

**HENDERSON COUNTY  
SPECIAL CALLED  
PLANNING BOARD MEETING MINUTES  
June 2, 2005**

The Henderson County Planning Board met on June 2, 2005, for a Special Called meeting at 6:00 p.m. in the Board Room of the Board of Education Building, 414 4<sup>th</sup> Avenue West, Hendersonville, NC. The subject of the meeting was the proposed Flood Damage Prevention Ordinance. Board members present were Tedd Pearce, Chairman; Mike Cooper, Vice-Chairman; Tommy Laughter, Jonathan Parce, Renee Kumor, Gary Griffin, Paul Patterson, Mark Williams, and Stacy Rhodes. Others present included Karen C. Smith, Planning Director; Lori Sand, Planning Project Manager; Matt Card, Planner; Autumn Radcliff, Planner, Kathleen Scanlan, Secretary; C. Russell Burrell, County Attorney, Natalie Berry, Zoning Administrator; Toby Linville, Development and Enforcement Services Director; Rocky Hyder, Emergency Management Director; and Chuck McGrady, Commissioner and liaison to the Henderson County Planning Board. County Commissioner Larry Young was also in attendance.

Chairman Pearce called the meeting to order and asked Ms. Smith to review some of the changes that Board members found in the revised draft that Staff sent out.

Ms. Smith stated that the Board of Commissioners had a hearing on a draft Flood Damage Prevention Ordinance on May 2, 2005, and they had a number of comments, a list of which were provided to the Planning Board members. She said that based on those comments, the comments received at the last Planning Board meeting as well as other comments that have come into the Planning Department, Staff prepared a revised draft for the Planning Board's consideration.

Ms. Smith then reviewed revisions that were made to the draft Henderson County Flood Damage Prevention Ordinance, including:

Removing the 500-year floodplain from the Special Flood Hazard Area regulated by the Ordinance.

Reducing the freeboard from four feet to two feet. She said that FEMA just requires the base flood elevation but the State encourages a two-foot freeboard.

Text clarifications regarding the regulation of areas outside the Special Flood Hazard Areas that are found to be below the base flood elevation through engineering studies and additional mapping studies.

Replacing references to *flood prone areas* and *floodplains* with *Special Flood Hazard Areas*.

Revising permitted uses to read *Farming, including plastic culture and all other present-use practices*.

Adding airport hangars as a listed example of an accessory structure.

Clarifying fencing requirements to allow vertical or horizontal slats.

Ms. Smith said that notes in the margins show where these changes have occurred as well as changes that the County Attorney has made.

Chairman Pearce opened public input.

Marvin Owings, NC Cooperative Extension Service. Mr. Owings said that he is speaking on behalf of the commercial growers in Henderson County. He stated that some of the growers have been affected by some of the development that has gone on in the past with some flooding on their property and others are looking at their properties for future generations for development. Mr. Owings said that what most of the growers are looking at is the State Model ordinance, which is very similar to the Transylvania County model and the majority of the growers that he has spoke to would support that concept.

Leon Allison. Mr. Allison said that there are many things that need to be considered. He said that farming is one of the biggest industries in Henderson County and it would not be good if the County would permit them only to farm. He feels that if the County's draft ordinance is implemented, it will take away the property values of the farmers and a lot of the borrowing powers that they have. He feels that if this same concept were put in place in Charlotte, there would be no building from there to the coast. Mr. Allison said that Board members should keep the farmers in mind above all.

William Lapsley, Professional Engineer. Mr. Lapsley focused his concerns with the floodplain maps in relation to the Ordinance. He stated that he supports proper, sound floodplain management, but the basis for the Ordinance is the floodplain maps. He spoke on how the floodplain maps were developed. Mr. Lapsley stated that the Flood Insurance Study report that published in 1981 is the basis for the maps that are the backbone of the Ordinance. He stated that TVA, under the Federal Flood Disaster Protection Act of 1973, did this study. This report encouraged communities to investigate the existence and severity of flood hazards. He told the Board how the study was done and stated that TVA hired an engineering group to develop the best way they could, the flood maps. He said that they used standard engineering methods that were accepted at the time and information of historical record. The historical record consisted of flood elevation data that was recorded many years ago, but for most of the streams in our community and County there are no historical records on where that flood elevation is. He said that the engineers went to rainfall record data and, in most cases, the period of rainfall record data in Henderson County is very limited and has room for error. The next step was to try and determine what the development patterns would be in a particular watershed, but it was based on limited information. He said that the third key part is rainfall intensity and in using that rain gauge data, they tried to extrapolate it and try to make the best guess that they could as to what the rainfall intensity would be in a 100 or 500-year storm. He said that the database was very limited and so the extrapolate has a lot of room for error. He inferred to a page from the Flood Study that he had distributed and said it states, "the area between the floodway and the boundary of the 100-year flood is termed the floodway fringe." The floodway fringe thus encompasses the portion of the floodplain that could be completely obstructed without increasing the water-surface elevation of the 100-year flood more than 1.0 foot at any point. Typical relationships between the floodway and the floodway fringe and their significance to floodplain development are shown in the diagram in the study." Mr. Lapsley said that the engineers in this study that is the basis for the County's maps assumed that there would be encroachment in the flood fringe and that it would be filled. He said that is the difference between the floodway and the flood fringe. He said that the flood fringe can be filled and not have a significant impact on the flood elevation and that was built into the study. He feels that there has been a misconception

