

August 11, 2009  
Regular Meeting

The Union County Board of Commissioners met in a regular meeting on Tuesday, August 11, 2009, at 7:00 p.m. in the Commissioners' Board Room, first floor, Union County Government Center, 500 North Main Street, Monroe, North Carolina. The following were

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

ABSENT: None

ALSO PRESENT: Al Greene, County Manager, Lynn G. West, Clerk to the Board, Matthew Delk, Assistant County Manager, Jeff Crook, Senior Staff Attorney, Kai Nelson, Finance Director, interested citizens, and members of the press

**OPENING OF MEETING:**

Chairman Openshaw convened the meeting and welcomed everyone. He apologized for being a little late in opening this meeting but explained the Board had been in a closed session. He requested Commissioner Baucom to present the invocation.

Invocation: Commissioner Baucom offered the invocation.

Pledge of Allegiance: Commissioner Baucom led the body and audience in reciting the Pledge of Allegiance to the flag of the United States.

Employee Recognition of Service Awards: The Chairman recognized the following for five-years of service:

Linda Price, Board of Elections  
Laura Webb, Central Administration  
Sandra Marsh, Communications  
Dorothy Sherrin, Communications  
Gary Silsby, Communications

Lee Jenson, Planning  
Lee Dillon, Public Works  
Heather Mattox, Public Works  
John Arnold, Sheriff's Office  
Conley Bordeaux, Sheriff's Office  
Michael Conley, Sheriff's Office  
Michael Cunningham, Sheriff's Office  
Garrett Davis, Sheriff's Office  
Kenneth Goodrum, Sheriff's Office  
Anthony Humphrey, Sheriff's Office  
Randall Miller, Sheriff's Office  
Jonathan Presson, Sheriff's Office  
Jason Rumley, Sheriff's Office  
Scott Stroud, Sheriff's Office

He then read the names of the employees with ten years of service:

Jane Clements, General Services  
Alida Perez, Health  
George Carter, Inspections Department  
Allen Croom, Inspections Department  
Ney Killough, Public Works  
Andrew Goodwin, Sheriff's Office  
Andrew Mullis, Sheriff's Office  
Guadalupe Nesbit, Social Services  
Windy Outen, Social Services  
Robin Robinson, Social Services

Those employees with fifteen years of service were as follows:

Jonathan Lowder, Sheriff's Office

Donna Helms, Tax Collector's Office

The employees recognized for twenty years of service were as follows:

Phillip High, Sheriff's Office  
Anita Sullivan, Transportation and Nutrition

Lastly, he recognized Roger Horton from the Planning Department with twenty-five years of service.

**PUBLIC HEARING – RE: Text Amendment – Section 146 Table of Uses:**

The Chairman stated the subject of the Public Hearing and moved that in conducting this hearing that the Board allows ten minutes for the spokesman designated from the Union County Public Schools and the Union County Planning Board and three minutes for each other speaker. He said the order of comments shall be the Planning Board, followed by individual speakers in favor of the proposed amendment, then the Union County Public Schools followed by any individual speakers opposed to the proposed amendment.

He said the other issue that needs to be determined is if the Board will be asking questions tonight or will the matter be dealt with at the next meeting with notes taken tonight and questions asked prior to the next meeting.

Commissioner Kuehler explained that it is her preference to take notes and seek answers to questions prior to the next meeting. She said that during the time she has been on the Board there has not been an interaction between the Board members and the speakers during the public hearing segment of the meeting.

The Chairman agreed and stated those are the two motions that he has before the Board.

Commissioner Mills said he would suggest suspending the Rules of Procedure. He said he had talked with Mark DiBiasio, and he believes there is a compromise that could be worked out to meet everyone's expectations. He said if that is the case then he would like to see the item settled tonight as Dr. Davis and his staff have lots of work to do with the money they have to revert back to the state. He said he would not say that it has to be done, but if something comes up during the public hearing and there is an agreement, he would want the Board to consider that option.

Vice Chair Rogers said that she too would like to see, if at all possible, questions asked at the conclusion of the presentations and at that time it could be determined if a course of action could be taken tonight to settle this issue because there is a lot of work going on for most of the people in this room. She said that she thought that a compromise or a memorandum of understanding could be reached. She also asked that it be left open for that possible action.

The Chairman asked her what she was specifically saying about questioning. She replied that she wanted to hear what the schools have to say and ask the questions and if it appears that it is going to be a longer process than expected, the Board could continue the public hearing to another date and time.

The Chairman asked if the Vice Chair is interested in limiting the time for presentations to ten minutes and wishes to ask questions.

