board received the following information from Mr. Smith:

There will be approximately 51 or 52 lots in the entire development with the possibility for as many as 100 automobiles going and coming. There would be 10' of road bed surface. In order to meet the grade requirement of the NCDOT, it was not possible to loop more of the road system together. None of the lots had been tested for septic tanks. There had been no attempt to establish a fire suppression water supply off the property being developed. The restrictive covenants impose responsibility for maintenance of the roads on the property owner's association. There will be a 3' shoulder on either side of the 10' road bed, and the entire 16' bench is flat.

Commissioner Edney stated that the issue is the construction of the Land Development Ordinance, and asked Mr. Smith to comment on the history of the Ordinance.

Staff Attorney, Angela Skerrett, objected to this line of questioning on the basis that as a matter of law, legislative intent cannot be shown by the testimony, affidavits, or records of the internal deliberations of members of the legislature.

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Pursuant to a question from Commissioner Edney, Mr. Smith stated that at the time the Land Development Ordinance was adopted, the developers were not following up with what they had represented to be developed.

There were other exchanges between the members of the Board, Mr. Justus, Ms. Skerrett, and Mr. Smith. Mr. Justus then called his next witness, Mr. Sam Laughter.

Mr. Laughter was sworn in. Through a series of questions posed by Mr. Justus, Mr. Laughter presented the Board with the following information. Mr. Laughter is the Zoning and Code Enforcement Administrator of Henderson County. He remembered when the Ordinance was first adopted in 1988. At that time the County Commissioners were Bill Drake, Troy Maybin, Hugh Randall, Dick Baker and Bill Parker. He helped write the Ordinance along with Jerry Meyers and the Planning Board. After the Ordinance was adopted, he and Jerry Meyers enforced the Ordinance for a short time. The language of Article 5 of the Ordinance has remained substantially unchanged since adoption. Article 5 contains the language "improvements as specified by the applicant" which was to ensure what the applicant proposed was delivered. The original adopters of the Ordinance directed him that the minimum road standards for private roads were that they meet line and grade specifications of the DOT. They specifically did not want the County to be in the design business for roads.

Ms. Skerrett objected again to that line of questioning for the record.

Chairman Kumor discussed that objection with Mr. Justus.

Pursuant to a question from Commissioner Edney, Mr. Laughter stated that when he was enforcing the Ordinance, he interpreted section 504.7 as not giving the Planning Board, staff or the Commissioners authority to set standards on road width.

Mr. Laughter further stated that while he was administrator of the Ordinance, the Planning Board never denied a subdivision request. He stated that for a minor subdivision there were no road specifications. He stated that under section 504.7, it was his opinion that the applicant had the discretion to choose whether a road would be private or not.

Mr. Justus stated that he had no further witnesses to call.

Chairman Kumor recognized Matt Matteson, Planning Director.

Matt Matteson and Stuart Rohrbaugh were sworn in.

Mr. Matteson made some introductory comments including that he has been the Planning Director for Henderson County since January 2, 1989. He has administered the Land Development Ordinance for about seven (7) years. Mr. Matteson then recognized Stuart Rohrbaugh.

Mr. Rohrbaugh reviewed the application with the Board. He discussed the traffic circulation, including High Falls Road being an access road. Mr. Rohrbaugh pointed out that the Land Development Ordinance states in Section 504.6 that all roads within a subdivision must be built to DOT standards, including an 18' wide, 6" gravel base, with 1 1/2" thickness of pavement. Mr. Rohrbaugh reviewed with the Board the comments he had made to the Planning Board when they considered the application, including public safety concerns for a 10' wide gravel road, erosion, storm water detention and drainage, fire hydrants or water supplies.

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Pursuant to questions from the Board, Mr. Rohrbaugh presented the following information. The Planning Board also discussed the suitability of the proposed cul-de-sacs for fire engine turnarounds. Section 504.6 requires roads in subdivisions to be public. Mr. Rohrbaugh had driven the property, and currently there was only a logging trail. He was unsure as to what could be installed by the developer to prevent soil erosion. The Planning Board denied the application because of the 10' roads, but there were other issues with the application that the planning board didn't discuss.

Mr. Elkins pointed out that there had been no preplanning conference with Planning Staff on this application.

Mr. Matteson stated that the pre-application conference was waived because Mr. Smith is so familiar with the Ordinance. He submitted the plans to DOT, but received no comment. There was other discussion.

