

Approved 10/4/2010

Minutes of the September 20, 2010  
Regular Meeting

The Union County Board of Commissioners met in a regular meeting on Monday, September 20, 2010, at 7:00 p.m. in the Commissioners' Board Room, 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: Wes Baker, Interim County Manager; Lynn G. West, Clerk to the Board of Commissioners; Jeff Crook, Staff Attorney; Keith Merritt, County Attorney; David Cannon, Finance Director, members of the press and interested citizens

**OPENING OF MEETING:**

At approximately 7:00 p.m., Chairwoman Rogers convened the meeting and welcomed everyone.

***a. Invocation***

Commissioner Openshaw offered the invocation.

***b. Pledge of Allegiance***

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

***c.      Featured Community Benefit Organization: March Forth with Hope Foundation***

Stuart Stout shared that the March Forth with Hope Foundation was created in 2004 by him and his wife, Shelby Stout, as a result of their daughter, Hope Stout, being sick with cancer and a group of people coming together for them during this time. He said that during the last six weeks of Hope's life, she really taught them about what giving was all about.

He explained that the March Forth with Hope Foundation was created when Hope was in the hospital and she was appalled when people had to leave their children alone in the hospital to undergo chemotherapy. He said that a number of their friends organized and held a golf tournament for them in 2003 during which enough money was raised for the Stout family to survive while Hope was in the hospital. Mr. Stout stated that there was money left from what had been raised for them, and he and his wife decided to begin the March Forth with Hope Foundation. He said that March 4<sup>th</sup> was Hope's birthday.

Mr. Stout explained that March Forth with Hope Foundation works through the area hospitals with families that have children who are facing a life threatening illness or injury. He said that they look for families that are truly disadvantaged and where cancer has hit their family. He stated that the foundation keeps those families' power on and makes mortgage and rent payments. He said that since the inception of this organization, they have helped over 300 families and given out \$300,000. Mr. Stout said they want to take the foundation national and are looking at starting a chapter in Mobile, Alabama.

He shared a video in which his daughter, Hope, appeared. When Hope was given the opportunity to have almost any wish fulfilled by the Make-A-Wish Foundation, Hope's wish was that the other 155 Wish Kids would be granted their wishes.

Mr. Stout stated that there are several fundraisers held for the organization throughout the year. He shared information regarding the 8<sup>th</sup> Annual Hope Stout Golf Classic to be held at Firethorne Country Club. He said that the Foundation has helped a lot of people in Union County as well as a number of people in North Carolina.

At the conclusion of the presentation, at approximately 7:15 p.m., Chairwoman Rogers called for a short recess in the meeting.

The Chairwoman reconvened the meeting at approximately 7:22 p.m.

***d.      Employee Recognition: Service Award Recipients for the Month of September 2010***

On behalf of the Board of Commissioners, Chairwoman Rogers recognized the following employees for their full-time continuous service:

**5 Years of Service**

Kelli Manczka  
Joseph Black

**Department**

General Services  
Sheriff's Office

**10 Years of Service**

Beverly Liles  
Roger Carter  
Jimmie Guillen  
Penny Martin  
Ronnie Rape  
Brad Mosley  
Anne Briggs  
Albert Chiong

**Department**

Finance  
Parks and Recreation  
Public Works  
Public Works  
Public Works  
Sheriff's Office  
Social Services  
Social Services

**15 Years of Service**

Larry Lockhart  
Jerry Paxton  
Lori Wade

**Department**

Public Works  
Sheriff's Office  
Tax Collection

**20 Years of Service**

Lynn West

**Department**

Central Administration

Chairwoman Rogers recognized Lynn West, Clerk to the Board of Commissioners, for her 20 years of fulltime continuous service with Union County. She presented Mrs. West with her 20-year service award and a plant. Vice Chairwoman Kuehler joined the Chairwoman in her recognition of Mrs. West.

**PUBLIC HEARING: RE: ECONOMIC DEVELOPMENT INCENTIVE TO PERFECT INDUSTRIES IN A TOTAL AMOUNT NOT TO EXCEED \$19,557:**

Chairwoman Rogers opened the public hearing at approximately 7:30 p.m. and announced that no one had registered to address the Board during the public hearing. She closed the public hearing at approximately 7:31 p.m.

**INFORMAL COMMENTS:**

Chairwoman Rogers recognized Virginia Bjorlin to speak during informal comments.

Mrs. Bjorlin gave her address as 1220 Rosa Drive in Monroe. She stated that she is representing the League of Women Voters of Union County. She expressed appreciation to the Board for having adopted a Proclamation proclaiming August 26<sup>th</sup> as Women's Equality Day. She said that they had shared the 90<sup>th</sup> anniversary of women's right to vote. She noted that Union County has approximately 7,000 more women than men registered to vote.

She said that the Union County League of Women Voters is planning two candidate forums. She stated that the first candidate forum would be held on October 7 at 7:00 p.m. and is being co-sponsored with the Chamber of Commerce. She said that this event will be held at the Chamber's Office and will be for the candidates for County Commissioners. She noted that there are eight people running for three open County Commissioners' seats. She said the public is welcome to attend.

Ms. Bjorlin said that the second candidate forum will be held on Thursday, October 19, at 7:00 p.m. at the Union West Library in Indian Trail. This event is for the candidates for the Board of Education, and it is a non-partisan race. She said that there are eight people running for these seats with some of the candidates being at large and some for certain districts.

She invited everyone to attend these forums.

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

Vice Chairwoman Kuehler requested that Item 9 – Discussion of Legal and Ethical Concerns be removed from the regular agenda.

Commissioner Openshaw requested to add an item to the regular agenda to consider appointments to the Community Trustee Council.

Vice Chairwoman Kuehler asked for clarification purposes to delete Item 11f – Announcement of Vacancies on the Carolinas Medical Center Union - Community Trustee Council.

Chairwoman Rogers requested to remove Item 10 – Discussion of Health Benefits for Commissioners from the regular agenda and to move Consent Agenda 1c – Change Orders for Blythe Development Company and Amendment to CM&E Contract for the Jesse Helms Park Bridge Entrance Project to the regular agenda.

Commissioner Mills asked if there was going to be any discussion at this time. Chairwoman Rogers responded that there would not be any discussion regarding the agenda. Commissioner Mills asked if the Board was ever going to hear Items 9 and 10 on the Regular Agenda. Chairwoman Rogers responded that to talk about this would be discussion.

Chairman Rogers moved adoption of the agenda with the following amendments:

- a. Removal of Consent Agenda Item 1c – Change Orders for Blythe Development Company & Amendment to CM&E Contract for the Jesse Helms Park Bridge Entrance to the regular agenda (Item 8a on Regular Agenda)
- b. Adding the appointments to the Community Trustee Council (Regular Agenda Item 12b), and
- c. Deleting Regular Agenda Item 11f – Announcement of Vacancies on the Carolinas Medical Center-Union Community Trustee Council.

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

**CONSENT AGENDA:**

Vice Chairwoman Kuehler moved approval of the items listed on the Consent Agenda as amended. The motion passed unanimously.

***Contracts and Purchase Orders Over \$20,000:*** Authorized the Manager to approve the following, pending legal review: a) Library: Purchase Order for Library Consultant – The Library received an EZ Planning Grant from the State Library, which the Board of Commissioners approved in August. The grant pays for consultant services from Scope View Strategic Advantage in the amount of \$20,000 to work with the Library Board and staff to execute the grant. This is the purchase order for that grant-paid expenditure; b) Health Department: Purchase Order for Influenza Vaccine for the 2010-2011 Flu Season in the Amount of \$20,250 – Each year the agency prebooks influenza vaccine in preparation for the upcoming influenza vaccination season. Currently the remaining order for 180 vials of vaccine, totaling 1,800 doses is yet to be shipped. The total cost for the remaining shipment totals \$20,250; c) Change Orders for Blythe Development Company & Amendment to CM&E Contract for the Jesse Helms Park Bridge Entrance Project – ***This item was not approved as a part of the Consent Agenda and was moved to the Regular Agenda at the request of Chairwoman Rogers;*** d) Contract Amendment to CM&E Contract for Additional Services required for Jesse Helms Park Passive Area Project.

***Minutes:*** Approved the minutes of the regular meeting of September 7, 2010.

***Advance Refunding of Outstanding Debt Issues:*** Confirmed the Resolution Authorizing the Finance Department to Pursue an Advance Refunding of 2007D, 2009A and 2009B Bonds and Approved Financing Team of May 17, 2010.

***Commercial Use of Union County's GIS Electronic Data:*** Approved allowing Commercial Use of GIS Electronic Data at no cost like Cabarrus County, Lincoln County, and Stanly County.

***Request to Remove Member from the Union County Adult Care Home Community Advisory Committee Due to Failure to Complete Mandatory Orientation Requirement:*** Approved removal of Alicia Thomas' name from roster of Union County Adult Care Home Community Advisory Committee as requested by Centralina Council of Governments due to Ms. Thomas' failure to complete the mandatory orientation requirement.

***Amendment to Union County Drug and Alcohol Policy:*** Adopted proposed Amendments to the Union County Drug and Alcohol Free Workplace Policy, including the Proposed Addendum to the Union County Drug and Alcohol Free Workplace Policy as recorded below:

## AMENDMENTS TO THE UNION COUNTY DRUG AND ALCOHOL FREE WORKPLACE POLICY

1. In Section 2, amend the definition of “*Reasonable Suspicion* for **Covered Employees who drive Commercial Vehicles and Covered Mass Transit Employees**” as follows:

***Reasonable Suspicion* for Covered Employees who drive Commercial Vehicles and Covered Mass Transit Employees** means a well-founded belief that an employee is engaged in the improper use of alcohol or drugs in violation of this Policy, based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee made by a supervisor or other County official trained in detecting the signs and symptoms of misuse of alcohol or drugs in accordance with 49 C.F.R. § 382.603 and 49 C.F.R. § 655.14.

