

Approved 8/6/2010

Minutes of the Regular Meeting
of Monday, June 21, 2010

The Union County Board of Commissioners met in a regular meeting on Monday, June 21, 2010, at 7:00 p.m. in the Commissioners' Board Room, first floor, Union County Government Center, 500 North Main Street, Monroe, North Carolina. The following were

PRESENT: Chairwoman Kim Rogers, Vice Chairwoman Tracy Kuehler, Commissioner Allan Baucom, Commissioner A. Parker Mills, Jr., and Commissioner Lanny Openshaw

ABSENT: None

ALSO PRESENT: Al Greene, County Manager; Lynn G. West, Clerk to the Board of Commissioners, Jeff Crook, Senior Staff Attorney; Mark Kutny (Attorney with Law Firm of Hamilton, Moon, Stephens, Steele & Martin, PLLC); Kai Nelson, Finance Director; members of the press, and interested citizens

OPENING OF MEETING:

At approximately 7:05 p.m., Chairwoman Rogers convened the meeting and welcomed everyone present.

a. Invocation

Vice Chairwoman Kuehler offered the invocation.

Pledge of Allegiance

Chairwoman Rogers led the body in reciting the Pledge of Allegiance to the United States flag.

b. Featured Community Benefit Organization

Chairwoman Rogers introduced Melinda Plue, Executive Director of The Arc of Union County.

Ms. Plue stated that The Arc of Union County is one of the 18 United Way agencies in Union County, and this organization serves those who either themselves or family members have with developmental or intellectual disabilities. She shared a short video about the organization and its work in the community.

In response to a question by the Chairwoman about The Arc of Union County's greatest needs, Ms. Plue said that, obviously, its highest need is financial. She said that they want to implement a buddy program where volunteers aged 18 and older can become better acquainted on an individual basis with the Arc's clients and form a relationship with them by taking them to an activity once a month and inviting them into their homes. She stated that the Arc tries to make sure that its clients are a part of the community.

Ms. Plue stated that they have three major fundraisers per year: Casino night in February, an annual golf tournament in honor of Carroll Edwards, and a Poinsettia sale during the Christmas season.

INFORMAL COMMENTS:

Chairwoman Rogers stated that the speakers would be given three minutes in which to make their comments and explained the guidelines for informal comments.

Pinky Marsh, who resides at 1323 Landsford Road, Marshville, North Carolina, commented about the oil spill in the Gulf Coast. He referred to various matters in Union County as they relate to his personal claims against the County and also discussed the sale of the hospital and the ethics investigation.

Don Kerr, a resident of Marvin, spoke about the ethics investigation. He expressed his concerns about the County's leadership and the \$10,000 spent in legal fees on the ethics investigation. He stressed that not all people are corrupt.

Richard Alexander, who resides at 2811 Arrowhead Court, Monroe, North Carolina, commented regarding the ethics investigation.

Nancy Anderson, Mayor of the Town of Weddington, presented a resolution to the Board, as recorded below, which was adopted by Weddington's Town Council at its meeting of June 14, 2010. She provided a copy of the Resolution to the Board and stated that a signed copy would be provided on Tuesday. Mayor Anderson read the Resolution into the record.

**TOWN OF WEDDINGTON
RESOLUTION OPPOSING THE CONSTRUCTION OF A LIBRARY IN WAXHAW
AND REQUEST THAT THE UNION COUNTY BOARD OF COMMISSIONERS
LOCATE A LIBRARY IN THE WEDDINGTON, WESLEY CHAPEL
AND MARVIN AREA
R-2010-09**

WHEREAS, the Union County Library System's long range plan recognizes the value of regional libraries and calls for five regional libraries to be located strategically throughout Union County; and

WHEREAS, regional libraries are currently located in Monroe, Indian Trail, Marshville, and Waxhaw; and

WHEREAS, in addition to its current library, Waxhaw seeks a future South Western Regional Library despite its geographical location being somewhat distant from the heart of the region; and

WHEREAS, Weddington, is aware that the Union County Board of Commissioners is considering the construction of another library in Waxhaw; and

WHEREAS, approximately 78% of the population of Western Union County resides in the Weddington, Wesley Chapel and Marvin area while only 22% of the remaining population of Western Union County resides in the Waxhaw and Mineral Springs area; and

WHEREAS, Weddington, believes that the location of a library in the Waxhaw area will not serve the goal of the Union County Library System for the establishment of a regional library system and will not provide for convenience and access to all children and adults in the region,

NOW, THEREFORE BE IT RESOLVED that the Weddington Town Council opposes the construction of a 20,000 square foot library in Waxhaw and requests that the Union County Board of Commissioners strategically locate a regional library in the Weddington, Wesley Chapel and Marvin area, the area of western Union County where approximately 78% of the population resides.

Adopted this 14th day of June, 2010.

Nancy D. Anderson, Mayor

Attest:

Amy S. McCollum, Town Clerk

After reading the resolution, Mayor Anderson added that the real discussion was that the Council did not think there should be discussion about building a library anywhere in Union County given the current financial situation. She said that the fear was that a library would be built in Waxhaw leaving out 78 percent of the population in western Union County.

Donald Burroughs, who resides in Quellin Subdivision in Waxhaw, North Carolina, spoke regarding the Kensington Highway from the Waxhaw-Marvin intersection to Providence Road. He said that it was his understanding that GS Carolina was to have transferred ownership of the road to the State upon completion of the Quellin and Cureton Subdivisions. He stated that ownership of the road has not been transferred to the State, and it remains a private road. Mr. Burroughs said that there are areas of the road that need to be maintained, and with the State not owning the road, there is no one responsible for its maintenance. Secondly, he said there are school buses utilizing the road. He asked what venue could be used to force GS Carolinas to transfer ownership of the road to the State.

Chairwoman Rogers requested that Mr. Burroughs leave his contact information with Mrs. West, Clerk to the Board, so that Mr. Greene, the County Manager, could provide him with the name of the person he should contact.

Kevin Pressley, former Union County Commissioner, who resides in Hemby Bridge, North Carolina, addressed Agenda Item 10 regarding the Ethics Investigation. Mr. Pressley referred to the remarks made by him during the June 16, 2008, meeting regarding FBI interviews. He said that he stood firmly by his remarks during that meeting.

Mr. Pressley said that Mr. Cooney has conducted a professional investigation and during the course of the investigation, information containing other ethics violations came to light including conflicts of interest and perjury. He read the motion in connection with the ethics investigation that was passed by the Board on October 19, 2009. He agreed with the statements by then Vice Chair Rogers that if accusations of a possible ethics violations were brought forth against her, she would want to see a resolution of it because otherwise a stigma would be hanging over her head.

Mr. Pressley stated that if the ethics investigation was truly motivated by ethical reasons for the good of Union County, then the Board has no choice but to direct Mr. Cooney to continue his investigation of the new violations.

Andy Williams, who resides in Marshville, North Carolina, expressed condolences to the family of Johnny Jacumin. He said that Mr. Jacumn had served on the Governance Advisory Committee.

He expressed appreciation for having been appointed to the Governance Advisory Committee. He said that the presentation that will be made tonight on behalf of the Governance Advisory Committee is a good one. He added that on his behalf and that of other citizens of the eastern part of the County, they still wanted more districts.

Mr. Williams said that the Governance Advisory Committee spent countless hours on its efforts, and he hoped that whatever results from tonight's presentation and the Board's decision, it would be for the betterment of the County and its citizens. He said that he personally wanted there to be seven districts. He stated that his cohorts from eastern Union County would like to see at least five districts and two at large seats on the Board of Commissioners.

He encouraged residents to participate on County boards and committees. He said that there are a number of vacancies that need to be filled on these boards and committees.

Louis Philippi, a resident of Stallings, North Carolina, addressed the ethics investigation and the recent newspaper articles regarding hiring of a new Chief Financial Officer for the County.

Chairwoman Rogers announced that this concluded the informal comments.

ADDITIONS, DELETIONS, AND/OR ADOPTION OF THE AGENDA:

Commissioner Baucom called for a point of order stating that he believed Regular Agenda Item 10 – Presentation by James Cooney Regarding Ethics Investigation should be under the category of old business rather than new business. Further, he said this might also apply to Regular Agenda Item 9 – Presentation of Recommendations: Governance Committee.

Commissioner Openshaw requested to move Consent Agenda Items 3(a) and (b) – Union County Public Schools (UCPS) Wet Detention/Bio Retention Basin Easements from the Consent Agenda to the Regular Agenda.

Vice Chairwoman Kuehler stated that while she did not have a problem moving Items 9 and 10 on the Regular Agenda to old business, these items are new information and that is probably the reason they were included under new business. She noted that if these items were moved to old business, they would only advance by one position on the agenda.

Commissioner Mills suggested as a courtesy to the presenter, Mr. Cooney, of Item 10, and given the distance he has driven to attend the meeting, that this item be moved to Item 6 on the Regular Agenda.

Chairwoman Rogers called for a vote on moving Consent Agenda Items 3(a) and (b) to the regular agenda, which was unanimously approved.

She next called for a vote on Commissioner Mills' request to move Item 10 to Item 6, which failed by a vote of two to three. Commissioners Baucom and Mills voted in favor of the request, and Chairwoman Rogers, Vice Chairwoman Kuehler, and Commissioner Openshaw voted against the request.

With there being no further additions or deletions to the agenda, Vice Chairwoman Kuehler moved adoption of the agenda as amended. The motion passed by a vote of four to one. Chairwoman Rogers, Vice Chairwoman Kuehler, Commissioner Baucom, and Commissioner Openshaw voted in favor of the motion. Commissioner Mills voted against the motion.

CONSENT AGENDA:

Commissioner Mills moved approval of the items listed on the consent agenda as amended.

Commissioner Openshaw questioned where the Chair had assigned Item 3(a) and (b) from the Consent Agenda on the Regular Agenda. Chairwoman Rogers responded that this item would become Item 12b.

The motion passed unanimously.

Minutes: Approved the minutes of the special meeting of June 1, 2010; minutes of the regular meeting of May 17, 2010; and minutes of the regular meeting of June 7, 2010.

Contracts and/or Purchase Orders Over \$20,000: Authorized the County Manager to approve the following contracts and/or purchase orders pending adoption of the FY 2011 budget and legal review: (a) General Services: Contract Amendment #15 to Agreement with The Keith Corporation for Property Management Services (FY 2010-2011) extending the Agreement for an additional year through June 30, 2011 (Funding for these services, \$1,256,280, is included in the Manager's recommended budget for FY 2010-2011 and represents a decrease of \$34,416 or 2.7 percent from the FY 2010 adopted budget); (b) Social Services: Renewal of Software Support Agreement with Cox & Company for the period of July 1, 2010 through June 30, 2011; (c) Social Services: Renewal of agreement with Neighborhood Nurses to provide In-Home Services to eligible clients for the period of July 1, 2010, through June 30, 2011 [Total amount of contract is \$120,000 of which 90 percent (\$108,000) is state funding and 10 percent (\$12,000) is county funding]; (d) Public Works Department: Stormwater Management Study for Commercial Development in unincorporated areas: Task Order No. 1 with US Infrastructure of Carolina, Inc. in an amount not to exceed \$30,000; (e) Public Works: Memorandum of Understanding with South Carolina Department of Transportation for utility relocation of the County's 42-inch water main; and (f) Public Works: Task Order #5 with Olver Incorporated for Engineering Services in connection with 42-inch water main relocation along SC Highway 5, Lancaster County, South Carolina

Union County Public Schools (UCPS) Wet Detention/Bio Retention Basin Easements: a) Sun Valley Middle School (Wet Detention Pond); and b) Piedmont High School (Bio-Retention Basin) – *This item was moved from the Consent Agenda and placed as Item 12 b on the Regular Agenda at the request of Commissioner Openshaw.*

Centralina Council of Governments: Home and Community Care Block Grant (HCCBG) Funding Plan for FY 2011: Approved FY 2011 Home and Community Care Block Grant (HCCBG) Funding Plan and authorized the County Manager to approve a contract with Centralina Council of Governments, pending adoption of FY 2011 budget and legal review

Wesley Chapel/Weddington Athletic Association – Optimist Park: Budget Amendment #50: Adopted Budget Ordinance Amendment #50, which is recorded below:

| BUDGET AMENDMENT | | | | | | | |
|--------------------------------------|---|--------|--|--------------------------|---------------|--|--------|
| BUDGET | BOCC and Parks & Recreation | | | REQUESTED BY | Kai Nelson | | |
| FISCAL YEAR | FY2010 | | | DATE | June 21, 2010 | | |
| INCREASE | | | | DECREASE | | | |
| <u>Description</u> | | | | <u>Description</u> | | | |
| Board of County Commissioners | | | | | | | |
| Operating Expenses | | 10,000 | | General Fund Contingency | | | 26,500 |
| Parks and Recreation | | | | | | | |
| Operating Expenses | | 16,500 | | | | | |
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| Explanation: | Appropriate General Fund Contingency for expenditures related to agreement with the Town of Weddington in | | | | | | |

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|--|--|-------------|--------|--|--------|--------|
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| | | Total | 26,500 | | Total | 26,500 |
| | | | | | | |
| | | Prepared By | aar | | | |
| | | Posted By | | | | |
| | | Date | | | Number | 50 |

Amendment to 2010 Jail Medical Plan: Approved amendment to plan as submitted to reflect a change regarding non-prescription medications.

Tax Administrator: Approved the Eleventh Motor Vehicle Refund Register for the period of May 1, 2010 – May 31, 2010, in the net grand total of \$1,454.65-

Tax Administrator: Approved the Eleventh Motor Vehicle Release Register for the period of May 1, 2010 – May 31, 2010, in the net grand total of \$6,985.39-

Tax Administrator: Approved the Twelfth Motor Vehicle Billing in the grand total of \$993,948.69.

Tax Administrator: Approved Releases for May 2010 in the grand total of \$66,237.90, as recorded below:

| Acct # | Name | Release # | Totals |
|---------------|----------------------------------|------------------|-----------------|
| 2009 | | | |
| 50101784 | ZAXBY'S | 6452 | 548.63 |
| 50075069 | GOPHER HOLE SPORTS GRILL | 6453 | 1,118.90 |
| 50097256 | MAKSIMENKO YURIY P | 6454 | 54.33 |
| | RILEY ROBERT ALBERT JR & DEBRA | | |
| 50070077 | MCCOY | 6455 | 33.53 |
| 50101220 | STANTUS KYLE DBA SOUTHWESTERN CO | 6456 | 182.88 |

| | | | |
|-------------------------|---|------|------------------|
| 50094656 | AUTOBAHN COLLISION CENTER | 6457 | 451.11 |
| 50076943 | C & P SERVICES OF MONROE INC | 6458 | 13,943.13 |
| 06225057 | FIRETHORNE EAST LLC | 6462 | 998.79 |
| 06141001 | B & H HOLDINGS LLC | 6463 | 14,684.67 |
| 09143019A | GASKINS CECIL JR & JENNIFER SIMPSON J EARL & ALVIN L SIMPSON & MIKE SIMPSON | 6465 | 870.42 |
| 01192001 | MIKE SIMPSON | 6466 | 1,326.21 |
| 04036019 | MCCALL DWAYNE | 6469 | 299.91 |
| 04036019A | LITTLE VICKIE D | 6471 | 170.45 |
| 50072556 | ENVIRONMENTAL LEASING INC | 6473 | 1,931.08 |
| 50076669 | DEBOIS BRIAN D | 6474 | 31.24 |
| 01201013 | MCGINN ANGELL M | 6475 | 2,096.88 |
| 50046788 | INDUSTRIAL ALLOYS INC | 6477 | 2,201.85 |
| Totals- 2009 | | | 40,944.01 |
| 2008 | | | - |
| 50070077 | RILEY ROBERT ALBERT JR & DEBRA MCCOY | 6459 | 7.77 |
| 06141001 | B & H HOLDINGS LLC SIMPSON J EARL & ALVIN L SIMPSON & MIKE SIMPSON | 6464 | 14,684.67 |
| 01192001 | MIKE SIMPSON | 6467 | 1,326.21 |
| 04036019 | MCCALL DWAYNE | 6470 | 299.91 |
| 04036019A | LITTLE VICKIE D | 6472 | 170.45 |
| 01201013 | MCGINN ANGELL M | 6476 | 2,096.88 |
| 50046788 | INDUSTRIAL ALLOYS INC | 6478 | 2,222.96 |
| Totals- 2008 | | | 20,808.85 |
| 2007 | | | - |
| 50070077 | RILEY ROBERT ALBERT JR & DEBRA | 6460 | 11.04 |

| | | | |
|-------------------------|--|------|------------------|
| | MCCOY | | |
| 01192001 | SIMPSON J EARL & ALVIN L SIMPSON & MIKE SIMPSON | 6468 | 924.79 |
| 50046788 | INDUSTRIAL ALLOYS INC | 6479 | 1,727.56 |
| Totals- 2007 | | | 2,663.39 |
| 2006 | | | - |
| | RILEY ROBERT ALBERT JR & DEBRA | | |
| 50070077 | MCCOY | 6461 | 10.19 |
| 50046788 | INDUSTRIAL ALLOYS INC | 6480 | 998.08 |
| Totals- 2006 | | | 1,008.27 |
| 2005 | | | - |
| 50046788 | INDUSTRIAL ALLOYS INC | 6481 | 813.38 |
| Totals- 2005 | | | 813.38 |
| GRAND TOTALS | | | 66,237.90 |

Tax Administrator: Approved the departmental monthly report for May 2010

Information Only – No Action Required: Included in the agenda package for information purposes only with no action required was the Personnel Monthly Report for May 2010

PUBLIC INFORMATION OFFICER’S COMMENTS:

Brett Vines, Public Information Officer, commented regarding the following:

1. Filing for the Board of Education begins June 25th at noon and ends July 30th at noon. The filing fee is \$27, and there are open seats for Districts 3, 4, and 6 and one at-large seat. This is a non-partisan office.

2. Filing for seats for Soil and Water Supervisor began June 14th and ends July 2nd at noon. The filing fee for this office is five dollars. There are two seats open and this is a non-partisan office.
3. The Carolina Thread Trail will be conducting listening sessions on the following dates:
 - a. July 19 from 6:00 p.m. – 8:00 p.m. at the Weddington Swim and Racquet Club (4315 Matthews-Weddington Road)
 - b. July 20 from 6:00 p.m. – 8:00 p.m. at the Museum of the Waxhaws (8215 Waxhaw Highway)
 - c. July 21 from 5:00 p.m – 7:00 p.m. at the Union West Regional Library (123 Unionville-Indian Trail Road)
 - d. July 22 from 6:00 p.m. – 8:00 p.m. at the Union County Ag Center (3230-D Presson Road)
4. The State of North Carolina is following closely the oil spill in the Gulf. The Department of Crime Control and Public Safety has set up a website at www.nccrimecontrol.org.
5. The following Union County Government closings will occur in observance of the July 4th holiday:
 - a. Union County offices closed July 5th
 - b. Libraries will be closed on July 4th and July 5th
 - c. Animal shelter will be closed July 3 – July 5
 - d. Cane Creek Park will be open July 4 and July 5 with extended hours from 7:00 a.m. – 7:00 p.m. Jesse Helms Park and Fred Kirby Park will be closed July 1 – July 7. Due to the expected high traffic in Cane Creek Park's Day Use Area on July 4 and July 5, reservations for shelters and reservable picnic sites are highly recommended.
 - e. The Board of County Commissioners will not be meeting on July 6; the next meeting will be Monday, July 19 at 7:00 p.m.

AMENDED AND RESTATED BUDGET ORDINANCE FOR FY 2009-2010:

Kai Nelson, Finance Director, explained that this is an annual reflection of all the changes made to the budget during the course of the fiscal year which capsulizes the year-end budget for the external auditors.. He noted that the proposed amended and restated budget ordinance is consistent with the year-end estimate provided to the Board as a part of the budget book.

Following the explanation, Vice Chairwoman Kuehler moved adoption of the Amended and Restated Budget Ordinance for FY 2009-2010, as recorded below. The motion passed unanimously.

SECTION I. GENERAL FUND

- A. The following amounts are hereby appropriated in the GENERAL FUND for the operation of the county government and its activities for the fiscal year beginning July 1, 2009 and ending June 30, 2010 in accordance with the chart of accounts heretofore established for this county.