Vice Chair Rogers said she thought it fine to limit the time to ten minutes for presentations but then open it for questions.

Commissioner Mills asked if it would be necessary to suspend the Rules of Procedure in case the Board wants to make a decision tonight.

The Vice Chair responded that she thought it would be appropriate to make the motion at the end of the comments, if it is decided that the Board wants to do so.

The Chairman restated the first part of his motion to set time limits for the presentations of ten uninterrupted minutes for both the representatives of the Planning Board and the Board of Education and three minutes for individual speakers. The motion passed unanimously.

Commissioner Baucom agreed that the issue should be settled as soon as possible but noted he did not want to act improperly by moving forward too quickly.

The Chairman stated he had made a motion not to ask questions until the Board meets again further on this other than potentially the submission of written questions and information gathering along the way under the Board's normal procedure unless it is done in a work session.

The Vice Chairman submitted a substitute motion that questions be asked tonight after the presentation is completed.

The Staff Attorney stated that the Vice Chair's motion is in direct opposition to the Chairman's substantive motion and is, therefore, out of order. He recommended the Chairman's motion be voted on first.

The Chairman said he would withdraw his motion unless Commissioner Kuehler chose to vote with him on the motion as stated.

Commissioner Kuehler stated that she would prefer to not bend the rules and to follow the Rules of Procedure. She said she also prefers to digest the information and not make decisions based on the emotions of the situation.

Vice Chair Rogers said there was nothing within her motion that would tie the Board to making a decision tonight, but it would provide the Board the flexibility to ask questions, if the Board chose to do so. She reminded that she had stated the public hearing could be continued until a later date and time.

The Chairman called for a vote on his motion. The motion failed by a vote of two to three. Chairman Openshaw and Commissioner Kuehler voted for the motion and Vice Chair Rogers, Commissioners Baucom and Mills voted against the motion.

At the request of the Chair, the Vice Chair repeated her motion to allow each side to present for ten minutes and at the end of both presentations that any questions that the Commissioners may have could be directed to the particular group involved for a response.

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

The Chairman recognized the Planning Board to make its presentation on the Text Amendment – Section 146 Table of Uses as advertised.

Jim King, Chairman of the Union County Planning Board, stated that he was going to discuss vested rights and explained that if a person wants to build a house in a residential area the setback is 40 feet today and all permits are acquired and then three months

after the house is started someone points out that the Ordinance has been changed and setbacks are now 50 feet from the road. He stated that the homeowner is not required to tear the house down but everything stays because all permits were issued and the site is vested. The next person would have to adhere to the 50 foot setback, but the first property owner is vested. He said vesting is that simple and that is what is being presented tonight.

Mr. King said that a letter as distributed tonight dated November 30, 2005, from the North Carolina Department of Environment and Natural Resources addressed to Dave Burnett, Union County Schools has the subject heading of **New Middle School and High School B, Crane Road, Waxhaw, Union County – Approval of 401 Water Quality Certification *with additional conditions***. He pointed out the number one condition states: “1. A final written stormwater management plan shall be approved, in writing, by this Office prior to the construction of any permanent facilities at the site. The stormwater facilities must be designed to treat the runoff from the entire project, unless otherwise specifically approved by the Division of Water Quality. Further, he read “no changes to the structural stormwater facilities shall be made without written authorization from the Division of Water Quality.”

He stressed that this was written in plain English and in black and white; a written stormwater master plan had to be approved. Mr. King said that when that statement is understood all the other ten or so letters from DMQ are irrelevant. He said that all the other ten letters do is prove that somebody did not follow the rules and do what they were supposed to have done, because if they had, it would have been grandfathered. He noted that Stormwater Phase II did not come into effect until quite a time after the November letter. In fact, he noted that the schools would have been grandfathered had it complied with this regulation even up to and until March 2009. He said all that would have been required was one sheet of paper proving the school was grandfathered.

He presented a time line for the work at this school and pointed out that early in the process the school system was disregarding the letter with its stipulations. He also reviewed the documented letters as presented in a package tonight to the Union County Board of Commissioners between the Division of Water Quality and school personnel. He pointed out that in a letter dated June 5, 2007, to Don Hughes that the Division of Environment and Natural Resources stated the following: **“Should you choose to pursue the Marvin Ridge Middle School and High School Project (formerly known as New Middle School & High School “B”), you must reapply and resubmit through the regular 401/Wetlands Program with a modified application, which clearly addresses all issues DWQ identified in previous correspondence. Please be aware that you have no authorization under Section 401 of the Clear Water Act for this activity and any work done within waters of the state would be a violation of North Carolina General Statutes and Administrative Code.”**

He presented a letter addressed to Mr. Hughes dated December 18, 2007, that noted that these violations and any future violations are subject to civil penalty assessments of up to \$25,000 per day for each violation and noted that Davis-Martin-Powell Associates provided a cost of service for engineering services in the additional amount of \$38,988 to be added to the \$382,000. He pointed out this firm was still in the process of negotiating with the State until September 2008 when they finally got storm water approval.

