

MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COMMISSIONERS  
JULY 17, 1991

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

Those present were: Chairman J. Michael Edney, Vice-Chairman Vollie G. Good, Commissioner F. Richard Baker, Commissioner Hugh D. Randall, Commissioner William McKay, County Attorney Don H. Elkins, County Manager David F. Thompson, and Clerk to the Board Elizabeth W. Corn. Absent was Assistant County Manager/Finance Director David E. Nicholson.

CALL TO ORDER/WELCOME

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

PLEDGE OF ALLEGIANCE

Commissioner Baker led in the pledge to the American Flag.

INVOCATION

Rev. Walter Treadway of East Flat Rock First Baptist Church gave the invocation.

REVIEW OF MINUTES

Minutes were presented for review of the following meetings: June 25 and July 8. The minutes were approved as presented.

DISCUSSION/ADJUSTMENT OF AGENDA

Two items were added to the agenda under New Business as follows: "I" Request from the Cradle of Forestry asking for a letter of support from the Board of Commissioners for their request for federal funds, and "J" Update of the Comprehensive Land Use Plan.

PUBLIC INPUT

Chairman Edney asked the Clerk to call names of those who have signed up to speak.

Mark Richter - Mr. Richter lives in the Sweetwater Hills Subdivision. Mr. Richter spoke in opposition of the building of the asphalt plant on North Rugby Road.

Cal Phipps - Mr. Phipps spoke in opposition of the building of the asphalt plant on North Rugby Road.

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Claire Kunz - Ms. Kunz spoke in opposition of the asphalt plant.

Dr. Bobbit - Dr. Bobbit spoke in opposition of the asphalt plant.

Mr. Thompson, County Manager, was asked by the Chairman to explain the difference between a construction permit and a building permit. Mr. Thompson explained that there is a risk in the county taking action right now against the facility. If we haven't followed the Ordinance that the County has set for handling these matters we face the very real possibility of, even if the Commissioners decided after this is all over to zone it R-30, that it would be overturned and handed back down to either the Planning Board or to the County Commissioners. We follow the procedure because it is the fairest procedure that we have to follow, we can't speed it up or slow it down because one set of residents or other feel that we should do that. There are legal requirements for a public hearing on this requiring 15 days public notice. There is also a requirement that the Board of County Commissioners cannot hear this matter, cannot make a decision on it as far as amending the zoning ordinance of this county until the Planning Board has made a recommendation to them on what the correct zoning should be for that area.

Mr. Thompson stated that a construction permit, is required by the Department of Natural Resources and also an operating permit for that facility. Those two permits are directly related to the emission source on the asphalt plant itself. There is also a building permit which is issued by the County of Henderson. The building permit is just for construction of the out-buildings and things of that nature. It is also for the footings for the plant itself. We do not issue a permit for the actual set up of the facility. The building permit has been misunderstood and there have been alot of questions to the County Commissioners. We can't stop the issuance of that building permit. Building permit issuance is governed by the State of North Carolina through the state insurance department. We have to enforce their rules and regulations. We cannot arbitrarily withhold a building permit. It is administered through the County of Henderson. Basically a building permit is just saying that the construction that is proposed is in compliance with the state building code.

This is an issue that happens in unzoned areas and it is a question now of do they follow the law of the land basically, the Ordinance that they have adopted previously, in resolving this matter. Mr. Thompson stated that as the County Manager he would advise the Board to do this in a step by step manner and follow your own Ordinance so that after your decision is made it will not be sent back to you.

Don Elkins, County Attorney, said that he thinks we are assuming that someone has violated the law, there has been no such finding

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that he is aware of. In his opinion, the County Commissioners cannot decide which business will be located here in Henderson County and which business will be excluded. As it stands today there is no zoning in the area and that is what we must deal with. At such time as zoning is established in that area then we can address the problem of whether or not the asphalt plant violates that zoning. We cannot restrain a business from starting up, we can only address that issue when it comes before the commission based on some legitimate law. At this point the County Commissioners are not charged with the responsibility of deciding which private business comes into Henderson County and which is excluded.

Chairman Edney stated that Counties are created by the State. The State Legislature creates Henderson County, Buncombe County, etc. Because of that, counties only have the powers given to them by the state. We have no inherent authorities like Judges have. We have only those powers we are given. He said that there is nothing this Board of Commissioners can do until and unless the area is zoned. Once it is zoned, we will have different issues to address related to the vested rights that residents are referring to and whether or not vested rights will be the issue at that time, assuming the area is zoned.