Mr. Matteson called Rocky Hyder and Terry Layne forward. They were sworn in.

Rocky Hyder then addressed the Board. He had fire protection concerns with respect to this subdivision. He stated that in order to fight a fire, you must have a water supply, a pumper set up near the house pumping 350 gallons per minute at a minimum. A tanker supplies approximately 100 gallons per minute, so at least three tankers are necessary to run water back and forth. Each tanker is approximately 9' wide, and so there can't be two way traffic on a 10' wide road. Also, each tanker weighs about 30,000 pounds, so you can't pull it off on a soft shoulder on the side of a mountain, or it will roll down the hill. Also, about 18 firemen show up with their personal vehicles to fight the fire, and they usually have to park on the side of the road. In his opinion, 18' wide roads are necessary.

Pursuant to questions from the Board and Mr. Justus, Mr. Hyder stated that there are a lot of subdivisions in the County that do not have 18' roads. Bat Cave Fire Department has two tankers. Gerton, Edneyville, Rocky Broad and Fairview would provide backup to Bat Cave. When the Ordinance was adopted, there was no Fire Marshal in Henderson County. A minimum of 30' diameter is necessary to turn a fire truck around in a cul-de-sac. He had no opinion as to the requirements of the Ordinance. Without a water supply, the property could be declared uncoverable for fire insurance purposes. It would take about 7-8 minutes for Bat Cave to respond to a fire under any conditions because of the steep grade. Fire trucks will be able to get to a home in the subdivision one at a time. A fire can totally engulf a room in about 15 minutes.

Mr. Matteson then called Terry Layne as a witness. Mr. Layne stated that he is the Assistant EMS Director, and has not been to the site. Currently it takes about 22 to 24 minutes to respond to a call in Bat Cave. He did not feel that a 10' wide road was safe because an ambulance is 9' wide, mirror to mirror. The back bumper is 8' wide. There is no room to pass oncoming traffic. In addition, there will be first responders responding to the call who will park on the side of the road. He was not sure that a 3' wide road shoulder would support a 10,000 pound gross weight ambulance.

Mr. Matteson then made some concluding remarks including the point that the proposed 3 inches of stone was inadequate for road construction. He felt that the Ordinance had been consistently administered in that there had never been construction standards for a minor subdivision. In addition, the Planning Board could require that all streets be public under Section 504.6, but the Planning Board had in the past allowed variations from the public road standards by approving private streets.

Pursuant to questions from the Board, Mr. Matteson presented the following information. He had never recommended approval, nor had there ever been approval of a 10' wide private road for a major

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subdivision. Appendix 7 requires a cross section of the road to be constructed to be shown on the plan. A variance is one way in which an applicant can seek to have standards lessened. However, very often an exchange will occur between an applicant and the Planning Board in the approval process.

Mr. Matteson discussed with Commissioner Edney the issue of the amount of discretion given the Planning Board to determine if a road should be private or not. It was Commissioner Edney's position that the Planning Board has no discretion-- that it is up to the applicant to decide. Mr. Matteson took the position that the Planning Board has discretion to decide when a road should be private under the Ordinance.

Mr. Justus asked Mr. Matteson to identify the provision in the Ordinance that allowed a difference to be made between major and minor subdivisions as far as DOT requirements were concerned. Mr. Matteson did not answer on the grounds that it was irrelevant.

Mr. Justus objected to the question not being answered. He stated that under Woodhouse v. Board of Commissioners that standards must be built into an Ordinance in order to be enforceable. In this way an applicant knows what is going to be required of them. The applicant isn't saying that Mr. Hyder was wrong in the sense that 18' road are not appropriate for every subdivision in the County, but that the Ordinance does not require it. The Ordinance only requires that roads meet line and grade standards of the NCDOT. Mr. Smith was present when the original Ordinance was drafted, and the original drafters of the Ordinance did a balancing of public interest. They did not want to tell a developer the type of road to build, but only to require the developer to disclose the type of road that would be built.

Mr. Matteson stated that he felt it is a public safety issue, that previous discussions are irrelevant to the meaning of the Ordinance, and that a developer does not have a right to a private road.

The Board then discussed the evidence that had been presented.

Commissioner Edney stated that he felt the Ordinance simply requires a developer to do what he says he is going to do. There are no construction standards in the Ordinance. The Planning Department and the Planning Board cannot impose standards that are not in black and white. As far as public safety is concerned, the Board has a responsibility to change the Ordinance. He did not feel that this Board should second guess a prior Board that had already made a determination with respect to safety when they adopted the Ordinance.