2. Amend Section 3.1(h) as follows:

h. A **Covered Employee who drives a Commercial Vehicle** or a **Covered Mass Transit Employee** who: ~~violates this Policy as it pertains to alcohol use~~ (i) refuses a required alcohol test or (2) has a confirmed alcohol test result of 0.04 or greater may not subsequently perform any Safety-sensitive Function for the County unless and until he or she completes a SAP evaluation, referral, and education/treatment process, and shall be subject to return-to-duty and follow up testing, as set forth in 49 C.F.R. Part 40, as amended.

3. Amend Section 3.2(f) as follows:

f. A **Covered Employee who drives a Commercial Vehicle** or a **Covered Mass Transit Employee** who: ~~violates this Policy as it pertains to drug use~~ (i) refuses a required drug test or (2) has a verified positive drug test may not subsequently perform any Safety-sensitive Function for the County unless and until he or she completes a SAP evaluation, referral and education/treatment process and shall be subject to return-to-duty and follow up testing, as set forth in 49 C.F.R. Part 40, as amended.

4. Add the following sentence to the end of the first paragraph of Section 5(c):

If a **Covered Mass Transit Employee** acknowledges the use of alcohol when on call, but claims the ability to perform his or her safety-sensitive function, the **Covered Mass Transit Employee** must take an alcohol test.

5. Delete Section 6.2(c) as written, and replace it with the following:

- c. In addition to the other post-accident testing requirements described herein and established pursuant to Union County's independent authority, all **Covered Employees who drive Commercial Vehicles** (excluding **Covered Mass Transit Employees**) will be subject to the testing requirements found in 49 CFR § 382.303, as amended. This regulation requires the County to test all surviving drivers for alcohol following an occurrence involving a Commercial Vehicle operating on a public road in commerce if the driver: (1) was performing safety-sensitive functions (as defined by 49 CFR Part 382, as amended) with respect to the vehicle and the accident involved the loss of human life; or (2) receives a citation within 8 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the occurrence involved: (i) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the occurrence; or (ii) one or more motor vehicles incurring disabling damage as a result of the occurrence, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. The regulation requires the County to test all surviving drivers for controlled substances following an occurrence involving a Commercial Vehicle operating on a public road in commerce if the driver: (1) was performing was performing safety-sensitive functions (as defined by 49 CFR Part 382, as amended) with respect to the vehicle and the accident involved the loss of human life; or (2) receives a citation within 32 hours of the occurrence under State or local law for a moving traffic violation arising from the accident, if the accident involved: (i) bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or (ii) one or more motor vehicles incurring disabling damage as a result of the



accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle. The alcohol and controlled substances testing requirements set forth in 49 CFR § 382.303 do not apply to: (1) an occurrence involving only boarding or alighting from a stationary motor vehicle; or (2) an occurrence involving only the loading or unloading of cargo; or (3) an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR § 571.3, as amended) unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR 177.823, as amended.

In addition to the other post-accident testing requirements described herein and established pursuant to Union County's independent authority, all **Covered Mass Transit Employees** will be subject to the testing requirements found in 49 CFR § 655.44, as amended. This regulation requires the County to conduct drug and alcohol tests on each surviving **Covered Mass Transit Employee** operating the mass transit vehicle at the time of a vehicle accident involving the loss of human life unless the employee is tested under the fatal accident testing requirements of the Federal Motor Carrier Safety Administration rule 49 CFR 389.303(a)(1) or (b)(1). This regulation also requires the County to conduct drug and alcohol tests on any other **Covered Mass Transit Employee** whose performance could have contributed to a vehicle accident involving a fatality, as determined by the County using the best information available at the time of the decision. Furthermore, the regulation requires drug and alcohol testing of the following **Covered Mass Transit Employees** in the event that a mass transit vehicle is involved in an accident not involving the loss of human life: (1) each **Covered Mass Transit Employee** operating the mass transit vehicle at the time of the accident unless the County determines, using the best information available at the time of the decision, that the **Covered Mass Transit Employee's** performance can be completely discounted as a contributing factor to the accident; and (2) any other **Covered Mass Transit Employee** whose performance could have contributed to the accident, as determined by the County using the best information available at the time of the decision.

An employee who is subject to post-accident testing under this subsection c shall remain readily available for such testing or may be deemed by the County to have refused to submit to testing.

Nothing in this Policy shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

6. Amend Section 6.3(b) as follows:

Before any new or existing **Covered Employee who drives a Commercial Vehicle** first operates a commercial vehicle or performs other related safety-sensitive functions as defined in 49 C.F.R. 382.107, and before any new or existing Covered Mass Transit Employee first operates a Revenue Service Vehicle or performs related safety-sensitive functions as defined in 49 C.F.R. 655.4, the employee must submit to both drug and alcohol testing and receive a verified negative result for both. If the pre-placement drug test is canceled, the employee must take another pre-placement drug test with a verified negative result.”

7. Add a new subsection (c) to Section 6.3 to read as follows:

- c. When a **Covered Mass Transit Employee** has not performed a safety-sensitive function as defined in 49 C.F.R. 655.4 for 90 consecutive calendar days regardless of the reason, and the Covered Mass Transit Employee has not been in the random selection pool during that time, the **Covered Mass Transit Employee** must take a pre-placement drug test with a verified negative result.

8. Delete Section 6.5(c) as written and replace it with the following:

- c. Covered Employees who drive Commercial Vehicles and Covered Mass Transit Employees are subject to return to duty testing following a verified positive drug test result, a confirmed alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation. Such employees must have a negative drug test result and/or (depending upon which test is required) an alcohol test

with an alcohol concentration of less than 0.02 before they will be allowed to resume any DOT safety-sensitive duties. The test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. Nothing in this section requires the County to return an employee to safety-sensitive duties because the employee has met these conditions.

9. Delete Section 6.6(e) as written.
10. Delete Section 7 as written, and replace it with the following:

**Refusal to Submit to a Test**

Any of the following behaviors constitute a test refusal:

- a. Failure to appear for any test within a reasonable time, as determined by the Personnel Director or the Personnel Director's designee;
- b. Failure to remain at the testing site until the testing process is complete;
- c. Failure to provide a urine specimen for any required drug test;
- d. Failure to permit the observation or monitoring of the specimen collection when required to do so;
- e. Failure to provide a sufficient amount of urine when directed and there is no adequate medical explanation for the failure;
- f. Failure to take an additional test when directed to do so by the collector, the Personnel Director, or the Personnel Director's designee;
- g. Failure to undergo a medical examination when directed to do so by the MRO, the Personnel Director or the Personnel Director's designee;
- h. Failure to cooperate with any part of the testing process (e.g., refusal to empty pockets when directed by the collector, confrontational behavior that disrupts the collection process, failure to wash hands after being directed to do so by the collector);
- i. Failure to follow the observer's instructions during an observed collection including instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the

- observer to determine if the employee has any type of prosthetic or other device that could be used to interfere with the collection process;
- j. Possession or wearing of a prosthetic or other device that could be used to interfere with the collection process;
  - k. Admission to the collector or MRO that the employee adulterated or substituted the specimen;
  - l. Failure to provide an adequate amount of saliva or breath for any required alcohol test;
  - m. Failure to provide a sufficient breath specimen when directed and there is no adequate medical explanation for the failure;
  - n. Failure to sign the certification at Step 2 of the Alcohol Testing Form (ATF) if required by 49 CFR Part 40, as amended; and
  - o. Failure to remain readily available for post-accident testing if subject to post-accident testing.

In addition, if the MRO reports that an employee has a verified adulterated or substituted test result, the employee will be deemed to have refused the test. Nothing in this Policy shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

11. Add the attached Addendum # 1 to the Union County Drug and Alcohol Free Workplace Policy.

12. Except as herein amended, the provisions of the Union County Drug and Alcohol Free Workplace Policy shall remain in full force and effect.

### **ADDENDUM # 1**

#### **PROVISIONS APPLICABLE TO COVERED MASS TRANSIT EMPLOYEES, COVERED EMPLOYEES WHO DRIVE COMMERCIAL VEHICLES, AND COVERED APPLICANTS FOR SUCH POSITIONS**

##### **SECTION 1** **Applicability**

The provisions in this Addendum #1 (hereinafter “Addendum”) are only applicable to Covered Mass Transit Employees, Covered Employees who drive Commercial Vehicles, and Covered Applicants for such positions. The provisions shall be read to be in addition to those provisions set forth in the Union County Drug and Alcohol Free Workplace Policy, as amended (the “Policy”). Where there is a conflict between this Addendum and the Policy, this Addendum shall control.

## **SECTION 2**

### **Definitions**

***Adulterated specimen*** means a specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

***Aliquot*** means a fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

***Confirmatory Drug Test*** means a second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

***Confirmatory Validity Test*** means a second test performed on a different aliquot of the original urine specimen to further support a validity test result.

***Dilute Specimen*** means a urine specimen with creatine and specific gravity values that are lower than expected for human urine.