County Attorney Don Elkins said that normally zoning is not granted or denied based on a particular case. You grant zoning based on some broad general land development plan throughout the county. You do not pass zoning to exclude some person or business in the county or in a particular area. As far as responsibility, he thinks the citizens in that area might have some responsibility. If it is a nuisance and a polluter why not bring a private action to restrain it since your private rights are being violated.

Heinz Schuette - Mr. Schuette spoke in opposition of the asphalt plant.

Katy Haynes - Ms. Haynes spoke in opposition of the asphalt plant.

Sue Nelson - Mrs. Nelson asked to be allowed to relinquish her spot to Carol Dunn. Carol Dunn - Ms. Dunn spoke in opposition of the asphalt plant.

John Arwe - Mr. Arwe spoke in opposition of the asphalt plant.

Harry King - Mr. King spoke in opposition of the asphalt plant.

David Malpass - Mr. Malpass spoke in opposition of the asphalt plant. Action was taken on that piece of property without any permit in terms of the Corp of Engineers which is dealing with a wetland process application. Soil and water and erosion - N.C. Department of Natural Resources & Health, Environmental Division.

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In reference to the building permit in terms of the county itself, all that action was taken by the individual land owner in reference to their established business without any of those permits. This was documented in terms of 6/8/91.

6/14/91 The N.C. Department of Environmental Resources & Soil Erosion issued a violation. He thinks that then would have been a real opportunity for our community in terms of our Commissioners to have responded in terms of representing these people in respect to that violation by acknowledging the violation and perhaps taking some type of position in terms of what had happened.

The Corp of Engineers who deals with the wetland situation, based on what Mr. Malpass can find out, actually put a stop order on the construction.

7/4/91 Mr. Banks got his permit from State Soil & Erosion. He got requirements from the Corp of Engineers in terms of what he was going to do. A three member subcommittee was formed, that subcommittee evidently had decided that the whole area perhaps needed to be zoned for light industry. At the same time the citizens in that community began to respond in terms of what looks to be close to 2,000 people who had petitioned against the zoning for light industry. There was still no State Air and Water Quality permit issued.

7/12/91 Full report from the Planning Board not forwarded to the Commissioners at that point.

Mr. Malpass stated that it is his understanding that the Planning Board has still not acted on this. On July 31, perhaps a full set of recommendations of what to do with the zoning will come from the Planning Board and tonight is only an opportunity for the Board to hear from the public on how they feel.

Mr. Thompson stated that the summary Mr. Malpass gave was a very good summary of what has happened to date. Mr. Thompson called to everyone's attention where Mr. Malpass had said that it would have been an appropriate time for the County Commissioners to be involved when those violations were given to the developer. He agrees 100% but what happened at that time was the County took the position that no building permits would be issued until both the sedimentation and erosion control permit violations were corrected. Under state law we have to make sure those violations are corrected and they have a good permit before we issue a building permit and also the same question on the wetlands. At that point in time, there was not a building permit issued because those issues hadn't been resolved.

Mr. Thompson further stated that the Planning Board has 32 days to make a recommendation to the Board of County Commissioners. Under

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the Ordinance here in Henderson County, the County Commissioners cannot amend that zoning ordinance until two things happen: 1. they receive a recommendation from that board. If the Planning Board doesn't make a recommendation within the 32 day timeframe they would be in support of that zoning amendment. In other words they would be approving R-30 if they don't take any action. 2. the Board of Commissioners has to give adequate notice of a formal public hearing, at least 15 days, no more than 25 days notice of the public hearing to hear public comment on this issue, as required by law. Historically when the Planning Board meets they do have public input at those meetings.

Richard Foote - Mr. Foote spoke in opposition of the asphalt plant.

Sue Carol Grabski - Mrs. Grabski spoke in opposition of the asphalt plant.

Timothy Grabski - Mr. Grabski spoke in opposition of the asphalt plant.

Gary Morello - Mr. Morello spoke in opposition of the asphalt plant.

John Burt - Mr. Burt spoke in opposition of the asphalt plant.

John Williams - Mr. Williams spoke in opposition of the asphalt plant.

Chairman Edney read a letter written by Rick L. King, Regional Vice President of First Citizen's Bank. The letter expressed the fact that First Citizen's Bank is not involved in any financing in connection with the acquisition or development of the property sold by Mr. & Mrs. Johnson to Banks Brothers.

After a short break the meeting resumed.

#### NOMINATIONS

1. Chairman Edney reminded the Board of 2 or more vacancies on the Cable TV Advisory Committee.

Chairman Edney nominated Attorney Kim Gasperson to fill one of the vacancies. Commissioner Baker made the motion to suspend the rules and appoint Ms. Gasperson. All voted in favor and the motion carried.