Commissioner Eklund disagreed that a developer does not have a right to a private road.

Commissioner Ward agreed with Commissioner Edney on a couple of points. He believed that it was not the place of this Board to review it, but to uphold it as written. It is the Board's place to amend it as far as public safety. The Board must go by how they read the Ordinance today.

Commissioner Good stated that he thought Commissioner Edney's opinion was right in the eyes of the law. However, he didn't like the fact that it was right because common sense tells him that there are some safety hazards here with a 10' wide road with fire trucks, ambulances, or just passenger cars meeting one another. However one point in the Ordinance is very clear-- the Ordinance does not state a minimum road width.

The Board then discussed proposed findings of fact. The Board directed staff to bring back written findings of fact at the next meeting.

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Commissioner Edney made the motion to give preliminary plat plan approval to this plat plan with the specific findings that the Board's review did not consider the issue of health, safety and welfare relevant to this review; that the Ordinance does allow developers to have private roads and that it is not within the discretion of the Planning Board; and the Ordinance does not dictate any construction width standards for private roads.

The motion passed four to one, with Chairman Kumor voting against.

CONCEALED WEAPONS ORDINANCE

Recently, the General Assembly enacted legislation allowing persons to carry a concealed handgun as long as they secure a permit. The new NCGS 14-415.23 (effective December 1, 1995) states however that "A unit of government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with NCGS 14-415.11(c), on local government building, their appurtenant premises, and parks." NCGS 14,415.11(c) allows the owner of a building to post a notice prohibiting persons from carrying concealed handguns within the premises. In order to put into place a prohibition against carrying concealed handguns for the other County buildings and grounds, the County would have to adopt an ordinance allowing the notices prohibiting concealed handguns to be posted.

There currently exists (and predates the new concealed weapons law) a statute (NCGS 14-269.4) that prohibits any person who is not a law enforcement officer from carrying any deadly weapon, openly or concealed into "any building housing any court of the General Court of Justice. If a court is housed in a building containing nonpublic uses in addition to the court, then this prohibition shall apply only to that portion of the building used for court purposes while the building is being used for court purposes." Therefore, carrying any deadly weapon (handguns or other), openly or concealed, in the courthouse is prohibited, whether or not notices are posted.

At the last meeting staff presented a draft Ordinance prohibiting persons from carrying concealed handguns onto County property; however, the Board directed staff to redraft the Ordinance so as to prohibit all deadly weapons from County property. Staff had made the necessary changes and presented the revised draft for the Board's consideration.

Chairman Kumor made the motion to approve the first reading of the revised proposed Ordinance and to direct staff to bring the Ordinance back to the next regular meeting for a second reading. A vote was taken and the motion carried three to two with Commissioners Eklund and Edney voting nay.

HISTORICAL SOCIETY REQUEST

The Henderson County Genealogical and Historical Society has requested several pieces of furniture from the Historical Courthouse. These items include desks, chairs, tables and

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other pieces of furniture which would be used in their new facility in the old Tax Offices (Trust Building) on Main Street. Staff has reviewed this request with Dr. George Jones of the Society and completed an inventory of equipment and furniture left at the Historical Courthouse. Several items requested by the Society should be retained by Henderson County to be used following the renovation of the Historical Courthouse. The request from the Society and the recommended list were reviewed.

Commissioner Edney requested this item to be rolled to the next meeting.

UPDATE ON PENDING ISSUES/REQUEST FOR DIRECTION TO THE CHAIR

This is an effort to keep the lines of communication open. It will give the Chairman an opportunity to bring the Board up to date on issues that occur between meetings. It will also be the time she will ask for direction so that we can develop our public position on current and upcoming topics.

This will also be an opportunity for Commissioners to report on related committee work and assignments.

The topics to discuss during this meeting are as follows:

1. RETAIL TASK FORCE - There was much discussion regarding the Retail Task Force which was assigned to discuss economic development regarding retailers in Henderson County. The Task Force did not come up with a solution to the problems facing Henderson County regarding retailing and economic development.

It was the consensus of the Board that the Chairman execute a letter and mail to the different organizations who participated on the Retail Task Force and state that the \$40,000.00 which was set up for the Retail Task Force will go back into a Henderson County Economic Development Fund.

