

MINUTES

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BOARD OF COUNTY COMMISSIONERS  
AUGUST 15, 1990

The Henderson County Board of Commissioners met for a regular meeting at 9:00 a.m. in the Commissioners' Conference Room of the County Office Building.

Those present were: Chairman William T. Drake, Vice-Chairman F. Richard Baker, Commissioner Hugh D. Randall, Commissioner Troy L. Maybin, Commissioner J. Michael Edney, County Administrator Jerry D. Myers, County Attorney Don H. Elkins, Finance Director David E. Nicholson, Clerk to the Board Elizabeth W. Corn, and the media.

Chairman Drake called the meeting to order.

MINUTES

There were no minutes for review today.

DISCUSSION/ADJUSTMENT OF AGENDA

There was none.

PUBLIC HEARING

Chairman Drake stated that the first item of business will be a public hearing on amendments to the Land Development Ordinance, the Family Subdivision definition.

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

Chairman Drake asked Matt Matteson, County Planner, to briefly review what the amendments for the Family Subdivision definition will be.

Mr. Matteson stated that the amendments based on the enabling legislation passed this session in the General Assembly, if adopted by this Board as proposed would allow a fifth exemption to the four existing statutory exemptions authorized by State Law. Mr. Matteson reviewed these exemptions.

Public Comment

Gary Corn- Mr. Corn is against the amendment and urges the Board to leave as is. He does not feel that the Family Subdivision should be exempt. He is a registered land surveyor in the State and is in private practice in Henderson County.

William Penny- Mr. Penny is also against the amendment.

August 15, 1990

2

Roberta Moore- Ms. Moore had a question - She lives in Mills River and has about 27 acres, will her property be grandfathered in? She is speaking about right-of-ways. She was told that she would need to discuss her individual situation with the Planning Dept.

David Malpass- Mr. Malpass is against the amendment.

Robert Hansen- Mr. Hansen asked if this Ordinance is tied to a minimum size parcel for construction purposes?

Chairman Drake stated that this is the Land Development Ordinance, not the Zoning Ordinance and does not affect any provision of the Zoning Ordinance that deals with square footage.

Frank Fitzsimmons- Mr. Fitzsimmons asked the Board to please remember the people who have been on property passed to them ancestrally, that wish to pass it on to their children and grandchildren. He requests that our citizens be able to continue to use their land freely and pass it down in the way they wish.

Commissioner Baker made the motion to close the Public Hearing. All voted in favor and the motion carried.

Chairman Drake commented on the process of dealing with a Land Development Ordinance or Subdivision Ordinance. The Board of Commissioners have been dealing with that subject for at least twelve (12) years. Every time that it was brought to the Planning Board and every time that it was discussed at County Commissioners Meetings there was also discussion as to how to deal with family subdivisions. Several years ago, in the early eighties, we had a proposed draft that the Planning Board and the Board of Commissioners worked on for many many hours and were stumped on how to get around the family subdivision. It was discussed at that time that there would have to be local legislation enacted by the General Assembly in order to empower the County Commissioners to handle family subdivisions in a different manner. When this existing Ordinance was in the drafting stages there was discussion about a local bill. We thought that we would try it without a local bill and see how the family subdivision provision worked and we received many complaints about it.

Chairman Drake stated that in recent meetings they decided that there was enough outcry from the general public to see if they could get a local bill passed and they did. The local bill enables the County Commissioners to add another definition to the exemptions that are provided in the General Statutes. This Board can act on it and remove the transfer of land between family members from the Land Development Ordinance. If there are problems, future Boards could put it back, it is not set in concrete.

August 15, 1990

3

There was much discussion.

Chairman Drake stated that the Board has met the provisions of the Land Development Ordinance for discussing amendments. There were several other amendments that were discussed after our last public hearing. This afternoon is a scheduled workshop to go over each of those amendments again. He stated that we will delay any other consideration until after the workshop.

#### UPDATE ON WATERSHED PROTECTION

Chairman Drake called on Matt Matteson to address this item.

Mr. Matteson reminded the Board that in 1987 the City of Hendersonville Water Dept. began discussing the possibility of Land-Of-Sky Council of Government preparing a Watershed Management Plan. About that time the State General Assembly began discussing regulations for the control of watersheds that supply water to cities or industries. Regulations have since been developed and Land-Of-Sky has prepared a Management Plan.

