

MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
DECEMBER 5, 1994

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.

SWEARING IN OF ELECTED OFFICIALS

Tommy Thompson, Clerk of Superior Court, administered the Oath of Office to newly elected County Commissioners Bob Eklund and Don Ward and newly re-elected Commissioner Vollie G. Good.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

Mrs. Corn led the Pledge to the American Flag.

INVOCATION

Rev. Bill Jones, Pastor of Bethany Baptist Church, gave the invocation.

PRESENT

Those present were: Commissioner Vollie G. Good, Commissioner Renee Kumor, 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 J. Carey McLelland, Planning Director Matt Matteson, and Planners Karen Collins and Stuart Rohrbaugh.

ELECTION OF CHAIRMAN

Clerk to the Board Elizabeth Corn opened the floor to nominations. Commissioner Vollie Good nominated Commissioner Renee Kumor for

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Chairman. Commissioner J. Michael Edney made the motion to close nominations. A vote was taken and the motion carried unanimously.

The meeting was turned over to Chairman Renee Kumor.

#### **Chairman's Statement**

Chairman Renee Kumor thanked the other Commissioners for their vote of confidence. She stated that for the past two years she has been serving with four gentlemen and if every indication proves true, she will continue to serve with four gentlemen.

She stated she felt privileged to serve beside Chairman Good as Vice-Chair this past year. She presented a plaque of appreciation to Mr. Good for his two years serving as Chairman of the Henderson County Board of Commissioners.

Commissioner Vollie G. Good thanked everyone for putting up with him as Chairman the past two years; he especially thanked County Staff, the County Manager and the other Board Members. He stated that he would be around and he would be involved. He still has alot to do and will still be available for anyone who wants to talk with him.

#### **ELECTION OF VICE-CHAIR**

Chairman Renee Kumor opened the floor to nominations for Vice-Chair. She asked the Commissioners to consider Commissioner Good, if he feels that he has the time to serve as Vice-Chair for the next year.

Commissioner Bob Eklund nominated Commissioner Vollie G. Good for Vice-Chair. Commissioner J. Michael Edney made the motion to close the nominations and appoint Commissioner Good as Vice-Chair. All voted in favor and the motion carried.

#### **DISCUSSION/ADJUSTMENT OF AGENDA**

Commissioner Don Ward asked to add one item under Discussion Items as "F", Challenge to the City. He will give details at the appropriate time.

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It was the consensus of the Board to approve the addition of this one item.

**CONSENT AGENDA**

Commissioner Eklund 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 following meetings:

October 19, 1994

November 7, 1994

November 10, 1994

**Approval of Bonds** - Bonds were presented for approval for Sheriff George Erwin, Tax Collector Terry Lyda, Registrar of Deeds Nedra Whitlock, and Finance Director J. Carey McLelland. This must be done on an annual basis.

**Henderson County Financial Report** - This was presented for information only. No action was required.

**Henderson County Public School Financial Report** - This was presented for information only. No action was required.

**Henderson County Investment Report** - This was presented for information only. No action was required.

**Notification of Vacancies** - The Board was made aware of these vacancies. No action was required at this time. These will appear under "Nominations" on the next agenda:

1. Henderson County Travel & Tourism Committee - 4 vac.
2. Henderson County Zoning Board of Adjustment - 2 vac.
3. Henderson County Community Child Protection Team - 5 vac.
4. Library Board of Trustees - 1 vac.
5. Nursing Home/Domiciliary Home Advisory Committee - 3 vac.
6. Henderson County Regional Water Forum - 1 vac.
7. WCCA (Western Carolina Community Action) Board of Trustees  
1 vacancy.

Appropriate letters have been mailed to see if these persons are willing to continue to serve, if nominated.

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INFORMAL PUBLIC INPUT

1. Pam Lusk - Had questions regarding the jobs lost at the Henderson County Sheriff's Department due to the election of a new Sheriff.
2. Jerry Gordon - Mr. Gordon also wondered about the lost jobs at the Sheriff's Department.