NOMINATIONS

Chairman Kumor reminded the Board of two vacancies on the Hendersonville City Zoning Board of Adjustment. One vacancy is due to ineligibility of Raymond J. LeStrange because he does not live in the ETJ. The other vacancy is due to ineligibility of Malcolm Morgan for the same reason. Both replacements must be residents of the ETJ (extra territorial jurisdiction).

Chairman Kumor nominated Dave Adams to fill Mr. Morgan's unexpired term. Commissioner Edney made the motion to suspend the rules and appoint Mr. Adams. All voted in favor and the motion carried. There were no other nominations at this time so the second vacancy was rolled to the next meeting.

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IMPORTANT DATES

The Board made some additions and changes to the calendar:

1. November 15 - set a work session in the afternoon for Water supply/watershed issues.
2. Moved the originally scheduled Codification work session from November 15 to the afternoon of December 20.
3. December 20 - Animal Control Ordinance will be on agenda.
4. November 14 - Mr. David Rusk will be here to meet with The Board of Commissioners and staff.

MUD CREEK WATER AND SEWER DISTRICT

Commissioner Eklund made the motion for the Board to adjourn as the Henderson County Board of Commissioners and convene as the Mud Creek Water and Sewer District. All voted in favor and the motion carried.

Commissioner Edney made the motion for the Board to adjourn as the Mud Creek Water and Sewer District and reconvene as the Henderson County Board of Commissioners. All voted in favor and the motion carried.

CLOSED SESSION

Chairman Kumor made the motion pursuant to NCGS 143-318.11 to go into closed session for the following:

(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. the 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.

All voted in favor and the motion carried.

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

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

ATTEST:

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Elizabeth W. Corn

Elizabeth W. Corn, Clerk

Renee Kumor

Renee Kumor, Chairman

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

100 NORTH KING STREET

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

DAVID F. THOMPSON
COUNTY MANAGER

RESOLUTION

WHEREAS, in North Carolina, the Lead Regional Organizations, as voluntary organizations serving municipal and county governments, have established productive working relationships with the cities and counties across this state; and

WHEREAS, the 1995 General Assembly recognized this need through the appropriation of \$864,270 to help the Lead Regional Organizations assist local governments with grant applications, economic development, community development, and to support local industrial development activities and other activities as deemed appropriate by their local governments; and

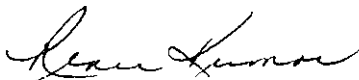
WHEREAS, these funds are not intended to be used for payment of member dues or assessments to a Lead Regional Organization or to supplant funds appropriated by the member governments; and

WHEREAS, in the event that a request is not made by the Henderson County Board of Commissioners for release of these funds to our regional council, the available funds will revert to the State's General Fund; and

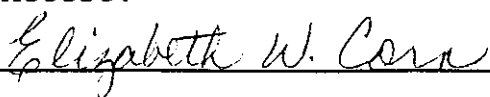
WHEREAS, in Region B, funds in the amount of **\$48,015** will be used for grant assistance infrastructure assistance, economic development planning assistance, economic development training, labor force development, maintenance and distribution of socio-economic data and projections, and other programs to help develop the region in an orderly manner.

NOW, THEREFORE BE IT RESOLVED, that the Henderson County Board of Commissioners requests the release of its share of these funds, \$12,992.94 to the Land-of-Sky Regional Council of Governments at the earliest possible time in accordance with the provisions of Chapter 324, House Bill 229, section 9.4 of the 1995 Session Laws.

Witnessed this the 6th day of November, 1995.



Chairman, Board of Commissioners
Title

Attest:


Clerk to the Board
Title

SEAL

IN THE MATTER OF THE APPLICATION OF
CHARLES D. PONDER.
Applicant,

to the

HENDERSON COUNTY BOARD OF COMMISSIONERS,
Permit Authority

ORDER GRANTING A VARIANCE FOR
SPECIAL SUBDIVISION APPLICATION 95-043

The HENDERSON COUNTY BOARD OF COMMISSIONERS having held a quasi-judicial proceeding on September 20, 1995, to consider an application submitted by CHARLES D. PONDER for the purpose of granting a variance for a Special Subdivision, having heard all of the evidence and arguments presented at the proceeding, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS.