In October 1989, Mr. Tom Kilpatrick from the City and Bill Aiker from Land-Of-Sky presented to the Board the status of that Management Plan and mentioned that the State was considering these regulations, otherwise known as House Bill 156 which was ratified in June of 1989.

The State has been working on proposed regulations and they have a deadline of January 1991 to finalize these regulations on how the State, through the local governments, will regulate water supply watersheds in every county in North Carolina that have surface water supplies. House Bill 156 calls for mandatory statewide watershed protection requirements and these requirements will affect Henderson County, basically in one area, that is the Mills River Watershed which includes both the North and South forks of the Mills River.

The watershed classifications are WS-I, WS-II, WS-III, and WS-IV with WS-I being the most restrictive and WS-IV the least restrictive. In each of these classifications they have now subdivided into areas called the critical area which is about a mile from the intake and the rest is another area. Each of these areas have proposed requirements for density, storm water run off, and the number of dwelling units per acre.

Mr. Matteson said that we now have the January 1, 1991 deadline for the State to adopt the rules, a year from then they will classify the streams and six months from then local governments must implement a management plan to control land use in these watersheds. Mr. Matteson stated that the Public Hearing for these

August 15, 1990

4

comments is scheduled for August 22 at the University of North Carolina/Asheville at 7:00 p.m.

Chairman Drake asked how much input is being given from the landowners in the Mills River community? Mr. Matteson said that the first meeting to be able to sit down and talk about the types of uses in this district will be held on August 24. After this the different agencies will get together and begin to draft a management plan.

#### UPDATE ON MUD CREEK SEWER SYSTEM

Chairman Drake called on Bill Lapsley to address this item.

Bill Lapsley reminded the Board that at the last meeting they asked Mr. Erwin and himself to be prepared today to bring them up to date on the status of the Mud Creek South project, phase I in particular. Mr. Lapsley said that the design of phase I has been completed, that is the interceptor sewer line which includes the last major revision across one of the large parcels of land after discussing again with the property owner what he would accept. Mr. Lapsley has verbally talked with the property owner and the indications are that it will be acceptable but we do not have the signed right-of-way yet.

Mr. Lapsley said that he feels the Board has three major decisions to make now:

1. The first decision concerns the treatment of the wastewater that will be discharged into this system. The Board has two apparent options, to continue with the agreement between the city and the county or to go with a separate treatment plant.
2. Relates to a major sewer lift station, the location is pinned down and we need to negotiate with that property owner for the purchase of about a quarter acre of land.
3. Concerns the outstanding right-of-ways. There are quite a few parcels and some of these have not been signed. The Board needs to make a decision with regard to how to handle those outstanding right-of-ways.

Mr. Lapsley then called on Jim Erwin to discuss the outstanding right-of-ways.

Mr. Erwin stated that the status of the easements is basically as it was at the end of February when work was suspended on the project with one exception. During that time work has been done on a redesign. He feels quite confident that we will soon have seven easements signed for properties that are now in the refused category, if that takes place we would then have 16 unsigned easements. There are a couple of properties that have changed ownership and he plans to be in touch with the new owner to see if they are willing to sign easements. He plans to contact each property owner at least one more time to see if they have come to

August 15, 1990

5

the realization that a sewer line will make their property more valuable.

Mr. Erwin stated that there will be additional easements involved on properties between this treatment plant or pump station and the point of discharge. He has not contacted anyone on this subject since the final design has not been prepared yet on that. There are some unsigned release deeds.

Mr. Lapsley stated that a number of property owners have indicated a willingness to go along if a treatment plant is not constructed next to their property, that issue may be resolved by a lift station.

Mr. Lapsley stated that should the Board choose to continue to honor the agreement between the city and the county, we would then request the allocation as stated in the agreement for treatment capacity. If the city responds favorably and we get a letter of allocation, that would go with the plans to Raleigh. We have to assure the state that we have a place to discharge the wastewater. That does not eliminate from future consideration the county building its own treatment facility.