***Disabling Damage*** means damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. This definition includes damage to a motor vehicle, where the vehicle could have been driven, but would have been further damaged if so driven. This definition excludes: damage that can be remedied temporarily at the scene of the accident without special tools or parts; tire disablement without other damage even if no spare tire is available; headlamp or tail light damage; and damage to turn signals, horn, or windshield wipers, which makes the vehicle inoperable.

***HHS*** means the Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

***Initial Drug Test or Screening Drug Test*** means the test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

***Initial Specimen Validity Test*** means the first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

***Invalid Result or Invalid Drug Test*** means the result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

***Laboratory*** means any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Test Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

***Limit of Detection (LOD)*** means the lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

***Limit of Quantitation*** means for quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

***Negative***, with respect to the results of a ***drug test***, means a test result that is reported when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

***Negative Dilute*** means a drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

***Positive***, with respect to the results of a ***drug test***, means the test result that is reported when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

***Reconfirmed*** means the result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

**Rejected for Testing** means the result reported when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that has not been corrected.

**Split Specimen Collection** means a collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

**Substituted Specimen** means a urine specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

**Validity Testing** means the evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

### **SECTION 3**

#### **Drug Testing Procedures**

- a. The drugs that will be tested for include MDMA (Ecstasy), marijuana, cocaine, opiates, amphetamines, and phencyclidine. Initial testing for heroin will be mandatory for all opiate positives.
- b. After the identity of the donor employee/applicant is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.
- c. The test results from the HHS certified laboratory will be reported to the MRO, and the MRO will review the results as described in Section 10 of the Union County Drug and Alcohol Free Workplace Policy and as required by 49 CFR Part 40, as amended.

- d. Employees that have a verified positive drug test result or a test refusal due to adulteration or substitution may request a test of their split specimen. However, employees do not have access to a test of their split specimen following an invalid result. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the MRO within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Union County will ensure that the cost for the split specimen is covered in order for a timely analysis of the sample. However, Union County will seek reimbursement for the split sample test from the employee.
- e. If a test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.
- f. Following a negative dilute result, the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- g. Observed collections
  - 1. Observed collections are required in the following circumstances:
    - i. All return-to-duty tests;
    - ii. All follow-up tests;
    - iii. Anytime the temperature on the original specimen was out of the accepted temperature range;
    - iv. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with;
    - v. Anytime a collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
    - vi. Anytime the laboratory reported to the MRO that the original specimen was invalid and the MRO determined that there was not an adequate medical explanation for the result;
    - vii. Anytime the MRO reports that the original specimen was positive, adulterated or substituted, but had to be cancelled because the test of the split specimen could not be performed;
    - viii. Anytime the laboratory reports to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to the County as negative-dilute and that a second collection must take place under direct observation.



2. The employee who is being observed will be required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the collector, by turning around that they do not have a prosthetic device.

## **SECTION 4**

### **Alcohol Testing Procedures**

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed by 49 CFR Part 40, as amended, to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

## **SECTION 5**

### **Test Refusals**

An employee's refusal to take a required drug or alcohol test is a violation of the Union County Drug and Alcohol Free Workplace Policy. An employee who violates this Policy by refusing to take a required drug or alcohol test may not subsequently perform any Safety-Sensitive Function for the County unless and until he or she completes a SAP evaluation, referral, and education/treatment process and shall be subject to return-to-duty and follow up testing, as set forth in 49 C.F.R. Part 40.

An employee or applicant who leaves the testing site before the testing process commences for a pre-placement test is not deemed to have refused to test. An employee or applicant who does not provide a urine specimen because he or she has left the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test. An employee or applicant who

does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences for a pre-placement test is not deemed to have refused to test.

## **SECTION 6**

### **Drug and Alcohol Tests**

#### **6.1 Pre-Placement Testing**

Applicants for a Covered Mass Transit Employee position are required to report previous DOT covered employer drug and alcohol test results. The failure to do so will result in the employment offer, if any, being rescinded. If the applicant for a Covered Mass Transit Employee position has tested positive or refused to test on a pre-employment test for another DOT covered employer, the applicant must provide Union County proof of having successfully completed a referral, evaluation and treatment plan as described in 49 CFR § 655.62. This Section 6.1 only applies to applicants for a Covered Mass Transit Employee position.

#### **6.2 Follow-up Testing**

An employee who violates this policy by refusing to take a required drug or alcohol test or by having a verified positive drug test or by having a confirmed alcohol test result of 0.04 or greater, and who seeks to resume the performance of safety-sensitive functions, will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty in accordance with a written follow-up testing plan to be established by the SAP after the SAP determines that the employee has successfully complied with the SAP's recommendations for education and/or treatment. The SAP is the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulations. However, the SAP must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions. The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service in accordance with the provisions in 49 CFR Part 40. The employee will not be allowed to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.

## **SECTION 7**

### **49 CFR Part 382**

- a. The provisions in 49 CFR Part 382, as amended, apply to Covered Employees who drive a Commercial Vehicle.
- b. The following list indicates the tests required by 49 CFR Part 382, and is meant to satisfy the requirement in 49 CFR § 382.113 that employers notify employees of tests required by Part 382. This list should not in any way be interpreted to limit the tests provided for in this Policy. 49 CFR Part 382 requires (for Covered Employees who drive Commercial Vehicles):
  - 1. Drug testing with a verified negative result prior to allowing a Covered Mass Transit Employee or applicant to perform a safety sensitive function (as defined by Part 382) for the first time. However, Part 382 does not require a drug test in this situation if: (1) the driver has participated in a controlled substances testing program that meets the requirements of Part 382 within the previous 30 days; and (2) while participating in that program, the driver either (i) was tested for controlled substances within the past 6 months (from the date of application with the County), or (ii) participated in the random controlled substances testing program for the previous 12 months (from the date of application with the County); and (3) the County ensures that no prior employer of the driver of whom the County has knowledge has records of a violation of Part 382 or the controlled substances use rule of another DOT agency within the previous six months.
  - 2. Post-accident testing under 49 CFR § 382.303, as described in Section 6.2(c) of the Policy.
  - 3. Random testing for prohibited drug use anytime the employee is on duty.
  - 4. Random testing for alcohol misuse while the Covered Employee is performing safety-sensitive functions (as defined by 49 CFR Part 382); just before the Covered Employee is to perform such functions, or just after the Covered Employee has ceased performing such functions.
  - 5. Reasonable suspicion testing for alcohol misuse if the required observations of appearance, behavior, speech, or body odors are made while the Covered Employee is performing safety-sensitive functions (as defined by 49 CFR Part 382), just preceding the performance of safety-sensitive functions (as defined by 49 CFR Part 382), or just after the Covered Employee has ceased performing safety-sensitive functions (as defined by 49 CFR Part 382);
  - 6. Alcohol and/or drug testing when the County has reasonable suspicion to believe that the employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion alcohol testing is authorized under 49 CFR Part 382 only if the required observations are made during, just preceding, or just after the period of the workday that the employee is required to be in compliance with 49 CFR Part 382, and the employee is directed to undergo the test while performing safety-sensitive functions (as defined by 49 CFR Part 382), just before the employee is to perform such functions, or just after the employee has ceased performing such functions.
  - 7. If an employee has a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, or a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation, 49 CFR Part 382

requires return-to-duty drug and/or alcohol testing prior to the return of the employee to safety-sensitive duties (as defined by 49 CFR Part 382). Such testing must occur after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment.

8. Follow-up testing of each employee who returns to duty in accordance with a written follow-up testing plan to be established by the SAP.
- c. 49 CFR Part 382 authorizes pre-employment alcohol testing in accordance with 49 CFR § 382.301.
- d. 49 CFR Part 382 defines “safety-sensitive function” to mean “all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work.” Under this part “safety-sensitive functions” include: (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer; (2) All time inspecting equipment as required by Sections 392.7 and 392.8 of Part 382 or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time; (3) All time spent at the driving controls of a commercial motor vehicle in operation; (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth; (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and (5) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.”

## **SECTION 8**

### **49 CFR Part 655**

- a. The provisions in 49 CFR Part 655, as amended, apply to Covered Mass Transit Employees. The Union County Drug and Alcohol Free Workplace Policy implements elements of an anti-drug use and alcohol misuse program that are not required by 49 CFR Part 655.
- b. The following list indicates the tests required by 49 CFR Part 655, and is meant to satisfy the requirement in 49 CFR § 655.17 that employers notify employees of tests required by Part 655. This list should not in any way be interpreted to limit the tests provided for in this Policy. 49 CFR Part 655 requires:
  1. Drug testing with a verified negative result prior to allowing a Covered Mass Transit Employee or applicant to perform a safety sensitive function (as defined by Part 655) for the first time.
  2. Drug testing with a verified negative result prior to allowing a Covered Mass Transit Employee to perform a safety sensitive function if the Covered Mass Transit Employee has not performed a safety sensitive function (as defined by