General Government:

| | | |
|---------------------------|-----------|------------|
| Board of Commissioners | 456,365 | |
| Central Administration | 888,534 | |
| County Dues & Memberships | 97,773 | |
| Internal Audit | 98,776 | |
| Legal | 328,185 | |
| Personnel | 706,248 | |
| Finance | 856,033 | |
| Tax Administration | 3,598,144 | |
| Court Facilities | 1,923,035 | |
| Elections | 1,028,578 | |
| Register of Deeds | 1,045,823 | |
| Information Technology | 1,743,920 | |
| General Services | 345,000 | 13,116,414 |

| | | |
|---|------------|------------|
| Public Safety: | | |
| Law Enforcement | 19,676,000 | |
| Communications | 4,010,504 | |
| Homeland Security | 195,255 | |
| Fire Services | 1,649,470 | |
| Inspections | 1,743,800 | |
| Outside Agencies | 3,081,540 | 30,356,569 |
| Economic & Physical Development: | | |
| Planning | 512,337 | |
| Economic Development | 1,917,687 | |
| Cooperative Extension | 1,104,747 | |
| Soil Conservation | 79,478 | |
| Outside Agency | 77,248 | 3,691,497 |
| Human Services: | | |
| Public Health | 9,124,252 | |
| Social Services | 26,643,028 | |
| Transportation and Nutrition | 1,545,065 | |
| Veterans' Services | 279,261 | |
| Outside Agencies | 2,891,973 | 40,483,579 |
| Education: | | |
| School Current Expense (See Section VIII. D.) | 79,504,155 | |
| School CE-Occupancy Costs | 203,478 | |

| | | |
|--|-------------|--------------------|
| School Capital Outlay (See Section VIII. A., B., & C.) | - | |
| Pay-Go & Bond Savings | 4,344,169 | - |
| Bond Savings | (2,000,000) | 2,344,169 |
| School Debt Service | | 48,887,704 |
| School Debt Service – Refunding | | 41,998,293 |
| Community College | | - |
| Debt Service | | 351,604 |
| Operations | | 1,100,000 |
| Outside Agency | | 2,250 |
| Cultural and Recreational: | | 174,391,653 |
| Library | | 4,242,180 |
| Parks & Recreation | | 1,731,351 |
| Outside Agencies | | 74,308 |
| Capital Reserve Contribution | | 6,047,839 |
| | | 9,243,248 |
| Contingency/Nondepartmental | | 444,564 |
| | | <u>444,564</u> |
| | | <u>277,775,363</u> |

Continued on next page.

Amended and Restated Budget Ordinance

Fiscal Year 2009-2010

Union County, NC

- B.** It is estimated that the following revenues will be available in the GENERAL FUND for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

| | |
|---------------------------|---------------------------|
| Ad Valorem Taxes | 151,542,026 |
| Local Option Sales Tax | 28,478,556 |
| Other Taxes | 1,416,000 |
| Intergovernmental | 31,047,529 |
| Functional Revenues | 6,762,637 |
| Miscellaneous | 5,216,528 |
| Debt Proceeds - Refunding | 42,040,683 |
| Fund Balance Appropriated | <u>11,271,404</u> |
| | <u><u>277,775,363</u></u> |

SECTION II. FIRE TAX DISTRICTS

- A.** The following amounts are hereby appropriated in the various FIRE TAX DISTRICT FUNDS for the operation of fire protection services for the fiscal year beginning July 1, 2009 and ending June 30, 2010 with the chart of accounts heretofore established for this county.

| | |
|--------------|-------------------------|
| Hemby Bridge | <u><u>1,130,500</u></u> |
|--------------|-------------------------|

- B.** It is estimated that the following revenues will be available in the FIRE TAX DISTRICT FUNDS for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

| | |
|------------------------|-------------------------|
| Ad Valorem Taxes | 1,017,768 |
| Local Option Sales Tax | <u>112,732</u> |
| | <u><u>1,130,500</u></u> |

| | | | |
|---------------|------------------|---------------------------|------------------|
| Springs | <u>327,115</u> | Ad Valorem Taxes | 314,698 |
| | | Local Option Sales Tax | 750 |
| | | Fund Balance Appropriated | <u>11,667</u> |
| | | | <u>327,115</u> |
| | | | |
| Stallings | <u>985,224</u> | Ad Valorem Taxes | 833,747 |
| | | Local Option Sales Tax | <u>151,477</u> |
| | | | <u>985,224</u> |
| | | | |
| Waxhaw | <u>588,926</u> | Ad Valorem Taxes | 400,094 |
| | | Local Option Sales Tax | 78,832 |
| | | Fund Balance Appropriated | <u>110,000</u> |
| | | | <u>588,926</u> |
| | | | |
| Wesley Chapel | <u>1,184,552</u> | Ad Valorem Taxes | 999,596 |
| | | Local Option Sales Tax | <u>184,956</u> |
| | | | <u>1,184,552</u> |

SECTION III. FEE SUPPORTED FIRE DISTRICTS

A. The following amounts are hereby appropriated in the FEE SUPPORTED FIRE DISTRICTS FUND for the operation of fire protection services for the fiscal year beginning July 1, 2009 and ending June 30, 2010 with the chart of accounts heretofore established for this county.

B. It is estimated that the following revenues will be available in the FEE SUPPORTED FIRE DISTRICTS FUND for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

| | | | |
|----------------|------------------|-----------|-----------|
| Public Safety: | <u>1,163,710</u> | Fire Fees | 1,160,610 |
|----------------|------------------|-----------|-----------|

| | |
|---------------------------|------------------|
| Fund Balance Appropriated | 3,100 |
| | <u>1,163,710</u> |

Continued on next page.

Fiscal Year 2009-2010

**Amended and Restated Budget
Ordinance**

Union County, NC

SECTION IV. EMERGENCY TELEPHONE SYSTEM

A. The following amounts are hereby appropriated in the EMERGENCY TELEPHONE SYSTEM FUND for the emergency 911 services for the fiscal year beginning July 1, 2009 and ending June 30, 2010 with the chart of accounts heretofore established for this county.

| | |
|---------------|------------------|
| Public Safety | <u>1,247,762</u> |
|---------------|------------------|

B. It is estimated that the following revenues will be available in the EMERGENCY TELEPHONE SYSTEM FUND for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

| | |
|---------------------------|------------------|
| Service Charges | 1,244,465 |
| Fund Balance Appropriated | <u>3,297</u> |
| | <u>1,247,762</u> |

SECTION V. WATER AND SEWER

A. The following amounts are hereby appropriated in the WATER AND SEWER FUND for the operation of water and sewer services for the fiscal year beginning July 1, 2009 and ending June 30, 2010

B. It is estimated that the following revenues will be available in the WATER AND SEWER FUND for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

with the chart of accounts heretofore established for this county.

| | |
|---------------|-------------------|
| Water & Sewer | <u>27,685,988</u> |
|---------------|-------------------|

| | |
|---------------------------|-------------------|
| Fees for Services | 25,921,376 |
| Miscellaneous | 1,689,620 |
| Fund Balance Appropriated | <u>74,992</u> |
| | <u>27,685,988</u> |

SECTION VI. SOLID WASTE

A. The following amounts are hereby appropriated in the SOLID WASTE FUND for the operation of solid waste services for the fiscal year beginning July 1, 2009 and ending June 30, 2010 with the chart of accounts heretofore established for this county.

B. It is estimated that the following revenues will be available in the SOLID WASTE FUND for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

| | |
|-------------|------------------|
| Solid Waste | <u>5,133,707</u> |
|-------------|------------------|

| | |
|-------------------------------|------------------|
| Fees for Services | 4,667,040 |
| Intergovernmental | 10,000 |
| Miscellaneous | 65,000 |
| IFT from Solid Waste Reserves | 391,120 |
| Fund Balance Appropriated | <u>547</u> |
| | <u>5,133,707</u> |

SECTION VII. STORMWATER

A. The following amounts are hereby appropriated in the STORMWATER FUND for the operation of stormwater services for the fiscal year beginning July 1, 2009 and ending June 30, 2010 with the chart of accounts heretofore established for this county.

B. It is estimated that the following revenues will be available in the STORMWATER FUND for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

| | | | |
|------------|----------------|-------------------------------|----------------|
| Stormwater | <u>305,681</u> | Transfer from Enterprise Fund | 284,797 |
| | | Fund Balance Appropriated | <u>20,884</u> |
| | | | <u>305,681</u> |

Continued on next page.

Amended and Restated Budget Ordinance

Fiscal Year 2009-2010

Union County, NC

SECTION VIII. SCHOOL BOND FUND-55 CAPITAL PROJECT ORDINANCE FUND

- A.** The following amounts are hereby amending the appropriation in the SCHOOL BOND FUND-55 (Capital Project Ordinance Fund) for education capital projects within the chart of accounts heretofore established for this county. Capital expenditures allocated to SCHOOL BOND FUND-55 are limited to Category I and III projects identified in the County's approved 2010-2014 UCPS Capital Improvement Plan.
- B.** It is estimated that the following revenues will be available in the SCHOOL BOND FUND-55 (Capital Project Ordinance Fund). SCHOOL BOND FUND-55 revenues are limited to bond funded CIP project savings which accrue only to funded and bid construction projects.

| | | | |
|------------------|------------------|---------------|------------------|
| Capital Projects | <u>2,000,000</u> | Debt Proceeds | <u>2,000,000</u> |
|------------------|------------------|---------------|------------------|

- B.** The appropriations identified as Section I A. General Fund - School Capital in the amount of \$4,344,169 shall be allocated to UCPS based on 115C-429(b) Category I (projects) and Category II (entire category) and Category III (entire category). The School Capital Categories I, II and III shall be based on the County's approved 2010-2014 UCPS Capital Improvement Plan. Additionally, Category I and Category II capital outlay appropriations provided by the County and reflected in the UCPS capital outlay fund pursuant to 115C-426 that are not capitalized pursuant to governmental generally accepted accounting principles will be charged to School Current Expense with a budget transfer from School Capital Outlay. Union County Finance Director is hereby provided the authority to make said budget transfers.

SECTION IX. SOLID WASTE CAPITAL FUND

- A.** The following amounts are hereby appropriated in the SOLID WASTE CAPITAL FUND, a capital reserve fund, for the fiscal year beginning July 1, 2009 and ending June 30, 2010 with the chart of accounts heretofore established for this county.
- B.** It is estimated that the following revenues will be available in the SOLID WASTE CAPITAL FUND for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

Transfer to:
Solid Waste Fund 473,600

Fund Balance Appropriated 473,600

SECTION X. DEBT SERVICE FUND

- A.** The following amounts are hereby appropriated in the DEBT SERVICE FUND, a debt service reserve fund, for the fiscal year beginning July 1, 2009 and ending June 30, 2010 with the chart of accounts heretofore established for this county.
- B.** It is estimated that the following revenues will be available in the DEBT SERVICE FUND for the fiscal year beginning July 1, 2009 and ending June 30, 2010.

Transfer to:
School Bond Fund-55 Capital
Project Ordinance Fund 11,847,132

Fund Balance Appropriated 11,847,132

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- SECTION XI.** **A.** GENERAL FUND: That there is hereby levied for the fiscal year beginning July 1, 2009, and ending June 30, 2010, the following county-wide rate of tax on each one hundred dollars (\$100) valuation of taxable property situated in the County, as listed for taxes as of January 1, 2009, for the purpose of raising the revenue from current year's taxes, as set forth in the foregoing county-wide estimates of revenue, and in order to finance the foregoing county-wide appropriations:

General Fund - County-wide Rate .6650

- B.** SPECIAL DISTRICTS: That there is hereby levied for the fiscal year beginning July 1, 2009, and ending June 30, 2010, the following Special District tax rate on each one hundred dollars (\$100) valuation of estimated taxable property situated in each Special District, as listed for taxes as of January 1, 2009, for the purpose of raising the revenue from current year's taxes, as set out in the foregoing District estimates of revenue, and in order to finance the foregoing District appropriations:

| | | | |
|--|----------------------------------|---|----------------------------------|
| Hemby Bridge Fire Protection District | <u> .0493 </u> | Wesley Chapel Fire Protection District | <u> .0191 </u> |
| Springs Fire Protection District | <u> .0306 </u> | Waxhaw Fire Protection District | <u> .0248 </u> |
| Stallings Fire Protection District | <u> .0406 </u> | | |

Amended and Restated Budget Ordinance

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SECTION XII. FIRE FEES

These fees will be collected by the County Tax Administrator's Office and remitted to the various fee supported fire districts by the Finance Department on a monthly basis. Remittances may not exceed the budgeted amount for any given department. In the event that revenues exceed expenditures, those funds shall be withheld and used in the next year's budget appropriation as a fund balance added to the appropriation from fees collected in that year. The fees are as follows:

| FIRE FEES 2009-2010 | | Allens | | | | | | |
|-----------------------------------|-----------------------|-------------|--------|-------------|----------|---------------|---------|-------------|
| | | Cross-Roads | Bakers | Beaver Lane | Fairview | Griffith Road | Jackson | Lanes Creek |
| Percentage per request or maximum | | 100.00% | 80.42% | 100.00% | 90.62% | 100.00% | 100.00% | 100.00% |
| Single Family Dwelling (SFD) | (max fee of \$50) | 50.00 | 40.21 | 50.00 | 45.31 | 50.00 | 50.00 | 50.00 |
| Unimproved Land-per acre | | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 |
| | -minimum (10% of fee) | 5.00 | 4.02 | 5.00 | 4.53 | 5.00 | 5.00 | 5.00 |
| Animal/Horticulture | (20% of fee) | 10.00 | 8.04 | 10.00 | 9.06 | 10.00 | 10.00 | 10.00 |
| Commercial < or = 5000 sq ft | (100% of fee) | 50.00 | 40.21 | 50.00 | 45.31 | 50.00 | 50.00 | 50.00 |
| Commercial > 5000 sq ft | (200% of fee) | 100.00 | 80.42 | 100.00 | 90.62 | 100.00 | 100.00 | 100.00 |
| Mobile Home | (same as SFD) | 50.00 | 40.21 | 50.00 | 45.31 | 50.00 | 50.00 | 50.00 |
| Duplex | (same as SFD) | 50.00 | 40.21 | 50.00 | 45.31 | 50.00 | 50.00 | 50.00 |
| Triplex | (150% of fee) | 75.00 | 60.32 | 75.00 | 67.97 | 75.00 | 75.00 | 75.00 |
| Other Family Dwellings | (200% of fee) | 100.00 | 80.42 | 100.00 | 90.62 | 100.00 | 100.00 | 100.00 |
| Cultural Facilities | (same as SFD) | 50.00 | 40.21 | 50.00 | 45.31 | 50.00 | 50.00 | 50.00 |
| Educational Facilities | (same as SFD) | 50.00 | 40.21 | 50.00 | 45.31 | 50.00 | 50.00 | 50.00 |
| Governmental Facilities | (same as SFD) | 50.00 | 40.21 | 50.00 | 45.31 | 50.00 | 50.00 | 50.00 |
| Religious Facilities | (same as SFD) | | | | | | | 50.00 |

| | | | | | | | | |
|------------------------------------|----------------|--------------|---------------|--------------|---------------|------------------|---------------|----------------|
| | | 50.00 | 40.21 | 50.00 | 45.31 | 50.00 | 50.00 | |
| Fire Protection Facilities | (same as SFD) | 50.00 | 40.21 | 50.00 | 45.31 | 50.00 | 50.00 | 50.00 |
| % of Legislated maximum of \$50.00 | | 100.00% | 80.42% | 100.00% | 90.62% | 100.00% | 100.00% | 100.00% |
| | | | | | | | | |
| | | <u>New</u> | <u>Provi-</u> | <u>Sandy</u> | <u>Stacks</u> | | <u>Union-</u> | |
| | | <u>Salem</u> | <u>dence</u> | <u>Ridge</u> | <u>Road</u> | <u>Stallings</u> | <u>ville</u> | <u>Wingate</u> |
| Percentage per request or maximum | | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% | 87.46% | 100.00% |
| Single Family Dwelling (SFD) | (max fee \$50) | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 43.73 | 50.00 |
| Unimproved Land-per acre | | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 | 0.02 |
| -minimum | (10% of fee) | 5.00 | 5.00 | 5.00 | 5.00 | 5.00 | 4.37 | 5.00 |
| Animal/Horticulture | (20% of fee) | 10.00 | 10.00 | 10.00 | 10.00 | 10.00 | 8.75 | 10.00 |
| Commercial < or = 5000 sq ft | (100% of fee) | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 43.73 | 50.00 |
| Commercial > 5000 sq ft | (200% of fee) | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 87.46 | 100.00 |
| Mobile Home | (same as SFD) | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 43.73 | 50.00 |
| Duplex | (same as SFD) | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 43.73 | 50.00 |
| Triplex | (150% of fee) | 75.00 | 75.00 | 75.00 | 75.00 | 75.00 | 65.60 | 75.00 |
| Other Family Dwellings | (200% of fee) | 100.00 | 100.00 | 100.00 | 100.00 | 100.00 | 87.46 | 100.00 |
| Cultural Facilities | (same as SFD) | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 43.73 | 50.00 |
| Educational Facilities | (same as SFD) | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 43.73 | 50.00 |
| Governmental Facilities | (same as SFD) | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 43.73 | 50.00 |
| Religious Facilities | (same as SFD) | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 43.73 | 50.00 |
| Fire Protection Facilities | (same as SFD) | 50.00 | 50.00 | 50.00 | 50.00 | 50.00 | 43.73 | 50.00 |
| % of Legislated maximum of \$50.00 | | 100.00% | 100.00% | 100.00% | 100.00% | 100.00% | 87.46% | 100.00% |

Continued on next
page.

Fiscal Year 2009-2010

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SECTION XIII. WATER AND SEWER RATES

A. One-time Charges for New Service:

| | <u>Meter Size</u> | <u>Capacity Ratio to 3/4 inch</u> | <u>Water User Fees</u> | <u>Sewer User Fees</u> |
|--------------------------------|-----------------------|---|--------------------------------|--------------------------------|
| Capacity Fee - charged for all | 3/4" | 1.00 | \$ 500 | \$ 2,650 |
| new service (based on | 1" | 2.52 | 1,250 | 6,675 |
| meter size): | 1.5" | 5.01 | 2,500 | 13,275 |
| | 2" | 8.01 | 4,000 | 21,225 |
| | 3" | 22.54 | | |

| | | | | |
|-----------------------------|----------------------|-------|--------|---------|
| | | | 11,250 | 59,725 |
| | 4" | 50.09 | 25,050 | 132,725 |
| | 6" | 70.12 | 35,050 | 185,825 |
| | | | \$ | |
| Water Tap Fee - charged for | 3/4" | | 400 | |
| county provided taps | 1" | | 525 | |
| (based on meter size): | 1.5" | | 2,600 | |
| | > 1.5" | | | |
| | meter | | | Cost |
| | Line Size | | | |
| | <hr/> | | | |
| Sewer Tap Fee - charged for | 4" | | | \$ |
| | | | | 630 |
| county provided taps | 6" | | | 825 |
| (based on line size): | > 6" line | | | Cost |

B. Monthly Service Charges:

| | Meter Size | Capacity Ratio to 3/4 inch | Water User Fees | Sewer User Fees |
|------------------------------|-----------------------|---|--------------------------------|--------------------------------|
| | <hr/> | <hr/> | <hr/> | <hr/> |
| Base Facility Charge - fixed | 3/4" | 1.00 | \$ 5.00 | \$ 9.25 |
| amount (based on meter | 1" | 2.52 | 12.60 | 23.31 |
| size): | 1.5" | 5.01 | 25.05 | 46.34 |
| | 2" | 8.01 | 40.05 | 74.09 |
| | 3" | 22.54 | 112.70 | 208.50 |
| | 4" | 50.09 | 250.45 | 463.33 |

6" 70.12 350.60 648.61

Monthly Volume (Usage) Charge, Non Residential Customers - per 1,000 gallons (monthly metered water usage): \$ 2.45 * \$ 3.30 **

* Monthly Volume (Usage) Charge, Residential 3/4" and Irrigation Meters - per 1,000 gallons (monthly metered water usage, rates are based on the stage of water restrictions in force):

| Monthly Gallons Billed | Stage I No Water Restrictions | Stage II Water Restrictions | Stage III Water Restrictions | Stage IV Water Restrictions |
|------------------------|-------------------------------|-----------------------------|------------------------------|-----------------------------|
| | \$ | \$ | \$ | \$ |
| 0 - 3,000 | 2.10 | 2.10 | 2.10 | 2.10 |
| 3,001 - 8,000 | 2.45 | 2.45 | 2.45 | 2.45 |
| 8,001 -10,000 | 3.45 | 3.45 | 3.45 | 3.45 |
| 10,001 -15,000 | 5.45 | 8.18 | 13.63 | 19.08 |
| Over 15,000 | 9.45 | 14.18 | 23.63 | 33.08 |

** A year round sewer billing cap is applicable to all metered water consumption over 12,000 gallons per month for residential customers using 3/4" meter.

C. Payment Distribution:

Payments will be applied first to late charges or fees, then to sewer charges, and then to water charges.

Continued on next page.

SECTION XIV. SEVERABILITY

- A. If any clause, phrase, sentence, paragraph, appropriation, or section of this Ordinance shall be held invalid, it shall not affect the validity of this Ordinance or the remaining phrases, clauses, sentences, paragraphs, appropriations, or sections.

This Amended and Restated Budget Ordinance is adopted on June 21, 2010.

**BOARD OF
COMMISSIONERS
UNION COUNTY, NORTH CAROLINA**

By: _____
CHAIRMAN

FY 2011 BUDGET ORDINANCE:

Kai Nelson, Finance Director, stated that Al Greene, County Manager, presented the FY 2011 recommended budget to the Board on May 28, 2010. He stated that the recommended budget includes approximately \$5.9 million in lottery proceeds. He explained that this estimate is based on the Governor's budget submitted earlier this year. He further explained that after the development of the recommended budget by staff, the Senate came out with its version of the lottery proceeds, which changed the statutory formula relative to the distribution of the lottery proceeds to a per pupil basis statewide. He stated that the impact of that action is roughly one million dollars. Further, he said that the House budget came out several weeks later, which proposed to take \$1.5 million from the County's lottery proceeds.

Mr. Nelson stated that both the House and the Senate have appointed their conferees in connection with the budget. He said that it appears that legislators might be considering substantially more cuts in the lottery than either the House or Senate version. He

stated that the General Assembly is not debating the Governor's version currently, but is debating a proposal that may be less than either the House or Senate's version.