FINDINGS OF FACT

1. Charles D. Ponder, hereinafter referred to as the "Applicant," is presently the owner of a 4.07 acre tract located off SR 1731, Big Oak Road in the Blue Ridge Township, PIN 9599-85-8386. A survey of this property is attached as Exhibit A, and is incorporated herein by reference.
2. Stuart Rohrbaugh is a Planner in the Henderson County Planning Department.
3. The Applicant wishes to subdivide a 4.07 acre tract into two parcels as shown on a plan drawn by David C. Huntley & Associates titled "Survey for Charles Ponder Rita Corn Ponder."
4. Proposed lot 'A' (shown on Exhibit A, attached) is an approximate 1.33 acre tract with two existing manufactured homes and an inhabitable dwelling.
5. Proposed lot 'B' is an undeveloped 2.74 acre tract (shown on Exhibit A, attached) which is partially wooded and partially cleared.
6. Proposed lot 'B' is surrounded by a natural stream to the west and a steep natural drainage swell to the east. The surrounding topography of lot 'B' is therefore unsuitable to be used as a future 'through road' to serve any of the undeveloped adjacent properties.

7. By way of an application for a special subdivision, received August 14, 1995, the Applicant initiated a variance request as required by Section 206 of the Henderson County Land Development Ordinance (HCLDO).

8. Specifically, the application requests the waiver of the requirements of Section 509 (HCLDO), which requires a minimum of 45' right-of-way and 45' of frontage within the boundaries of property developed, and to accept in lieu, a 20' right-of-way to be extended from Big Oak Road, across proposed lot 'A' with 20' of frontage to proposed lot 'B'.

9. A 45' right-of-way would infringe upon land needed for septic tank drain field and repair area. A 45' right-of-way may also encroach on one of the manufactured homes.

10. The Applicant's formal application was reviewed by the Henderson County Planning Board on August 29, 1995 in accordance with the terms and conditions of Section 206 of the Henderson County Land Development Ordinance.

11. The Planning Board, having heard such testimony concerning the application, agreed by motion duly made, seconded, and voted upon, forwarded a favorable recommendation to the Board of Commissioners to waive the requirements of Section 509 (HCLDO) and to grant the Applicant request.

12. Unless otherwise stated in these findings of fact, the Applicant has complied with requirements of Section 406 of the Henderson County Land Development Ordinance which govern the submission of an application for a Special Subdivision.

CONCLUSIONS

1. It is the Board's CONCLUSION that the hardship of which the applicant complains results from unique topographical site conditions related to the applicant's land.

2. It is the Board's CONCLUSION that, if granted, the Variance will secure the public safety and welfare and will do substantial justice.

3. It is the Board's CONCLUSION that, if granted, the variance will be in harmony with the general purpose and intent of the Ordinance and will preserve its spirit.

Based on the foregoing FINDINGS OF FACT and CONCLUSIONS drawn, and it appearing to the HENDERSON COUNTY BOARD OF COMMISSIONERS that the Application for a variance should be granted,

IT IS THEREFORE ORDERED by the HENDERSON COUNTY BOARD OF COMMISSIONERS as follows:

a. The proposed 20' right-of-way to be extended from Big Oak Road, across proposed lot 'A' with 20' of frontage to proposed lot 'B' is acceptable and is hereby approved.

b. The Applicant shall comply with all other applicable requirements stated in the Henderson County Land Development Ordinance.

ORDERED the 6th day of November, 1995.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: Renee Kumor
Renee Kumor, Chairman

ATTEST: (COUNTY SEAL)

Elizabeth W. Corn
Elizabeth W. Corn
Clerk to the Board

ACCEPTANCE BY APPLICANT

I, Charles D. Ponder, Owner of the property which is the subject of this variance, acknowledge and agree that any further subdivisions of this property must meet the all applicable standards of the Henderson County Land Development Ordinance.

This the 27th day of November, 1995.