that you cannot touch anything in the floodway fringe, but the engineering study clearly shows that they weren't anticipating that.

Chairman Pearce asked Mr. Lapsley whether the maps that the County has are inadequate for the County to proceed? Mr. Lapsley said no, as they were the best that engineering judgment could do at that time and he doesn't feel that they could be improved a whole lot more if we were to do it at present with the same data. He said that when the State goes through to update the maps, they would have better data. He said that if the County is going to pass an Ordinance today, it is the best that we have and said that he did not have a problem with that. He added that what he has a problem with is the fact that the study clearly shows that it is based on data that has a lot of room for improvement but most importantly recognized that there will be some filling in the flood fringe and that would be anticipated. He feels that it should be allowed subject to the standard FEMA regulations that allow other communities to do that.

Chairman Pearce asked Staff whether the County has adequate provisions without it being onerous on the part of an individual, if someone has property that is shown as being in the floodplain, but engineering data isn't available to signify that there are not in the floodplain, how long is the process for the owner to be removed as far as the Henderson County's Ordinance is concerned? Ms. Smith said that there are processes to do that through FEMA and the County does have some provisions, but it is a FEMA application. She stated that the County has had some people do map amendments and most of them have been for single family residential, but she doesn't know how onerous they have been.

Jim Maher. Mr. Maher stated that he was at the meeting on behalf of the Chamber of Commerce as the Board Chairman. He stated that their Governmental Affairs Committee has met several times and reviewed the proposals before the Planning Board and has made some suggestions for consideration. He reviewed the proposals as follows:

1. The Chamber agrees with the need for a 100-year floodplain map as a basis for the County's Flood Protection Ordinance.
2. That the 100-year floodplain map identified by FEMA as the standard map is sufficient and is used by our surrounding counties.
3. Development should be allowed in the floodplain.
4. Developing property with a no-rise certificate indicating that the development will have no negative flood related impact on other properties should be permitted, as this is currently allowed by the City of Hendersonville Ordinance, but not in the County proposal.
5. The current ordinance permits wells in the floodplain and they should be allowed for agriculture purposes.
6. The Chamber feels that an Ordinance with minimum FEMA requirements should be passed and would allow the passing protective measures at present and continuing time to work on adjustments for a longer period of time with property owners involved. They feel that no additional regulations are required outside of the flood hazard area. A one-foot above base flood elevation should be sufficient rather than the proposal of two feet.

Jeanine Davis. Ms. Davis stated that she is a Henderson County landowner and a professor with NC State Department of Horticultural Science and works at the research station in Mills River. She said that her entire career has been making and keeping the

farming community profitable in North Carolina. She said that she runs the NC State specialty crops program and landed a grant to look at farmland preservation and new crop development. She urged the Board to look at all sides of this issue, as this will have far reaching impacts. She stated that although it affects farming, the County needs to look beyond farming and beyond the floodplain. She said that all of the development that is going on in this County – every parking lot, every building that is being put up, even areas that are not near the floodplain - is contributing to run-off and causes water to go places that it has never been before. She said that floodplains are here for a reason. She said that farmers should be compensated in some way if they are keeping their land as farmland and floodplains in order to provide protection to the rest of us. She urged the Board as a homeowner to give something that will allow us to protect the property we have now. She hopes that the Board will come up with something that is reasonable and fair to all of the residents and businesses in this County in the near future.