Mr. Nelson explained the Board's authority to adopt an interim budget as described in the North Carolina General Statutes. He reviewed the provisions relative to an interim budget: the purposes of paying salaries, debt service, and usual ordinary expenses for the interval between the beginning of the budget year and the adoption of the budget ordinance. Additionally, he said that the School of Government in its text repeats the statutory language and discusses that it is not necessary to have the revenue side of the ledger and that the Board can adopt interim appropriations for some of the units and a partial budget ordinance for the other units. He stated that there is additional guidance from the Local Government Commission which also repeats the statutory language which specifically addresses program expansions. Mr. Nelson said that it is clear in the statutes that new programs and new initiatives are not part of an interim budget.

He explained that the proposed interim budget ordinance does not contain capital outlay and provides for expenditures for one month. He said that hopefully sometime during the month of July, the General Assembly will conclude its budget process and provide clarity on a very significant portion of the County's budget.

Mr. Greene noted that there are two items potentially that will need to be addressed between now and the time a final budget is adopted.

In regards to the first issue, Mr. Greene stated that he had a good meeting last week with Crystal Crump, Register of Deeds, regarding position reductions in the Register of Deeds' Office. He explained that there is an employee in that office who would be eligible for retirement in four months but had planned to continue to work beyond that point in time. He said that Mrs. Crump has had discussions with that employee and if funding can be provided for four months until she reaches retirement, she may be willing to take retirement at that point in time; and, in that scenario, the Register of Deeds would eliminate two positions at the time of the adoption of the final budget. He said that he had told Mrs. Crump that he would mention this approach to the Board, and barring any objections from the Board, the final budget would be drafted to include the salary for that one position for four months until that retirement could occur.

Secondly, Mr. Greene informed the Board that he had received a request from the schools today for capital funding to be included in the interim budget. He said that staff had heard late last week about the schools' concern that there was no capital appropriation in the interim budget. He said they had spoken with Dr. Davis and told him about staff's concerns about having capital

funding included in an interim budget and that they would be happy to work with Dr. Davis and his staff to identify what the needs might be. He said that it was communicated to Dr. Davis that the needs would have to be for basic usual and customary capital appropriations. He provided the Board with a list of the capital budget requirements for the Facilities and Technology Services Departments within the Building Operations Division.

He stated that after reviewing the list, staff was uncomfortable with some of the recommended capital expenditures that the schools wanted included in the interim budget, but staff has not had an opportunity to meet with Dr. Davis and his staff to review the list in detail and to understand the nature of the projects and whether or not they would meet the guidance of the School of Government or the Local Government Commission.

Mr. Greene shared that he had spoken with Dr. Davis late this afternoon and expressed concern with the list and also offered to meet with him and his staff to determine what would be appropriate for inclusion in the interim budget; and, if necessary, he would recommend that the interim budget be amended. He said if that occurred, it might possibly require a special meeting next week. He stated that there may be other ways to accomplish what the schools want to accomplish, and staff would like to talk with the schools about what those alternatives might be. He cited some of the possible alternatives.

Mr. Nelson pointed out that the list from the schools appears in two groups. The first group described by Mr. Nelson was deferred maintenance totaling \$1.275 million. He said that it is generally the County staff's view that these are replacement assets, whether maintenance or capital outlay, and are always a subject of continuing discussion with the school system. He stated that capital outlay items have long useful lives. Mr. Nelson said that in connection with those particular items, the schools can be accommodated in connection with their \$1.275 million request by taking that amount from current bond savings.

He stated that monies would be appropriated in the Capital Project Ordinance and that money would be available for the schools to proceed with the listed projects. Mr. Nelson said that he thought it was important to note that in connection with the \$1.5 million technology request, which is the second aspect, staff's understanding is that part of that request was to expand current offerings. Also, he noted that the \$1.5 million technology request represents 100 percent of the schools' technology request for the new year.

Mr. Nelson also addressed the pending legislation regarding E-911 funds. He said that the challenge has been over the years that the eligible expenses have included a very limited finite list of items. He stated that there is pending legislation that has developed from a House subcommittee that would expand the list of eligible items. He said that the expanded eligibility will be

helpful, but at this particular time, staff is trying to determine what items are included in the general fund that could be shifted to the E-911 fund in terms of expanded uses. Mr. Nelson further explained that the other provision of that legislation allows taking the fund balance in the E-911 fund and carve out 50 percent of that amount one time which would permit the use of that fund for any public safety purposes. He said that this legislation, like the lottery legislation, has not passed, and has really not been included for the purposes of the interim budget.

Chairwoman Rogers commented regarding an interim budget. She stated that the Manager's recommended budget was what the public hearing was about, and there have been no negative comments about it. She said that there has been no press or exposure about an interim budget. She stated that the schools have to buy buses, and they have to do that through the summer months and questioned if an interim budget were adopted, would the schools be able to purchase the buses. She said they also need the technology purchases. She noted that her point was that the schools have a finite period of time in which they can make their purchases, and questioned if the schools' ability to make those purchases would be hurt if an interim budget were adopted.

The Chairwoman said that, as the school liaison, she notified the schools last week about the possibility of an interim budget and the concern about the statute that Mr. Crook mentioned that once the school gets their budget, it does not have to give it back unless they want to or prevailing economic conditions can be shown. She said that she has had a conversation with Dr. Davis, Superintendent of the Union County Public Schools, and Dean Arp, Superintendent of the Board of Education, and both Dr. Davis and Mr. Arp have assured her that the schools have been a team player and will continue to be a team player, and if the lottery proceeds are not received as projected, they will sit down with the Board of Commissioners and work it out. She stated that she thought the Board should move forward under that premise.

Commissioner Mills said that Dan Karpinski, School Finance Officer, came by to see him on Thursday and presented a problem about capital outlay not being included in the interim budget. He stated that he had called Al Greene, County Manager, and he was not aware of the conversations with the schools. He said that they had been working to resolve this problem and the Manager would have been blindsided tonight had he not contacted him concerning the problem about the schools' capital expenditures. He said that he too hates to pass an interim budget, but the Board has not answered all the questions that need to be answered which are mainly related to fire services.

Chairwoman Rogers stated that she took offense to Commissioner Mills' comments. She said that at the Board's budget meeting when an interim budget was mentioned, she had expressed to both Mr. Nelson and Mr. Greene that she did not approve of an

interim budget, that it was fiscally irresponsible, and it would keep people hanging. She said that she had invited Mr. Nelson to provide her with any further documentation or support to try and change her mind.

She mentioned that there may also be an issue because G.S. 115C-429 requires that the Board of County Commissioners “shall complete its action on the school budget on or before July 1 or such later date as may be agreeable to the Board of Education.” She said that she knew the Board of Education had not agreed to an extension beyond July 1.

Mr. Nelson clarified that on the list of projects provided by the Board of Education, buses were not included on that list as an emergency purchase.

After continued dialogue regarding funding of the schools’ capital outlay, Commissioner Baucom said that he must disagree with the Chairwoman regarding an interim budget. He stated that he thought it was the Board’s fiduciary responsibility to consider an interim budget because if there is a \$4 million reduction because of the lottery proceeds, where would the money come from and how would the Board deal with those reductions. He suggested that the Board adopt an interim budget and once the State has adopted its budget, there would be absolutes at that point.

Following his comments, Commissioner Baucom moved adoption of an Interim Budget Ordinance.

Union County, North Carolina
Interim Budget Ordinance

BE IT ORDAINED by the Board of Commissioners of Carolina County, North Carolina, that pursuant to G.S. 159-16:

Section 1: The following amounts are hereby appropriated in the General Fund for the usual, ordinary expenses of the county government and its activities for the month of July, 2010 in accordance with the chart of accounts heretofore established for Union County:

| | |
|-----------------------------------|-------------|
| General government | \$1,004,443 |
| Public safety | 2,555,394 |
| Economic and physical development | 285,051 |
| Human services | 3,215,607 |

| | |
|-----------------------------|----------------------|
| Education | 6,734,992 |
| Cultural and recreational | 492,518 |
| Contingency/Nondepartmental | <u>59,450</u> |
| Total appropriations | <u>\$ 14,347,455</u> |

Section 2. The following amounts are hereby appropriated in the Fire and Fee District Funds for the usual, ordinary expenses of fire protection services for the month of July, 2010 in accordance with the chart of accounts heretofore established for Union County:

| | |
|----------------------|-------------------|
| Hemby Bridge | \$ 94,208 |
| Springs | 27,218 |
| Stallings | 80,638 |
| Waxhaw | 48,702 |
| Wesley Chapel | 102,313 |
| Fee Supported | <u>105,696</u> |
| Total appropriations | <u>\$ 458,775</u> |

Section 3. The following amounts are hereby appropriated in the Emergency Telephone System Fund for the usual, ordinary expenses of providing enhanced emergency telephone services during the month of July, 2010 in accordance with the chart of accounts heretofore established for Union County:

| | |
|---------------------------------|------------------|
| Emergency Telephone System Fund | <u>\$ 62,033</u> |
|---------------------------------|------------------|

Section 4. The following amounts are hereby appropriated in the Water and Sewer Fund for the usual, ordinary expenses of providing utility services during the month of July, 2010 in accordance with the chart of accounts heretofore established for Union County:

| | |
|----------------------|---------------------|
| Water and Sewer Fund | <u>\$ 2,098,005</u> |
|----------------------|---------------------|

Section 5. The following amounts are hereby appropriated in the Solid Waste Fund for the usual, ordinary expenses of providing solid waste management services during the month of July, 2010 in accordance with the chart of accounts heretofore established for Union County:

Solid Waste Fund \$ 362,408

Section 6. The following amounts are hereby appropriated in the Stormwater Fund for the usual, ordinary expenses of providing stormwater services during the month of July, 2010 in accordance with the chart of accounts heretofore established for Union County:

Stormwater Fund \$ 23,889

Section 7. The Budget Officer is hereby authorized to transfer appropriations as contained herein pursuant to the Resolution Governing Certain Contract, Personnel, and Fiscal Matters adopted June 20, 2005.

Adopted this 21st day of June, 2010.

BOARD OF COMMISSIONERS
UNION COUNTY, NORTH CAROLINA

By: _____
Chairwoman

Vice Chairwoman Kuehler added that she had the same concerns about adopting an interim budget as Chairwoman Rogers. She said that the County faced the same situation last year and the County deals with these situations every year.

Mr. Nelson said that he thought the \$1.275 million which was included on the first page of the schools Local Capital Budget Requirements would be a problem.

Commissioner Mills offered a friendly amendment to the motion to adopt an Interim Budget Ordinance which includes \$1.275 million for facility department projects and the funds for school buses.

Chairwoman Rogers repeated the motion as follows to adopt an Interim Budget Ordinance which includes \$1.275 million for facility department projects for the schools. She questioned what the remainder of the amendment was, and Commissioner Mills stated that was the amendment.

Mr. Nelson clarified that the schools had provided a list of funding they needed for the month July, and school buses were not included. He said that the request is \$1.275 million which can be satisfied with a separate appropriation from bond savings. He stated that he thought the issue was the \$1.505 million for technology funding which represents 100 percent of their technology request for the year.

Commissioner Mills said that Mr. Arp was very adamant that the schools needed to order the school buses. Mr. Nelson stated that the \$1.1 million for school buses has been reduced to \$602,000.

Commissioner Mills modified his amendment to the motion to read as follows: adopt an interim budget which includes \$1.275 million for facility department projects and \$602,000 for buses.

Chairwoman Rogers repeated the amendment, and Commissioner Mills verified that the amendment had been stated correctly by the Chairwoman.

Commissioner Openshaw stated that his concern is there is no one present tonight to comment from the schools and while the schools have indicated that the County could work on the schools' budget through Chairwoman Rogers and Commissioner Mills, he wanted a public acknowledgement of it. He suggested that the Board of Commissioners hold a work session to determine real numbers for the schools. Further, he said that he was very concerned about continuing cuts. He said that he understood Chairwoman Rogers' and Vice Chairwoman Kuehler's points about adopting an interim budget.

Commissioner Openshaw offered an alternative motion that the Board of Commissioners conduct a work session with the schools as soon as possible during the week following July 4th and that the Board include this matter on the agenda at its next regularly scheduled meeting. He said that he had wanted to adopt the budget and had looked forward to adopting a no tax increase budget for

the second year in a row, but he was afraid he would have to position himself on the side of caution. He said that he was very concerned about the future.

Mr. Nelson said that the Board could adopt an interim budget tonight and then hold a work session the week following July 4th and amend the interim budget.

Commissioner Openshaw said that he has supported the schools over the years and would like to hear a worse case scenario from the schools. He said that times are going to be tough, and he was unsure that all the schools' technology requests could be met. He stated that he would like to hear ideas from the schools on where cuts could come if there are three or four million in shortfalls due to the lottery proceeds.

Chairwoman Rogers questioned whether Commissioner Openshaw's amendment was to postpone action on the budget to a certain time. Commissioner Openshaw said that if Commissioner Mills' comments were correct that the Board must either adopt an interim budget or adopt a budget now unless the Board was to have another meeting between now and then, he would incorporate his amendment into Commissioner Baucom's motion in terms of holding a work session during the week following July 4th.

Commissioner Baucom accepted the friendly amendment to his motion.

Chairwoman Rogers stated that one issue she thought should be addressed before the Board adopts an interim budget is G.S. 115C-429. She said that she did not know where an interim budget falls in with this statute versus a budget. She stated that Mr. Crook had mentioned earlier that he has not had a chance to review that statute.

Commissioner Baucom asked if it is found that there is a challenge with that statute, then there would be an interim budget, and the Board could address that challenge. Mr. Crook reminded that the Board was talking about a very short period of time. He said that he thought the Finance Director has determined that the tax levy must be done by August 1, so the Board is looking at 30 extra days. He said that staff could give the Board an interpretation on that statutory provision.

Chairwoman Rogers asked Mr. Crook if he could provide a legal opinion regarding the statute prior to June 30, which Mr. Crook agreed he could do. Chairwoman Rogers requested that if Mr. Crook finds anything in the statutes requiring that a full budget must be adopted by July 1, that he notify the Board about his findings.

Commissioner Openshaw requested further clarification about prevailing economic conditions and whether there is any case law regarding this issue.

Chairwoman Rogers repeated the motion as follows: Motion was made by Commissioner Baucom to adopt the interim budget and he accepted the friendly amendments to allow for \$1.275 million for facility department projects and \$602,000 for buses for the schools, scheduling a work session during the first week of July, a determination of potential conflict with G.S. 115C-429 by Mr. Crook prior to June 30, and additional clarification regarding the term prevailing economic conditions.

Commissioner Baucom suggested including the words “if appropriate” or “if available” to holding a work session, because the motion is saying that a work session is an absolute, and it involves an entity that is not present tonight.

At the suggestion of Commissioner Baucom, Chairwoman Rogers added to the motion the following wording: schedule a work session during the first week of July with Union County Public Schools if they are available.

With there being no further discussion, Chairwoman Rogers called for a vote on the motion with all amendments. The motion as amended passed by a vote of three to two. Commissioners Baucom, Mills, and Openshaw voted in favor of the amended motion. Chairwoman Rogers and Vice Chairwoman Kuehler voted against the amended motion.

At approximately 9:00 p.m. Chairwoman Rogers called for a five-minute recess. The meeting was reconvened at approximately 9:10 p.m.

CONSIDERATION OF FIRE FEE LEGISLATION AMENDMENTS:

Al Greene, County Manager, explained that this item was added to the agenda at the request of Commissioner Baucom, and with there being no objection from the Board, he deferred to Commissioner Baucom for his comments.

Commissioner Baucom stated that he had hoped to have this item added to last meeting’s agenda. He said that a copy of the resolution adopted by the Board in February 2009, which was submitted to the legislators, was included in the agenda package. He stated that he had spoken with Representative Pryor Gibson who has indicated that he is willing to move forward with pursuing an amendment to the current legislation authorizing an increase in fire fees, pending a resolution from the Board and no objection from the other members of the legislative delegation and with the support of the fire departments.

Vice Chairwoman Kuehler stated that she did not understand the need for another resolution from the Board at this time.

Commissioner Baucom explained that the proposed resolution is the same resolution as was adopted by the Board in February 2009. Commissioner Baucom suggested that the Board request removal of the sunset provision from the current legislation. He said that Representative Gibson would need to know within two days whether to move forward with pursuing an amendment to the legislation.

Vice Chairwoman Kuehler reiterated that she did not understand the need for further action from the Board since it is on record twice not only with a resolution but also with a letter as wanting an amendment to the legislation absent the sunset provision.

Commissioner Baucom responded that Representative Gibson is looking for an action by this Board so he can move forward in the short session requesting an amendment to the current legislation. He clarified that he wanted an affirmation and an acknowledgement of a consensus of a majority of the fire departments, whether it is from the fire chiefs or the fire departments. In response to a question by Chairwoman Rogers, Commissioner Baucom stated that he did not think there had been a consensus of the fire departments in February 2009.

Chairwoman Rogers stated that she was hesitant to take any action at this point, since the fire study will be completed hopefully within a month or so which would include buy-in from the fire chiefs. Commissioner Baucom stressed the purpose in the action requested tonight is to be proactive in the funding mechanism for the fire departments, because currently there is no additional funding mechanism available because the fire fees are at the upper limits. He said if legislation were passed in the short session, it would be available for next year if the Board of Commissioners determines it wants to increase the fire fees at that time.

In response to a question by Commissioner Mills, Mr. Crook explained that the current legislation does not indicate specifically what the Board has requested in its resolutions. He said that the legislation authorizes doubling of the fire fees with a sunset provision. He stated that the Board does not have to impose the increased fees.

There was discussion about whether the current legislation includes a one year or two year sunset provision.

Commissioner Openshaw said that in theory he would be delighted to see the fire fees increased to \$100; but, in reality, he did not think \$100 addresses the problem. He said he thought it would postpone the problem. He stated that he would be glad to support

a \$100 fee, but he was concerned that all of a sudden it brings the issue back to the table, and the County will end up with a situation like the current legislation which has a sunset provision if the bill moves forward in the short session.

Chairwoman Rogers asked if anyone was prepared to make a motion regarding this item or if this concluded the discussion.

Commissioner Mills said that there was buy-in from the fire departments when the resolution was originally sent to the legislators. He moved to adopt a Resolution to Request Authorization to Increase the Amount of Certain Fire Fees that can be Charged by Union County with the caveat that there be buy-in from the County's legislative delegation members as well as the fire departments.

Chairwoman Rogers repeated the motion to be adoption of a Resolution to Request Authorization to Increase the Amount of Certain Fire Fees that can be Charged by Union County with the caveat that if there is no buy-in from the fire departments, then the resolution would not be sent to the legislative delegation. Commissioner Mills added that his motion included buy-in from the County's legislative officials as well.

Vice Chairwoman Kuehler stated the legislation would assist with some of the shortfalls with the fire department funding, but even if the fire fees are increased, the County would still be providing subsidies to the fire departments. She said that she thought the people utilizing the services, who are the taxpayers, are the ones being lost in the equation. She stated that in this circumstance, it is not a tax but a fee, but it is still money out of the taxpayers' pocket.

Commissioner Openshaw asked if the motion included approval of the legislators before the resolution is submitted. Chairwoman Rogers responded that was her understanding. Commissioner Openshaw requested that the motion include that if the legislators do not agree with the request, then they do nothing.

Commissioner Mills pointed out that if the Board does not request that the sunset provision of the current legislation be rescinded, then the fire fees would go away after a year.

Mr. Crook interjected that he was concerned about the contingent nature of the Board's action should the motion pass. He said that he thought the Board should prescribe for staff how the various parties (fire departments and legislators) would be apprised of the Board's action and what form their consent would take and who would make the decision of whether or not to support it if there was divided support. He suggested that the wording of the motion be rephrased.

Commissioner Mills said that he thought the first step would be to contact the legislators, and if there is not buy-in from them, then the next step would be unnecessary.

Chairwoman Rogers asked Commissioner Mills if he wanted to stand on his motion in light of Mr. Crook's comments. Commissioner Mills stated "yes." He said that he thought the first step should be to contact the legislators.

Commissioner Mills offered to call Representative Curtis Blackwood on Tuesday morning to inform him of the Board's action.

Following the discussion, the motion passed by a vote of four to one. Vice Chairwoman Kuehler, Commissioner Baucom, Commissioner Mills, and Commissioner Openshaw voted in favor of the motion. Chairwoman Rogers voted against the motion.

Commissioner Mills stated that Commissioner Openshaw had brought forth the point about the sunset clause provision on the current legislation. He said that with the sunset clause provision, after one year the fire fees go away. He stated his only argument is the County is paying for a fire study that has not been completed, and it is not known what that study will recommend.

There was discussion among the Board members regarding rescinding of the sunset clause provision.

Chairwoman Rogers asked Mr. Crook for his opinion whether the new resolution adopted tonight automatically deletes the prior resolution sent by the Board. Mr. Crook responded that he thought if the Board wanted to make its actions clear, it should make a new motion or reconsider the prior motion and add that language to it.

Commissioner Baucom moved to rescind the Board's prior resolution which contained a sunset clause provision. It was noted that the Board had not passed a resolution that contained a sunset clause provision.

Mr. Crook suggested that the Board authorize the Manager to make it known to the members of the legislative delegation that the Board was requesting removal of the sunset provision from the current legislation.