Chairman Kumor explained that a presentation will come later in the agenda regarding this and other departments. Item "B" Henderson County Transition Planning Report.

3. Louise Freeman - Mrs. Freeman asked Commissioner Edney why he had left (at an earlier meeting) before the vote was taken regarding manufactured homes in the Waterfront District.

Commissioner Edney stated that a Superior Court Judge ordered him to the courthouse because he was involved in a case that was in session. Chairman Good did not know how long Commissioner Edney would be away so action was taken in his absence.

4. Louise Jaeckin - Mrs. Jaeckin also wondered about the firing of qualified employees from the Sheriff's Department.

PUBLIC HEARING - Renewal of the Option to Purchase 69.4 acres of the Appleland Business Park

Vice-Chairman Good made the motion for the Board to go into Public Hearing to consider the renewal of the Option to purchase 69.4 acres of the Appleland Business Park. All voted in favor and the motion carried.

Angela Skerrett informed the Board that a public hearing must be held as required by NCGS 158-7.1 to consider the renewal of the Option which the County currently has for the development of the Appleland Business Park. The County entered into an Option on 69.4 acres of property owned by Mrs. Cynthia Whitted located at the intersection of Upward Road and the I-26 connector. The total purchase price for the property was \$1,500,000.00. The County has partially exercised the Option and purchased the Roadway, the Park Property, Lot 8, Lots 1, 1A, 2, 3, 4 and two lots to be dedicated to NCDOT for a total acreage purchased of 28.9 acres at a price of \$746,159.54.

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The current Option will expire on December 31, 1994. The price to renew the Option until March 31, 1995 will be the quarterly interest at the NationsBank prime rate of interest determined as of December 10, 1994 on the unpaid portion of the purchase price of \$753,870.46. The payment to renew the Option for an additional three month term is due on December 20, 1994.

Angela Skerrett showed a map of the Appleland Business Park. There was much discussion.

Public Input - There was none.

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

Commissioner Eklund made the motion to renew the option on the Appleland Business Park for an additional three month period. All voted in favor and the motion carried.

**PUBLIC HEARING - Rezoning Application by Esther Ferrell**

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

Karen Collins stated that this public hearing is to consider a request to rezone a 0.4 acre parcel located on Greenville Highway (US 25 South). The property owner, Esther Ferrell, requested that the parcel be rezoned from an R-T (Residential Transient) district to a C-1 (Residential Commercial) district.

At their meeting on October 25, 1994, the Henderson County Planning Board voted 5-3 to send a favorable recommendation to the Board of Commissioners regarding this rezoning request.

In accordance with Section 1204 of the Henderson County Zoning Ordinance, notices of the public hearing were published in the Times-News on November 11 and November 18, 1994. The Planning Department also mailed notices of the hearing to owners of property adjacent to the subject tract.

Karen Collins showed a three minute video of the subject property and adjacent property uses.

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When the County adopted zoning amendments in 1981, the Ferrell property was zoned R-T.

Staff was concerned about this being interpreted as spot zoning and felt that an overall plan for this area needed to be looked at. This request may be appropriate for this parcel but the Board would be setting a precedent for change in individual parcels if this were approved.

#### Tim Mullinax

Tim Mullinax, Attorney for the petitioner, stated he would consent to a 90 day delay (or continuance) to allow for a study to be done of the area. He only learned today that the staff's recommendation was different from that of the Planning Board.

#### Public Input

1. Sonny Ashley - Mr. Ashley spoke in opposition to the rezoning request. He is the son-in-law of Mr. & Mrs. J.V. Morgan who own and reside in the parcel immediately north of the property in question. Mr. Ashley owns two pieces of property himself within one tenth of a mile of this property.

2. Bob Sherman - Mr. Sherman spoke in bitter opposition to the rezoning request. He lives immediately adjacent to the property in question, 1518 Greenville Highway. He owns along the entire south and east sides of the property in question (surrounds the property on two sides).

3. J.D. Hunnicutt - Mr. Hunnicutt lives directly behind the property in question. He spoke in opposition to the rezoning request.