Jeff Young. Mr. Young said that the Ordinance still includes language that is more zoning type language than floodplain ordinance language. He said that floodplain ordinances should address how development will occur, not necessarily what type of development should occur. He said to determine the type of development that is the role of zoning. He said that the Floodplain Ordinance should be limited to the provisions, administration, standards and specifications for floodplain development. It is only one of several tools that is needed for floodplain management, others would include zoning, erosion control and stormwater management. Mr. Young said that he wouldn't consider for this Planning Board to recommend an ordinance that effectively zones 10,000 acres without an adequate study or proper public input. Mr. Young said that referring to Mr. Lapsley's diagram of the floodway and flood fringe areas, when the study was completed, FEMA basically ran two sets of numbers – one with an unimpeded floodway and the second with the encroachment areas filled and not accessible by flood waters and leaving the floodway open and leaving the surcharge tolerance to one foot or less. Mr. Young stated by doing so FEMA acknowledges that local jurisdictions need the ability to weigh competing interests for land uses in and around the floodplain and by doing that, they allowed local jurisdictions to not have to go through the engineering studies and the detail to determine what the impact of development in these fringe areas. He said that currently as the draft Ordinance is presented, recreational and agricultural uses that occur in this fringe area, even though outside of the floodway require a no-rise certificate, which is the same engineering study that was mentioned earlier and that is redundant. If you are looking at a large floodplain such as the French Broad, costs are certainly something to be expected. He said that not only FEMA recognizes and goes to the trouble of making provisions for allowing competing land uses, the State Model from the Division of Emergency Management does as well, even though our County's Ordinance is based heavily on the State Model, one thing was left off. At the beginning of the Ordinance, the State lists their objectives and one of the objectives that was not suitable for the County's Ordinance was regarding helping and maintaining a stable tax base by providing for the sound use and development of flood prone areas. He said that if something like the State Model was approved, allowed uses in the fringe areas would not need a no-rise certificate, but would simply need an elevation certificate and would not have the added cost of an engineering study where it has been done by FEMA in the past. He also discussed the process the County had when implementing the Watershed Ordinance. He said that he is asking the Planning Board and the Board of Commissioners to use the same judgment and allow for varying interests in and around these floodplains to address the property owners as been

done in the past, as recognized by the federal government and the development of these maps. It is also recognized by the State and the development of their ordinance, which they supply to jurisdictions to help give a foundation for their floodplain ordinance and we have seen it work in Henderson County. He feels that the State Model should be looked at.

Charles Jones. Mr. Jones stated that he is a farmer who has 100 acres on the French Broad River and was concerned that he, along with other nearby farmers, were not notified of this meeting or received any material dealing with this Ordinance when they will be affected by this Ordinance. He encouraged the County to send out some type of information.

Gaston Compano. He stated that he is the Chairman of the Partnership for Economic Development group of the Chamber of Commerce and reiterated that he supports the same viewpoints of the Chamber of Commerce as mentioned by Mr. Jim Maher.

Angela Beeker. Ms. Beeker stated that she is representing Mitch Gaither of Mountain Bean Growers, Inc., Darryl and Steve Fullam of Fullam Dairy and Fullam Creamery, Kenny Barnwell of KB Orchards and Ridgeview Apple Packers, Fred Pittillo of Turf Mountain Sod, Boyd Hyder, Ken and Vic Pryor of Clear Creek Farms, Ken Allison of Hillside Nursery, Bert Lemkes of Van Wingerden International, Marvin Lively of Lively Farms, Timmy Johnston, Bradley and Billy Johnston and Mary Louise Corn all of Tap Root Dairy and the Blue Ridge Apple Growers Association, representing 135 members. Ms. Beeker said that what the Ordinance is talking about involves approximately 11,000 acres in Henderson County that will be limited to allow virtually no development except for agriculture and recreational uses. She said that as you heard tonight this is something that is traditionally done through a careful and deliberative zoning process. She said that the Comprehensive Land Use Plan talks about community-based planning, studying the County in small areas, looking at the infrastructure, the topography and natural areas including floodplains and making the best land use decision after that careful and deliberative study. She said that this area is twice the size of the US 25 North Study area as that acreage was 5,500 acres and with this, we are talking almost twice that amount. Ms. Beeker said that this was on the table before the Board of Commissioners since March 23<sup>rd</sup>. She said that we are looking at a substantial impact which is the size of Hendersonville, Laurel Park and Flat Rock combined, so if you could imagine taking that much land area and using a “no build” approach, it will give you an idea of the impact that this decision is going to have in Henderson County. She said that the County’s Comprehensive Plan already has many things that have been put in it that are recommendations and actions that will cumulatively have a substantial impact to reduce flooding in Henderson County. The CCP takes those incentive-based approaches and regulatory-based approaches that will work together to reduce flooding. She said that she does not know if anyone has considered that cumulative impact before recommending something so severe as a no-build approach to the floodplain regulations. She said that we need a balanced approach and if everything is considered, in her opinion, taking a no-build approach is way more than is going to be necessary to achieve a balanced approach to managing floodplain acreage. Ms. Beeker discussed “use value” as it is the market value as the land is being used. If the land is being used agriculturally, then the value would be more than if it was not used as agriculture. This proposed Ordinance would be a conservation easement by regulation that will substantially devalue property and will kill the incentive-based approaches that are