Chairman Drake stated that a meeting is needed between the County and the City to iron out differences and reach agreements. Both parties need a clear understanding of what the agreement says. The city changed their position on serving areas outside the city limits in 1987 or 1988, that was a situation that wasn't anticipated when this agreement was drawn. When the agreement was drawn the city's position was that it would not serve areas outside the city limits unless it annexed them. There is a provision in the agreement that deals with areas that are annexed whether they were built by Federal, State, local funds, or private funds. He said that the city's position in the last letter he has dealing with the subject indicates that the city feels that it can run sewer lines wherever it wants, in or out of the city limits. That needs to be clarified before we go on with the agreement and attempt to work in it. There need to be some definite provisions for treatment cost and for charging billing costs that both parties clearly understand and recognize as part of the agreement so that there is no misunderstanding.

Chairman Drake stated that in the last letter to the city we indicated that we had sent the one \$6,000 check that had not been cashed, and asked for a response from the city as to whether they thought the agreement was still in effect and if so then we would immediately proceed with bringing those payments up to date. Reading in the paper - it said the mayor was not going to respond with a letter. Some time between now and the 18 months hook-up there needs to be some agreements reached as to what the terms of the agreement say.

August 15, 1990

6

Chairman Drake stated that the Board has to make a decision as to whether they are going to attempt to work with the city, let Bill Lapsley contact them about the 150,000 gallon per day capacity or start designing our own plant. That will not slow down the work on the condemnations of the remaining easements. The Board will also need to authorize proceeding with the legal work to obtain the remaining easements.

Commissioner Baker made the motion to authorize the County Attorney to proceed with the necessary legal work to obtain the remaining easements on the first phase of the South Mud Creek project on or before September 1, 1990. All voted in favor and the motion carried.

Commissioner Edney made the motion to authorize contact with the city and authorize pursuance of purchasing the lift station property. All voted in favor and the motion carried.

#### CABLE T.V. SURVEY RESULTS

Chairman Drake recognized Jerry Myers to address this item.

Mr. Myers stated that the Cable T.V. Survey was conducted during the latter part of April and the first part of May 1990. He has reviewed these results completely with the staff at Multivision and Multivision conducted their own analysis of the survey, the two analyses compare very favorably.

Mr. Myers said as we begin the franchise renewal process during the latter part of this year, he thinks the results of this survey will provide some objective information concerning signal quality and customer satisfaction to assist us in the project.

The survey consisted of four basic sections:

1. General subscriber information.
2. Signal quality.
3. Customer service.
4. Programming information.

The questions from the first three sections are those which the county commissioners can legitimately consider during the franchise renewal process. In regard to programming information from section IV, the Board has no control over the programming offered by Multivision.

11,841 surveys were mailed to subscribers of which 5,745 were returned for a response rate of 48.5%. Over 75% of Multivisions subscribers are in the greater Hendersonville area. About 76% of subscribers take basic service only.

Section B dealt with signal quality and the respondents were asked to rank overall picture quality on a scale of 1 - 5 and 17% of those ranked overall picture quality as below mid range on that

August 15, 1990

7

scale. This would appear to be a fairly high percentage of subscribers that have problems with picture quality. Regarding sound quality, about 89% rated it as above mid range on a scale of 1 - 5. One fourth of the respondents rated overall reliability of the cable T.V. signal as below mid range. Over two thirds of the respondents indicated that they had contacted Multivision about service problems, 19% were about billing problems and 12% about other concerns. About 31% of the subscribers indicated that when they attempted to contact Multivision by phone the telephone was not answered promptly. About half of the subscribers, 53.9%, indicated a less than prompt response to telephone calls after hours. Once they got through 93% reported courteous treatment by Multivision staff on the phone and also when visiting the offices. 43.8% reported that their reception problems were not resolved promptly.

Chairman Drake stated that we will be having Public Hearings during the franchise renewal process.

#### RADON REPORT

Chairman Drake recognized Tom Johnson to address this item.

Mr. Johnson stated that in the spring they were asked by the County Administrator to take a look at the radon levels in the county office buildings. At the same time they had an opportunity offered through Western Carolina University to use one of their seniors and a fairly sophisticated instrument to measure radon levels on the spot. Mr. Johnson said that they contacted the schools and offered to check the radon levels in the school buildings when they checked the county office buildings.

Mr. Johnson informed the Board that radon is a colorless, odorless gas and exposure to high levels of this gas increase your risk of lung cancer. Radon gas is caused by the decomposition of uranium and some level of it is just about everywhere. The more rock you have in your ground structure, the higher the level of radon.