- 49 CFR Part 655) for 90 consecutive calendar days regardless of the reason and the employee has not been in the random selection pool during that time.
3. Alcohol testing if a Covered Mass Transit employee acknowledges the use of alcohol while on-call but claims the ability to perform his or her safety-sensitive function (as defined by 49 CFR Part 655).
  4. Alcohol and/or drug testing when the County has reasonable suspicion to believe that the Covered Mass Transit Employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion alcohol testing is authorized under 49 CFR Part 655 only if the required observations are made during, just preceding, or just after the period of the workday that the Covered Mass Transit Employee is required to be in compliance with 49 CFR Part 655, and the employee is directed to undergo the test while performing safety-sensitive functions (as defined by 49 CFR Part 655), just before the employee is to perform such functions, or just after the employee has ceased performing such functions.
  5. Random testing for alcohol misuse while the Covered Mass Transit Employee is performing safety-sensitive functions (as defined by 49 CFR Part 655); just before the Covered Mass Transit Employee is to perform such functions; or just after the Covered Mass Transit Employee has ceased performing such functions.
  6. Random testing for prohibited drug use anytime a Covered Mass Transit Employee is on duty.
  7. Post-accident drug and alcohol testing under 49 CFR § 655.44 as described by Section 6.2(c) of the Policy.
  8. If a Covered Mass Transit Employee has a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, or a refusal to test (including by adulterating or substituting a urine specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation, 49 CFR Part 655 requires return-to-duty drug and/or alcohol testing prior to the return of the employee to safety-sensitive duties (as defined by 49 CFR Part 655). Such testing must occur after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment.
  9. Follow-up testing of each Covered Mass Transit Employee who returns to duty in accordance with a written follow-up testing plan to be established by the SAP.
- c. 49 CFR Part 655 authorizes pre-employment alcohol testing in accordance with 49 CFR § 655.42.
  - d. 49 CFR Part 655 defines “safety-sensitive function” to mean any of the following duties: (1) Operating a revenue service vehicle, including when not in revenue service; (2) Operating a nonrevenue service vehicle, when required to be operated by a holder of a Commercial Driver’s License; (3) Controlling dispatch or movement of a revenue service vehicle; (4) Maintaining (including repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service; and (5) Carrying a firearm for security purposes.

**Groundwater Testing on County Owned Property:** Authorized the County Manager to approve an agreement with Yale Security, Inc. (Norton) pending legal review.

**FY 2011 County Capital:** Adopted Capital Project Ordinance #136 as recorded below:

**CAPITAL PROJECT ORDINANCE AMENDMENT**

BUDGET	<u>General Capital Project Ordinance Fund</u>			REQUESTED BY	<u>David Cannon</u>		
FISCAL YEAR	<u>FY 2010-11</u>			DATE	<u>September 20, 2010</u>		
<b>PROJECT SOURCES</b>				<b>PROJECT USES</b>			
Source	Project	Requested	Revised	Project	Project	Requested	Revised
<u>Description and Code</u>	<u>To Date</u>	<u>Amendme nt</u>	<u>Project</u>	<u>Description and Code</u>	<u>To Date</u>	<u>Amendme nt</u>	<u>Project</u>
IFT From General Fund	-	4,138,351	4,138,351	IT Infrastructure	-	774,000	774,000
				Jail Control Systems	-	467,675	467,675
				Jail Roof Replacement	-	605,727	605,727
				Inspections Mobile Office	-	123,400	123,400
				DSS Bus. Process Autom. Sys.	-	1,280,802	1,280,802
				Sheriff's Office Vehicles	-	808,747	808,747
				Jail HVAC	-	78,000	78,000
	<u>-</u>	<u>4,138,351</u>	<u>4,138,351</u>		<u>-</u>	<u>4,138,351</u>	<u>4,138,351</u>

EXPLANATION: Appropriate funds from unallocated funds previously transferred from the General Fund to the General CPO Fund for

IT Infrastructure, Jail Control Systems, Jail Roof Replacement, Inspections Mobile Office, DSS Business Process Automation System, Sheriff's Office Vehicles, and Jail HVAC. Projects were approved by the BOCC on July 22, 2010 in FY2010-2011 Adopted Budget Ordinance, Section X., General Capital Project Ordinance Fund.  
 At the completion of each of these capital projects, all excess funds will be remitted to the "unallocated funds previously Transferred from the General Fund" account and these Capital Project Ordinance projects will be closed.

DATE: \_\_\_\_\_

APPROVED BY: \_\_\_\_\_  
 Bd of Comm/County Manager  
 Lynn West/Clerk to the Board

FOR FINANCE POSTING PURPOSES ONLY

PROJECT SOURCES				PROJECT USES			
Source	Project	Requested	Revised	Project	Project	Requested	Revised
Description and Code	To Date	Amendme nt	Project	Description and Code	To Date	Amendme nt	Project
IFT From General Fund 40442100-4010-PR048	-	774,000	774,000	IT Infrastructure 40542100-5510-PR048	-	774,000	774,000
IFT From General Fund 40443500-4010-PR050	-	123,400	123,400	Inspections Mobile Office 40543500-5580-PR050	-	123,400	123,400
IFT From General Fund 40453101-4010-PR051	-	1,280,802	1,280,802	DSS Bus. Process Autom. Sys. 40553101-5510-PR051	-	1,280,802	1,280,802
IFT From General Fund	-	605,727	605,727	Jail Roof Replacement	-	605,727	605,727

40443128-4010-PR052				40543128-5580-PR052			
IFT From General Fund	-	467,675	467,675	Jail Control Systems	-	467,675	467,675
40443128-4010-PR053				40543128-5580-PR053			
IFT From General Fund	-	78,000	78,000	Jail HVAC	-	78,000	78,000
40443128-4010-PR049 (FY2011 Capital Outlay)				40543128-5580-PR049 (FY2011 Capital Outlay)			
IFT From General Fund	-	747,955	747,955	Sheriff's Office Vehicles-Patrol	-	498,493	498,493
40443130-4010-PR049 (FY2011 Capital Outlay)				40543130-5540-PR049 (FY2011 Capital Outlay)			
				Sheriff's Office Vehicles Equip-Patrol		249,462	249,462
				40543130-5550-PR049 (FY2011 Capital Outlay)			
IFT From General Fund	-	60,792	60,792	Sheriff's Office Vehicles-Animal Control		47,382	47,382
40443138-4010-PR049 (FY2011 Capital Outlay)				40543138-5540-PR049 (FY2011 Capital Outlay)			
				Sheriff's Office Vehicles Equip.-Animal Contrl		13,410	13,410
				40543138-5550-PR049 (FY2011 Capital Outlay)			
	-	4,138,351	4,138,351		-	4,138,351	4,138,351
Prepared By	Aar						
Posted By							
Date						Number	CPO - 136

**Government Center Phase VII Renovations – Bid Award Recommendation:** 1) Accepted bids; 2) awarded bid to the lowest responsive, responsible bidder, Ponder & Company, Inc. in the amount of \$1,287,000, and 3) authorized the County Manager to approve contract documents pending legal review. A summary of the bids is recorded below.

**BID TABULATION  
Union County Government Center**



**Office Renovation Phase VII  
September 14, 2010**

General Contractors	BASE BID
Carpenter Construction Co., Inc.	\$1,344,337.00
Fabco Construction, Inc.	\$1,590,000.00
Gleeson Snyder Constructors	\$1,460,000.00
Godfrey Construction Co., Inc.	
Hamlett Associates, Inc.	\$1,503,906.00
Holden Building Co., Inc.	\$1,314,000.00
Hostetter & Keach, Inc.	\$1,515,800.00
Ike's Construction, Inc.	\$1,385,000.00
Liles Construction Co., Inc.	\$1,436,500.00
Little Mountain Builders	
Miles Builders, Inc.	
Morland Construction	\$1,379,000.00
Murray Construction Co.	\$1,456,100.00
Ponder & Company, Inc.	\$1,287,000.00
Price & Hill, Inc.	\$1,369,000.00
Sorensen Gross, Inc.	\$1,413,200.00
Spectra Builders, Inc.	\$1,660,000.00

***Contribution to Monroe for Veterans Day Event:*** Authorized the County Manager to approve an interlocal agreement with the City of Monroe in the amount of \$36,000 from line item 10558200-5630.

***Information Only/No Action Requested:*** Included in the agenda package with no action requested were the following: 1) Report of Approval of Sewer Tap Request Due to Septic Failure – 2620 Waxhaw-Marvin Road; and 2) Department of Inspection's Monthly Report for August 2010.

**PUBLIC INFORMATION OFFICER'S COMMENTS:**

Chairwoman Rogers recognized Brett Vines, Public Information Officer, for his comments.

Mr. Vines shared comments regarding the following matters:

1. The Animal Shelter will hold a rabies clinic on Saturday, September 25, 2010, from 12:30 p.m. until 2:00 p.m. at the Animal Shelter located at 3344 Presson Road. The cost of the vaccinations is \$10 for either a one-year or three-year vaccination. Microchips will also be offered.
2. The Union County Master Gardeners are selling rain barrels. The cost is \$85 for a 60-gallon rain barrel and the cost of an 80 gallon barrel is \$100. The rain barrels must be ordered by October 18, and the pick-up date is October 23 from 9:00 a.m. to 12:00 o'clock noon at the Ag Center at 3230 Presson Road.
3. The Sheriff's Office along with other law enforcement agencies in the county will hold an Operation Medicine Drop to dispose of unused, out-of-date prescriptions or over-the-counter medications. The medicine can be dropped off at Wal-Mart in Monroe and Indian Trail, the Waxhaw Police Department; Food Lion in Wingate, the New Town Market Shopping Center in Waxhaw; and the Stallings Municipal Park.
4. The Village of Wesley Chapel will hold a fall heritage festival on Saturday, October 2, from 9:30 a.m. to 4:00 p.m. in front of Hickory Tavern and Brooklyn Pizza in Wesley Chapel. There will be a parade, games, food, entertainment, pet contest, and a car show.
5. The Town of Indian Trail will be holding a Family Fun Day on Saturday, October 16 from 10:00 a.m. to 6:00 p.m. in downtown Indian Trail. They will have free rides and entertainment and give-away contests will be held throughout the day.
6. The Literacy Council is having its Literacy Council 101 (information session for adults who want to volunteer to teach English or Spanish or to learn more about the council) on Monday, October 18 from 6:00 p.m. to 8:00 p.m. at the Literacy Council's office located at 105-A East Jefferson Street, Monroe. There will be additional training on Friday, October 22 from 6:00 p.m. to 9:00 p.m. and Saturday, October 23 from 9:00 a.m. to 4:00 p.m.
7. The Hendrick Hurricane Golf Classic will be held on Thursday, October 28, 2010 at Stonebridge Golf Club beginning at 12:00 o'clock noon. This organization supports the Union County Chapter of the American Red Cross. Registration and lunch will be held at 11:00 a.m., and the cost is \$95 per player, which includes a cart, range balls, green fees, lunch, seated dinner, goodie bag and beverages.