typically used to preserve the floodplain. Usually you look at preserving open space in floodplains through voluntary incentive-based approaches – purchasing the land, conservation easements. She said that by this Ordinance you are removing one of the biggest incentives that someone has to give a conservation easement and that is a tax benefit. If the land is already valued, and is limited to agriculture uses, placing a conservation easement would be worth nothing. That property owner would have no tax incentive to donate any kind of conservation easement. She said something else to consider about a regulatory approach versus a voluntary approach is that regulations are only as good as the people that are elected and willing to continue with them and enforce them. If someone donates their conservation easement or one is purchased, they are permanent avenues to preserve floodplain. She feels that this issue needs to be studied more before going to a no-build approach. She mentioned that she has a draft ordinance for the Board's consideration and it is based on the State Model. She understands that some level of regulation will be necessary in the County eventually, and she and the group she represents are not opposed to arriving at an ordinance that is reasonable and balanced in light of the competing interests involved and the objectives to be achieved as long as it is arrived at using a collaborative, consensus building process with the community. She feels that the County needs to start with the Model, which would buy the County time to then study areas where a higher level of regulation may be needed, but she feels that study should occur through a collaborative, consensus-building process that involve the key stakeholders in this issue. She said she based this Ordinance on the Model and she went through to tailor it to making the Ordinance verbiage consistent with other County ordinances. She said that regarding the enforcement provision, she basically took what the County had done and the Model Ordinance and merged them together to something that would be workable. She added that she included a comparison table to show where it is similar or identical to the County's Ordinance versus the Model Ordinance. She said it does not contain any regulations for areas outside the special flood hazard areas. It does not contain no-rise certificates in the floodplain fringe, but it does prohibit new manufactured homes from going in, and does allow development in the floodplain. This would give the opportunity as the community-based studies are done to determine what types of uses should occur in the floodplain, for example in the US 25 North area. In the US 25 North Study, you recommended some areas that were in the floodplain as RC (Rural Conservation), which allows limited development in the floodplain. She said you take what has occurred in the US 25 North Zoning Study and overlay it with this Ordinance and that decision to zone that acreage becomes meaningless because it doesn't matter what RC allows or doesn't allow, as this proposed Ordinance will prohibit everything and therefore there are some conflicting actions that are occurring. She said the approach she is suggesting would allow consistent land use decisions to be made through a careful and very studied approach. Mark Williams asked her to point out the key issues of the suggested draft she presented. Ms. Beeker stated that the comparison table summarizes the County's draft versus the Model Ordinance. Mr. Williams said that in looking at the table, the key difference is that it does allow for some development to occur. Ms. Beeker said that in the floodplain it also allows, as per the Model Ordinance, development in the floodway if a no-rise certificate can be obtained in the floodway and is consistent with what the City of Hendersonville does. She added that the flood insurance study acknowledged that due to the scale and size of the drawings that there are areas within the floodplain boundaries that are above the flood base elevation. It says that in the study, but due to the scale, those areas are not shown. So what FEMA allows is for an owner whose land is naturally above that base flood elevation to apply for a letter of map

amendment. She said in order to do that, you need to provide detailed engineering studies that are necessary to do that and this is a very expensive and time consuming process and a lengthy process as well. Mr. Williams said that he feels that the Ordinance that Ms. Beeker is proposing is based largely on the State Model and is actually more stringent in the restrictions because it appears to incorporate a lot of what the County has already added some for clarification and maybe some more restrictive items. Ms. Beeker said that is a very fair statement. Regarding the development standards, those are primarily based on the State Model except for manufactured homes, as it does not allow for new manufactured homes to be placed or manufactured home parks that are in existence to be expanded.