Commissioner Baucom withdrew his motion.

Commissioner Mills moved to reconsider the previous motion. The motion passed by a vote of four to one. Chairwoman Rogers, Commissioner Baucom, Commissioner Mills, and Commissioner Openshaw voted in favor of the motion. Vice Chairwoman Kuehler voted against the motion.

Commissioner Mills moved to request that the sunset provision be removed from the current fire fee legislation, adopt a Resolution to Request Authorization to Increase the Amount of Certain Fire Fees that Can be Charged by Union County and that the Resolution be forwarded to the legislative delegation members contingent upon receiving buy-in from all members of the County's legislative delegation and the majority of the fire departments requesting an amendment to the Special Legislation that would increase the statutory limits that can be charged for fire fees.

Chairwoman Rogers repeated the motion as follows: to approve the Resolution contained in the agenda package with the caveat that the fire departments and legislators be contacted respectively by the Fire Marshal and Commissioner Mills, and request that the sunset provision that was added by the legislators to the current legislation be removed.

Vice Chairwoman Kuehler asked again how the Board could remove language which had been added to legislation by the legislators. She said she was okay with the motion if it was to ask the Manager to send a letter to the legislative delegation members stating that the Board is against the sunset provision, which is what the Board did several months ago. She asked if the motion was to direct the Manager to send the same correspondence that he sent the last time.

Chairwoman Rogers responded that she thought the motion was to send the same resolution and letter that was sent in February 2009.

Mr. Crook stated that the concern is with the sunset provision that was added to the legislation, and he thought the motion made clear what the Board was requesting.

Following the discussion, the motion passed by a vote of four to one. Vice Chairwoman Kuehler, Commissioner Baucom, Commissioner Mills, and Commissioner Openshaw voted in favor of the motion. Chairwoman Rogers voted against the motion.

A RESOLUTION TO REQUEST AUTHORIZATION TO INCREASE THE AMOUNT OF CERTAIN FIRE FEES THAT CAN BE CHARGED
BY UNION COUNTY

WHEREAS, at the request of the Union County Board of Commissioners, the North Carolina General Assembly adopted special legislation found in Chapter 883, § 1, 1991 N.C. Session Laws, as subsequently amended (the “Special Legislation”), granting authority to charge fire fees; and

WHEREAS, the amount necessary to provide fire service in certain fire fee districts exceeds the amount that is collectible using the current statutory limits for fire fees; and

WHEREAS, the Board of Commissioners desires to request an amendment to the Special Legislation increasing the limits that may be charged for fire fees for certain categories.

NOW, THEREFORE BE IT RESOLVED by the Union County Board of Commissioners that an amendment is requested to the Special Legislation that would increase the statutory limits that may be charged for fire fees, as set out below:

1. Amend N.C.G.S. 153A-236(c)(1), found in the Special Legislation, as follows:

(1) A single-family dwelling or manufactured or mobile home, and appurtenant structures, plus up to five acres of surrounding land. The fee on this class of property may not exceed ~~fifty dollars (\$50.00)~~ one hundred dollars (\$100.00) per site per year.

2. Amend N.C.G.S. 153A-236(c)(4), found in the Special Legislation, as follows:

(4) A commercial facility other than an animal production or horticultural operation. The fee on this class of property may not exceed fifty dollars (\$50.00) per site per year for commercial facilities with structures encompassing less than 5,000 square feet and ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) per site per year for commercial facilities with structures encompassing 5,000 square feet or more.

3. Amend N.C.G.S. 153A-236(c)(5), found in the Special Legislation, as follows:

(5) A multiple-family dwelling. The fee on a duplex may not exceed fifty dollars (\$50.00) per building per year. The fee on a triplex may not exceed ~~seventy five dollars (\$75.00)~~ one hundred fifty dollars (\$150.00) per building per year. The fee on any other multiple-family dwelling may not exceed ~~one hundred dollars (\$100.00)~~ two hundred dollars (\$200.00) per building per year.

Originally adopted on the 5th day of May, 2008.
Adopted and reaffirmed the 16th day of February, 2009.
Adopted and reaffirmed this the 21st day of June, 2010.

ATTEST:

Lynn G. West, Clerk to the Board

Kim Rogers, Chairwoman

PRESENTATION OF RECOMMENDATIONS: GOVERNANCE COMMITTEE:

Vice Chairwoman Kuehler introduced Janet Critz, a member of the Governance Advisory Committee, to present this item.

Ms. Critz stated that she had a copy of the Governance Committee Summary, but due to the report having to be redone today, she did not have copies available for the Board members tonight. She provided a copy of the report to Mrs. West for distribution to the Board members.

Ms. Critz prefaced her comments by saying that this summary in no way reflects the views of everyone on the Committee; it is a summary. She said that it also in no way reflects the fullness of all of the dialogue that occurred with this Committee. She noted that copies of the minutes from all meetings of the Governance Advisory Committee were included in the agenda package.

Ms. Critz reviewed the following summary, which was provided in written format:

“Governance Committee Summary

The main objective of this committee was to search out ways to improve geographic representation throughout the county, especially the east side. This would include, but not be limited to, increasing the size of the board of commissioners and the use of districts.

There were 24 members (22 active) of the Governance Committee who live throughout all areas of the county, including the unincorporated areas. A majority of members met on 10 occasions over a 12 month period. Each meeting lasted an average of 2 hours and was filled with significant discussion. Our debate was open, spirited and filled, not only with opinions, but numerous facts and thorough research. Our original conclusion had to be changed at the 11th hour, at no fault to this committee or to our chair, Commissioner Kuehler. The county attorney, at the last minute

informed Commissioner Kuehler of statutory law preventing us from submitting our original conclusion; therefore this summary reflects the results of an email consensus from the majority of this committee.

Our first order of business was to look at the size of the board of commissioners. We thoroughly discussed the pros and cons of keeping the size of the board the same or to increase it by 2, thereby providing a total of 7 commissioners to meet the ever increasing demands on our county. With the challenging pressures and changes facing us it seemed logical to add to the board at this time in the hope that it would allow those who serve on the board of commissioners to better fulfill their duties and spread the load of responsibility. Being a neighbor to a city the size of Charlotte makes our challenges constant and ever increasing, thus creating more demands on our board of commissioners. The idea that 7 heads are better than 5 is neither logical, nor necessarily correct, but it does provide an opportunity to increase our representation and spread the demands of the position. Whether or not this will actually achieve its intended goal will always depend on the integrity of those who hold this office! It seemed clear from this committees lengthy discussions that, at least in part, some of the problems were the direct result of a failure on the part of those in office to perform their duties with integrity.

The discussions concerning districts were lengthy and more complicated. North Carolina history shows us that originally all county seats were at-large and approximately 41 % still are. Districts were created to provide racial equality and there are no legislative provisions for creating districts to provide geographic representation. To create districts for this purpose would expose us to potentially unwanted changes by both the N.C. Legislature and the Department of Justice. According to current law the Justice Department would have the final word. We had to also consider that the voters of our county rejected the option of districts a few years ago in a referendum. There is no reason to believe that opinions would change dramatically in a few short years. In contacting the University of North Carolina's Institute of Government, David Lawrence said that it was a legitimate concern for the needs of the county as a whole and splinters our focus. There are no examples for use to use, where districts actually and measurably improved geographic representation. It should be carefully noted that we always have an obligation to our community to provide equal opportunity, not special opportunity, while guarding the rights and wellbeing of everyone. This always has been and will be a challenge for every elected official and there are no infallible solutions for us to draw from. There are, however, proven methods and practices from history and the study of government structure that we should put into play. We can not ignore the facts and make decisions on a whim that will not only affect us now, but generations to come.

This brings us to another very serious view of multiple districts and that is the Constitutionally protected right that all tax payers be allowed to vote for the representatives that are responsible for levying their taxes. Multiple districts would create a situation in which no one voter could vote for the majority of their representatives, thus creating an environment where there is taxation without representation! This is a sacred and time honored American right that must be guarded with much care and diligence!

The original conclusion of this committee was to recommend 2 districts and 5 at-large sets. Allowing every voter to retain the right to vote for a majority of their representatives and also increase their representation by 1. After the new information concerning N.C. Statute (153A-58) the committee had only 2 options left on the table.

1. All at-large
2. The combination of 2 districts with 2 representatives from each

The results are as submitted by Commissioner Kuehler.

Local government is our last opportunity to serve at home, on the home front, and we must do all that we can to protect it! With every well thought out and well planned opportunity we create we demonstrate our character, integrity and good intentions not for ourselves, but for everyone! These measures will not solve all of the problems that we face in our county, but the majority of this committee believes that it is a step in the right direction and is a good starting place for positive change!

We wish to thank the Board of Commissioners for the opportunity to serve the people of Union County in this effort. We particularly wish to thank Commissioner Kuehler in moderating each of our meetings as she did a great job in providing guidance throughout the process and inspiration when we needed it.

Janet Critz,
Mineral Springs Town Council”

Ms. Critz stated that when Mr. Crook gave Vice Chairwoman Kuehler information about N.C.G.S. 153A-58, the Committee had only two options left on the table. She said those two options were: (1) to request that the Board consider increasing the Board of Commissioners by two Commissioners and these would be all at large seats; or (2) a combination of two districts with two representatives from each of these districts.

She said that in light of the information provided by Mr. Crook, responses only could be obtained from the Committee members in the short amount of time allowed through e-mail responses. Ms. Critz stressed that it was done strictly as a consensus through e-mails with the members. She stated that out of the 22 active members, 17 members responded through e-mail and 13 members recommended seven at large; three members recommended two districts with two Commissioners in each district and three at-large positions; and one member recommended staying with the current governance; however, that was not a legitimate vote because that option was not an option left on the table at the Committee’s last meeting.

Ms. Critz said that two members had responded that they wanted the Committee to meet again. She stated that the e-mail consensus does not reflect any new information, and she was not sure what another meeting of the Committee would accomplish.

As a point of information, Vice Chairwoman Kuehler added that it became clear that the majority of the Committee was set on the voter being able to vote on the majority of the representatives. She said that the Committee did not know at the time when the Committee was holding its meetings, but it has since learned that if the board governance changes to a combination of districts and at-large positions, the at-large positions cannot be more than half the number of districts. She stated that the option available to this committee under the district scenario were four districts and three at large members, which was voted down by the Committee. She said the only other district scenario that the Committee was interested in looking at was the one to have been presented tonight with two districts with two representatives from each district and three at large positions, which would give the voters the ability to vote for four of seven of the positions.

Chairwoman Rogers complimented the committee for its work. She said that the Committee eventually reached a recommendation with a clear majority behind it. She said that through no fault of Commissioner Kuehler, she learned about the statutory requirement regarding the number of districts, but she did not think this information changed the recommendation.

Following the discussion, Chairwoman Rogers moved to direct staff and the Board Attorney to prepare a report regarding legal process for changing the composition of the governing board to seven at large members to be placed on the ballot for the public to vote on.

Commissioner Baucom stated that the Board received the summary with this recommendation at tonight's meeting. He moved to defer action on this matter until the next Board meeting.

Commissioner Openshaw asked by what date the Board's action would need to be sent to the Board of Elections. Mr. Crook responded that he became aware of the Committee's recommendation last Friday, and he had contacted the County Manager, who in turn contacted Mr. Whitley with the Board of Elections. Mr. Greene stated that the latest date that the Board's action would have to be sent to the Board of Elections is July 30. He said that he was not sure how the Department of Justice's process fits in with that date. He stressed that time is of the essence in this matter.

The motion to defer action failed by a vote of two to three. Commissioner Baucom and Commissioner Mills voted in favor of the motion. Chairwoman Rogers, Vice Chairwoman Kuehler, and Commissioner Openshaw voted against the motion.

Chairwoman Rogers stated that the motion currently on the table is to direct staff and the Board Attorney to prepare a report regarding the legal process for changing the composition of the governing board so that it may be included on the November ballot.

By way of discussion, Commissioner Baucom suggested that the Board defer action on this item until the new board takes office. He said that the Board majority deferred action on the hospital waiting for the new board to take office, and he thought this item was worthy of the same consideration.

Chairwoman Rogers responded that the reasoning behind deferring the motion on the hospital sale had to do with the issue that the people came out and voted and wanted the Board to do that, so that is why she voted to defer action on the hospital matter.

Commissioner Mills requested that the legal process and any ramifications need to be brought to the Board first before action is taken. He said that he thought all the information needed to come before this Board for discussion before moving forward.

Chairwoman Rogers clarified that the motion was for the legal process to go through Mr. Merritt, the County Attorney. Further, she stated that there are many times that the Board approves contracts, etc. based on legal review, and by the Board directing staff and the Board's Attorney to prepare the report, there is a legal review, so she would be against the information having to come before the Board first before it is moved forward.

Vice Chairwoman Kuehler added that the statute limits some of the options, some of which were not even on the table to begin with. She said that the statute did not negate the vote, it did not make the work of the Committee worthless, but it did limit the options.

Following the discussion, the motion passed by a vote of three to two. Chairwoman Rogers, Vice Chairwoman Kuehler, and Commissioner Openshaw voted in favor of the motion. Commissioner Baucom and Commissioner Mills voted against the motion.

At approximately 10:10 p.m., Chairwoman Rogers called for a five-minute recess. The Chairwoman reconvened the meeting at approximately 10:20 p.m.

PRESENTATION BY JAMES COONEY REGARDING ETHICS INVESTIGATION:

Chairwoman Rogers recognized James Cooney, Attorney at Law, to address this item. The Chairwoman stated that each Commissioner would be given the opportunity to ask Mr. Cooney a maximum of five questions each and then she would move on to the next Commissioner. She said that if time needs to be allowed for an additional round of questions because Commissioners might

have more than five questions, there could be another round of questions. Further, she stated that if there needed to be a round of comments to allow Commissioners to address statements that are made, this would also be permitted.

Chairwoman Rogers recognized Commissioner Baucom to ask his first round of questions. Commissioner Baucom stated that he wanted to hear a report from Mr. Cooney, as did Commissioner Mills and Commissioner Openshaw.

Mr. Cooney stated that it was not his intention to read the report before the Board, but he could give a five-minute summary.

Chairwoman Rogers stated that it appeared that a majority of the Board wanted to hear the report by Mr. Cooney, and she asked that Mr. Cooney present the report followed by the Commissioners' questions.

For the record, Jim Cooney introduced himself and stated that he has practiced trial and appellate law for 26 years and is a partner with Womble Caryle Sandridge and Rice.

Mr. Cooney presented a summary of his findings for the Board. He explained that his conclusions are his best legal opinions in light of the statutes and the Codes of Ethics, and he thought it was up to the Commissioners both whole and individually to reach their own decisions on any of these matters.

The report is recorded below in its entirety:



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MEMORANDUM

To: Union County Board of County Commissioners
From: James P. Cooney III
Date: June 4, 2010
Re: Ethics Inquiry into Actions of Union County Board of County Commissioners

Scope of Representation

On October 19, 2009, at a meeting of the Union County Board of County Commissioners (“the Board”), I was asked to conduct an investigation into a series of votes taken by the Board in 2008 concerning the reimbursement of certain attorneys’ fees. The charge by the Board was to investigate these votes and to address in an appropriate manner any other issues which were identified during the course of my investigation. In addition, the Board limited the fees to be paid for this investigation to a maximum of \$10,000. No other conditions or limitations were placed on the scope of my representation. On November 2, 2010, my firm accepted the terms of this representation and confirmed this formally on December 1, 2010. This Memorandum constitutes the report of my investigation.

Timeline of Investigation¹

Following my firm’s acceptance of the terms and conditions of the representation, I met initially with Keith Merritt, Board attorney, on November 4, 2009, to discuss materials provided to me to begin the investigative process. These consisted of Minutes from the Board meetings of March 10, 2008, June 2, 2008, and June 16, 2008. Mr. Merritt also provided me with the Agendas, Agenda Abstracts and supporting materials for these meetings. In addition, I was supplied with invoices from the law firm of Wyatt & Blake as well as representation letters from that law firm to Commissioners Allan Baucom, A. Parker Mills, and Kevin Pressley, dated March 6, 2008.

After conducting a review of the materials that I had been provided, and performing additional research under North Carolina law, I met with Commissioner Tracy Kuehler on December 9, 2009. At that time, she provided to me a Notebook of materials - - many of which I had already received - - concerning the votes on attorneys’ fees that took place on March 10, 2008 and June 2, 2008.

¹ Throughout the course of this Memorandum, I will use the term “Commissioner” to refer to any person who served on the Board of County Commissioners, regardless of whether they are actively serving in that capacity.

Following my meeting with Commissioner Kuehler, I contacted James Wyatt of the firm of Wyatt & Blake. I did so both to obtain materials from him and to seek his permission to interview Commissioners Baucom, Mills and Pressley. Since Mr. Wyatt had represented Commissioners Baucom, Mills and Pressley, and since I intended to interview them about matters that related to that representation, the Ethical Rules of the State Bar of North Carolina dictated that I initiate contact through Mr. Wyatt, their counsel for these matters. I requested that Mr. Wyatt make his clients available for interview and that his clients waive the attorney-client privilege for matters connected with my investigation. Mr. Wyatt, appropriately, took these requests under consideration and indicated that he needed to both review his file and speak with his clients. To facilitate this review, on December 22, 2009, I provided Mr. Wyatt with the topic areas on which I intended to seek information and for which I was asking for a waiver of the attorney-client privilege.

While these requests were pending, I contacted County Manager Al Greene, former Interim County Manager Richard Black, and Kai Nelson, the County Finance Director. I requested that each submit to an interview concerning these matters. Mr. Greene and Mr. Black agreed to do so and I interviewed Mr. Greene and Mr. Black on February 2, 2010. Mr. Greene and Mr. Black answered all questions. Mr. Nelson retained the Hon. Fletcher Hartsell as counsel in connection with these matters. I contacted Mr. Hartsell by letter of February 19, 2010 to formally request the opportunity to interview Mr. Nelson. Over the course of the next several weeks, I exchanged numerous messages with Mr. Hartsell and spoke with him concerning Mr. Nelson's availability for an interview. Mr. Hartsell has never objected to such an interview; however, as of the date of this Memorandum I have been unable to schedule this interview. Based upon the materials that I have received and the interviews that I have conducted, I do not believe that an interview of Mr. Nelson would either materially change my conclusions or provide any information that would be sufficiently important to warrant any further delay in completing this investigation. Consequently, I have elected to provide a report without Mr. Nelson's interview.

After my initial exchange with Mr. Wyatt, I was contacted in early January 2010 by Attorney Trey Robison of Monroe on behalf of Commissioners Baucom, Mills and Pressley. Mr. Robison informed me that he would be representing these Commissioners in connection with this investigation. I provided Mr. Robison the topic areas on which I anticipated interviewing Commissioners Baucom, Pressley and Mills (which had been previously provided to Mr. Wyatt) on January 5, 2010, and we generally discussed this matter in the ensuing weeks. By letter of February 19, 2010, I formally requested the opportunity to interview Commissioners Baucom, Pressley and Mills about these matters. Subsequently, on March 1, 2010, Mr. Robison indicated by letter that Commissioners Baucom, Pressley and Mills had agreed to be interviewed.

These interviews took place on April 14, 2010. Each Commissioner was accompanied by Mr. Robison; no Commissioner refused to answer any question and at no time was the attorney-client privilege invoked to stop any inquiries.

Finally, during the course of my investigation, as questions have arisen, Mr. Merritt has supplied to me various documents and other materials concerning the subject matter of this investigation.

With the exception of Mr. Nelson, no person has refused to speak with me about these matters. No issues of privilege have been raised and no person interviewed has refused to answer any question. No "ground rules" or other limitations were placed on any of my interviews, either by the persons I interviewed or their counsel.

Subject Matter of Investigation

- (1) Were there violations of the State Government Ethics Act, N.C.G.S. §138A-2 et seq., the North Carolina Association of County Commissioners' Code of Ethics (adopted December 2, 2002 by the Board) or the Resolution to Supplement the Code of Ethics of the Union County Board of Commissioners (adopted April 5, 2004) in connection with the authorization of attorneys' fees reimbursements for individual County Commissioners in 2008? Specifically, were there violations of these various ethics acts and provisions during the meetings of March 10, 2008, June 2, 2008, or June 16, 2008?
- (2) During the course of this investigation, did other issues arise which suggested or indicated any ethical violations by any member of the Board on matters other than the reimbursement of attorneys' fees?

Conclusions

- (1) There is no evidence of a violation by any County Commissioner of the State Government Ethics Act, the North Carolina Association of County Commissioners' Code of Ethics or the Resolution to Supplement the Code of Ethics in connection with the votes taken on March 10, 2008 and June 2, 2008 authorizing the reimbursement of attorneys' fees for individual County Commissioners.
- (2) During the course of a Board meeting on June 16, 2008, Commissioners Mills, Baucom and Pressley stated that they had "not been contacted by the FBI." However, as of that date each had met with Wyatt & Blake for the purpose of acting as their counsel in connection with an ongoing investigation by the FBI - - indeed,

Commissioners Baucom and Pressley had voluntarily provided financial information to the FBI through Wyatt & Blake in April and May 2008. In addition, according to the Minutes of the meeting, “the County Manager interjected that to his knowledge the County had not employed a firm to represent individual commissioners in a FBI suit.” This representation was in error; at that point in time Union County had paid \$58,456.07 to the law firm of Wyatt & Blake for its representation of Commissioners Pressley, Baucom and Mills in connection with an investigation being conducted by agents of the Government of the United States of America.