The study was conducted in May and June. The EPA has set a threshold level of 4 pc per liter as being the point at which you should be concerned about the radon level. Based on the study there were no county office buildings and no school buildings that had as much as 4 pc per liter in their air. 71 public buildings were checked, most of these buildings did not have basements.

Chairman Drake asked Mr. Johnson to check and see if the testing machine is available for us to use again, if so he requested that they retest.

August 15, 1990

8

HIGHWAY #74 Resolution

Chairman Drake recognized Bob Pond, a resident of Gerton, to address this item.

Mr. Pond is chairman of the Hickory Nut Gorge Highway Safety Committee, a committee that represents the concerned members of Hickory Nut Gorge, mainly the communities of Lake Lure, Chimney Rock, Bat Cave, and Gerton. The concern of these members is the continuing hazardous problem that exists on Hwy.#74 with the travel of 18 wheelers or tractor-trailers on that highway. There have been a number of collisions and/or near collisions.

They are requesting that the road be closed to 18 wheelers from Rutherfordton to Asheville. He presented a resolution to the Board on behalf of the Committee to close this section of highway.

N.C. Department of Transportation officials state that they have done all that they can do because of statutory regulations. They have made recommendations and/or suggestions to drivers of these vehicles and they have erected signs. They cannot, under statutory regulations, refuse 18 wheeler usage of Hwy.#74. The Committee would like to go to Raleigh and visit the legislative officials there who control these statutory regulations. They hope to bring about a revision in those regulations that would prohibit 18 wheelers from using the road or bring into consideration the safety merits.

Mr. Pond presented a video the Committee had created which represents the safety problem of 18 wheelers using Hwy.#74. All viewed the video tape.

Highway I-26 and Highway I-40 are acceptable alternate highways to Highway # 74 for traffic between Rutherfordton and Asheville. An alternate highway is supposed to be approximately the same distance between the two points that are being talked. The distance is 14 miles longer between Rutherfordton and Asheville but is 25 minutes shorter.

Mr. Pond said some of the drivers are sent this way by their dispatchers, some think it is a straight shot from Asheville to Charlotte, some drive the road because it looks like a pretty area of Western North Carolina. He stated that the N.C. Department of Transportation is going to change some of the signs but they can only make recommendations. Mr. Pond said there is a sign in Bat Cave that says "Use alternate route" but it does not suggest an alternate route. On the other end there is a big sign that says "Mountainous terrain, if you are going east use I-26, if you are going west use I-40".

August 15, 1990

9

Mr. Pond stated that some highways in other parts of the country are closed to certain tonnage and that is the only thing the statutory regulations address is tonnage or axle weight.

The Board all reviewed a proposed Resolution asking that Hwy. # 74 be closed to 18 wheeler traffic (except those making local deliveries) and that Hwy. U.S. 221/I.-40 and N.C. 108, now I-26 be designated truck routes between these two points. Chairman Drake stated that this would be a resolution by our Board and the Committee would present it to the State. Our Board would be showing support to the residents of the area and their efforts to make Hwy. #74 as safe as possible.

Chairman Drake requested changing the "Now therefore, be it resolved by" to read "The Henderson County Board of Commissioners supports the efforts of the Hickory Nut Gorge Highway Safety Committee in restricting tractor-trailer traffic on Hwy. #74".

Commissioner Baker made the motion to approve the resolution, subject to proper wording approved by our County Attorney, supporting this effort. A vote was taken and the motion carried as follows:

AYES: Chairman Drake  
Commissioner Baker  
Commissioner Randall  
Commissioner Edney  
NAYS: Commissioner Maybin

#### NOTIFICATION OF VACANCIES

Chairman Drake informed the Board of a vacancy on the Board of Adjustment.

#### NOMINATIONS

1. Chairman Drake asked for nominations for the one vacancy on the Land-Of-Sky Regional Council, Economic Development Interest. There were none and the item was rolled to the next meeting.

2. Chairman Drake asked for nominations for the one vacancy on the Land-Of-Sky Advisory Council on Aging. There were no nominations so the item was rolled to the next meeting.

3. Chairman Drake asked for nominations for the three vacancies on the Youth Development Committee. Commissioner Baker placed in nomination the names of Jane Apple and Dolly Ward to fill two of the three vacancies. Commissioner Maybin made the motion to suspend the rules and appoint these two ladies to the Youth Development Committee. All voted in favor and the motion carried.