William Patterson. Mr. Patterson stated that he feels that the County is moving too fast on this Ordinance. He feels that this Ordinance should be studied by a committee seriously before any type of approval affects the County. Mr. Patterson agrees that no one should be able to build in the floodway nor should anything be replaced that was in the floodway. He said that regarding the flood fringe, there should be some provisions to be able to fill in the flood fringe as he feels it would not affect anyone. He said that he agreed with a comment that was forwarded from a member of the Environmental Advisory Committee which states that *if the Commissioners want to enact a Flood Hazard Ordinance in order to qualify for FEMA Insurance, than the ordinance should be the least restrictive, as possible, on the individual property owners that it will affect.*"

John Fadok. Mr. Fadok stated that he is the owner and operator of the Hendersonville Airport. He stated that the airport provides an important public use transportation link for the county at no cost to the taxpayer. The airport pays full commercial taxes and fees and the tenants pay personal property taxes on millions of aircraft value. He said that the airport provides employment for five to ten people depending on the season. He mentioned that it is not necessary, economical or feasible to conduct any large scale filling on the airport property because the buildings are essentially flood proof by their nature and use. He said that the ability to move aircraft in and out of the hangar precludes the hangar floor elevation from being substantially above the surrounding terrain. He said that the property is located in a 100-year floodplain and realizes that flood insurance was not available to him and feels that it is not important to him. Mr. Fadok stated that he feels that the County should have a good flood ordinance, but the one that is proposed is very restrictive. He said that, in essence, what this ordinance would do would be to rezone the airport from a C-2 zoning district and render it as a grandfathered use and the value of it would be nil. He said that would be devastating to his retirement, the livelihood of his six employees and the 35-40 airplanes that are based around that area and also the hundreds of people that come in and out of this airport every month or so. He requests some type of exemption for the airport to allow its continued use as an airport.

Kenny Barnwell. Mr. Barnwell talked about the Emergency Watershed Program that has been in effect since October 2004, when it was announced that over 63 million dollars funding was available for work within the floodway to remove specifically debris from storm damage. At present this money will revert to the Federal Government on Sept. 1, 2005. He said had this issue been addressed aggressively, then a lot of these issues that we are dealing with now would have already been spoken to by removing that debris and by expanding the floodway a small amount you would decrease the floodplain a lot. He is concerned with regulating the floodplain without being able to draw a definite line of where

the floodplain is and there are people that will be affected that have no idea that they are in it. He feels that the County should have a long and careful process before implementing this Ordinance as it is approximately 5% of the unincorporated area that will be affected by this.

Ms. Smith said that regarding the City of Hendersonville's flood ordinance, in addition to it they also have requirements for floodplain management in their zoning ordinance that are a little more restrictive than what their standard flood ordinance would provide for. She said they do limit uses to some extent and do allow people who have their entire parcel in the floodway fringe or floodway to develop up to a certain percent of that parcel with a no-rise certificate, even if it is in the floodway fringe. She said they do limit uses similar to the County's list.

Ms. Kumor asked, "What part of the County Comprehensive Plan that was adopted gave some sort of passing nod to looking at some buy outs of some of these properties damaged due to floods instead of repairing the damages?" She also said if the County had any interest in a Clean Water Management Trust Fund program for buyouts? Mr. Hyder said that what Ms. Kumor might be referring to is the Hazard Mitigation Program that is managed by FEMA. He said they spent about three hundred million dollars on that program last year and they buy out repetitive loss properties that have been damaged more than once by flooding. They remove those properties out of the floodplain and restrict it to recreational use after that. The property belongs to the local government jurisdiction. Ms. Kumor asked, "Does the Clean Water Management Trust Fund allow you to buy out other than that?" Mr. Hyder said that the trust fund for the most part is very open and that money is very usable depending on the types of restrictions that are put on that grant, so it would allow for some use types like that. Chairman Pearce asked whether the County is exploring funds of this nature? Mr. Hyder said that the County can not participate in the Hazard Mitigation Program because we do not participate in the National Flood Insurance Program. Chairman Pearce asked, "What about the Clean Water Management Trust Fund?" Mr. Hyder said we can participate in the Clean Water Management Trust Fund. Mr. Hyder said that when we approach the State regarding those types of funds, they look at the ordinances that are in place in order to deal with issues like that and our inability to manage certain floodplain issues has cost us points in the rating system in the past. After some further discussion, Mr. Hyder said that with the new flood maps, if we continue to allow fill in the floodplain detailed engineering studies to develop a new base flood elevations will be needed and the County will be responsible for paying for those studies for all of the fill that has happened since the County was photographed in February. Chairman Pearce asked what Mr. Hyder feels about the no rise certifications? Mr. Hyder said he feels they have a value and that they are part of many minimum standards, but are a very important part of the Flood Damage Prevention Ordinance. He said that sometimes when you see where no rise certifications have been granted in certain areas you wonder about the actual impact. Chairman Pearce asked whether there was a way to make the process of certifying your property, once you become part of these FEMA programs, less expensive in terms of engineering fees? Mr. Hyder said that he was only familiar with the two FEMA methods, which is a letter of map amendment or the letter of map revision. Ms. Natalie Berry, Zoning Administrator and Floodplain Manager for the County, stated that there are different levels at which you can do a no rise. She demonstrated several scenarios on this matter. Mr. Patterson clarified that the no impact (no rise) deals with the floodway not the flood fringe. After some further