These statements do not constitute a violation of the State Government Ethics Act, the North Carolina Association of County Commissioners’ Code of Ethics or the Resolution to Supplement the Code of Ethics. First, all of the evidence indicates that the County Manager, Al Greene, made his statement inadvertently and without full knowledge of the facts; indeed, Mr. Greene had only recently been hired as County Manager and was hired after the initial vote for reimbursement. At that time, he had not had any significant participation in this matter. His statement, while in error, was made in good faith. Second, the failure of Commissioners Baucom, Mills and Pressley to correct the statement and their statements that they had not been “contacted” by the FBI were not violations of the State Government Ethics Act, the North Carolina Association of County Commissioners’ Code of Ethics or the Resolution to Supplement the Code of Ethics.

- (3) During the course of this investigation, additional issues were raised concerning the conduct of other Commissioners in connection with various matters. These included:
- (a) Whether a Commissioner testified falsely under oath during a deposition in the *Shalati v. Union County* litigation about matters that occurred during a closed session of the Board when it was later shown that he was not present at that time?
 - (b) Whether a Commissioner failed to reveal a conflict of interest (and perhaps failed to recuse herself) in connection with the proposed sale of Union-CMC Hospital due to her husband’s employment?

These matters are so significantly different from the issues on which our Firm was retained that they are well beyond the scope of my representation and work.

Discussion

Factual Background

The Shalati Litigation and the Engagement of Wyatt & Blake

The issues in this investigation arise out of a series of events related to the termination of former Union County Manager Mike Shalati. Following his termination in 2007, Mr. Shalati instituted civil litigation against Union County and its Board for various claims. In that litigation, the County and the Board were represented by a set of attorneys, including the law firm of Poyner & Spruill. Two incidents occurred during the course of the civil litigation that led to the issues embraced by this investigation. The first occurred when Mr. Shalati, apparently during the course of his deposition, indicated that there was an investigation being conducted by the Federal Bureau of Investigation (“FBI”) into issues related to his claims. Indeed, on February 14, 2008, *The Charlotte Observer* reported as its headline: **“FBI asks about Union County sewers.”** The article indicated that the FBI had been interviewing witnesses over the prior year concerning the allocation of sewer permits in Union County. The second incident occurred when it became apparent to the Board’s attorneys that there was a divergence of interests among members of the Board; specifically, Commissioner Roger Lane indicated that his testimony (and his interests) were different than those of Commissioners Baucom, Pressley and Mills with respect to the claims raised by Mr. Shalati. The creation of this conflict led the Board’s attorneys - - primarily Poyner & Spruill - - to conclude that continued joint representation would not be possible and that the Commissioners should consult with individual attorneys.

Based upon these two incidents, Poyner & Spruill, recommended that Commissioners Baucom, Mills and Pressley consult with James Wyatt of the law firm Wyatt & Blake for a determination of both whether Mr. Wyatt could represent them in connection with the FBI investigation and whether Mr. Wyatt could represent these three Commissioners jointly.

Commissioners Baucom, Mills and Pressley indicated that they met with Mr. Wyatt in February at Commissioner Pressley’s office. All three describe this initial meeting as “more of an interrogation than an interview.” Commissioner Baucom believed that Mr. Wyatt was being retained by Poyner & Spruill, rather than by him individually. Commissioner Pressley denied flatly that Mr. Wyatt was his attorney at any point, again apparently believing that Mr. Wyatt had simply joined the legal team already involved in the *Shalati* matter. There is no question, however, that each understood that he was being questioned concerning the then-public FBI investigation.

On March 6, 2008, Mr. Wyatt transmitted letters to Commissioners Baucom, Mills and Pressley; the letters were received by the Interim County Manager. The letters were addressed individually to each Commissioner and were identical; they

each contained the “Re” line: “Engagement of Wyatt & Blake, L.L.P.” The letters each set forth the terms of the engagement of Wyatt & Blake for the purpose of representing each Commissioner “in connection with any claims or proceedings arising from actions taken during the course and scope of your employment as a County Commissioner.” They further set forth Mr. Wyatt’s billing rate, indicated that he will bill by the hour and send invoices monthly and attach a “standard terms of employment” form.²

Significantly, while each letter is addressed separately to a Commissioner, there is no address on any of the letters. During the course of my interviews with Commissioners Baucom, Mills and Pressley, each denied having received the letter or, indeed, even seeing a copy of the letter until questions were raised by Commissioner Kuehler about the votes many months later. The evidence indicates that these letters were sent directly to the County Staff, presumably for their acceptance.

The March 10, 2008 Vote

On March 10, 2008, an agenda item appeared on the meeting agenda addressing the question of reimbursement for attorneys’ fees. Commissioner Baucom was the Chair at that time and thus participated in setting the formal agenda. Commissioner Baucom indicated that Interim County Manager Black spoke with him about this item and indicated that Commissioner Roger Lane had requested its addition. Commissioner Baucom had no conversation with Commissioner Lane about this agenda item, though apparently Commissioner Lane informed Commissioners Pressley and Mills (in Commissioner Baucom’s presence) on the morning of March 10th that such an agenda item had been added. This apparently took place at an aborted deposition of Commissioner Lane in the *Shalati* litigation. Interim County Manager Richard Black confirmed that the issue of separate representation was first raised by Commissioner Lane in connection with his belief that he required separate representation in the *Shalati* litigation.

The Agenda Item for this meeting is styled: “*Authorization for County to Enter into Contracts for the Defense of Individual County Commissioners and Adopt Budget Amendment #40.*” Its description indicated that the issue was whether to authorize the Interim County Manager to enter into contracts for individual commissioners’ legal defense not to exceed \$15,000.

² I note that the retention of Wyatt & Blake was particularly appropriate in the context of a federal criminal investigation. This firm has a well-deserved reputation as one of the leading criminal defense firms in North Carolina and provides outstanding advocacy and representation to its clients.

While Commissioner Lane had apparently been responsible for the placement of this item on the Agenda, the Minutes indicate that Commissioner Mills made the motion to authorize these contracts and this payment. During the discussion, Commissioner Lane described in detail the conflict which he believed had developed in the *Shalati* litigation that led him to conclude that he required separate representation. Commissioner Lane objected to the agenda item, however, because he believed that \$15,000 “was ridiculously low” and indeed constituted “a complete slap in the face to him” since he had been “labeled as a hostile witness in the *Shalati* case.”

As will be discussed below, at this time Union County had an already existing indemnification policy for the payment of legal fees in connection with investigations and other litigation. That policy did not provide any limitation on the fees to be paid for this representation. In context then, this Agenda Item was actually a **limitation** on what could be spent by individual commissioners for legal counsel. The Minutes reflect that the Board attorney indicated that “he was not aware of anything in the statutes that would allow for reimbursement of sums, but that a prior Board adopted a resolution for reimbursement for defense of counsel.” He further stated that he had provided a copy of the resolution to the County Attorney. Commissioners Baucom, Pressley and Mills each indicated that they did not know there was a separate indemnification policy. It appears that, from Staff’s perspective, this agenda item was necessary for the purpose of fiscal year budgeting, particularly since the budget for legal fees had been exhausted due to the *Shalati* litigation and Staff wished to formally budget for additional fees. However, from the Commissioners’ perspective it appears that they believed that a separate resolution was required to permit them to be reimbursed for attorneys’ fees when, in fact, this was not necessary.

In any event, after what appears to have been an extended discussion about whether such fees should be limited at all, the agenda item and budget resolution was approved. Commissioner Lane and Commissioner Openshaw voted against the resolution; Commissioners Baucom, Mills and Pressley voted in favor of the resolution. Commissioner Baucom indicated that the limitation to \$15,000 was suggested by Mr. Burns.

The Payment of Legal Fees Exceeds the \$15,000 Limitation

Mr. Wyatt transmitted his first invoices to the Kai Nelson, the County Finance Director, on March 25, 2008; he billed \$9,212.46 for his services on behalf of Commissioners Baucom, Mills and Pressley, each - - a total of \$27,637.38. The invoices were received on March 26th. The invoices were not addressed to Commissioners Baucom, Pressley or Mills;

Commissioners Baucom, Pressley and Mills each indicated that he did not see the invoices. On March 28th Mr. Nelson affixed a preaudit certification to Mr. Wyatt's representation letter of March 6 with the notation that fees were to be limited to \$15,000. Apparently because Mr. Wyatt's invoice was not sufficiently detailed, he was asked to resubmit his invoice, which he did by letter of April 14, 2008. Mr. Black accepted the engagement letters on April 24, 2008 and Mr. Wyatt's invoices were approved by Mr. Nelson on April 29, 2008. Checks to Mr. Wyatt's firm for these fees were sent on May 1 and May 8, 2008.

Commissioners Baucom and Mills both indicated that during April and May they were asked through Wyatt & Blake to voluntarily provide - - and did voluntarily provide - - bank records and other financial data to the FBI as part of the investigation.

In addition, on April 7, 2008, Commissioner Roger Lane received a representation letter from the firm of Ferguson Stein Chambers Gresham & Sumter, PA. That letter set forth the terms of that firm's representation of Commissioner Lane and contained a request for a retainer of \$7,500. It appears that this retainer was authorized by Mr. Nelson on June 10, 2008.

On May 18, 2007, Mr. Greene began as the County Manager and attended his first Board meeting as Manager.

On May 31, 2008, Mr. Wyatt transmitted a second set of invoices for \$10,271.23 for each of the Commissioners - - a total of \$30,813.69. The totals for each of the Commissioners were \$19,483.69 - - a sum that obviously exceeded the \$15,000 limitation imposed by the resolution of March 10.

It appears that Mr. Nelson, after receiving these invoices and realizing that the initial authorization had been exceeded, met with Mr. Greene to seek an additional resolution raising the authorization for budgeting purposes. Mr. Greene indicated that Mr. Nelson informed him that the \$15,000 fee limit was inadequate and that it was his impression that these fees were related to the *Shalati* litigation. He was not aware of a Grand Jury investigation or a criminal investigation. The fiscal year for the County ends June 30th, so it appears that Mr. Nelson wanted an additional budget resolution prior to the end of the fiscal year to properly account for these fees.

The June 2 Vote

Consequently, on June 2, 2008, an agenda item appeared under the title “*Legal Services Budget.*” It sought the adoption of a budget amendment to add an additional \$15,000 to the legal fees for each Commissioner, and to increase the \$15,000 authorization to \$30,000 “per Commissioner per fiscal year.” The Minutes of the Meeting of June 2 indicate that this increase was considered in the context of the large amount of legal fees that the County had incurred for the fiscal year and Mr. Nelson’s estimate that another \$257,000 would need to be budgeted to cover these expenses for May and June. Only Commissioner Openshaw addressed the increase in the individual commissioners’ indemnification for legal fees, noting that “to date his legal fee costs had been zero.”

The additional allocation of monies passed unanimously.

On June 9, 2009, Mr. Nelson approved Mr. Wyatt’s invoices for May and three checks for \$10,271.23 for services to Commissioners Pressley, Baucom and Mills were issued on June 12, 2008. With the issuance of these checks, the County had paid Mr. Wyatt \$58,451.07 in connection with the criminal investigation caused by the *Shalati* litigation.³

The June 16 Meeting

The next meeting of the Board took place on June 16, 2008. The Minutes of that meeting indicate that Commissioner Openshaw requested that an item concerning the payment of legal fees be added to the agenda.

Commissioner Openshaw contended that “as a member of this Board he was entitled to be notified when the County or three of the Commissioners employed the legal firm of Wyatt and Dunn, one of the top criminal trial law firms and FBI specialists in the State.” Commissioner Openshaw complained about the expense involved with the retention of Wyatt & Blake and indicated that when he had been interviewed by the FBI he had spoken without counsel. He further indicated that while “Commissioners were entitled to legal representation, . . . if they are proved to have done something wrong, they would be required to reimburse the county for the expenditures.”

³ In all, it appears that Wyatt & Blake were paid approximately \$105,675.54 for their representation of Commissioners Baucom, Pressley and Mills.

Apparently in response, Commissioner Mills “pointed out that he had not been confronted nor has the FBI contacted him to talk with him.” At that point Commissioner Baucom as Chairman, and Commissioner Pressley as Vice-Chairman, “both interjected that they also had not been contacted by the FBI.” Commissioner Lane then indicated that “he had talked with a couple of FBI agents for several hours and, he too, had done so without the benefit of counsel.”

The Minutes then indicate that the County Manager “interjected that to his knowledge the County has not employed a firm to represent individual commissioners in a FBI suit.”

No member of the staff, nor any member of the Commission with knowledge, corrected these statements by the County Manager. The County Manager has indicated that he was unaware of both the Grand Jury investigation and that the Wyatt & Blake representation was connected with that rather than the civil litigation caused by Mr. Shalati. He was apparently informed by Mr. Crook of the Grand Jury investigation following this meeting and of Wyatt & Blake’s role in that investigation.

Legal Analysis

General Principles Relating to Conflicts of Interest

The State Government Ethics Act, G.S. §138A-21 et seq., sets out the statutory scheme that prohibits a public official from using her office for private gain. Section 138A-31 specifically prohibits a public official from engaging in “an official action or legislative action that will result in financial benefit” to the official. Section 138A-36 prohibits any public servant from participating in official action if the official “may incur a reasonably foreseeable financial benefit from the matter under consideration” which “would impair the public servant’s independence of judgment or from which it could reasonably be inferred that the financial benefit would influence the public servant’s participation in the official action.” In addition to these prohibitions, G.S. §14-234 provides that: “No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract.” “Direct Benefit” is in turn defined as having an ownership interest, deriving income from the contract, or acquiring property under the contract. G.S. §14-234(a1)(4). The statute prohibits a public official with a “direct benefit” in a contract from deliberating or voting on the contract, or attempting to influence any other person involved in making or administering the contract. G.S. §14-234(b1). Significantly, the General Statutes specifically exempt certain actions from these prohibitions, even though they plainly involve a direct benefit to the public officials involved. Of most relevance to the issues in this case is the exemption

contained in G.S. §153A-44. While the title of this statute deals with County Commissioners who are excused from voting, the statute provides that: ***“For purposes of this section, the question of the compensation and allowances of members of the board does not involve a member’s own financial interest or official conduct.”*** Similar exemptions apply to City and Town Councils. G.S. §160A-75.

Taken together, these statutes plainly prohibit the participation by public officials in matters in which they may have a direct economic benefit, other than the question of compensation and allowances. The policy behind what at first appears to be divergent principles seems clear - - matters of compensation and allowances on their face provide an economic benefit that is clear to all and thus are uniquely transparent. Members of the public will easily and automatically know that when a commissioner votes on a matter involving her compensation or allowance, that she will derive a direct economic benefit. In addition, as a practical matter the decision of allowances and compensation must be decided by someone, and it makes sense to permit commissioners to do so particularly when they are answerable to the public for those decisions. This stands in contrast to a contract in which the economic benefit may be hidden, or indirect, or not apparent on its face - - participation under such circumstances does not plainly reveal the benefit and thus violates the core principle of transparency necessary for open government.

In addition to these statutory prohibitions (and exemptions), Union County has adopted the North Carolina Association of County Commissioners’ Code of Ethics. The preamble to that Code provides that while its purpose “is to establish guidelines for ethical standards of conduct for county commissioners,” it “should not be considered a substitute for the law or a county commissioner’s best judgment.” In short, the Code is aspirational rather than statutory. The Canons of the Code posit that a County Commissioner “should uphold the integrity” of his office (Canon Two), that a County Commissioner “should avoid impropriety and the appearance of impropriety in all his or her activities,” (Canon Three), and that a County Commissioner “should perform the duties of office diligently” including the admonition that commissioners “should conserve the resources of the county in their charge. (Canon Four, Part C(2)).

Union County has additionally supplemented the Code of Ethics with a Resolution of April 5, 2004. As applied to this matter, the Supplemental Resolution provides that no “Board Member shall use his official position of the County’s facilities for personal gain,” and that Board Members are barred from using confidential information gained from their official duties in any way that advances their personal financial interest. Supplemental Resolution at II.B. and II.C.1. The Supplemental Resolution further requires that “[a]ny Board Member who has an Interest in any Official Action or action . . .

shall publicly disclose on the record . . . the nature and extent of such Interest, and shall withdraw from any consideration of the matter if excused by the Board . . . pursuant to applicable law.”

General Principles Relating to Indemnification of Attorneys’ Fees

At the outset, it is important to note that the reimbursement (or indemnification) of employees - - and particularly officers - - for attorneys’ fees incurred in connection with investigations (or litigation) arising out of their official duties is an accepted principle of corporate governance. In 2003, the U.S. Department of Justice attempted to limit such indemnification in criminal investigations, directing prosecutors in the “Thompson Memorandum” to take into consideration in any decision to prosecute a company whether the company was “protecting” employees “through the advancing of attorneys’ fees.” The Thompson Memorandum was subsequently replaced by the “McNulty Memorandum” which barred prosecutors from considering such indemnification unless the circumstances were clear that it was “intended to impede a criminal investigation” and then only upon approval of the Deputy Attorney General. Indeed, the U.S. Court of Appeals for the Third Circuit, in *U.S. v. Stein et al*, 541 F.3d 130 (3rd Cir. 2008), specifically held that the actions of the United States in directing that a company **not** indemnify its employees in a criminal investigation violated those employees’ Sixth Amendment rights to be represented by counsel. In short, the indemnification of corporate employees, officers and agents for attorneys’ fees incurred in connection with investigations arising out of their official duties is not only a generally accepted principle of corporate governance, but can have a constitutional dimension when government seeks to interfere with it.

The principle of indemnification of attorneys’ fees for County Commissioners (and other public officials) is codified in North Carolina law. General Statute 153A-97 provides that a “County may . . . provide for the defense of: (1) Any county officer or employee, including the county board of elections or any county election official.” Even in the absence of a policy established under §153A-97, Section 160A-167 provides that “[u]pon request made by” a “member or former member of the governing body of any . . . county . . . [any] county . . . may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity.”

Union County enacted such an indemnification policy in 1998 under these statutes (“Indemnification Policy”). That policy provides that it “shall be the policy of Union County to defend its officers and employees against civil actions, claims or proceedings arising from any act done or omission made . . . in the course and scope of his/her employment or duty as an officer or employee of the County.” *Resolution – Indemnification Policy §1*. The policy established by this Resolution

specifically exempts criminal acts and provides that the attorney retained to defend an individual shall be selected in the discretion of the County Manager and shall typically be the County Attorney. *Resolution – Indemnification Policy §§I.D. and VII.* There is no limitation on the amount of fees for which indemnification can be sought nor is there a requirement for a separate resolution authorizing such indemnification.

The Vote of March 10th

The issues in this matter surround the resolution authorizing the expenditure of \$15,000 per Commissioner in connection with attorneys' fees arising out of the *Shalati* matter. There is no question that these fees were used to pay the Wyatt & Blake firm for their representation of Commissioners Baucom, Mills and Pressley.

The Indemnification Policy does not specifically refer to the payment of attorneys' fees arising out of a criminal investigation. In context, however, it seems plain that such an investigation would fall within the Indemnification Policy and is necessarily within the "claims or proceedings arising from any act done or omission made" provision. Indeed, it is difficult to understand how a criminal investigation would not be a "claim" or "proceeding."

During the course of the interviews conducted in this matter, there was unanimity of agreement that the Indemnification Policy embraced the payment of attorneys' fees in connection with a criminal investigation. Indeed, no one has questioned that these fees were not properly reimbursable. Rather, the issue that has been raised is whether it was proper for Commissioners Baucom, Mills and Pressley to have voted on this resolution in light of their direct interest in the allocation of the fees. That is, did these three Commissioners vote on a matter which would provide a direct benefit to them within the meaning of the statutes prohibiting such participation.

The answer to this question appears to be easily resolved when the exemption applicable to compensation and personal allowances is considered. The General Assembly has made it clear that commissioners may vote on matters of direct compensation and personal allowances. This resolution enabling the payment of \$15,000 per commissioner for attorneys' fees is plainly an "allowance" on which it was appropriate for Commissioners Baucom, Mills and Pressley to participate. Moreover, any member of the public would have known immediately that each might "benefit" up to \$15,000 if the resolution passed. The transaction was thus open, fair and honest and seems to clearly fall within those matters exempted from the direct benefit prohibition of the statutes.

In addition, no resolution at all was needed for these Commissioners to seek reimbursement. Under the then-existing Indemnification Policy, they needed only to secure the approval of the County Manager for the representation of Wyatt & Blake. Particularly since it had already been determined that representation by the County Attorney was inappropriate due to the conflicts of interest and the specialized nature of the investigation, Mr. Wyatt's representation would have been readily approved and his fees paid without any public resolution at all. Thus, the resolution that was presented both made the allocation of monies a more public matter and served as a limitation on the fees to be spent, absent further authorization.

Under these circumstances, Commissioners Pressley, Mills and Baucom acted appropriately in participating in deliberations and approval of the March 10 Resolution.

The Vote of June 2

For the same reasons, there was no prohibition against Commissioners Pressley, Mills and Baucom participating in or voting on the increase in per Commissioner legal fees reimbursement to \$30,000 per fiscal year.

The issue has been raised as to whether these Commissioners were under an obligation to reveal the amount of indemnification that had taken place before the June 2 resolution. This was not required by any of the applicable statutes or resolutions and seems superfluous. Any member of the public who either watched or followed this issue would have immediately understood that the resolution requesting the additional allocation was necessary because the initial allocation had been spent - - indeed, staff made this fact plain on both the agenda and during the public meeting.