There were no other nominations so one vacancy was rolled to the next meeting.

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2. Chairman Edney reminded the Board of 1 vacancy on Western Carolina Community Action, Inc. There were no nominations at this time so the item was rolled to the next meeting.

3. Chairman Edney reminded the Board of 2 vacancies on the Jobs Training Partnership Act Committee (PIC). There were no nominations so the item was rolled to the next meeting.

4. Chairman Edney reminded the Board of 1 vacancy on the Land of Sky Regional Council Advisory Council on Aging. There were no nominations so the item was rolled to the next meeting.

5. Chairman Edney reminded the Board of 1 vacancy on the Western North Carolina Tomorrow. There were no nominations so the item was rolled to the next meeting.

#### FORECLOSED PROPERTY - Elmer Mace

Mr. Elkins informed the Board that this parcel of land was foreclosed for taxes some years ago and conveyed to the county. One of the heir's daughters, Katherine Heffner, placed a bid on the property of \$5,653.66. This represents back taxes on the property that have accumulated over the years. The offer was accepted by resolution, subject to advertising in the newspaper for an upset bid.

Advertisement has been done and there have been no upset bids.

Commissioner Baker made the motion, since there have been no upset bids, to accept the offer to purchase from Katherine Heffner and give a quit claim deed for the property. All voted in favor and the motion carried.

#### COMMUNITY CHILD PROTECTION TEAM UPDATE

Liston was not in attendance, so this was deferred until his arrival.

#### LIBRARY CHANGE ORDER No.5

Bill Snyder, Library Director, informed the Board of a change order to fix some items that have arisen during the library construction project. To this point the board has approved two change orders involving money that have added just over \$10,000 to the cost of the project. This change order will be an additional \$23,506. This will not involve an additional appropriation from county funds. The Finance Officer has told Mr. Snyder that they have had additional donations and interest earned amounting \$79,000 in the last year. Mr. Snyder is recommending approval of this change order and that the money come from the capital funds.

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Commissioner McKay made the motion to approve the change order totaling \$23,506.00. All voted in favor and the motion carried.

#### COMMUNITY CHILD PROTECTION TEAM UPDATE

Mr. Liston Smith informed the Board that they are now ready for recommendations from the Commissioners for members of the Community Child Protection Team, and will be ready to appoint members to the team August 1, 1991. Mr. Smith would like for this team to be a genuine community team that would place alot of emphasis on looking at the current system of serving children in the county, looking at the department of social services, looking at what private providers are doing, looking at the churches, looking at what we as a community as a whole are doing to work with child abuse and neglect in the community.

Mr. Smith stated that the team should place a big emphasis on the program being family centered. He would like for the committee to try to maintain a minimum of 50% private individuals on the team, ministers, doctors, etc.

Mr. Smith recommended to the Board that he chair the committee himself, he would like to have a co-chair, and he will come back to the Board for recommendations for appointment to the Team.

Mr. Smith stated that he does not see any conflict, competition, overlap, or duplication of services. He feels they have different missions.

There was alot of discussion. There was no action, this will be on the Agenda again for August 5.

#### TAX RELEASES

Robert Baird, County Tax Assessor, informed the Board of eleven (11) requests for tax releases. Mr. Baird endorses these findings and submits them to the Board for approval.

Commissioner Baker made the motion to approve these 11 tax releases, based on recommendation from the County Tax Assessor. All voted in favor and the motion carried.

#### TAX REFUNDS

Robert Baird informed the Board of five (5) requests for tax refunds. Mr. Baird endorses these findings and submits them to the Board for approval.

Commissioner McKay made the motion to approve these 5 tax refunds as recommended by the County Tax Assessor. All voted in favor and the motion carried.

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ROAD PETITIONS

Chairman Edney informed the Board of two road petitions received for addition to the state maintenance system: Forest Hill Road and Plantation Drive. The Board has recommendations from the Planning Department on both of these petitions.

Commissioner McKay made the motion to accept these petitions and forward them to the N.C. Department of Transportation for their consideration. All voted in favor and the motion carried.

PROPOSAL TO REFINE/STRUCTURE SOLID WASTE PLANNING

Mr. Thompson first spoke concerning a permit for a demolition and debris landfill. Mr. Thompson felt that there must be some problem at the state level because the permits are normally fairly easy to obtain. He called the state office and in talking with the state's staff found that this permit request had been put into the same file with our request for permit for site approval of the expansion area within the existing boundaries of the landfill. Because of the new regulations which are not finalized yet, these are being held.