discussion on fees and other issues with the flood ordinance, Chairman Pearce asked Staff, "What do you consider to be the major differences between the Ordinance as presented to us (the most recent one) and the State Model?" Ms. Smith said the allowing of development in the 100-year. Mike Cooper reiterated that he is personally for the minimum at this point. He doesn't feel that the County should jump into something and write the most restrictive ordinance and so therefore he feels that a minimum ordinance is what we should pass and then work on items individually as the topics come up that need to be addressed and need to be further studied. He said that if the County needs an ordinance passed to join in the FEMA program and get flood insurance and not be exposed to disaster, then we need to start out with the minimum. He said that a lot smarter people have stated that if the floodplain was filled from one end to the other, the waters would not rise more than a foot. He said that if the Planning Board members think that the entire floodplain is going to be filled from one end of the County to the other, someone is going to need a lot of money to spend and he feels that he won't see it in the foreseeable future. He said that there is a lot of time to study this and make amendments to it in the years to come as opposed to jumping into it and making it so restrictive. Chairman Pearce said that he has seen some friends that have been affected because of poor planning in the floodplain. Chairman Pearce said that he is in favor of a no-rise (no-impact) affect where compensatory storage is allowed, which basically allows people to make general use of their property but does not adversely affect anyone else. He added that this is much bigger than the floodplain. There are stormwater management and water control issues that need to be more rapidly addressed than are presently in the plan. He said that as long as there are ways to provide for no-impact without going through expensive studies with FEMA, than we have limited most of our problems in that category. He said that the Board of Commissioners should consider and the Planning Board should recommend that they consider notifying the individual landowners whose property is being affected. Mr. Griffin asked, "Are we affecting the floodplain anytime we build in the County?" Chairman Pearce said that we are, and that this Flood Damage Prevention Ordinance is independent of those other ordinances mentioned. Mr. Cooper asked that if you fill the whole floodplain and it rises one foot, that is a no-rise? Paul Patterson said that is correct. Ms. Berry said that is not correct. She said a no-rise means it can't rise any at all, not even one-hundredth of an inch. Paul Patterson said she was saying that the no-rise is in the 100-year floodway. He said that Mr. Pearce is trying to apply that no-rise or no-impact across the whole floodplain. Ms. Berry said that if you use a no-rise across the floodplain, then a no-rise is what it implies, a no-rise and does not include that one-foot that has been mentioned. She added that you could build that into it and say that a no-rise for the flood fringe can not go over a foot and then you would not be affecting the floodway in any way. Mr. Cooper asked if that was the FEMA standard now? Ms. Berry said no and that it was zero rise and this is entirely different. Mr. Cooper asked whether FEMA allows it to rise a foot at present? Ms. Berry said no, they don't allow it to rise a foot over the base flood elevation, so when you hit the base flood elevation, there is no-rise period. She said that if the base flood is 2,000 feet you can not rise anything over that. She said that if you fill in the flood fringe, it won't take that base flood elevation and raise any at all, as they have a one-foot protection built in there. Paul Patterson asked, "Is there a no-rise or no-impact certificate in the flood fringe?" Ms. Berry said that if you put it in there it is. She said that the minimum standards now is that you do not need to. Mr. Lapsley said that he feels what the choice that the Planning Board and the Board of Commissioners have is whether you want to put in the Ordinance a stipulation that if you fill, if you allow development in the flood fringe of any kind, you have the option of requiring that a study be

done to determine what the level of rise would be to prove that it is not above the one-foot that is calculated in there. He said that the only thing he would add, the calculations that go in to determining that elevation that were done in 1981, and if you have to do that study on the French Broad River, where the drainage is 600 square miles, it is a very intensive and expensive engineering effort. If you do it on the upper reaches of Mud Creek near Camp Blue Star that has got 500 acres draining to it, the level of engineering effort is much less. He thinks what is imposed on people if they happen to own property in an area that is in the flood fringe and they will need to do a no-rise, the cost to do it in an area that has a large upstream watershed area is going to be extremely expensive and will put them in a much more disadvantageous position. Mr. Cooper asked, "As long as you are not filling in the floodway, just the flood fringes, the study is a little overboard?" Mr. Lapsley reiterated that when the study was done it was on the best data that they had and that will be updated and it may change the elevation, but we're not sure at this time. He said that in a large watershed that is contributing to it, it won't take much to make that elevation go up or down. He said that where the floodway has been defined, there is a lot of that 10,000 acres that hasn't been defined. He said that in those areas where there has not been a detailed study, they are considering that area as "high hazard area" so a study will need to be done. Mr. Patterson said, "Is it a reasonable assumption that filling in the flood fringe would not happen unless there is public sewer?" Mr. Lapsley said that was a fair statement as someone could fill in the flood fringe and get their elevation up so that it doesn't flood, but they wouldn't be able to put anything on it except a vacant parking lot because they would not be able to get a septic permit.