At the request of the Chairwoman, Mr. Vines announced that the Eighth Annual Hope Stout Golf Classic will be held on October 18, 2010, at Firethorne Country Club. He was asked by the Chairwoman to include this information in his comments at the next regular meeting.

**CONSIDERATION OF ECONOMIC INCENTIVE GRANT AWARD – PERFECT FIT INDUSTRIES IN A TOTAL AMOUNT NOT TO EXCEED \$19,557:**

Chairwoman Rogers recognized Wes Baker, Interim County Manager, to explain this request.

Mr. Baker stated that the public hearing was held earlier in tonight's meeting, and no one spoke during that public hearing. He said that Perfect Fit was seeking an incentive grant from the County. He introduced Michael Trotter of the Union County Partnership for Progress to comment further on this item.

Michael Trotter distributed a copy of an economic development guide provided by The Charlotte Regional Partnership. He also handed out a copy of written information in connection with the incentive grant award. He stated that Maurice Ewing, President of the Union County Partnership for Progress, sends his apologies for being unable to attend tonight's meeting. He said that Mr. Ewing is participating in the State of North Carolina's Logistics Task Force's meeting tonight.

He thanked the Commissioners for the opportunity to speak before the Board tonight. He said this is a subsequent step to the Partnership for Progress' efforts to gain the expansion of one of Union County's long-standing industries. Mr. Trotter stated that Perfect Fit Industries is located in the Sutton Park area in the County and is a manufacturer of pillows and mattress pads. He said Perfect Fit Industries has been operating in its current facility since 1961 and employs 181 people. He stated that this past June Perfect Fit Industries was acquired by the Anderson Group, a holding company, out of Michigan. He said shortly after the acquisition that the new owner announced its plans to consolidate the facilities, and as a result of the consolidations, Perfect Fit will either shut down operations in Loogootee, Indiana, and move that production to Monroe or shut down the Monroe facility and move that production to Loogootee, Indiana. Mr. Trotter said that if Perfect Fit consolidates its facilities to Union County, over the next two years it would invest \$2.123 million and hire an additional 50 people.

He explained that as part of Union County's efforts to continue to gain the company's expansion, the Partnership for Progress has worked with staff and developed an incentive grant, if one were to be offered. He said the proposed grant to the company would be for a total amount not to exceed \$19,557 to be paid over a three-year period. He stated that the scheduled investment by the

Company is \$673,828 in 2010 and an additional \$1.450 million to be invested in 2011. Mr. Trotter said that based on the Company's projected investment in Union County, it would pay estimated taxes on the new investment over three years of \$31,226 based on the current tax rate. He noted that the grant amount during that same three-year period would total \$19,557, and, therefore, the estimated net revenue to the County would be \$11,668 over the three-year grant period.

He stated that since Perfect Fit is located within the city limits of Monroe, they have worked closely with the Monroe Economic Development Commission, and on August 17, 2010, the Monroe City Council approved a grant for this project in an amount not to exceed \$31,740 to be paid over a five-year period. Mr. Trotter noted that the State of North Carolina is also pursuing efforts to win the expansion in North Carolina, and is contemplating a \$36,000 One North Carolina grant.

He introduced Steve Dickens of Perfect Fit Industries.

Mr. Dickens stated that the Company has been in an extremely difficult financial situation for a number of years. He said that Perfect Fit operates four facilities around the country and has approximately 6,000 square feet of manufacturing space. He stated that as a result of this acquisition and in looking for opportunities to make this work, the owners have decided to consolidate the facilities and one of the facilities will be closing.

Mr. Dickens said that the decision as to which of the facilities will close rests in large part on the partnership that can be formed with the respective governments here in Union County and in Indiana. He said that he is the Production Manager of the Monroe facility and as such interacts daily with the 180 employees in the Monroe facility. He stated that there are 180 jobs at stake in Monroe and another 100 jobs at stake in Indiana. He said that they want to do whatever is needed to make it work for the community. He assured the Board that they do not take lightly the enormous responsibility to make sound fiscal decisions for the County. He asked that the Board consider the request for the incentive grant.

Mr. Trotter said that John Beliveau who was mentioned on the application that was distributed to the Board, was unable to attend the meeting tonight, because he is with the Governor of Indiana. He said that Mr. Beliveau sends his regrets.

Mr. Trotter stated that it has recently been brought to his attention that if the Monroe plant is expanded the facility would be the largest pillow manufacturing operation in the United States. He said that on August 10, 2010, the Board of Directors of the Partnership for Progress unanimously approved that the Partnership's staff continue to seek incentives to win this project.

He explained that if an incentive is approved by the Board, Perfect Fit Industries has not made a final decision on consolidation of its facilities. He asked if there were any questions from the Board.

Commissioner Baucom asked Mr. Dickens about the timeline when a decision might be forthcoming by the Company. Mr. Dickens responded that he was not exactly sure, but it would be very soon. Commissioner Baucom commented that in order to have the jobs in place by the end of the year, it would require action sooner rather than later. Mr. Dickens estimated that a decision by the Company would be forthcoming within the next couple of weeks.

Commissioner Openshaw said that the application contains a statement that “Monroe’s utility department has also proposed a rate savings of \$141,000/year.” He asked if this savings is proposed through a rate reduction. Mr. Trotter responded that one of the issues that is very important to the Company involves long-term operating costs, and one of those factors is energy costs. He said that the City of Monroe has proposed a generator program where a customer can buy a generator and in turn receive a significantly reduced utility rate, and that is where the \$141,000 savings is derived through the application of that program.

Following the presentation, Commissioner Baucom moved to authorize the County Manager to approve a grant agreement with Perfect Fit Industries in an amount not to exceed \$19,557 payable over a three-year period, pending legal review. The motion passed unanimously.

**PROCLAMATION FOR NATIONAL LONG-TERM CARE RESIDENTS’ RIGHTS WEEK 2010:**

Chairwoman Rogers recognized Wes Baker, Interim County Manager, to explain this item.

Mr. Baker explained that Residents’ Rights Week is celebrated the first full week in October each year, and its purpose is to honor residents living in all long-term care facilities. He said that Residents’ Rights Week was originated in 1981. He said that the Residents’ Rights Celebration in Union County will be held in October, and Centralina Council of Governments will be sending invitations to the Board members in the near future to attend the celebration. He added that in recent years, either the Chair or his/her designee, has attended the event and read the County’s Proclamation.

Following the explanation, Commissioner Openshaw moved adoption of the Proclamation for National Long-Term Care Residents’ Rights Week 2010. The motion passed unanimously.

NATIONAL LONG-TERM CARE  
RESIDENTS' RIGHTS WEEK 2010  
PROCLAMATION

**Whereas**, there are more than 1.6 million individuals living in 16,000 nursing homes; and one million individuals living in 50,000 board and care/assisted living facilities in the U.S.; and

**Whereas**, the federal Nursing Home Reform Act of 1987 guarantees residents their individual rights in order to promote and maintain their dignity and autonomy; and

**Whereas**, all residents should be aware of their rights so they may be empowered to live with dignity and self-determination; and

**Whereas**, the Union County Board of Commissioners wishes to honor and celebrate these citizens, to recognize their rich individuality, and to reaffirm their rights as community members and citizens, including the right to have a say in their care; and

**Whereas**, individuals and groups across the country will be celebrating Residents' Rights Week with the theme – **"Defining Dining: It's About Me"** – to emphasize the importance of affirming these rights through facility practices, public policy and resident-centered decision-making that impacts quality of care and quality of life.

**Now, therefore**, the Union County Board of Commissioners does hereby proclaim October 3-9, 2010, as National Long-Term Care Residents' Rights Week, in Union County and encourages all citizens to join us in these important observances.

Adopted this the 20<sup>th</sup> day of September, 2010.

ATTEST:

\_\_\_\_\_  
Lynn G. West, Clerk to the Board

\_\_\_\_\_  
Kim Rogers, Chairwoman

\_\_\_\_\_  
Tracy Kuehler, Vice Chairwoman

\_\_\_\_\_  
Allan Baucom, Commissioner

---

A. Parker Mills, Jr., Commissioner

---

Lanny Openshaw, Commissioner

**CHANGE ORDERS FOR BLYTHE DEVELOPMENT COMPANY AND AMENDMENT TO CM&E CONTRACT FOR THE JESSE HELMS PARK BRIDGE ENTRANCE PROJECT (This item was moved from the Consent Agenda to the Regular Agenda at the Request of Chairwoman Rogers):**

Chairwoman Rogers explained that she had asked that this item be removed from the Consent Agenda and placed on the Regular Agenda for two reasons. She said one of the reasons was that funding for these items was coming from other areas of the budget, and she wanted the funding to come from the budget for the Jesse Helms Park. She explained that the other reason she had asked to move this item to the regular agenda was that for either the October 4 or October 18 meeting she would request to have a full accounting of this project which would include expenditures to date, budget to date, how much is remaining on the project, how much is funded, what is not funded, and how it is funded. She said that it seems there are a lot of change orders on this project, and she did not know that the Board has a review of the project in totality. She stated that she thought it would be good for the Board to have that information.