Mr. Thompson has included in the agenda packet a proposal from David M. Griffith and Associates to provide consulting services to analyze the major aspects of solid waste management alternatives. Staff met recently and the proposal is a result of what they feel should be done to refine and structure solid waste planning in Henderson County. Mr. Thompson is requesting the Board's approval of this proposal.

Mr. Thompson also discussed a proposed plan of action to begin addressing the complex problem of solid waste management through a step-by-step approach. There was much discussion.

Staff discussed the study that was done in 1988 which was a waste stream analysis of the county's solid waste and felt that those figures need updated. He proposed a 2 week waste stream analysis be conducted with a consultant supervising the analysis. County staff will be used for the analysis.

Commissioner McKay made the motion to approve the proposed contract with David M. Griffith and Associates. All voted in favor and the motion carried.

UPDATE ON PROPOSED COUNTY COURTHOUSE/LAW ENFORCEMENT CENTER/JAIL COMPLEX

Mr. Thompson stated that the design and construction of a new courthouse/jail/law enforcement center was one of the priority projects the Board discussed with him during his interview. He has



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discussed the project with the architect and staff and it has become apparent that staff needs to make recommendations for the Board to consider so that progress can be made to achieve the goal. Chairman Edney has a goal of a spring 1992 construction start up date. Henderson County is now looking at building three separate buildings on the site, a courthouse, a jail, and a law enforcement facility.

Mr. Thompson did express some concerns with the project:

1. The feasibility and space planning report was conducted in 1988. He feels that it would be beneficial to update those original projections for space and personnel. He recommends updating the report over the next 30-45 days. Needs will be addressed rather than wants but Mr. Thompson feels that needs have changed since 1988.

2. He recommends that a new AIA contract be initiated for the architects' services but allow credit for any usable work that he has already completed. For example, some of the schematic drawings of the courthouse are still usable.

3. We have focused on the property and what we will do at the specific site, he feels we should look closer at the overall community and our inter-relationship with the city and the community on this project. He recommends that a new survey of the properties be conducted, encompassing the utility lines, water, sewer etc. He recommends also that the surveyor work with the city utilities department to get as many of those lines mapped out as possible.

**Action Items-** Mr. Thompson is requesting approval to do complete surveys on the entire piece of property. He is also requesting permission to start the data gathering again to update the needs. He is requesting permission to meet with the County Attorney and the Architect to see if a new contract can be negotiated. He would like a fresh start on the project and will be working with staff and the Architect to come up with a time schedule.

Commissioner McKay made the motion to approve the three requests as outlined in the preceding paragraph. All voted in favor and the motion carried.

#### **REQUEST FOR SUPPORT - Section 8 Housing**

Chairman Edney informed the Board of a letter received from John Leatherwood requesting a letter of support from this Board for Western Carolina Community Action, Inc. to apply for 34 additional units of Section 8 assisted housing. Last year the Board unanimously supported WCCA's application. The current waiting list for Henderson County stands at 444 eligible applicants.

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Commissioner Baker made the motion to approve this request and send a letter of support from this Board. All voted in favor and the motion carried.

#### CRADLE OF FORESTRY

Chairman Edney informed the Board of a letter from Fran Waser, Chairman of the Transylvania County Board of Commissioners, who is also Chairman of the Board of Directors of the Cradle of Forestry. They are trying to raise a substantial amount of money to do some improvements. They are requesting a resolution or letter of support from this Board of Commissioners

Commissioner Baker made the motion to forward a resolution or letter of support from this Board. All voted in favor and the motion carried.

#### COMPREHENSIVE LAND USE PLAN

Chairman Edney stated that the latest Land Use Plan Henderson County has was adopted in 1977 and definitely needs updated. There was much discussion, including hiring additional staff or contracting it out. There has been much discussion on County Wide Zoning but that cannot be accomplished without a good land use plan.

There was much discussion with Mr. Matteson passing around examples of Land Use Plans for the Board's review. The biggest question Mr. Matteson has as a Planner is what is the role of the cities of Laurel Park, Hendersonville, and Fletcher and how they will be integrated into the plan.

It was recommended that David Thompson and Matt Matteson bring recommendations back to the Board within 30 days regarding the new plan along with estimates of costs. It was decided to put this on the agenda for the mid-month meeting in August (Aug.21).

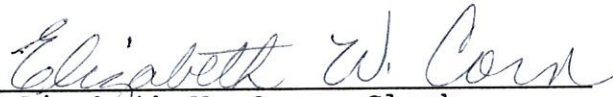
#### EXECUTIVE SESSION

Commissioner Baker made the motion for the Board to go into Executive Session to discuss legal and personnel matters. All voted in favor and the motion carried.