BY: Charles D. Ponder
Charles D. Ponder, Owner

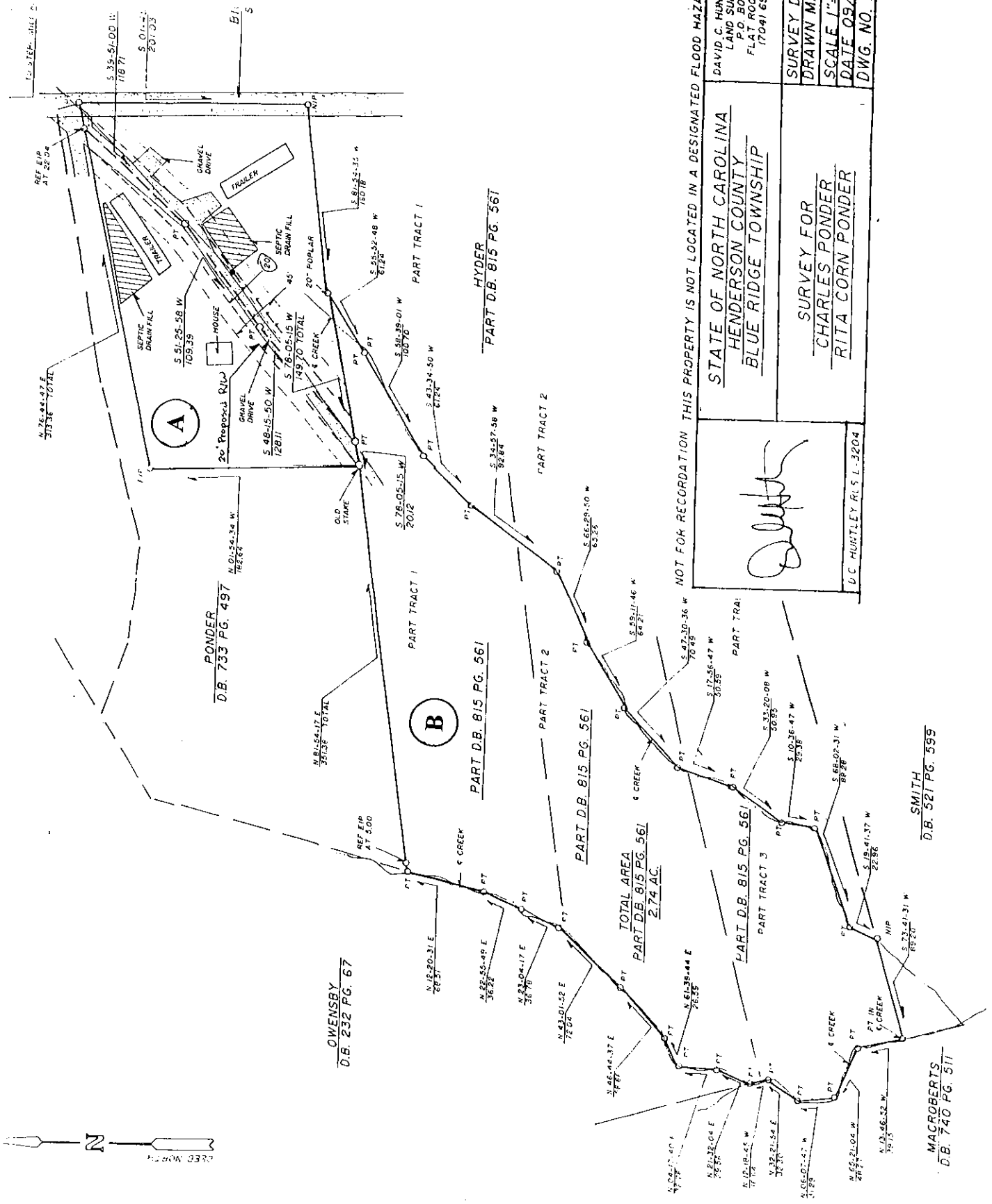
STATE OF NORTH CAROLINA
COUNTY OF ~~HENDERSON~~ Burcombe

I, Tiffany M. Reagan, a Notary Public for said County and State, do hereby certify that Charles D. Ponder personally appeared before me this date and acknowledged the due execution of the foregoing instrument.

Witness by hand and official seal, this the 27 day of
November, 1995.

Tiffany M. Reagan
Notary Public
My Commission Expires:

Exhibit A



NOT FOR RECORDATION THIS PROPERTY IS NOT LOCATED IN A DESIGNATED FLOOD HAZARD AREA	
STATE OF NORTH CAROLINA HENDERSON COUNTY BLUE RIDGE TOWNSHIP	DAVID C. HUNTLEY & ASSOC. LAND SURVEYING P.O. BOX 579 FLAT ROCK, NC 28731 17041 693-8077
SURVEY FOR CHARLES PONDER RITA CORN PONDER	SURVEY DCH DRAWN MAC
	SCALE 1" = 60 FT.
	DATE 09/01/93
	DWG. NO. H-1118
D.C. HUNTLEY RLS L-3204	