Chairwoman Rogers moved to approve the additional funding needed for the project from the Jesse Helms Park budget since that is what the expense is for.

Commissioner Mills asked whether the items are currently budgeted and if there is funding in the parks' budget for these items. David Cannon, Finance Director, responded that the funding was not directly attributable to the park. Commissioner Mills said if the funding is not in the parks' budget, he would assume that the project would die. He asked if the Chairwoman were asking for this item to be tabled to allow time for staff to find the funds.

Chairwoman Rogers said she did not have a problem with tabling the item but stressed that she did not want to take the funding from other projects. She stated that her understanding of this particular issue was this was a lump sum project that had a defined scope of work and this was work that was not defined in the scope of work, so, therefore, there are change orders.

Mr. Baker stated that Chairwoman Rogers was correct. He said this project was started by one architectural firm that the County chose not to continue with its services and that firm was replaced. He explained that one of the change orders for Blythe Development was because the rip rap rock included in the original contract is not sufficient and would be easily washed away by any

significant rainfall, so they had chosen to go with a heavier rip rap stone. He stated that cost of this change was \$895.83. He noted that the other \$2,500 on the change order from Blythe was for moving the pedestrian walkway. Mr. Baker said that in the original drawings the pedestrian traffic would be on the opposite side of the parking lot which means that everybody that walks that path is going to have to cross over the vehicular traffic. He said that Blythe Development has said that it can move the walkway to the other side. He explained the reason for the additional costs is because there will be some additional curb and guttering and some asphalt required that would not have been included had it stayed as originally designed.

Mr. Baker said that the other amount being asked for is for the architectural firm and not the contractor. He explained that this cost is due to the decision to use a modular wall, and the original architect did not have funds figured into the job for the required inspection for that wall. He said that the modular wall must be inspected and it has to have compaction tests. He stated that in order to inspect the modular wall, an inspector must be on site the entire day while they are installing and compacting the fill, which will take approximately two weeks. Mr. Baker said that there is no more money in the Jesse Helms Park Bridge Project budget. He explained that this project required bio-retention ponds to be built, which were originally not required, and that created a lot of additional work at extra cost.

Bill Whitley, Interim Director for Parks and Recreation, provided photographs showing the current status of the bridge. He said that substantial completion of the bridge should be October 31, 2010, with the final completion to be November 15, 2010. He stated that two of the four retaining walls are almost complete. Mr. Whitley stated that the major cost is the compaction tests. He also showed a rough drawing of the passive area.

Vice Chairwoman Kuehler stated that she too would like to see the figures for this project. She said that she would like to see, as Chairwoman Rogers had said, where this project started, its current status moneywise, the future predicted costs, and the total amount of money that will have been spent at the completion of the project.

Mr. Baker responded that Finance has those figures that Mr. Cannon can share with the Board tonight if the Board wants to hear them. Chairwoman Rogers said that staff could share these figures, but she would want time to review them. She suggested that staff send that information to the Board via e-mail or other means.

Commissioner Baucom commented that he did not understand why the engineering firm is not responsible for the rip rap rock, because the firm evaluated the project based on the location. Secondly, he questioned why the architectural firm is not responsible for the change order for the increased costs for the compaction.



Mr. Whitley responded that there has been a change in the architectural firm. He said that this project is semi-time sensitive in that the passive area cannot be completed until the bridge is completed. He explained that the rip rap rock was outlined by the first engineering firm, and the current engineering firm looked at it after the fact and did some recalculations. He stated that the lesser type rip rap rock might have worked but it seemed not to be as good. Mr. Whitley said that in staff's opinion, it would be wrong for CM&E to be held accountable for that because it was not CM&E that put it in the original specifications. Commissioner Baucom questioned whether CM&E assumed the design of the original firm. Mr. Whitley responded that CM&E was contracted to perform only the bidding and the construction, so they should not be responsible for the drawings from the other firm.

Mr. Baker offered that a representative from CM&E was present tonight to answer questions that the Board might have. There was a consensus of the Board for Myron George of CM&E to come to the podium to answer questions.

Mr. George said that his firm contracted with the County about the time it was thought the design for the project was completed. He said that CM&E's first task was to review the plans. He stated that they went through the bid phase and began the construction phase. Mr. George said as they looked at the project being constructed and the foundations that were being put in, he had questioned the size of the rip rap rock. He stated that they went back to the original architectural firm and asked if this had been evaluated and were told that it had been evaluated. He stated that he had suggested that it would be best to use the Class II rip rap rock which is larger just as an insurance policy. He said it was \$800 in the scheme of the project, and he felt this was good insurance for the County. He stated that it was his recommendation and this is what the change order is about.

Chairwoman Rogers restated that the motion on the table is to have staff look for funding elsewhere within the project and to come back to the Board and give an update on all of the expenditures and budget to date. She said at that point in time, she thought the Board would be better informed. She stated that Commissioner Baucom had also mentioned some of the contractual components of the project, and she suggested that staff might want to include some of the contractual components in its review such as the original scope of the project, the transfer from one company to the other, and the corresponding costs. She stated that would be her motion.

Commissioner Openshaw said that ironically he agreed as far as the rip rap rock, because he is familiar with a similar situation all of it has been washed down into the creek bed creating problems and leaving everything exposed to erode around the footings. He stated that he understood the practicality of it. He said no one likes to go through the proverbial nickeling and diming; however, he thought the way Mr. George had described it is appropriate that it is insurance. He stated that he did not have a problem with that particular part of the issue, but he said he was concerned that it would be a lot less expensive to deal with these issues now. He asked

Chairwoman Rogers if the intent of her motion was to not try and stop the project but to ask the Finance Director to find other ways to move some money around. He asked if there were any objections to proceeding with these aspects of the project or was she looking to get a holistic picture of the project in the future so she would be more comfortable with the expenditures thus far and where the project is going in the future.

Chairwoman Rogers responded that she was not trying to stop the project in any way, shape or form, and she is not necessarily arguing the merits and reasoning for the costs behind it. She said all she was saying is there is a budget for the park and these monies should come from that budget. She stated that she wanted to get the holistic view of the whole project just so she would have a better understanding, and she thought it would move things forward in the future. Further, she said that currently the costs of \$19,900 are coming from within the Parks and Recreation capital projects appropriation. She said that what she was saying is there is a budget for the Jesse Helms Park and she did not want to take these monies from any other projects.

Commissioner Mills asked the reasoning for staff recommending that the monies come from the western district and north district parks. Mr. Cannon responded that \$629,000 is now the budget for the Jesse Helms Park of which \$351,000 has been spent to date and an additional \$270,000 is encumbered for contracts, leaving an unencumbered balance of approximately \$7,000. He said he thought to come up with this additional amount within this project would be very difficult. He stated that previously the Board had taken action to reduce the appropriations from those two projects which had left \$12,500 in these budgets, and it did not seem that either one of the projects would go forward, so that was the reason for staff's recommendation. He said that staff could give an accounting and the details of where the monies were initially budgeted and why it has increased, but reiterated he thought it would be difficult to find the monies within the project's budget.

Commissioner Mills asked if the Board could instruct CM&E and staff to do value engineering and try to determine some cost cutting somewhere; otherwise, the County does not have the money.

Chairwoman Rogers said her only comment would be that the Board does not have the figures and that is why she wants to have a chance to review them.

Commissioner Mills questioned whether the pedestrian walkway has been moved to the other side. Mr. Whitley stated that it is not to the point of construction; however, the substantial completion is October 31. Commissioner Mills said that it should have been known from the beginning that an inspector was needed on site.

Mr. George said that when his firm had submitted a proposal to do the work, there was no mechanical type retaining wall in the design, so there was no way for his firm to know what the design was going to be. He stated when the final plans came out and had the modular wall included, the requirements were that the compaction on the geo grid had to be inspected at every tier and at every 100 feet along the wall, so it was unknown to them at the time they submitted the estimate for the work.

Commissioner Mills offered an amendment to the motion to ask staff and CM&E to look for any cost savings within the project itself to meet some of the additional costs and at the same time for the Finance Director to work with them also. He stated that if there are no cost savings, then there would be no alternative but to use funds from other areas. He said that he thought these projects were worthwhile. He stated that he agreed with what had been said that the project needs to be finished up and get a handle on it, but the funding needs to be found.

Vice Chairwoman Kuehler asked for a clarification to Mr. Cannon's comments about the western district park and the north district park where dollars had been taken from these projects at another time leaving \$12,500 in each project. Mr. Cannon stated that this was correct. Vice Chairwoman Kuehler asked what amount was originally allocated to each of those parks. Mr. Cannon responded that the original allocation to each project was \$100,000 and he thought \$85,000 had been moved from each park to be used toward the matching funds when the County received a \$500,000 grant. Vice Chairwoman Kuehler said there are unallocated funds within the County's capital improvement plan. She asked if these funds would be an available funding source without taking money from the western district and north district parks.

Mr. Cannon agreed that it could be an alternative to use those unallocated funds. However, he said that his initial thought had been that the amounts had gotten so low in the budgets for those two parks, he did not know if the Board still wanted to go forward with those projects. He stated that he was concerned to not over commit funds for future projects, and had proposed using the available funds now.