Mark Williams said that going back historically, in terms of choosing as a County not to participate in the flood insurance program, maybe the intent was good. He said that at present we are looking again at participating in the National Flood Insurance Program and in doing that we have to create an ordinance, but we are trying to use it as a tool that is really not intended for, which is more of a regulatory nature for issues which should be handled more, as been pointed out, through zoning and is trying to make more of it than what it is intended to do. He said why have flood insurance if we are not going to have development. He feels that we are skirting all around the issue of the program and trying to use it for something that is totally separate. Chairman Pearce said that any ordinance that has anything to do with land could also be indirectly considered a zoning ordinance. He feels that the first issue the County needs to look at is just being a part of FEMA but it has as much to do with disaster assistance in the rest of the County. We need to know whether it is important for the people of Henderson County to be eligible for disaster assistance from FEMA because it affects two things. One, our timing, and second, is it important to get it done now or should we wait for awhile longer until we get new maps. Mr. Williams said that it is pretty clear to be eligible for that funding we are forced to having an ordinance and that is what is driving the issue. Chairman Pearce asked the Board whether they consider it important enough to go forward now? All Board members feel that it should be implemented now and that the County really has no choice in the matter. Mr. Williams said that the Board has a choice in going with either Staff's Ordinance or the draft of the State Model that Ms. Beeker has presented. Chairman Pearce said that he doesn't feel anyone has really had time to review and study Ms. Beeker's draft ordinance. Mr. Williams said that he feels that if the Board needs to go forward with an Ordinance, and most people are in agreement with that. We need to go forward with a model that has been proven and tested and what has been accepted by our surrounding municipalities and move forward a step at a time. He added that he is referencing to go with the State Model. Mr. Hyder stated that he has always been a proponent of using the standard

ordinance in moving up, but in this case there may be some differences there because once you build under a minimum standard, you can not take that back. He said there are also some differences that will affect our customers if it is passed. If you have a one-foot freeboard, the cost for insurance for a home would be \$ 495.00, but if you have a two-foot freeboard, the annual cost for your flood insurance premium is reduced to \$ 318.00 and lesser cost down the line, so there are some impacts. He said we need to be cognizant of what surrounding municipalities have adopted because the County borders them and if we have an Ordinance that is not compatible or less stringent than theirs, it would cause problems for them.

Gary Griffin stated that he doesn't feel that the County should be any stricter than the City of Hendersonville in our ordinance. Mr. Hyder said that the point he wants to make is that if the County allows fill in areas that Hendersonville doesn't and they annex the area, the property is in violation of their Ordinance. He said with a more restrictive ordinance that won't allow that, if Hendersonville annexes the area, you can allow that now and it does not cause them near the problem. Mr. Patterson said that he had talked with Susan Frady, City Zoning Administrator, and she stated that any areas where they have filled massive amounts of fill outside of the City, for example near Cason's on Spartanburg Highway, would not be taken in by the City because if the City annexes them, they would have to do a detailed study.

Chairman Pearce said that his biggest problem with the State Model deals with the no impact part of the Ordinance. He feels that we need something that prevents people from hurting someone else. Mr. Patterson said that this is not a flood ordinance issue but a stormwater issue. There was some further discussion regarding this matter among Board members. Chairman Pearce said in order for him to vote for a less restrictive ordinance, somewhere along the line he needs to see how we can affect the fill situation in the Ordinance. He feels that by going with the State minimum we would open up motivation to do a lot more building and filling in the floodplain and in the flood fringe. Mr. Griffin said that in terms of the 11,000 acres, what percentage is in water? Mr. Patterson said that the driving force whether to fill or not is whether they have water and sewer facilities. Chairman Pearce reiterated that the County needs stormwater management, but to have a lesser ordinance would just open up "Pandora's box." Mr. Mark Williams said that we are discounting the minimum FEMA standards as being very lenient because it is not. Chairman Pearce said that he agrees with any type of standards but needs to consider any fill impact on someone else. Mr. Williams felt that this has been addressed in the State Model. Ms. Smith said that an engineer would need to address that better than Staff can.