Under these circumstances, Commissioners Pressley, Mills and Baucom acted appropriately in participating in deliberations and approval of the June 2 Resolution.

An additional question concerns whether, despite the lack of any limitation on the amount of indemnification under the Indemnification Policy, the County Manager was nonetheless barred from accepting any legal contracts of this magnitude without specific authorization by the Board. That is, were these two resolutions "mandatory" in the sense that the Board still needed to approve the amounts of attorneys' fees that could be expended in order to empower the County Manager to accept these 'contracts.'" Even if this limiting construction was placed on the Indemnification Policy - - despite an utter lack of language indicating any intent for such a limitation - - this would not change the conclusions concerning the

propriety of the Commissioners votes on March 10 and June 2. That is, the fact that these were “contracts” requiring Board approval - - rather than resolutions of limitation - - does not change their essential character as an “allowance” under the General Statutes, one that is plain and transparent to the public.

The June 16 Meeting

As noted at the outset of this Memorandum, the scope of this representation was not only to determine the propriety of actions taken by Commissioners in connection with the votes authorizing the payment of attorneys’ fees, but to examine any additional matters that arose during the course of this investigation. The discussions concerning the FBI inquiry at the June 16 Meeting raise such issues and are thus well within the scope of the Board’s engagement.

The Minutes indicate that Commissioner Openshaw requested that an agenda item be placed on the meeting for the purpose of discussing the monies that had been expended on attorneys’ fees. No action was to be taken, no resolution was proposed, and the matter was one for discussion only. During the course of that discussion, the Minutes indicate that Commissioner Openshaw directly mentioned the Wyatt firm (though apparently incorrectly called it the “Wyatt and Dunn” firm rather than the “Wyatt & Blake” firm) and insisted that he should have been notified about their engagement in connection with an FBI investigation. During the exchange that followed, Mr. Greene stated that no law firm had been retained for an FBI investigation on behalf of individual commissioners. In addition, Commissioners Baucom, Mills and Pressley each stated that they had not been “contacted” by the FBI.

Wyatt & Blake had not only been retained on behalf of Commissioners Mills, Pressley and Baucom, but by this time had been paid more than \$58,000 by the County for their services on behalf of these Commissioners in connection with this FBI investigation. While Commissioners Mills, Pressley and Baucom had not been individually and directly contacted by the FBI, their attorneys - - Wyatt & Blake - - had been communicating with the FBI about this investigation and the Commissioners had voluntarily provided financial information through Wyatt & Blake to the FBI for use in the investigation. These statements standing alone and uncorrected could have left a member of the public with the distinct impression that no firm had been retained for Commissioners Baucom, Mills and Pressley in connection with the FBI investigation and that Commissioners Baucom, Mills and Pressley were not a part of that investigation. However, the ethical and legal import of these statements is complicated by several factors.

In context, these statements were made in during the course of a discussion in which no legislative action was proposed or approved. The agenda item was purely one of discussion only and began with an assertion that Commissioner Openshaw was entitled to be notified when a particular law firm was retained for individual commissioners - - an assertion that has no basis in any of the resolutions or policies for Union County. Thus, these statements did not affect or impact legislative action nor were they used as a justification for such action - - rather they were made in a series of exchanges that appear to be completely political in nature. As such, no statutes were violated and the only code implicated is the Code of Ethics. The most directly applicable portion of that Code is under Canon Two, which requires that "County commissioners should demonstrate the highest standards of personal integrity, truthfulness, honest[y] and fortitude in all their public activities." Thus the issue is: (1) whether there was an affirmative obligation on the part of the Commissioners to publicly correct the County Manager's erroneous statement; and, (2) whether the statements by various Commissioners that they had not been "contacted" were ethically complete.

With respect to the County Manager's erroneous factual statement, the County Manager indicated during his interview that if he makes an error during the course of a Board meeting, he expects his staff to correct him after that meeting, not during the meeting. There are obvious reasons for this policy and it is well within his discretion to ask that corrections take place in this manner. In fact, it appears that this is precisely what occurred when the County Manager was informed by the County Attorney that, indeed, there was an FBI investigation for which Wyatt & Blake had been retained on behalf of individual commissioners.

In addition, the fact that an individual is or is not part of an investigation being conducted by the FBI is generally not intended to be public knowledge. The reason for this is apparent - - innocent individuals may be investigated and discovered to have committed no wrongdoing. In those circumstances, disclosure that an individual is under investigation will do nothing but damage the reputation of an innocent person. It is for this reason that the FBI typically does not comment on the existence of investigations, particularly where it is far from clear that crimes have been committed. As such, no person should be compelled to reveal in a public forum whether he or she is part of an investigation that is ongoing (absent a specific legislative or administrative requirement otherwise). This basic constitutional principle - - that all are presumed innocent - - is further complicated by the fact that in this case the Commissioners had been advised not to discuss the investigation with anyone - - advice that is both standard and necessary. Thus, to impose an obligation on the Commissioners to publicly correct the County Manager under these unique circumstances is at best excessive, and at worst deprives these officials of basic norms of fairness which they possess as citizens of the United States.

With respect to the statements made by various Commissioners about a lack of “contact,” there is a latent ambiguity in this discussion. The Minutes indicate that the discussion began with Commissioner Openshaw observing that he had been **interviewed** by the FBI and had submitted to the interview without an attorney. Commissioner Mills then stated that “he had not been **confronted** nor has the FBI contacted him to talk with him.” Commissioner Mills’ statement, made in response to Commissioner Openshaw’s observation about interviews, in context could certainly mean only that he was saying that he had not been interviewed by the FBI nor had the FBI asked to interview him. Both statements were true. At that point, Commissioners Baucom and Pressley both stated that they had not been “contacted” by the FBI. The use of the phrase “contact” in the context of these exchanges could plainly mean that they had not been interviewed. Again, this was true. However, the term “contact” also has a broader meaning, one which implies that not only had they not been interviewed, but that there had been no contact at all between them (or their representatives) and the FBI. The concern, of course, is that their attorneys had been contacted and were cooperating with the investigation. Thus, read broadly their statements could be interpreted not constituting the entire truth. Particularly in the face of the County Manager’s erroneous statement that Wyatt & Blake had not been retained for an FBI investigation, these statements, when given a broad reading, could have misled members of the public.

This inherent ambiguity in these exchanges weighs strongly against a conclusion that these Commissioners were acting unethically. Additionally, and significantly, is the fact that none of these Commissioners were have found to have engaged in any criminal conduct, criminal behavior or criminal wrongdoing as the result of the investigation. In short, the allegations made of criminal behavior proved to be unsupported; indeed, these allegations - - which appear to have been related to litigation instituted by a hostile former employee who was engaged an extended adversarial contest with the Board and its commissioners - - carried with them a question of bias from the outset. Commissioners Mills, Pressley and Baucom committed no crimes nor engaged in the wrongdoing that was the basis for the criminal investigation. As such, it is difficult to conclude that because innocent people were unwilling to reveal the entire scope of an investigation that was based upon allegations that were proven false, they are nonetheless guilty of an ethical breach.

This said, the failure to speak to correct the inadvertent misstatement by Mr. Greene, and then the technically true but potentially misleading assertion by the Commissioners that they had not been “contacted” in the investigation is troublesome. This failure and these statements implicate the candor with which open government must operate. However, the reality is that the retention of and payments to Wyatt & Blake were matters of open public record and were available to any commissioner (or member of the public) who asked. Consequently, while the statements made at the June 16 meeting are troublesome when read broadly, they were made in the context of an investigation which apparently

found no criminal wrongdoing, were made by Commissioners who are presumed to be (and in fact were) innocent of all allegations, and were seemingly directed at whether individual commissioners had been “interviewed” by the FBI. Under these circumstances, these statements do not rise to the level of a violation of the Code of Ethics.

Additional Issues

Finally, during the course of this investigation, additional allegations were raised against other Commissioners. The two principal allegations were that (1) a commissioner testified falsely under oath that he was present for a discussion at a closed session when it was later proven that he was not at that session at that time; and, (2) during the course of the inquiry into the sale of CMC-Union, a commissioner failed to reveal that her husband’s employer had a financial relationship with one of the potentially involved parties, a relationship which was alleged to be sufficient to cause her recusal from that decision.

Unlike the comments made at the June 16 meeting, these allegations are significantly removed from the main object of this investigation. Moreover, and unlike those comments, these allegations are not matters of Board record nor are they contained in Board documents or minutes. Consequently, and consistent with the scope of our engagement, these are reported to the Board but have not been investigated.

Whether additional investigations need to be conducted into these allegations are matters left to the Board’s discretion. In the exercise of its discretion, however, the Board must seriously consider whether such matters are the proper subject of independent investigations or are more properly handled by their disclosure and debate in the context of the political process. In addition, and to the extent that allegations involve claims of false testimony under oath, referral to and investigation by law enforcement may be more appropriate than an internal investigation commissioned by the Board.

Respectfully submitted this 4th day of June, 2010.

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Following the presentation, the Commissioners asked questions of Mr. Cooney and received answers to their questions. A summary of the questions and responses is recorded below.

Vice Chairwoman Kuehler:

Vice Chairwoman Kuehler stated for the record that she had not criticized Mr. Cooney's report. She thought it was a very in depth report. She said she had a couple of questions, some of which she had discussed with him.

Question #1: She stated that the first time she spoke with Mr. Cooney that they had discussed whether or not there should have been a disclosure. She asked what would actually trigger the requirement for a disclosure? She said for her, the compensation allowance exclusion came as a surprise. She asked Mr. Cooney when in his research did he discover that particular statute?

Response: Mr. Cooney responded that it was probably towards the end of December or early January as he was reviewing all of the statutory provisions and in trying to make sure that he was not going to leave any stones unturned, that he found that statute. He stated it was really in the context of the fact that each Commissioner has a legal duty to vote on everything and can only be excused from voting on something, either by a decision of the Commission as a whole or by a specific statutory exemption. He said that proceeding on the assumption that all other things are equal, a Commissioner has to vote on everything, he then went searching for those exemptions, and the compensation and allowance exemption stood out for him.

Question #2: Vice Chairwoman Kuehler stated that under the Board's current ethics policy and specifically the amendment that deals with the disclosure, there are no exclusions iterated in that policy to include compensation and allowance. She said that it does not specifically reference the statute that he had found that did offer those exclusions. She stated that she understood that laws and ethics

canons are two separate things with different standards and modes of enforceability. Further, she said that she also understood based on some of the latest legislative moves for all of the boards to enact ethics policies, where it has never been a mandate before, it is a tool to create a more defined or narrowed behavior guideline for the boards that are operating under them. Vice Chairwoman Kuehler said that the Board's policy called for total disclosure and did not list any caveats, and she would be interested in hearing why Mr. Cooney had concluded that the exclusions that existed in the statute also pertain to the Board's ethics policy.

Response: Mr. Cooney responded that the policy behind the exemption to be when the Board members vote themselves a pay increase. He said that when the Board members vote themselves an increase in allowance, it was the same thing. He stated that the underlying policy behind that is that it is obvious that the Board members stand to benefit from that action, and no further disclosure is needed. Mr. Cooney said that when the Board was dealing with the two budget resolutions as put forth in these two areas essentially it is more of the same, because they stated that each Commissioner could spend up to "x" amount. He stated it was more in the form of a reimbursement than an authorization. He said that a member of the public would expect that money to be spent and particularly by the second vote, because it was apparent that the second vote had to take place for \$30,000, because the \$15,000 limitation had been exceeded. He stated that he did not think any further disclosure was needed for it to be fair and honest; the assumption is that it would be spent the same as a salary increase or additional allowance.

Question #3: Vice Chairwoman Kuehler said that Mr. Cooney talked initially that in the scheme of things basically what the action had been was to cap or limit the available monies to Commissioners for that representation, and certainly a similar action could have been taken to increase that cap. She said there was not an action taken to increase that cap, and instead the money was spent, then the action was taken with a budget amendment to cover that.

Response: Mr. Cooney responded that bills had been submitted, but the monies were actually not paid.

Question #3: Vice Chairwoman Kuehler said at that point there was a very public discussion about the \$15,000 when it was actually \$30,000 that was spent. She asked if that did not require any disclosure either?

Response: Mr. Cooney stated no, because it was clear from the resolution before the Board on June 2, and even the framing of the resolution that the amount was going to be increased. He said there was a specific reference to the inadequacy in the amount of money that had been set aside, that a member of the public would have understood that \$15,000 had not been enough. Mr. Cooney stated that some of the individual Commissioners pointed out that they had not spent that amount, which was their prerogative just as if there is a salary increase or allowance that the Board members do not intend to take, they can state that. He noted that he thought it

was interesting on the initial vote that Commissioner Lane voted against the \$15,000 even though he had been the one behind placing the item on the agenda, because he did not think \$15,000 was enough money.

Question #4: Vice Chairwoman Kuehler asked Mr. Cooney if he were aware that the County had not treated these expenditures as compensation or allowance and had sent 1099's to the law firm. She asked how he had concluded it was a compensation allowance when it was not treated that way within the budget?

Response: Mr. Cooney stated that he thought this was a bookkeeping issue. He said that he and Vice Chairwoman Kuehler have had this discussion, and he did not believe these monies were income for the Commissioners because they are only being reimbursed for sums they have either spent or incurred; therefore, he said that he thought sending 1099's to the law firms makes perfect sense for handling this from an accounting standpoint. He added that how these are handled from an accounting standpoint is really beside the point as far as he is concerned in terms of what a Commissioner needs to do for further disclosure and what the underlying public policy is.

Question #5: Vice Chairwoman Kuehler referred to Mr. Cooney's report where he addressed the Manager's policy about the staff correcting misinformation by the Manager after a meeting instead of during a meeting. She asked Mr. Cooney if it were his premise that this type of policy pertains to the elected officials as well and was he aware that this in fact was not a policy? She said that she thought it was a misunderstanding between the Manager and what he said to Mr. Cooney and the way that Mr. Cooney had interpreted it. She stated her question would be if that policy existed would it pertain to elected officials, and, secondly, how should misinformation be corrected in the public?

Response: Mr. Cooney responded plainly not, because elected officials can do what they want to do in terms of correcting or not correcting the Manager. He stated that the Manager works for the Board in the same way that Mr. Cooney works for the Board, so there is nothing about the Manager's policy or preference that would constrain public officials. He said that the issue becomes when correcting the Manager are we prepared to say that saying nothing under these circumstances violates an ethical code? He stated that there is no question about there not being a statutory violation, because there was no action pending, and no vote. He said there were no statutes at play, just simply a code of ethics' issue, and whether silence by itself could rise to the level of an ethical violation under the code of ethics, and it is extremely broad and is more aspirational than anything. He stated that he felt very firmly that being a County Commissioner does not mean that a Commissioner waives certain fundamental constitutional rights, and one of those rights is that a person is presumed innocent and the second is that a Commissioner does not have to announce to the world that he/she is involved in a FBI investigation.

Vice Chairwoman Kuehler responded that the three Commissioners were not silent, but comments were made.

Mr. Cooney stated that the comments that were made dealt with their contact with the FBI. He explained that what Mr. Greene had inadvertently said was the County had not hired the Wyatt and Blake firm. He said that Commissioner Openshaw pointed out that he had not had any counsel with him when he was interviewed by the FBI, and Commissioner Lane talked about his interview, and the next Commissioner said he had not been confronted or interviewed and two more said they had not been contacted. He stated that the latent ambiguity in those comments, to a lay person “contact” and “interview” is all kind of the same thing, but as attorneys, they tend to read contact a little broader than interview. He said that is where his concern came in. He said that while they both happened at the same time, there are really two different types of ethical issues.

Commissioner Openshaw:

Question #1: Commissioner Openshaw said that he had no problem with them getting representation from an attorney and having the representation paid for by the County. He stated that he certainly understood the job of a Commissioner, and he had no problem with that.

Mr. Cooney responded that he thought there had been unanimity of agreement among all of the Commissioners that he had spoken with that employing counsel was totally appropriate.

Commissioner Openshaw stated that his concern was what Mr. Cooney had just mentioned and called troublesome, which were the comments about no contact with the FBI essentially. He asked if it were true that once a client hires an attorney that the FBI cannot speak directly with that client?

Response: Mr. Cooney responded that was the way the attorneys preferred it, and it is a matter of policy at the FBI and US Attorney’s Office that is enforced largely more often than not. He said for the most part that was a correct statement.

Question #2: Commissioner Openshaw asked Mr. Cooney how he would define an attorney’s relationship when he is representing his client and dealing with others on his client’s behalf?

Response: Mr. Cooney answered that the attorney is the contact person.

Question #3: Commissioner Openshaw said that essentially there is someone or a group of people who spoke with an attorney in February before the March 10th meeting and there is some contention about whether Commissioners Baucom, Mills, and Pressley knew about the letters (dated March 6th) which were addressed individually to the Commissioners. He said that at some point, they were clearly represented by Wyatt and Blake. Commissioner Openshaw said his contention with this is really twofold: 1) as Mr. Cooney pointed out in his report repeatedly there was the conception that the other three Commissioners were being represented as a unit and not individually, and, therefore, they fell under the Shalati matter. He said if they were essentially being compensated as a unit, it would seem that was an action of the Board, and as a member of the Board, therefore, as a representative of the public, he should have been informed about what was going on. He said the other thing is the issue of the meeting of June 16th where the word was out about the FBI looking at Union County. He stated that his feeling was that the public should know not necessarily about the specific issues that were being discussed but this is where the money is going. He said that not only had this not been done, but also quite frankly, to this day, other than through Mr. Cooney's report, he has never been told what the FBI investigation derived from.

Response: Mr. Cooney said that he wanted to respond to a comment by Commissioner Openshaw that he thought the public had a right to know about the retention of lawyers and the payment of fees. He stated that as a general proposition, no one would argue with that, and all of this information was public documents, subject to request. He said that his problem was that Commissioners retain their constitutional rights even as an elected official of the County. Mr. Cooney stated that there were a number of people who would say if there's an FBI investigation, and an individual has an attorney, then they must have done something wrong. He said that he believed very strongly that people ought to have the right not only to be presumed innocent but also to seek competent legal representation without being forced into a position where they have to reveal that representation. He noted that the clash in this situation is that the Commissioners are public officials also. He said that was why he was not prepared to say that in every case, which he would have had to say if there was an ethical violation, an attorney is retained for a Commissioner in connection with an investigation even though the Commissioner is presumed innocent, it needs to be announced in the public square. He stated he did not think that is where the Commissioners are as public officials.

Commissioner Openshaw continued with his comments stating that the problem was there had been information in the press regarding an FBI investigation and during the Board meeting's public comments, it was addressed by an individual at the podium specifically about the FBI. He said that the concern he has is he thought the Commissioners would have been better off by not saying anything than saying "I haven't been contacted or whatever by the FBI." He stated that his position is that it appears that it was misleading to the public, and he was not sure that achieves the highest standard of truthfulness that is quoted in the report. He asked Mr. Cooney for his comments on this issue.

Response: Mr. Cooney stated that there are really two questions. He asked if the Commissioners would have been better off saying nothing, which is what he would have preferred. He said that there was an ambiguity because the comments arose out of statements volunteered by Commissioners that they had been interviewed and confronted by the FBI. He stated that as he had watched and read through the flow of the minutes, it was difficult for him to know whether when someone said they had not been contacted, it meant that the FBI had not reached out to him or to his lawyer or whether he was as clean as the new driven snow, or was he really saying I haven't been interviewed by the FBI either. He said it was within the context of that discussion that was filled with ambiguity. He said that in terms of whether the Code of Ethics imposes the highest standard, it would be no. He reiterated that he is not the arbitrator ultimate as to what each of the Commissioners should be doing; it is really up to the Commissioners and possibly a majority if the Board ever legislated it.

Mr. Cooney stated that given the latent ambiguity of what occurred during the June 16 meeting and the competing constitutional concerns, he could not come to a conclusion by clear evidence that there was an ethical violation.

Question #4: Commissioner Openshaw stated that someone had stated tonight that he stood by his statements that he was not contacted by the FBI, but in the report, it states that two of the Commissioners had given financial information to the FBI, so they had responded to a request, which was a contact with their attorney who is their proxy, and they fulfilled that request which means there was an interaction which to him meant contact.

Response: Mr. Cooney stated that this goes back to the ambiguity of what they meant when they said during the meeting that "I haven't been contacted." He said if they meant the FBI has never been in touch with me or my lawyer or anyone else, then that was wrong. Further, he stated if they meant "I haven't been interviewed either", most lay people would use contact and interview interchangeably.

Commissioner Openshaw stated that was his issue and he had thought it could have been handled better and more openly.

Commissioner Baucom:

Question 1: Commissioner Baucom stated that Mr. Cooney had alluded to in his report why he believed the FBI was involved, investigating, etc. He asked Mr. Cooney to comment for the record about his feelings on that issue.