Commissioner Openshaw reviewed that there is \$25,000 for the two parks in a savings account and there is also an undesignated portion in the reserves. He said one way or the other it is just taking the funding from one pocket and putting it into another. He stated that Mr. Cannon's predecessor has frequently said "don't borrow from your savings account." He said that this is a savings account albeit it is a relatively small one. He stated that if staff cannot come up with value engineering, he would prefer to see it come from unallocated reserves. He stressed that he was concerned about the time sensitivity of this project. He asked when this project would actually be dealt with versus when the Board would be able to respond again.

Mr. George commented that they were dealing with it right now.

Commissioner Openshaw offered to make a motion but Chairwoman Rogers reminded that a motion was on the table. Commissioner Mills withdrew his amendment.

Chairman Rogers suggested that Commissioner Openshaw could offer an amendment to her motion currently on the floor. Commissioner Openshaw requested to have the motion repeated.

Mrs. West read the motion to be “to have staff look for funding elsewhere within the project and to come back and give the amount expended to date, budget to date, and to include the contractual scope.”

Chairwoman Rogers added that the motion included for staff to provide the dollars remaining on the project and how that is funded. She said that Mr. Cannon had mentioned the \$300,000 in encumbered contracts and the motion included looking at those numbers to see if they are lump sum, architectural and engineering, or actual construction and whether there might be value engineering within those encumbered funds.

Commissioner Openshaw said that he would like to see the additional funding taken from unallocated reserves and proceed with the project as is. He stated that this project has been going on for approximately four years. He encouraged that the project be completed and see what can be learned about expenditures in the future.

Chairwoman Rogers asked if Commissioner Openshaw was offering an amendment to the motion to go ahead and approve the \$19,900 coming out of the unallocated capital improvement plan. Commissioner Openshaw offered an amendment to authorize the transfer of \$16,291 from reserves.

Chairwoman Rogers asked why authorize the transfer of the funds now if there could be some value engineering or cost savings within the \$300,000. Commissioner Openshaw said that he wanted someone to tell him that this project is not going to be delayed.

There was discussion on whether the project would be held up if transfer of the funds were not approved at this time. Mr. George stated that the work is being done, and they realize it is being done at their risk. Chairwoman Rogers said that she was not hearing anyone dispute the cost, and she thought as far as CM&E was concerned she would go out on a ledge and say they are safe.

with that. She stated that she thought the question being raised is where the dollars should come and this is a valid question that needs to be answered before the Board commits to moving dollars that would have to be moved again.

Mr. Baker interjected that Blythe Development is probably not going to complete the road and move the walkway to the other side without the change order. Chairwoman Rogers said that this item could be put on the Board's next agenda.

Commissioner Openshaw asked if the Chairwoman were saying that she did not want to make this expenditure at this time. Chairwoman Rogers responded this was correct because the work is being done, and she did not want to make an expenditure out of one funding source and then find something out when the Board actually receives the facts and figures and then have to switch funding sources.

Commissioner Mills said that he would agree with Commissioner Openshaw that he did not want to see this project delayed. He said that he agreed completely with the Chairwoman that all the facts and figures need to be provided, but the bottom line is this needs to be done.

Chairwoman Rogers asked if Commissioner Openshaw were offering an amendment to the motion as stated. Commissioner Openshaw responded "yes."

Commissioner Baucom said that he would support the motion and amendment, but the only challenge he had is that the funding was being transferred from the capital improvement plan rather than a line item budget. He said he understood what was being said about the cost savings, but he would much rather support the amendment with funds coming from parks and recreation, because that it is the line item from which it is being used.

Mr. Cannon responded that the project was being funded from the capital improvement plan so there was no funding coming from operating or the general fund. Commissioner Baucom said that the proposal had been to bring the funding from the other two parks and recreation projects to the parks and recreation budget. Mr. Cannon clarified that the other two park projects were under the capital improvement plan.

Chairwoman Rogers said that it would take \$8,000 from the western district park and the \$8,000 from the north district park because that is within the parks and recreation line item capital projects appropriation. Commissioner Baucom stated that would be his preference because it is parks and recreation. He said that his other comment would be that he found it a little frustrating that it

had gotten to this point in the project before asking for the change orders. He stated it is a little late in the game, because he thought the numbers had been known earlier than last week or this week.

Mr. Whitley said that the change for the pedestrian walkway was not known until about three weeks ago, and they had to go back to the contractor and ask for information. He explained that this is because the drawings did not come from the passive area – there are two different projects.

Commissioner Baucom offered an amendment to the amendment that the additional funding come from the parks and recreation capital improvement allocation.

Commissioner Openshaw said that Commissioner Baucom had said for the funding to come from the parks and recreation capital improvement allocation, and that was why he was asking if there are additional parks and recreation capital improvement projects, because he will not support taking it from the park fund.

Chairwoman Rogers said that she thought the Board members were all on the same page, but there were a lot of questions. She stated that she had not heard any comment tonight that she did not agree with.

Commissioner Openshaw withdrew his amendment.

Commissioner Baucom said that he did not think there would be work proceeding on the road. He stated that he was agreeing with the Interim County Manager on this that he did not think Blythe would continue work. He emphasized that he did not want this to delay the project and place the County in jeopardy on funding issues.

Chairwoman Rogers said that what she was hearing is that by delaying a decision for two weeks, it would not impact the road that was being discussed.

Commissioner Baucom said that his amendment was to Commissioner Openshaw's amendment, so, therefore, he would withdraw his amendment.

The Chairwoman said that it was back to the main motion. She asked if anyone needed to hear the main motion repeated again.

She called for a vote on the main motion which passed unanimously.

**DISCUSSION OF LEGAL AND ETHICAL CONCERNS:** This item was removed from the agenda at the request of Vice Chairwoman Kuehler.

**DISCUSSION OF HEALTH BENEFITS FOR COMMISSIONERS:** This item was removed from the agenda at the request of Chairwoman Rogers.

**ANNOUNCEMENT OF VACANCIES ON BOARDS AND COMMITTEES:**

- a. Adult Care Home Advisory Committee (at least 4 Vacancies)
- b. Agricultural Advisory Board (1 Vacancy Expiring June 2010)
- c. Juvenile Crime Prevention Council:
  - 1. Substance Abuse Professional
  - 2. Two Members under the Age of 18
  - 3. One Member of Business Community
  - 4. One Member Representing United Way or Other Non-Profit
  - 5. One Commissioner Appointee
- d. Nursing Home Advisory Committee (at least 4 vacancies)
- e. Parks and Recreation Advisory Committee (1 vacancy for a member with a physical disability)
- f. Planning Board (Four Vacancies as Follows: One Unexpired Term for Regular Member Ending 4/20/2011; Two Unexpired Terms for Regular Members Ending 4/20/2012; and One Unexpired Term for Regular Member Ending 4/20/2013)

**APPOINTMENTS TO BOARDS AND COMMITTEES:**

***a. Industrial Facilities & Pollution Control Financing Authority***

Vice Chairwoman Kuehler moved reappointment of Kenneth Collins and appointment of Hoss Hinson to the Industrial Facilities & Pollution Control Financing Authority. There were no further nominations.

Chairwoman Rogers called for separate votes on the nominations of Kenneth Collins and Hoss Hinson. Both motions passed unanimously.

Vice Chairwoman Kuehler questioned whether Mr. Cannon needed to be appointed to replace Kai Nelson, who served on this authority as the Finance Director. Mrs. West responded that it would be good if this appointment were made.

Vice Chairwoman Kuehler moved to appoint David Cannon, Finance Director, to replace Kai Nelson, the County's former Finance Director, to serve on this authority. The motion passed unanimously.

***b. Community Trustee Council:***

Chairwoman Rogers announced that there were three vacancies on this council and three applications have been received. She asked for nominations for the Community Trustee Council.

Commissioner Openshaw nominated the following persons: 1) Walker Davidson to fill the unexpired term ending in December 2010; 2) Randall Groves to fill the term expiring in December 2011; and 3) Fern Shubert to fill the term expiring December 2012.

Chairwoman Rogers asked Mr. Crook for his guidance on whether there was anything in particular that the Board needed to do in regards to these appointments. Mr. Crook responded that he did not think there was anything in particular that needed to be done except that it is required that these appointments match the criteria that has been established by the Community Trustee Council for the positions.

Commissioner Baucom nominated the following persons to serve on the Community Trustee Council: 1) Richard Helms, 2) Chris Plate', and 3) Dr. John McKay.

Chairwoman Rogers asked if these persons had been nominated previously. Commissioner Baucom responded that this was correct, and these names had been submitted by the Community Trustee Council.

Chairwoman Rogers stated that the persons nominated by Commissioner Baucom had been nominated and rejected and she assumed that these were not valid nominations. Mr. Crook responded that the names placed in nomination by Commissioner Baucom



had been rejected by the Board at its September 7, 2010, meeting, but he did not see any reason that the Board could not consider them again.

Commissioner Mills requested an opportunity to discuss this matter. He stated that all three of the candidates who had been nominated by Commissioner Openshaw are all very qualified. He said that he did not know why the other names that have been submitted by the Community Trustee Council in the past have been turned down, but there is a very contentious relationship between the Hospital Board of Trustees and the Board of Commissioners and the issues at hand with the hospital overall. He stated he was not sure he would want to move forward with the appointments with the elections taking place, and he did not think it was a healthy way to start negotiations that are going to have to begin immediately with the Board and the Community Trustee Council over a new lease and the fact that the Waxhaw facility is sitting empty while rent is being paid. He asked that the Board reconsider and not appoint people who have not come through the Community Trustee Council. He said that since the Board has delayed the hospital discussions until the new Board, he would offer a substitute motion to delay the appointments until a new Board of Commissioners come on in December.