4. Janice Sherman - Mrs. Sherman spoke in opposition of the rezoning request. She stated that spot zoning sets the wrong precedence.

5. Tim Mullinax - Attorney Mullinax stated that he represents the petitioner, 85 year old Esther Ferrell who was in attendance. Ms. Ferrell acquired this property in 1972 with the hope to retire and come to this community and build a home. In 1977 she was told by the City that the property was in the ETJ and a residence was not allowed there. She bought a home in Henderson County and has tried to sell the property. Prospective buyers have assumed that it was

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zoned commercial because of surrounding land uses. Mrs. Ferrell feels that she could better sell her property if it were zoned commercial.

Mr. Mullinax stated that he would renew his motion to allow this to be tabled for 90 days. If this is not done, he requested a favorable vote on the request.

6. Chuck Cordray - Mr. Cordray asked for a study of the whole area by the Planning Board. He hopes they will consider what the professional Planning staff has recommended and will allow the study.

7. Jack Billingsley - Mr. Billingsley also asked that a study be done of the area and not SPOT RESTRICTIONS. He is in the same situation Mrs. Ferrell is and feels that he could sell his property if it were zoned commercial.

#### CONTINUATION OF PUBLIC HEARING

After considerable discussion, Commissioner Edney made a motion to adjourn this public hearing until Monday, March 6, 1995, at 7:00 p.m. and during the adjournment instruct staff to study this entire area to determine whether the entire zoning should be looked at, not just whether it should be commercial but whether it should be residential or whatever and that they report back to the Board of Commissioners by March 6, 1995. All voted in favor and the motion carried.

Matt Matteson stated that the Planning Staff will basically look to see where the development trends are.

#### PUBLIC HEARING - Special Use Permit 19-94 Champion Hills, Meadow Ridge, Section 3 Planned Unit Development

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

#### **Chairman's Statement**

Chairman Kumor stated that this is a Quasi-Judicial Hearing which means that the only people who may speak are those who have an immediate interest in this issue. This is a hearing in which one's

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individual rights are being determined under the provisions of a particular ordinance. The law requires that when the Board is making an individualized decision such as this, that the procedure for making this decision be like a court proceeding. Anyone who participates in this hearing will speak under oath and all those who speak will be subject to questioning by the other participants. The Board of Commissioners are participants and may ask questions at any time of anyone who is speaking. The only persons allowed to participate are those who are affected by the outcome of this decision.

Chairman Kumor stated that we will hear from:

Henderson County Planning Department,  
The Henderson County Board of Adjustment,  
Adjacent property owners, and  
Patrick O'Brian who is speaking on behalf of the Branigar  
Organization, as the petitioner.

The Special Use Permit is for a Planned Unit Development. All other parties to the proceedings will be considered opponents.

Chairman Kumor identified all the parties to the proceeding:

Patrick O'Brian, Bill Lapsley, Matt Matteson, Robert Vale, and  
Stuart Rohrbaugh.

The Clerk to the Board administered the Oath. All parties were sworn in.

Stuart Rohrbaugh

County Planner Stuart Rohrbaugh reminded the Board that the planning staff is responsible for reviewing planned unit developments to insure they comply with provisions of Section 700 of Planned Unit Developments of the Henderson County Zoning Ordinance. The Planning Department is not an enforcement agency. It is customary for the Planning Department to follow through the application process with a staff review, a Planning Board review, through the public hearing process and any subsequent meetings necessary.

Mr. Rohrbaugh stated that this request is for a small 42 unit planned unit development. It is located on a 30.2 acre site and is a R-20 zoning district. This PUD includes both a cluster concept with both two family and single family units plus traditional single family dwellings on individual lots. Mr. Rohrbaugh showed



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the area on a map and described where the different units would be built. Each lot will be served by city water, a community sewer system, and a private road built to NC DOT standards.

An existing barn on the property will be used as a maintenance facility for the golf course. The developer proposes to retain a 2.56 acre area around the barn for continuance of maintenance functions.