4. Chairman Drake asked for nominations for the four vacancies on the Hendersonville City Zoning Board of Adjustment. This nominee must live within the one mile extraterritorial jurisdiction.

August 15, 1990

10

Commissioner Baker placed in nomination Argie Taylor, Elma McShane, Jack Frost, and Malcolm Allen as reappointments to this Board. Commissioner Edney made the motion to suspend the rules and reappoint these four to fill the vacancies on the City Zoning Board of Adjustment. All voted in favor and the motion carried.

5. Chairman Drake asked for nominations for the one vacancy on the Henderson County Zoning Board of Adjustment. He stated that Gwen Thornburg, an alternate member, has indicated her willingness to serve as a full member. Commissioner Edney placed in nomination Gwen Thornburg to fill this vacancy. There were no other nominations. Commissioner Baker made the motion to suspend the rules and appoint Ms. Thornburg to the County Zoning Board of Adjustment as a full member. She will fill the unexpired term until 12/31/91. All voted in favor and the motion carried.

6. Chairman Drake asked for nominations for the one vacancy on the Henderson County Planning Board. Commissioner Baker placed Don Adams in nomination for this vacancy. Commissioner Maybin asked that the vacancy be held until the next meeting.

7. Chairman Drake asked for nominations for the Land-Of-Sky Retired Senior Volunteer (RSVP) Program to fill one vacancy. There were no nominations so the item was rolled to the next meeting.

#### WORKSHOP-Land Development Ordinance and Zoning Amendments

Chairman Drake stated as a result of our last Public Hearing on the East Flat Rock Land Use Plan, we have a list of comments from the folks who spoke at the Public Hearing and they are each identified on the map.

Mr. Matteson then went down the list of property owners, told the Board of each one's request and showed the Board where the property was per map. There was a lot of discussion. There was discussion of frontage roads, the Planning Board did not recommend frontage roads.

There was much discussion on the Land Development Ordinance.

Chairman Drake asked Mr. Matteson to come back to the next meeting with a revised map per discussions today. He asked that the proposed corridor be defined on the new map with a corridor width of approx. 500 ft.

#### ZONING AMENDMENTS

Mr. Matteson reviewed all the proposed zoning recommendations with the Board.

The definition of yard sale was established to make yard sale a commercial use if it doesn't meet this definition. It reads yard

August 15, 1990

11

sales including garage sales, porch sales, carport sales, and estate auctions are informal sales held by occupants of private households at their dwelling premises. Items sold are household articles and clothing, used and accumulated over several years as part of everyday living. Minor, obsolete, or worn small business items may be included. Yard sales may be conducted no more than two times per day and to extend not more than six continuous days. Yard sales which continue over a longer period of time shall be considered as a commercial use. Yard sales are incidental use in all residential districts.

The Commissioners requested that this definition be changed to read that yard sales may be conducted no more than four times for a total of 12 days per year

Chairman Drake stated that we had reviewed all the proposed amendments to the Land Development Ordinance last meeting except for the Family Subdivision portion.

203.6 A new paragraph was added to read "For the purposes of this Ordinance a deed of trust shall not be considered a transfer or conveyance of real property".

Mr. Matteson went through the changes page by page with the Board.

There was very much discussion on the Zoning Ordinance and the amendments.

Mr. Baker felt that a separate Ordinance should be adopted for the division of family property and include in it that they can draw up a rough plat which they would present to the Planning Board to ensure that right-of-ways are included in their division. He requested that Mr. Elkins investigate the legality of adopting a separate Ordinance to cover these situations.

Commissioner Maybin made the motion to adopt the amendments to the Land Development Ordinance as presented, to include the Family Subdivision Definition. A vote was taken and the motion carried three to two as follows:

AYES: Commissioner Edney  
Commissioner Maybin  
Chairman Drake  
NAYS: Commissioner Baker  
Commissioner Randall

#### EXECUTIVE SESSION

Commissioner Baker made the motion for the Board to go into Executive Session to discuss legal and personnel items. All voted in favor and the motion carried. 5:00 p.m.

August 15, 1990

12

Commissioner Maybin 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, Chairman Drake adjourned the meeting.

ATTEST:

Elizabeth W. Corn  
Elizabeth W. Corn, Clerk

William T. Drake  
William T. Drake, Chairman