Chairwoman Rogers noted that under the Board's Rules of Procedure there could not be a substitute motion.

Commissioner Mills offered an amendment as stated. Chairwoman Rogers noted it was not a motion but it was a nomination. Commissioner Mills asked Mr. Crook what alternative he had.

Mr. Crook said that he would defer to the Chairwoman if she would like for him to give his opinion regarding his parliamentary response. Chairwoman Rogers asked that Mr. Crook give his opinion.

Mr. Crook said that he thought Commissioner Mills' had made a procedural motion to table or defer the appointments which was in order.

Chairwoman Rogers called for a vote on Commissioner Mills' procedural motion. The motion failed by a vote of two to three. Commissioners Baucom and Mills voted in favor of the motion. Chairwoman Rogers, Vice Chairwoman Kuehler, and Commissioner Openshaw voted against the motion.

Chairwoman Rogers said that she was not going to get into a lengthy discussion but did take issue with some of the comments that had been made. She called for votes on the nominations in the order in which the nominations were made. The votes were as follows:

1. Walker Davidson – Mr. Davidson received three votes. Chairwoman Rogers, Vice Chairwoman Kuehler, and Commissioner Mills voted in favor of Mr. Davidson. Commissioners Baucom and Mills voted against the nomination.
2. J. Randall Groves – Mr. Groves received three votes. Chairwoman Rogers, Vice Chairwoman Kuehler, and Commissioner Mills voted in favor of Mr. Groves. Commissioners Baucom and Mills voted against the nomination.
3. Fern Shubert – Ms. Shubert received three votes. Chairwoman Rogers, Vice Chairwoman Kuehler, and Commissioner Mills voted in favor of Ms. Shubert. Commissioners Baucom and Mills voted against the nomination.

Since Mr. Davidson, Mr. Groves, and Ms. Shubert received a majority of the votes, votes were not taken on the other nominees.

#### **INTERIM COUNTY MANAGER’S COMMENTS:**

Wes Baker, Interim County Manager, shared that the church he attends is holding revival activities this week and he invited anyone who was interested to join the activities.

#### **COMMISSIONERS’ COMMENTS:**

Commissioner Baucom stated that he was absent September 7, 2010, because he and his wife, Marie, were in India. He said it was a wonderful and enlightening trip during which they saw many beautiful sites. He stated that he was not psychologically, emotionally, or mentally prepared for everything he saw. He said he was expecting to see some things he would not be fond of but he saw much more than he had anticipated. He stated that if anyone ever heard him make any comments about not liking anything about this great country, remind him. He said it was one of those things that makes him thankful for where he lives and that he lives in this great country where there are opportunities to have discussion, where there is a plan, and attitudes of people who want to prosper and get ahead.

Commissioner Baucom reminded everyone of the Farm City Festival this Thursday night, September 23, at 6:30 p.m. at the Agricultural Center.

The Chairwoman recognized Commissioner Mills for his comments.

Before Commissioner Mills began his comments, Commissioner Baucom asked if he could add to his comments.

Commissioner Baucom said that in the determination of setting the agenda for tonight, Items 9 and 10 were removed. He explained that Agenda Item 9 first came about on June 21, 2010, but was not allowed to be on the agenda for June 21. He said that he had requested that it be placed on the agenda of July 19, and it has been on every agenda since then except the September 7<sup>th</sup> meeting, but each time it has been removed. He stated that the title of the item is "Discussion of Legal and Ethical Concerns." Commissioner Baucom said that it is regarding members of this Board and members of a prior Board. He said that he finds it ludicrous that this Board does not want to address this item. He stated that he has heard members of this Board speak about transparency, open government, ethics, and honesty. He said that actions speak louder than words, and he does not see those actions being played out. He stated that he would encourage the Board to address these two items at the next Board meeting. He said it is the right thing to do, and he hopes it takes place.

Commissioner Mills said that he was also absent at the last meeting. He stated that the Board majority chose to bring ethics charges against Commissioner Baucom, former Commissioner Pressley, and him. He said Commissioner Baucom requested an apology, and when the ruling came back from the attorney, it was written in the newspapers, that there would be no apologies. He read excerpts from the minutes of the September 21, 2009, Board meeting regarding Vice Chairwoman Kuehler's comments about an apology if the investigation revealed that she was incorrect. He said that in Commissioners' Comments from that same meeting, the same comments were stated by Vice Chairwoman Kuehler. He stated that the irony of all this is the fact that Vice Chairwoman Kuehler said she ran for Commissioner because of the motion of March 10, 2008. He said she had already filed for election before the meeting had taken place.

He stated that Chairwoman Rogers had brought up in one of the meetings that if any ethical violations were brought up by any citizen or member of the Board accusing her that she would want to have those moved forward as soon as possible, because she would not want those hanging over her head to some degree. Commissioner Mills said that he finds a lack of leadership for these items to be taken off the agenda. He stated that Chairwoman Rogers had stated there is no leadership on this Board when Commissioner Openshaw was Chair and she was Vice Chair. He said he completely concurred with her comments and nothing has changed. He

stated that these items have continued to be removed from the agenda, and at some point they need to be dealt with. He said that Commissioner Baucom, former Commissioner Pressley, and he had been exonerated from the ethical charges brought against them. He said in the same meeting, when talking with the attorney, it was specifically stated if there are any other ethical violations brought forth, the Board would look at them.

Commissioner Openshaw said that he was sure that Vice Chairwoman Kuehler could speak for herself, but one thing he heard from Mr. Kooney when Commissioner Baucom pointedly questioned him about it was there were troublesome allegations in there. He said he basically sanctioned the need to look at those issues. He stated that he thought what has been presented by Commissioners Mills and Baucom so far in relation to the other three Commissioners is ludicrous. He said that Vice Chairwoman Kuehler did a great job of researching the facts and the statements made and asked that the questions be pursued. He stated that the things that Commissioner Mills has put forth are politically motivated, and he would be glad to refer it to a middle school English class for an evaluation of reading comprehension. He said that while there is clearly little political love between the Commissioners, he was surprised because he had a higher opinion of what he expected of a work product from Commissioner Mills. He said that if they were really playing games on the agenda items, the three Commissioners could have eliminated the items at the last meeting when both Commissioners Baucom and Mills were not present to have a motion to not reconsider. He stated that they did not do that and that Commissioner Baucom had requested to have the items withdrawn, and this had been honored. He said that he did not see anything of substance in the item.

Commissioner Openshaw said that he had the opportunity to attend the Marvin Ridge and Ardrey Kell football game last week and it was on television. He said it was a grand production with the press and a number of radio stations. He stated that it was estimated to have over 5,000 people present. He said this game was the epitome of positive things about high school sports.

He congratulated Mr. and Mrs. Frank Rogers of Waxhaw on celebrating their 50<sup>th</sup> wedding anniversary.

Vice Chairwoman Kuehler said that last week she and the Chairwoman met with representatives of Carolinas Healthcare Services to continue negotiations on the Waxhaw Emergency Department. She described the meeting as one of the most positive meetings that she had been in with Carolinas Healthcare Services. She said she thought a lot of the air was cleared and they really understood each other's positions. She stated there was a lot of positive conversation and hopefully enough common ground was found to move the project forward. She said they were waiting to hear back from Carolinas Healthcare Services.

She said that Commissioner Openshaw and she were going to Anson County next week hopefully to finalize the agreement with them. She said that things are starting to move forward.

Chairwoman Rogers referred to the comment by Commissioner Baucom about when the ethical and legal concerns first came up. She said that was not accurate if you reviewed the backup documentation that was sent. She stated that she had read the documentation today because it was sent via e-mail. She said that what she learned is there is a resurrection of Union County 2020, which she described as the unethical organization that walked on the line of legality and was formed for the purpose of slandering and lying. She stated that the documentation provided by Commissioner Baucom was no more than an anonymous package that was sent to all the newspapers and possibly television stations that was full of libelous statements, lies, and false information and not worthy of consideration of this Board. She said that she could not reply to anonymity. Chairwoman Rogers said she did not know what the legal charge is, because all she read was a bunch of fiction. She stated that just because someone brings something forward to the Board does not make it legitimate and worthy of review especially if it is not backed by facts and legitimate information. She said that it talks about the ethics investigation conducted before. She stated there was over \$120,000 of taxpayer money that went to that and the FBI was involved. She said that Vice Chairwoman Kuehler brought forth three or four pages with bullet point after bullet point of facts and data. She stated that she was not going to address Mr. Kooney's investigation. She said that she had satisfied what the people wanted her to do. She stated that her hope is that whoever comes on this Board in December is going to have the goal of showing what a healthy debate is, what a Board of high moral character is, and that the Board can have disagreements. She said she thought the Board had a very healthy discussion tonight over the Jesse Helms Park. She stated that they were all going to the same place but going about it in different ways. She said that is healthy debate and that is what government should be doing and not the petty politics. She stated that she was sick of petty politics. She encouraged the citizens to do their research and decide who they want to come on the Board in December and whether they want more of the same or something that is going to be different that will have a change and impact on the Board. She said that as tired as the citizens are of watching it on television, she is even more tired of sitting here listening to it and having to deal with it.

With there being no further items for discussion, at approximately 8:55 p.m., Vice Chairwoman Kuehler moved to adjourn the regular meeting. The motion passed unanimously.