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

Being there was no further business, the meeting was adjourned.

ATTEST:

  
Elizabeth W. Corn, Clerk

  
J. Michael Edney, Chairman

15:55:08 10 JUL 1991

Release

OWNERS NAME..... ACCOUNT. P.I.D.... FAX.. FIRE..... AMOUNT TAXES FIRE..... TOTAL..... REASON FOR REFUND.....

OWNERS NAME	ACCOUNT. P.I.D.	FAX.. FIRE.. CODE	AMOUNT TAXES REFUNDED	FIRE.. CODE	AMOUNT	TOTAL.. AMOUNT	REASON FOR REFUND
ANDERSON, DAVID E	875 99-05191	G01 F02	\$34.17		\$10.39	\$44.56	PROP DOES NOT EXIST-ABSORBED BY VARIOUS DEEDS
CUX, DOUGLAS LEE SR & WIFE	2979 02-01811	G01 F01	\$104.40		\$13.90	\$118.30	MH SET UP AS BUILDING ON LEASE D LAND ACCT 81492
KIRKLAND, SARA	76069 99-39473	G01	\$23.40		\$0.00	\$23.40	PROP IN FORECLOSURE STATUS SHOULD HAVE NO 90 BILL
LAKEPARK ASSOCIATION	75463 99-39022	G01 F02	\$152.42		\$23.65	\$176.07	DEED FOR PROP QUALIFIED IT AS EXEMPT (HOMEOWNERS ASSOCIATION)
LEWIS, JUBIE H	12914 07-01460	G01 F05	\$4.95		\$0.44	\$5.39	PROPERTY MAPPED WRONG-1.40 AC INSTEAD OF 1.75
MILLS, MARY G EST	25936 01-09157	G01 F07	\$163.86		\$23.40	\$207.26	UNDER REVIEW BY LRM AND APPRAISAL POSSIBLY MAPPED INCORRECTLY
MILLS, MARY B EST	25936 01-09157	G01 F07	\$153.59		\$23.40	\$217.29	UNDER REVIEW BY LRM AND APPRAISAL FOR INCORRECT MAPPING
MILLS, MARY B EST	25936 01-09157	G01 F07	\$203.20		\$27.56	\$232.56	HOUSE BELONGS ON PARCEL 01-09203
RABUN, AGNES M	19525 99-02644	G01	\$3.07		\$0.00	\$3.07	PROP TRANSFERRED BY BOUNDARY LINE AGREEMENT-TAXED UNDER 06-00351
WILINSKI, DANIEL	75191 99-38963	G01 F04	\$167.79		\$28.93	\$196.72	OWNER DID NOT HAVE MOBILE HOME JAN 1, 1985
WILINSKI, DANIEL	75191 99-38963	G01 F04	\$157.50		\$21.00	\$178.50	MOBILE HOME LISTED AND PAID ON PARCEL 99-38958
			\$1,830.65		\$173.47	\$1403.12	

11 ITEMS LISTED.

approved  
7-17-91  
ewc

15:53:14 10 JUL 1991

OWNERS NAME	ACCOUNT	PID	TAX CODE	FIRE CODE	AMOUNT TAXES REFUNDED	FIRE CODE AMOUNT	TOTAL AMOUNT	REASON FOR REFUND
EICHELL, ARTHUR L JR & WIFE	17817	01-03797	001	F08	\$0.00	\$48.07	\$48.07	HEATHERWOOD SUB WAS NOT IN FIR E DIST IN 1990
HAWKINS, H B	5133	04-00372	001	F02	\$75.60	\$10.00	\$85.60	VALUE CHANGE BY BOARD OF E AND R
MILLS, ULYSSES C JR MILLS, LINDA	25988	01-09205	001	F07	\$56.25	\$7.50	\$63.75	INCORRECT HOUSE ON PARCEL-HSE FROM 01-09157 BELONGS HERE
WELCH, JULE G & WIFE	24929	99-34011	001	F08	\$108.45	\$10.85	\$119.30	VALUE CHANGE BY BOARD OF E AND R
WILSON, CHARLES L WILSON, DEANE H	73883	99-02853	001		\$49.50	\$0.00	\$49.50	VALUE CHANGE BY NC DEPT REV ST ATE APPEAL
					\$289.80	\$76.50	\$366.30	

ITEMS LISTED

- ① 505 Glenhurst Dr. 28739
- ② P.O. Box 1915 28773
- ③ Rt. 5, Box 176B 28777
- ④ 343 Deane Lane Rd. Three Lake 28777
- ⑤ 42 Hunter's Lane 28739

Approved  
7-17-91  
awc