Response: Mr. Cooney stated that he could give his understanding about it without being privy to many of the source documents. He said that in the context of the employment dispute that Mr. Shalati was having with the County, allegations were raised, which so far as he was aware and from what he had seen, proved to be without any foundation, that there was criminal activity going on in connection with the apportionment of sewer permits. He said that the investigation is over and closed, and no one was charged and presumably no wrongdoing was found. Mr. Cooney said it was exactly for that reason why the presumption of innocence is so important. He stated that he did not know who a target was and who a subject was, and said these are important legal terms in any investigation or were they simply mere witnesses. He said that mere witnesses will often retain attorneys to deal with the FBI and US Attorneys. He stated that once it starts getting into “I’ve hired a lawyer or the FBI is looking at it”, the public jumps to a conclusion that simply is not warranted, and reputations are irrevocably damaged at that point. He said that was the fundamental problem he had with some of the contention that more needed to be said within reason.

Question #2: On a personal nature, Commissioner Baucom asked Mr. Coney if he had reason to believe that he was being looked at or were a person of interest by the FBI, would he seek an attorney and employ the attorney, and if so, the reason he would do so.

Response: Mr. Cooney stated he would hire Jim Wyatt because he would need someone objective to serve as an intermediary and to determine what was going on. He said he could not be objective about his own case.

Question #3: Commissioner Baucom asked Mr. Cooney what he thought the purpose or the desired outcome of his employ was in this investigation.

Response: Mr. Cooney responded that he could read the minutes and no one attempted to influence the outcome of his investigation. He said that he thought everyone answered the questions truthfully and there were excellent exchanges that were pushed back and forth. He stated that when he would push on a conclusion, other questions would be raised, and that was the type dialogue he expected from his clients. He said that no one led him to believe that a certain outcome needed to be achieved or that they desired a certain outcome to be achieved. Mr. Cooney said that concerns were shared with him, but all along he never felt encumbered in terms of conducting an independent look at what was going on.

Mr. Cooney said that in terms of why the investigation was being done, he thought there were legitimate issues being raised on questions for which there was not a lot of law. He said that was why he had to essentially piecemeal policy from other statutes to reach the conclusions that he reached. He stated that when he approached the investigation, he did not see a lot of obvious answers,

and it took some scrubbing before it got to a position where he felt comfortable with the conclusions. He said he thought they were legitimate questions and answers. He commended everyone involved in the investigation for their openness and fairness.

Question #4: Commissioner Baucom asked the number of Commissioners Mr. Cooney had spoken with and the number of times he had spoken with Commissioners in connection with the investigation. Further, he asked Mr. Cooney why he had or had not met with all of the Commissioners during his investigation.

Response: Mr. Cooney stated that he spoke with Commissioner Baucom, Commissioner Mills, and Commissioner Pressley and spent approximately an hour and fifteen minutes with each of them. He said for the record, the three of them answered every question he had asked, and no one placed any limitations on the questions he asked. He said that he began the investigation by meeting with Vice Chairwoman Kuehler for approximately one hour and she reviewed the papers and history with him. He said that Vice Chairwoman Kuehler and he had exchanged e-mails. He said that he and Vice Chairwoman Kuehler had several telephone conversations after he had reached the preliminary conclusions. He stated that he did not speak with Commissioner Openshaw, Chairwoman Rogers, or Commissioner Lane. Mr. Cooney stated that after he had finished reviewing the applicable law and concluded the interviews with Commissioners Baucom, Mills, and Pressley, he did not see that Commissioner Lane would add any material information to the investigation. He stated the real issue was should more information have been revealed in connection with the two votes? He said he had pretty much reached the conclusion that the answer was “no.” He said the only problem he was wrestling with for most of the investigation was the June 16th meeting. He stated that he had spoken with Mr. Greene and gotten his perspective on it, in terms of his comments and what he knew and how new he was to the job. Mr. Cooney said that he did not see that either Commissioner Lane or Commissioner Openshaw would have any additional information that would help in the investigation.

Question #5: Commissioner Baucom asked Mr. Cooney about his charge to conduct the investigation. He read from an excerpt from the October 19, 2010, minutes of the Board of Commissioners as follows: “At the request of Chairman Openshaw, Commissioner Baucom repeated his motion to be as follows: to add Commissioner Lanny Openshaw and former Commissioner Roger Lane to the ethics investigation and to be specific that the agenda item of March 10, 2008, to hire attorneys for the defense of individual Commissioners be included in the investigation and include the full Board, and secondly, that any findings of ethics violations against any Commissioner, past or present, be brought to this Board. The third component is that any ethics violation found during the investigation either of past or present Commissioners be brought to the Board.” Commissioner Baucom asked if that was the charge under which Mr. Cooney was engaged to conduct the investigation.

Response: Mr. Cooney responded that was the general charge. He said that it was never his perception and he did not think his firm would have agreed to the representation if he were to somehow going to be an ombudsman to investigate every Commissioner for any possible ethics violation. He stated that it was mentioned that Commissioner Lane and Commissioner Openshaw were added to the March 10th vote. He said that he concluded fairly early in the January or February timeframe before he interviewed Commissioners Baucom, Mills, and Pressley, that unless he was missing something, the vote on March 10th on the attorneys' fees was totally appropriate and no one had an obligation to reveal that they had hired an attorney or intended to because of the analogy to allowances and salaries. He said what he struggled with was the June 16th meeting.

Mr. Cooney stated that other ethical issues were raised with him during the course of his interviews and he viewed those within the reasonable ambit of something black and white in the minutes or directly related to what he was looking at, then that was part of what he had to do, but to the extent it involved an entirely new subject area, he viewed his job was to bring it to the Board's attention and then let the Board decide what to do with it. He said that he could not and would not be kind of a roving ombudsman to investigate everybody for every possible thing. He stated he understood the sense of the resolution was to follow those votes and anything else that comes up, but he had to narrow it in some fashion.

Commissioner Mills:

Question #1: Commissioner Mills stated that the process has been long and arduous and he hated that it had come to this point. He said that this matter has caused a tremendous backlash, and the Board has been fractured over it, and it has caused and will continue to cause many problems. He asked if there is a statute of limitations on ethics matters.

Response: Mr. Cooney responded that he was not aware of a statute of limitations on ethics matters.

Question #2: Commissioner Mills referred to Commissioner Baucom's motion of October 19, 2010. He said that some of the comments Vice Chairwoman Kuehler made earlier were answered at the Institute of Government. He stated that he had mentioned several items that he believed were ethical violations that were not included in the report. He asked Mr. Cooney why he had chosen to leave those items out of the report.

Response: Mr. Cooney said that he thought he had taken pretty good notes and had tried to include the two main items: 1) allegation of potential perjury and 2) and the allegation of a conflict of interest concerning the sale of the hospital.

Question #3: Commissioner Mills referred to Canon Two of the Board's Code of Ethics which requires County Commissioners to demonstrate high standards of personal integrity, truthfulness, honesty, and fortitude in their public activities. He said the first thing that came to mind during his discussions with Mr. Cooney when Vice Chairwoman Kuehler first brought the investigation forward was she had made a display of being ethical, moral, etc. in moving this forward and the fact the vote of March 10, 2008, was one of the key elements that pushed her to run for Commissioner when in fact the filing period was over in February, and she was already a candidate for Commissioner prior to this motion taking place. He asked Mr. Cooney if he remembered that conversation.

Response: Mr. Cooney responded that he did not remember it being put as Commissioner Mills had stated but said if that conversation had occurred, he could not see why he would not have thought this was an ethical matter he needed to investigate.

Question #4: Commissioner Mills said that he had also mentioned to Mr. Cooney the fact that he thought there was a huge ethical violation in March 2009 when there was an attempt to take away the ability of the County Manager to hire department heads. He said that he thought Vice Chairwoman Kuehler had made that motion, and at that time the Manager stated he had a contract. He said Vice Chairwoman Kuehler's father was an active candidate for the Public Works Director position at that time. He said he was curious as to why this information had not been included in the report.

Vice Chairwoman Kuehler interjected that this was not true.

Response: Mr. Cooney responded that Commissioner Mills had mentioned this item to him, and the reason he thought he had put it to one side was because it did not appear to him to have been subject to any actual action by the County and did not rise to the level of the inquiry for example, as the sale of the hospital, which was a hugely contentious issue in the County.

Question #5: Commissioner Mills said that he had also pointed out the recording of the October meeting where Commissioner Openshaw was asked a question by Commissioner Baucom if the meeting he attended at the Ballantyne Resort had anything to do with the sale of the hospital, and his response at the end of that was "no." Commissioner Mills said that comes back to truthfulness, and that was actually not correct.

He said another issue he had mentioned to Mr. Cooney was the fact that Vice Chairwoman Kuehler and Commissioner Openshaw both alluded to the fact that Donnie Baucom, Chair of the Community Trustee Council at the hospital, set up a meeting where they met at Ballantyne. He said that the e-mails show Commissioner Openshaw set up the meeting. He stated that he knew these issues were trivial, but when it comes to truthfulness and such a big deal was made out of it and also the fact that one of the

Commissioners made a comment that they were all about ethics and truthfulness and wanted things to be done right, and there are numerous occasions where this was not taking place. He said the other issue he thought he had mentioned to Mr. Cooney was the fact that Commissioner Sexton testified under oath that he, Commissioner Stone, and Commissioner Lane met routinely at Commissioner Lane's house prior to County Commissioners' meetings but did not discuss County business, which was a quorum of the Board members and a violation of the Open Meetings Law. He asked why those comments were not included in the report.

Response: Mr. Cooney stated that when he raised the hospital issue, he would have intended to have it to include all the tentacles emerging from it, and in the context of the report, the issues that Commissioner Mills was raising are issues that he had raised, but the problem was he did not have a lot of objective information in front of him to be able to validate it without launching into another in depth series of investigation.

Commissioner Mills stated that he did not mean for Mr. Cooney to investigate these issues but to report those to the Board. He said that he felt those issues needed to be included in the report.

Mr. Cooney responded that he reported the two matters that he felt to be the most serious charges, and he wanted to alert the Board to those, and then the Board could do as it sees fit.

Chairwoman Rogers stated that she wanted to clarify a comment raised during the public comments about tough questions Mr. Cooney would receive from the Board about the report. She said that she thought he would receive tough questions from all the Board members, and it was not exclusive to her.

Chairwoman Rogers:

Question #1: Chairwoman Rogers said that she and Mr. Cooney had not spoken during the investigation, so this was the first time she has had an opportunity to ask him questions. She stated that her questions were coming from issues that have been presented to her by the public based on the perceptions and ambiguities that are out there. She stated the big question that everyone has that there were a series of actions that occurred that resulted in \$136,000 of taxpayer dollars being spent on what is being deemed as a non-investigation if one is blatantly reading the report and the process in which that happened. She said if a person is looking just at the documentation, it appears that a contract was entered into by three Commissioners, and after that contract was entered into, those Commissioners came to the Board and presented it to be approved as a contract. She stated that the law firm had already expended monies and did so without a contract from the Board and that all of these actions were done kind of retroactive and the engagement

was done without a vote. Vice Chairwoman Rogers said in the public's eye that is very ambiguous at best. She asked Mr. Cooney to help her and the public understand the series of events.

Response: Mr. Cooney stated that innocent people had to spend money on their behalf to deal with the FBI. He said that is where he needed to start. He stated that in terms of the analogy that was being drawn to a contract, while by itself out in space, that might be all right, the problem is there is an indemnification policy [1993] and the state has indemnification statutes. He stated that there is no requirement that the Board approve the selection of an attorney in the County's indemnification policy. He said the policy states that procedures for handling liability claims and lawsuits against the County, its officers, and employees shall be established by the County Manager and the County Attorney or their respective designees. He stated that the policy gives the County Manager and/or the County Attorney absolute discretion to retain who they deem fit for any Commissioner and to spend whatever sums are necessary.

He said that the March 10 and June 2 votes actually put sunshine on these matters that did not need to exist. He said in other words, the County Manager or the County Attorney could have done all of this without a single vote and without the public knowing that there was a vote or that Commissioners were going to budget money to defend issues arising out of the Shalati litigation. He said that far from being a problem or some kind of retroactive approval of a contract, those two votes in fact revealed much more information than was required in the indemnification policy, because all of this could have taken place in the County Manager's Office or the County Attorney's Office without any vote whatsoever.

Question #2: Chairwoman Rogers asked if the limitation of the County Manager's authority with the dollar amount apply at all?

Response: Mr. Cooney responded under the County's indemnification policy, it does not.

Question #3: Chairwoman Rogers asked if he were saying that the indemnification policy allows all of that to occur, and they did not really need to come before the Board?

Response: Mr. Cooney responded exactly and that the two resolutions limited the amount of money that could be spent.

Question #4: Chairwoman Rogers referred to Paragraph 3, Page 5 of the report wherein Mr. Cooney stated that: "Commissioners Baucom, Mills and Pressley indicated that they met with Mr. Wyatt in February at Commissioner Pressley's office."

Response: Mr. Cooney said that he thought that was correct.

Chairwoman Rogers said her question was that was a majority of Commissioners. How would that not be a violation of the Open Meetings Law?

Response: Mr. Cooney responded that the three Commissioners were not discussing County business as far as he was aware.

Chairwoman Rogers stated that if the business was to meet with an attorney and to engage that attorney, then how would that not be County business?

Response: Mr. Cooney stated that the three Commissioners were not engaging an attorney on behalf of the County. He said that the attorney had separate engagement letters for each of them, and each Commissioner was interviewed separately in order to maintain the attorney-client privilege with each of them. He stated that he did not believe this would violate the open meetings law any more than three of them having lunch and discussing the Panthers game. He said that the three Commissioners were there for the purpose of speaking with an attorney, and spoke with the attorney one by one. He stated that in fact there was considerable confusion among some of them about whether or not Mr. Wyatt was going to be representing them or simply joining the Poyner and Spruill legal team. He said it was clear to him that each Commissioner was interviewed separately.

Chairwoman Rogers said that the reason she had brought this up is the Board has been advised by Mr. Crook numerous times and apprised that for example, when there was a candidate forum or where three Commissioners were going to be at a municipality meeting and maybe not even speaking, there had to be a notice of a special meeting issued. She stated that this has always been confusing to her, because it seems like there is a level where notices are required that may not exist.

Response: Mr. Cooney stated that there were multiple incidents where Commissioners were present, for example, at someone's deposition in the Shalati litigation. He said that he had difficulty believing that the Open Meetings Law was meant to apply to three people being interviewed by an attorney in connection with an investigation. He said that Mr. Crook is the municipal law expert, and he did not look into the Open Meetings Law aspect, but if the Open Meetings Law says that, then in his judgment, it violates the Sixth Amendment to the United States Constitution.

Chairwoman Rogers said that she has the same problem with having to send a public notice if they are going to a Republican Party Executive Meeting and that they have to note that there might be a quorum present or if they are going to a candidate forum,

even if they are not all going to speak. She stated that she has taken up that issue with Mr. Crook before, because she believes it is beyond what is the intent of the Open Meetings Law.

Question #5: Chairwoman Rogers stated that there had been a lot of discussion regarding semantics and verbiage of confronted versus interviewed. She said that she thought the Board had already gone through that discussion. She referred to Page 15 where Mr. Cooney had talked about that being troublesome. She said the only comment she would make to that is ethicalness versus unethicalness. She stated that this was very difficult to quantify in certain cases. She said that there is the actual breaking of the law and the actual violation of the spirit of ethical and transparent government. She stated that she was told by the public that was how they were viewing it that it was a violation of the spirit of ethical and transparent government because of all the after the fact and all of the changes. She said it was very confusing for the public to sit back and get bits and pieces.

She said the last comment she wanted to discuss is Canon 4, Part C(2) of the Board's Code of Ethics that the Board should conserve the resources of the County and their charge. She stated that the fact that the County spent \$136,000 on an investigation that did not involve any contact or any interviewing or any confrontation, that is what the public has a really hard time getting their hands around.

Response: Mr. Cooney asked to provide the public with a perspective. He said when the FBI looks at an individual and decides it is going to start asking for financial records and investigating things whether they are true or it is just chasing ghosts, and, in this case, apparently chasing ghosts, that person wants an attorney who is going to spend a lot of time understanding what the real facts are, understanding what the financial issues are, understanding what the financial transactions look like, so that attorney can explain it to the prosecuting authorities. He stated that the problem here is not that the County spent a \$136,000 for innocent people; the problem is how innocent people came to be the subject of an investigation that had no merit to it. Mr. Cooney said that once that ball begins rolling down the hill, it is totally appropriate for everyone to do whatever is necessary to protect themselves consistent with being citizens of this country.

Chairwoman Rogers agreed this was a valid point, but stressed from the public's perception Commissioner Openshaw was actually interviewed by the FBI and had no attorney, but that was an individual decision. She said that it is a hard pill for the public to swallow, when they look at it, view it as needless and not all Commissioners either spent any money or spent that much money.

Mr. Cooney said that he did not want anyone to think because a person retains a lawyer to protect himself/herself, that person must have done something wrong or that by retaining an attorney, that person is doing something wrong.

Vice Chairwoman Kuehler reiterated that no one had said the Commissioners did not deserve to have the representation; it was just questions about how it came about.

Mr. Cooney responded that he did not hear anyone on the Board saying that, but he was concerned that the public might feel that way because of the expenditure.

Commissioner Openshaw clarified comments that were made earlier by Commissioner Mills regarding the meeting that he and Vice Chairwoman Kuehler attended with Regional Care. He said that the comments had misrepresented what actually occurred.

Commissioner Mills stated that he, Commissioner Baucom, and Commissioner Pressley had been sued by the former County Manager, and they asked and received legal advice that the three of them could meet together in the scope of the attorneys, but they chose for two of them to meet at one time. He stated that when they met at Commissioner Pressley's office, they met one at a time with the attorneys.

He said on a positive note one of the things he wanted to bring out of all of this is there needs to be a policy or guidelines. He said he did not know about the indemnification policy until it was pointed out. He said if anything good comes out of this investigation, there needs to be policy guidelines. He stated an orientation program for new Board members would be great and attending training at the Institute of Government is an absolute must and probably should be done prior to Commissioners being sworn in. He suggested that the Board consider having that since there will be three new Commissioners being seated in December. He also suggested that Commissioners go and meet the department heads as a part of an orientation process.

Commissioner Baucom reiterated that when the three Commissioners met with Wyatt and Blake at Commissioner Pressley's office, Commissioner Pressley was not present. He said that he met with the attorneys individually. He stressed that they never met with the attorneys as a group of three. He said that during the depositions in the Shalati case, there were never more than two Commissioners present in any deposition. He said that they worked diligently to assure they did not violate the rule of three Commissioners being present at one time.

He stated that when he brought the motion forward initially, Chairwoman Rogers (Vice Chair at that time) made a statement and Commissioner Openshaw (Chair at that time) did not want to move forward with the investigation. Commissioner Baucom said

his purpose of bringing the motion forward was to do exactly what has been done to exonerate him and the other two Commissioners as individuals, whom he also believed to not be guilty of any violations.

He read from the minutes that Vice Chair Rogers had stated that “she had two thoughts, first, that not doing this would be placing a price tag on a potential ethics violation. She said that the Board has an ethics policy and if it is going to follow the policy, then it needs to follow the policy. She stated that if the Board was going to place a price tag on ethics, then the policy needs to be amended to state if a potential violation is brought to the Board, then the Board would proceed with investigating it if it does not cost more than a certain dollar amount. She said her second point is that if one of the Board members or a member of the public had brought forth an accusation or comment publicly that perhaps she had violated some ethics policy that unless she was guilty of it, she would want to see a resolution to the accusation because otherwise the stigma would be hanging over her head.” He said that was why he had brought forth the motion for the investigation to do exactly what Mr. Cooney has done. Commissioner Baucom expressed appreciation to Mr. Cooney.

Commissioner Baucom asked during his second round of questions the following:

Question #1: He stated that Mr. Cooney had included Commissioner Lane’s deposition in the report as a finding. He asked Mr. Cooney if this was a legal violation, ethical violation or both?

Response: Mr. Cooney stated it could potentially be both. He said he would need to see the deposition and see the evidence, and under some circumstances, it could be perjury if it were material to the fact at issue. He said this was why he had suggested on preliminary review, if people felt it could be a material issue, then the Board would probably be better off asking John Snyder (District Attorney) to look into it rather than him.

Question #2: He stated that Mr. Cooney had included in his report information given to him about the Chair’s actions with the Community Trustee Council and her failure to disclose a potential financial impact with her husband and the failure to recuse or offer to recuse herself. He asked if this were a legal violation, ethical violation, or both?

Response: Mr. Cooney said again he did not know the underlying facts and all he could do was to repeat what he was told and he had tried to scrub the names out. He said that he did not believe that any votes were taken or any action was taken, in which case it would be totally an ethical issue and not a legal issue assuming that it would be a conflict at all. He stated that he did not know enough facts to know objectively if that would fall within the direct or indirect interest portions of the statutes.

Commissioner Baucom stated that the Chair was in a position serving on the Community Trustee Council to have intimate knowledge of funding, potential projects and projections, and by her husband's website that the firm had done work for not only the management organization of the hospital in the County but also a competitor that they were working with.

Question #3: Commissioner Baucom said that Commissioner Mills had brought forward Vice Chairwoman Kuehler's actions with her motion to remove the responsibility of the Manager to oversee department heads and put that responsibility with the Commissioners, and at the same time, her father was an active candidate for a department head. He asked if this were a legal, ethical, or moral violation?

Response: Mr. Cooney responded that it was hard to say because it is one thing to have a generic policy to pull that away from the Manager. He said if someone had acted directly on putting in a department head who was a relative, that would be something different. He stated that the fact some action the Board might take could benefit somebody down the road whom they know, feel fondly about, or is related to a Commissioner, it is a very difficult conclusion to draw based on that alone. He said that the wisdom of the public and the political process is sometimes the best way, and airing it might be the best way to let the public give the only opinion that matters, which is theirs.