Mr. Rohrbaugh stated that subsequent to the Planning Board approval the applicant, after further site review of the property, has requested a minor modification of the stated set back distances from structures on the proposed neighborhood drives. This modification is stated in a letter enclosed in the agenda packet to be formally presented by the applicant. Following the applicant's presentation, Matt Matteson will have comments on the set backs.

The Zoning Administrator, Planning Staff, and Planning Board have all reviewed the site plan and supporting documentation and conclude that this application complies with the provisions of section 700.

At their November 9 special called meeting, the Planning Board voted unanimously to forward a favorable recommendation to the Board of Commissioners subject to the following conditions:

1. Water Plan Approval. Applicant should provide evidence that the water plans serving the project have been approved by the Hendersonville Water and Sewer Department and NCDEHNR.
2. Sewer Plan Approval. Applicant should provide evidence that the sewer plans serving the project have been approved by NCDEHNR.
3. Erosion and Sedimentation Control. The applicant should provide evidence that erosion and sedimentation control permits for Section 3 have been approved by NCDEHNR.

Mr. Rohrbaugh showed a short video of the area in question and surrounding area.

There were questions regarding whether the Board of Commissioners must approve the sewer system to the project. Staff will check on this.

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Bill Lapsley

Bill Lapsley, a consulting civil engineer, serves as the consulting engineer on this project. He reviewed the Master Plan map and also a map of Section 3. He requested approval from the Board of Commissioners.

Patrick O'Brian

General Manager/Project Director at Champion Hills.

Findings of Fact and Conditions were discussed briefly.

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

There was discussion regarding the Draft Findings of Fact, Conclusions and Conditions as well as the lack of opposition. The Board will plan to take action on this item at the next meeting, December 21, 1994.

**BREAK**

Chairman Kumor called a 10 minute break.

**SETTING A PUBLIC HEARING ON A REZONING REQUEST - Application # R-24-94 by L. Douglas Marshall**

Matt Matteson asked the Board to consider setting a public hearing on an application submitted by L. Douglas Marshall to rezone a 0.88 acre parcel from R-15 (Medium Density Residential) to I-2 (General Industrial). The parcel is located off of US 25 North on Hillgirt Road Extension (previously known as Dunlap Road). Mr. Marshall is in the process of purchasing the parcel in order to relocate a tool business to the site.

At their meeting on November 29, 1994, the Planning Board voted unanimously to send Mr. Marshall's rezoning application to the Board of Commissioners with a favorable recommendation.

The Board of Commissioners must hold a public hearing on this application prior to taking action. Mr. Matteson recommended January 3 for the Public Hearing.

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Commissioner Edney made the motion to set the Public Hearing for January 3, 1995 at 7 p.m. All voted in favor and the motion carried.

#### HENDERSON COUNTY TRANSITION PLANNING REPORT

David Thompson informed the Commissioners of a letter he received from Nedra Whitlock, the newly elected Registrar of Deeds. She informed him that she had reappointed all members of the current Register of Deed's staff. They were sworn in this morning.

New Sheriff George Erwin has merged some divisions at the Sheriff's Department. There was some discussion regarding this and regarding the Sheriff's Posse (volunteers).

There were 102 employees in the Sheriff's Department under Sheriff Jackson and there will be 102 employees in the Sheriff's Department under Sheriff Erwin. Sheriff Erwin will have fewer sworn officers resulting in a smaller budget item for the same number of employees.

There was discussion of the requested Staff Attorney for the Sheriff's Department.

Sheriff Erwin introduced Major Eddie Watkins, who came to Henderson County from the City Police Department.

There was much discussion regarding the recent hiring freeze which is currently in effect. David Thompson requested that the Board of Commissioners lift the freeze for all but the Recreation Department and the Vehicle Maintenance Department. He is presently studying the staffing needs and the possibility of consolidation of these two departments.