Mr. Cooper said that he feels we are trying to analyze something that most of the members of the Board are not capable of determining. Mr. Patterson said that he recommends the minimum now as we can always go back and add something later when the new detailed maps are produced and then the County can also have a stormwater management ordinance in place as well. He added that right now, these maps do not have base flood elevations indicated. He said that what appears to be the bare-minimum ordinance is still pretty stringent as there are certain things that need to be done by the guidelines. Mr. Cooper asked how much does the City's Ordinance vary from the State Model? Mr. Patterson said that it varies little, but the City's zoning is different from the County's. Ms. Sand stated that the City's Zoning Ordinance specifically addresses the floodplain and says that you cannot build in the 100-year floodplain without a no-rise certificate and then

only on 10 percent or one-half acre, whichever is greater. Mr. Patterson asked whether that was floodplain or floodway? Ms. Sand said it was in the 100-year floodplain. Mr. Williams asked, "How does it compare in the floodway?" Ms. Smith said that in Fletcher's Flood Ordinance, it is allowed with a no-rise certification and in the 100-year floodplain it is allowed with an elevation/flood proofing certification.

Mark Williams made a motion to recommend to the Board of Commissioners that the County adopt the North Carolina Model and move forward with that for the time being until the County sees whether that will work and what the impact will be once the new maps are made and in the meantime, it will allow the County the opportunity to participate in the National Flood Insurance Program, which appears to be the primary objective and which is consistent with the surrounding municipalities and surrounding counties have in place at the present time, more so than what is currently proposed by Staff. Chairman Pearce asked whether Mr. Williams would consider withdrawing this motion or rephrasing it to an ordinance that is consistent with the City of Hendersonville's Ordinance? Mr. Williams said no, because he feels that the Board does not need to go that route. Chairman Pearce said how many times was it said at this meeting tonight that the County needs to be consistent with neighboring municipalities? Mr. Williams said that if you look at City of Hendersonville, you are looking at only one municipality. Chairman Pearce said that is the primary municipality that is adjacent to the County. Mr. Williams said that we should be looking at other counties such as Transylvania County, Polk County and see what other counties are doing. He added that those other counties have the benefit over our County because they have new maps and they have been participating. Mr. Williams also said that the County might not want to continue with the State Model, but there will be time to study the issue as we have more information available and then perhaps put more restrictions in place. Mike Cooper seconded the motion. Mr. Patterson said the reason why he does not want to go with the City of Hendersonville's Ordinance is because what Ms. Sand mentioned that you cannot build in the 100-year floodplain without a no-rise certificate and then only on 10 percent or one-half acre, whichever is greater. He said that there are a lot of lots out there in the County that you couldn't do anything on. In the City where there are smaller lots, they have the luxury of City water and sewer service so they can build with little impact and not need to worry about a septic system as they do in the County. Ms. Kumor said that she will vote against the motion because for the very reasons why Mark Williams and Paul Patterson are arguing that the County should be at the minimum and she feels the County should be adopting what Staff has recommended because the County does not have up-to-date maps and she feels that the County will not be able to pull-back if we need to when we have allowed a lot. She feels that it will be easier to allow less and release properties once we know exactly where the maps are and once we know what the impacts are. She said that we are talking about a limited amount of time – maybe 18 months – as it will allow the County to do all the things that the Planning Board would like to have happen, but hold to more restrictive measures so that nothing is done in haste that can not be undone. Mike Cooper said that on the other hand, as we get those new maps and if the areas rise in elevation, that doesn't mean that this Ordinance doesn't rise with it as whatever the new map shows is what you are going to be using as a guideline. Mark Williams, Mike Cooper, Paul Patterson, Jonathan Parce, Tommy Laughter, Gary Griffin and Stacy Rhodes voted in favor. Tedd Pearce and Renee Kumor opposed the motion. The motion carried 7 to 2.

Chairman Pearce made a motion that the Planning Board recommend to the Board of Commissioners that they look at speeding up the time table on stormwater management and water control issues and secondly, also recommend to the Board of Commissioners to consider notifying property owners whose land will be affected by the Flood Damage Prevention Ordinance. Renee Kumor seconded the motion. Mike Cooper said that when we do the stormwater management plan, he hopes that the Planning Board will have more adequate time to study it. All members voted in favor.

Adjournment. There being no further business, Chairman Pearce made a motion for the meeting to be adjourned. All members voted in favor. The meeting adjourned at 7:45 p.m.

---

Tedd M. Pearce, Chairman

---

Kathleen Scanlan, Secretary