Question #4: Commissioner Baucom asked if Commissioner Openshaw's failure to be honest or truthful with his answers was an ethical violation?

Response: Mr. Cooney stated that what he had tried to point out is that so much of it depends on the context of what people are hearing in the give and take of a conversation. He said what is in someone's head and what they are hearing in the ebb and flow of the conversation, particularly with a political body such as the Board, makes those things difficult. He stated he simply was not in a position to answer the question.

Question #5: Commissioner Baucom asked Mr. Cooney during his investigation, did he find that Commissioners Baucom, Mills, and Pressley understood equally who hired Wyatt and Blake, how Wyatt and Blake came to be hired?

Response: Mr. Cooney responded that each of the three Commissioners had a different version of this and there was not a shared understanding of how that came about.

Continuation of Question #5: Commissioner Baucom asked as a follow-up to that question, why did Mr. Cooney think that occurred?

Response: Mr. Cooney stated that he thought there was a lot of natural confusion particularly on the part of lay people when first of all, there were a number of attorneys working on the Shalati case to begin with, and then a conflict arises because Commissioner Lane is deemed to be a hostile witness, so his interest began diverging and there were talks about separate representation on that; and, in fact the County hired a separate law firm to represent Commissioner Lane. He said then suddenly there is another issue coming up with an investigation and there's another group of lawyers coming in. He said he understood how confusing it could be. He said that he did not think it was important for his conclusions to figure out who knew what when. He stated that he thought there were legitimate misunderstandings about what role Wyatt and Blake was playing for whom, whether or not they were working for Poyner and Spruill, whether they were working for the County, or each of the three Commissioners.

Question #6: Commissioner Baucom said that one of the admonitions that Vice Chairwoman Kuehler has made is that Commissioner Baucom knew that on March 10th he had hired Wyatt and Blake and that she had a letter of engagement with his name on it. He asked Mr. Cooney if he found any component or point that led him to believe that he had seen, read the letter, or had his name on the letter other than typed in, had he signed it, or had any reason to believe that he knew about the letter?

Response: Mr. Cooney responded that he was told that Commissioner Baucom did not know about the letter and clearly had not signed it. He said that it was not addressed to Commissioner Baucom at an address, although it did contain his name on it. He said there was a lot of ambiguity around it, and clearly, Mr. Wyatt believed he would be representing Commissioners Baucom, Mills, and Pressley individually. Mr. Cooney said it also became apparent to him that there had been a break down in communication along the way. He said he did not need to resolve who understood what, because it seemed relatively plain to him that when the Board voted to, from his perspective, limit the amount of attorney's fees, that it was a functional equivalent of a salary or allowance and did not need any more disclosure with it. He stated that the public understands that.

Commissioner Baucom said that he was told he has been investigated by the FBI, told he has been cleared by the FBI, been investigated by Mr. Cooney, who is, as he understands, an esteemed attorney with a good reputation, and Mr. Cooney has found that he has not violated any issues. He said that he thought there were only three people in the room that could say they have been investigated by the FBI and Jim Cooney, and have been cleared. He again expressed appreciation to Mr. Cooney for his work.

Chairwoman Rogers said that in regards to the comments made both by Commissioner Mills and Commissioner Baucom when they brought up the name and included her name on what had been included in the report, not only is it a libelous mischaracterization but is a reckless disregard to the truth. She stated that it harms a private company and harms a private citizen, and she was not going to comment any further because she could see the potential of some kind of lawsuit coming up against this county. She commented as far as the Community Trustee Council, she has stated to Mr. Crook and others that she thought the fact that for any Commissioner to serve on that council is a conflict of interest, and she attended two or three meetings, and has had a couple of conversations with Mr. Crook to let him know that she was not comfortable with attending those meetings and felt it was a conflict of interest as a Commissioner and she was not going to attend. Further, she said she did not keep the paperwork that she received at the Community Trustee Council meetings. She stated that she had made it a point every time of not keeping whatever paperwork that was submitted by the Community Trustee Council or the Board of Directors in that room. She said that she thought it was a conflict of interest that the Commissioners serve on the Board of Directors of the hospital and the fact that the Commissioners approve the actions of the Community Trustee Council. She said that was in direct conflict. She stated many times what the Community Trustee Council is doing is in direct conflict with the Board of Commissioners.

The Chair thanked Mr. Cooney for his efforts and at approximately 12:00 a.m. called for a five-minute recess in the meeting.

At approximately 12:05 a.m., the Chair reconvened the meeting and called the next item on the agenda.

WESLEY CHAPEL FIRE & RESCUE REQUEST FOR SEWER ALLOCATION:

Chairwoman Rogers recognized Al Greene, County Manager, to explain the agenda item.

Mr. Greene stated that Wesley Chapel Volunteer Fire Department has been working for some time to obtain land use approvals that would allow for the constructions of a new fire station at 315 South Waxhaw-Indian Trail Road, and it has been granted a Conditional Use Permit to proceed. He said that based upon the engineer/architect calculations, the new station will need 700 gallons per day of sewer capacity.

He stated that the department acquired an adjoining parcel which had a residential allocation for sewer capacity of 360 gallons. He said that the deficit for the new station is 340 gallons based on the engineer's calculations. He stated that Section 7.1 of the Sewer Allocation Policy provides that "Subject to approval by the Board of Commissioners, additional capacity at treatment facilities, if

available, may be allocated to other Governmental facilities.” He said that Exhibit 6 the Sewer Allocation Policy lists the governmental facilities and the corresponding allocations, which does not include Union County Public Schools’ projects as follows:

| | |
|--------------------------------|----------------------------|
| EOC/E911 | 5,000 gallons per day |
| Regional Library (Weddington) | 5,000 gallons per day |
| Waxhaw Regional Library | 5,000 gallons per day |
| Public Works Operations Center | 5,000 gallons per day |
| Fire Station – Waxhaw | <u>600 gallons per day</u> |
| Total | 20,600 gallons per day |

Mr. Greene stated that the only project listed on Exhibit 6 that has progressed since adoption of the Sewer Allocation Policy is the Waxhaw Fire Station, so there is ample opportunity to offer an adjustment to provide the additional 340 gallons for Wesley Chapel’s Fire Station. He said that it is recommended that Exhibit 6 be amended to reduce the allocation that is contained in Exhibit 6 for the Public Works Operations Center from 5,000 gallons per day by 340 gallons per day needed by the Wesley Chapel Volunteer Fire Department, which would bring the Public Works Operation Center’s allocation to 4,660 gallons per day.

He stated that it is the intent of the department to receive bids for this project in the coming weeks, and his understanding is that once the bids are received, staff would come to the Board to seek a resolution in support of a governmental loan for the financing of the fire station. Mr. Greene said that an item that is always of interest is how capital expenses impact the department’s budget while the fire department is only asking for sewer allocation. He stated that the department will be making final lease payments on two trucks at the end of 2011, and the amount of the two lease payments totals approximately \$360,000, which is currently built into the departmental budget. He explained that the lease for the new facility will be structured so that the lease payment does not exceed the combined amount of the two current leases.

Mr. Greene introduced Butch Plyler, President of the Board of Directors for the Wesley Chapel Fire and Rescue. He said that he and Mr. Plyler talked extensively about the justification for the project and the efforts they went through in the design to keep the costs as low as possible.

Vice Chairwoman Kuehler initiated discussion regarding the typical length of a fire truck lease, the length of time that the lease payments that will be retired by the department have been on the books, and the typical length of a fire station mortgage. She said that she understands that lease payments are being retired in the occurrence of the new mortgage. Vice Chairwoman Kuehler

stated that the Board has discussed the fire departments in its budget discussions. She said that there are a couple of fire district stations that are being subsidized by the County because the tax rates are not set at a level where they are funding themselves. She stated that in two of the versions of the fire budgets there would be an increase in Wesley Chapel's and Waxhaw's fire department budgets. She said that she did not think anyone had ever argued that Wesley Chapel does not need a station.

Mr. Greene pointed out that the Sewer Allocation Policy in terms of the governmental allocation was designed to be amended for future projects.

[Chairwoman Rogers left the room at approximately 12:10 p.m.]

In the absence of the Chair, Vice Chairwoman Kuehler assumed the Chair position and continued the meeting.

Following the discussion, Commissioner Baucom moved adoption of the recommended amendment to the Sewer Allocation Policy.

Vice Chairwoman Kuehler asked if the Board could move to excuse Chairwoman Rogers from the vote on this matter. Mr. Crook responded that this would be appropriate.

Vice Chairwoman Kuehler moved to excuse Chairwoman Rogers from this vote. The motion was passed by a vote of four to zero. Vice Chairwoman Kuehler, Commissioner Baucom, Commissioner Mills, and Commissioner Openshaw voted in favor of the motion. Chairwoman Rogers was not present.

By way of discussion of Commissioner Baucom's motion, Commissioner Openshaw said that he has not seen the fire department's plan. He stated that he lives in Wesley Chapel's fire district. He said that the County has a fire study that should be completed at any time. He stated that he did not feel comfortable making decisions on either this item or the next item unless there is a good rationale for it when a fire study is forthcoming that is to be encompassing. He echoed Vice Chairwoman Kuehler's comments about Wesley Chapel needing a new station, and he was glad to see them have one. He said that he would like to know more about the station particularly since he is a taxpayer in that district.

Mr. Greene responded that there have been discussions with Dr. Jenaway, who is working on the fire study, and the report will recommend both the fire station and the pumper truck which is the subject of the next agenda item. He said that he thought there had

been discussions with the fire chief a year ago, and unless he was mistaken the Board had been invited by the Fire Chief to visit the fire department and the Board chose not to go. He stated that he understood Commissioner Openshaw's questions but recommended working with the fire department to answer the questions.

Commissioner Openshaw said that Vice Chairwoman Kuehler raised the point that Wesley Chapel's fire tax, which is less than two cents, is being subsidized significantly. He stated that one of the questions he had was "Why the million dollar shortfall?"

Mr. Greene stated that he had learned from Mr. Plyler that the department is planning ahead and has a capital plan.

Vice Chairwoman Kuehler said she wanted to receive more information, obtain the fire study, find some resolution to the issues dealing with the fire departments from the budget standpoint, and to have some resolution to the budget issues.

Commissioner Openshaw moved to defer action on this item until the Board's work session with the schools.

Mr. Plyler asked when representatives of the fire department could meet with the members of the Board who have questions. Commissioner Openshaw suggested Wednesday or Thursday of this week.

Vice Chairwoman Kuehler stated that her questions were related more to the budget and the budgeting scenarios of the fire departments.

Mr. Greene stated that the leases requested by the fire department will not require a tax increase, as they are currently built into the department's operating budget. He said that they cannot say there will not be a tax increase, but stressed that the truck and fire station will not require a tax increase.

Vice Chairwoman Kuehler said that she would like 30 days to clear up her questions.

Following the discussion, Vice Chairman Kuehler called for a vote on Commissioner Openshaw's motion to defer action until the Board's next work session. The motion failed by a vote of two to two. Vice Chairwoman Kuehler and Commissioner Openshaw voted in favor of the motion. Commissioners Baucom and Mills voted against the motion. Chairwoman Rogers was excused from the vote.

Vice Chairwoman Kuehler then called for a vote on the original motion by Commissioner Baucom to approve the amendment to the Sewer Allocation Policy. The motion failed by a vote of two to two. Commissioners Baucom and Commissioner Mills voted in favor of the motion. Vice Chairwoman Kuehler and Commissioner Openshaw voted against the motion. Chairwoman Rogers was excused from the vote.

Commissioner Openshaw said that he would be glad to meet with Mr. Plyler hopefully on Thursday.

WESLEY CHAPEL FIRE AND RESCUE: RESOLUTION APPROVING FINANCING FOR PURCHASE OF 2010 PIERCE “PUMPER” ENGINE TRUCK:

Al Greene, County Manager, stated that a request has been received from Wesley Chapel Fire and Rescue for a resolution approving a governmental lease for a new 2010 Pierce Pumper Engine Truck. He said that the new truck will replace a 1989 model pumper, and the department has \$150,000 on hand to go towards a down payment and proposes to finance the balance of the \$561,000 cost through a three-year lease. He said that the \$150,000 is currently built into the department’s budget, and the purchase of the vehicle and proposed financing will not require an increase in departmental funding. He stated that the department’s vehicle replacement schedule does not call for any additional trucks to be purchased in the next three years, and for this reason, the purchase will not require an increase in the district’s tax rate.

Mr. Greene stated that the recommended action is to adopt a Resolution Approving the Incurrence by Wesley Chapel Fire & Rescue of up to \$411,000 in indebtedness to finance a 2010 Pierce Velocity Engine Pumper. He said that it was his understanding from Dr. Jenaway that the fire study would recommend these for replacement as soon as possible.

Following the explanation, Commissioner Mills moved to adopt a Resolution Approving the Incurrence by Wesley Chapel Fire & Rescue of up to \$411,000 in Indebtedness to Finance a 2010 Pierce Velocity Engine Truck.

Vice Chairwoman Kuehler stated that she did not have as much an issue with this item because it is a swap for swap. She offered a friendly amendment to the motion to remove Paragraph 5 from the draft resolution which reads as follows:

“(5) As represented to the Board of Commissioners by the Treasurer of the Department, approval of this resolution by the Board of Commissioners will not result in a tax increase at this time within the district served by Wesley Chapel Volunteer Fire Department, Inc.”

She stated that she did not think there could be guarantees that that it would not result in a tax increase at this time within the district served by Wesley Chapel Volunteer Fire Department. She said that there might not be a tax increase as a direct result of the purchase of the truck, and she would request that this verbiage be removed from the resolution and for the Board not to take this stand. Vice Chairwoman Kuehler said that she could not guarantee there would not be a tax increase based on the budget.

Commissioner Mills responded that he did not have a problem removing this language from the resolution.

Jeff Crook, Senior Staff Attorney, stated as a matter of housekeeping, he was unclear as to whether the Board had excused the Chair from the preceding vote or from the remainder of the meeting. He suggested that unless the Board wanted the Chair's vote to be counted in the affirmative, then there should be a motion to excuse her from the votes for the remainder of the meeting.

Vice Chairwoman Kuehler moved to excuse the Chair from voting for every issue included in the remainder of the meeting unless the Chair returns to the meeting. The motion failed by a vote of two to two. Vice Chairwoman Kuehler and Commissioner Openshaw voted in favor of the motion. Commissioner Baucom and Commissioner Mills voted against the motion.

Commissioner Mills accepted the friendly amendment to remove Paragraph 5 from the Resolution.

The motion was passed unanimously. [In accordance with the Board's Rules of Procedure, Chairwoman Rogers' vote was counted in the affirmative, with her having left the meeting without having been excused.]

**RESOLUTION APPROVING THE INCURRENCE BY WESLEY CHAPEL VOLUNTEER FIRE DEPARTMENT,
INC., OF UP TO \$411,000.00 IN INDEBTEDNESS TO FINANCE A PUMPER FIRE TRUCK**

WHEREAS, Union County has been advised that Wesley Chapel Volunteer Fire Department, Inc. (the "Department") intends to borrow up to \$411,000 (the "Loan") to finance the purchase of a new pumper fire truck (the "Project"); and

WHEREAS, the Board of Directors of the Department, on behalf of the Board of Commissioners, pursuant to public notice duly given (the "Notice"), held a public hearing on the proposed Loan and Project and considered the comments of persons who requested to be heard; and

WHEREAS, (i) neither the County nor any agency thereof shall be liable in any event for the repayment of the Loan, (ii) the Loan does not constitute an indebtedness of the County or any agency thereof, and (iii) the Loan does not constitute or create in any manner a debt or liability of the County or any agency thereof; and

WHEREAS, the Board desires to approve the Loan and approve the Project.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Union County, North Carolina, as follows:

- (1) The publication of the Notice and the designation of the meeting held by the Department on June 18, 2010, as a public hearing on the Loan and the Project is hereby ratified and approved.
- (2) The incurrence by the Department of indebtedness of up to \$411,000 to finance the Project is hereby approved.
- (3) The Project is hereby approved.
- (4) This resolution shall take effect immediately upon its passage.

UNION COUNTY PUBLIC SCHOOLS (UCPS) WET DETENTION/BIO RETENTION BASIN EASEMENTS (This item was moved from the Consent Agenda to the Regular Agenda at the request of Commissioner Openshaw):

- a. Sun Valley Middle School (Wet Detention Pond)*
- b. Piedmont High School (Bio-Retention Basin)*

Commissioner Openshaw said that during the recess he had spoken with the schools' representative. He stated that his concern had been that he did not want to have a repeat of the Marvin-Ridge situation where there were permits outstanding. He stated that he has been assured that everything is okay, and he is fine with approving these items.

Commissioner Openshaw moved to authorize the County Manager to approve the following Union County Public Schools (UCPS) Wet Detention/Bio Retention Basin Easements, pending legal review: a) Sun Valley Middle School (Wet Detention Pond) and b. Piedmont High School (Bio-Retention Basin). The motion was passed unanimously. [In accordance with the Board's Rules of Procedure, Chairwoman Rogers' vote was counted in the affirmative, with her having left the meeting without having been excused.]

ANNOUNCEMENT OF VACANCIES ON BOARDS AND COMMITTEES:

The Vice Chairman read the following vacancies on boards and committees:

- a. Adult Care Home Advisory Committee (at least 3 Vacancies)
- b. Agricultural Advisory Board (2 Vacancies Expiring June 2010)
- c. Criminal Justice Partnership Program (5 Members at Large)
- d. Union County Industrial Facilities and Pollution Control Financing Authority (2 vacancies for terms expiring May 2010)
- e. Juvenile Crime Prevention Council:
 - 1. Substance Abuse Professional
- f. Nursing Home Advisory Committee (at least 3 vacancies)
- g. Parks and Recreation Advisory Committee (1 vacancy for a member with a physical disability)

COUNTY MANAGER'S COMMENTS:

The County Manager had no comments.

COMMISSIONERS' COMMENTS:

Commissioner Baucom reminded everyone to vote on Tuesday if they live in an area where the vote is applicable.

He acknowledged the death of Johnny Jacumin and stressed what Mr. Jacumin meant to the Town of Wingate, Wingate University, the community, and the County. Commissioner Baucom stated that Mr. Jacumin was a great individual who has impacted many, many lives.

He expressed appreciation on behalf of his wife and her family for the acts of kindness, thoughts and prayers during the illness and death of his wife's sister, Helen Davis. He said that Mrs. Davis had fought her illness valiantly and cared about the County and about what went on with this Board.

Commissioner Mills commented that he was glad the ethics investigation is over. He said that he had had no doubt that the investigation findings would be as they came in. He stated that he was sorry that the investigation had taken place and it has caused some problems and placed the Board in a quagmire.

He said that someone had mentioned Louisiana earlier in the meeting. He stated that the County had sent a group to Louisiana some years ago to help with the cleanup from a hurricane. He said that he wanted the Board to see if there is an interest in sending a group to Louisiana to assist with the coastline cleanup. He stated that he would bring it up at the next meeting if there is any interest.

Commissioner Openshaw said that he echoed Commissioner Baucom's sentiments about Johnny Jacumin. He said that Mr. Jacumin was a great coach, and he thought he was a great asset for Wingate.

He said as far as Wesley Chapel's Fire Station, he needs to be informed and know what he is voting for. He said that at this time when there is a situation with an interim budget, he thought the Board needs to look carefully at everything that it does. He said that he supports the firemen and the fire station. He stated that he did not mind paying a little more in taxes to have good service, but the County has a budget situation that needs to be resolved, and he wants to see what is involved. He said up to this point he had deliberately stayed out of the fire situation there, and in a no tax increase environment, he thought it was important to look at everything. He stated that he thought the State's budget would impact the County hard, and that is why he had voted in favor of the interim budget.

Commissioner Openshaw said that something that the Board has not discussed but was brought up earlier is increased insurance rates for smokers. He asked Mr. Greene what is the status of those discussions.

Mr. Greene responded that he thought the federal law was that there be a six-month implementation period for education and assistance provided to those employees that may be addicted to nicotine, and the additional premium rates would take effect on January 1st. He said that Mr. Watson was very familiar with it.

Commissioner Openshaw said that CMC and CHS sent out information about how diligently they are working with the County to resolve the Waxhaw Emergency Department situation. He said that was not the case. He stated that there had been a meeting with them more than a couple of months ago. He said that they have been told what they would consider doing to resolve that situation but has not heard back from them. He stated they had an open house at Steele Creek, which is an emergency department, which they had

advertised and sent out invitations to elected officials and others, and two people showed up: he and Vice Chairwoman Kuehler. He said that Steele Creek's Emergency Department was financed 100 percent by the hospital.

Vice Chairwoman Kuehler expressed appreciation to Presbyterian Hospital for its overwhelming generosity in partnering with the Union County Public Schools to place nurses in the schools. She said that she was a mother of an at-risk child, and she thought having nurses in the schools would provide peace of mind to a lot of people and it is a great gift by Presbyterian Hospital.

With there being no further items for discussion and the time being 12:35 a.m., Commissioner Openshaw moved to adjourn the meeting. The motion was passed unanimously. [In accordance with the Board's Rules of Procedure, Chairwoman Rogers' vote was counted in the affirmative, with her having left the meeting without having been excused.]