Sheriff Erwin requested the Board of Commissioners lift the Hiring Freeze, especially for the Sheriff's Department. If not, the freeze would keep 22 people from serving this county. He stated that as the elected Sheriff he could not take the responsibility for this action. These 22 people have gone through interviews and many of them have turned in notices or are giving notices.

David Thompson informed the Board that the transition period has gone smoothly regarding paperwork and pay and classification. The

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freeze has done what it was intended to do, stabilize county government.

Commissioner Edney stated that we owe a deep debt of gratitude to the employees of the Sheriff's Department and we need to do everything we can to assist them. We also have an obligation to the newly elected Sheriff to respect the boundaries established by the constitution and laws of the State. He made the motion to lift the county-wide hiring freeze and authorize the filling of all vacant and proposed positions except for those in the recreation department and the vehicle maintenance department, provided that all budgets remain within the 1994 authorizations adopted by this Board of Commissioners.

Commissioner Good made a substitute motion to delay vote on this motion until after the Closed Session. Commissioner Edney had no objection to Commissioner Good's motion. A vote was taken and the motion carried unanimously.

#### OFFER TO PURCHASE/Foreclosed Property

Don Elkins informed the Board of an offer to purchase from Cecil W. Patterson in the amount of \$375.00 for the following property:

PIN # 99-379-31  
Lot # 147, Highland Lake Club Lots

This offer has been advertised in the newspaper with no upset bids. It is now time for the Board to accept or reject the offer.

Commissioner Good made the motion to approve the sale with the bid of \$375.00. All voted in favor and the motion carried.

#### NOMINATIONS

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

1. **Private Industry Council (PIC) - 2 vacancies.** There were no nominations at this time so the item was rolled. We are awaiting nominations from the Chamber of Commerce.

2. **Hendersonville City Zoning Board of Adjustment - 1 vacancy.** There were no nominations at this time so the item was rolled.

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**3. Downtown Hendersonville - 1 vacancy.** Commissioner Good nominated Russ Bachert to fill this vacancy, a two year term running through 1996. Commissioner Edney made the motion to suspend the rules and appoint Mr. Bachert. All voted in favor and the motion carried.

**4. Asheville/Buncombe Water Authority - 1 vacancy.** There were no nominations at this time so the item was rolled.

**5. Land Of Sky (Region B - Council of Governments) - 1 vacancy.** Commissioner Good nominated Chairman Kumor. Commissioner Edney made the motion to suspend the rules and appoint Chairman Kumor. All voted in favor and the motion carried.

#### IMPORTANT DATES

There was discussion of setting an EMS Work Session. It was consensus of the Board to set that date at the January 3 meeting.

#### CHALLENGE TO THE CITY

Commissioner Ward issued a challenge to the City of Hendersonville for a basketball game with the County (for charity). He requested that the media be contacted. The City could name the facility and charity. He challenged all our Commissioners to be in shape to play this game. He felt that the game would offer some non-formal time for cooperation and relaxation between County/City. Commissioner Ward would like to see County Commissioners and their staff in this game.

Commissioner Ward requested that David Thompson issue the challenge to the City and to hold mandatory practice for staff.

#### CLOSED SESSION

Commissioner Good made the motion for the Board to go into Closed Session as allowed under NC GS 143-319.11:

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.

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2. (a) (4) To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body.

3. (a) (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.

All voted in favor and the motion carried.

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

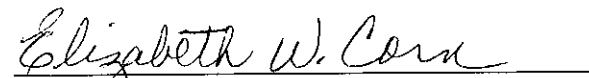
**ACTION**

Commissioner Edney made the motion to lift the hiring freeze on all county departments except the Recreation Department and the Vehicle Maintenance Department and to approve the Sheriff's current plan of organization, as long as it fits within his currently allotted budget. All voted in favor and the motion carried.

Commissioner Edney made the motion to adjourn until Tuesday, December 6 at 7:00 p.m. All voted in favor and the motion carried.

This action was taken so the Board could complete their discussion in Closed Session.

ATTEST:

  
Elizabeth W. Corn, Clerk

  
Renee Kumor, Chairman