Mr. King further said the question has been raised as to why the Planning Board has been involved in this project. He read No. 25 out of the County's Land Use Ordinance that specifies the powers and duties of the Planning Board. He said he did not see anywhere in this ordinance that it exempts anyone or any organization from following the Ordinance as adopted. He asked how could the Planning Board ignore this problem when it was found because the Planning Board is charged with protecting the citizens of Union County. He stressed it was not a fun-thing, but it had to be done.

He noted a letter was sent out by Mr. Greene dated July 28, 2009, from Donald Hughes which says: "In response, [and he is talking about meeting with the Planning Board] we offered to conduct a meeting to discuss the circumstances and the members of the Planning Board declined our offer. Mr. King reported that a letter was distributed from one of the Planning Board members to three school board members plus Superintendent Davis which notified the schools that the subject would be discussed at the June 2, Union County Planning Board meeting. He pointed out that the Planning Board has yet to have a response to that notice.

Mr. King further noted that a formal letter was addressed to Dr. Davis on June 18, 2009, requesting Don Hughes or the Superintendent's designated person to attend the July 7<sup>th</sup> Union County Planning Board meeting for the purpose of explaining the process of issues that led to UCPS/Union County having to pay additional costs to comply with stormwater mandates involving Marvin Ridge and also requested a 401 Stormwater Certification for the North Carolina Department of Environment and Natural Resources Division of Water Quality.

He said that a letter from Don Hughes to Mark DiBiasio, with a copy to Mike Webb, dated June 18, 2009, stated that he had discussed the request with Dr. Davis for him to attend the Planning Board meeting. He said the letter stated that they [Hughes, Davis, and Webb] are in agreement that it would not be appropriate for him to attend the meeting but that he would be willing to meet with you [Mark DiBiasio] and Jim [King] to discuss it.

Mr. King said that there is a proper agenda item set for the Planning Board, and it would be as if the Commissioners had a proper agenda item and someone came in and said that they would talk with the Chair and Vice Chair behind closed doors but would not discuss the item in open session.

He emphasized that the Planning Board had provided adequate documentation for the Board as to what it has said and what it has done. He said he is anxious to hear the proof that the School Board can present since he had heard only rhetoric from them. He said he would like to see the School Board's documentation.

Mr. King said the Board of Adjustment goes on findings of fact, because it is a quasi-judicial board and cited the basis stipulated for findings of fact.

Mr. King reported that it is said that time is important to schools but on March 17, 2005, a news article stated that the Board of Commissioners approved a purchase of 74 acres of land on Crane Road and then on May 2, 2005, there is another item on the Commissioners agenda to approve additional land for School B on Crane Road, and it was not finalized until May 17.

Jeff Gerber, Planning Board member, commended the Commissioners for appointing an outstanding Planning Board whose members are committed, dedicated, and understand their role on the Planning Board. He said they do research, investigate and advise the Commissioners on issues to the best of the members' abilities. He stated that the Planning Board has no desire to take control or power from the school system but only wants to help. Mr. Gerber said that it is possible that the Planning Board could have found the errors in the Marvin Ridge Middle and High School construction projects that cost the taxpayers several hundreds of thousands of dollars if the major development process had been in place. He acknowledged that he had a great deal of respect for the school board under the leadership of Chairman Dean Arp and that he also has a great deal of respect for its Superintendent, Dr. Ed Davis. He said he hears the argument that school construction could be delayed a month or so but he did not see that happening. He asked if when spending millions upon millions of dollars on school construction isn't a short delay worth potentially finding any errors that will cost the taxpayers several hundred thousands of dollars.

He encouraged Richard Black, Al Greene, and Don Hughes to start working with the Planning Board and not against it. He assured that if this cooperation took place that it would be the taxpayers who would benefit. He expressed his disappointment with Don Hughes for not appearing before the Planning Board to explain what went wrong with the Marvin Ridge Middle School and High School projects that costs the taxpayers hundreds of thousands of dollars. He said that the Planning Board received a response from Mr. Hughes that he was advised that it would be inappropriate to meet before the Planning Board but would meet with a couple



members of the Planning Board privately. Mr. Gerber stressed that in his opinion that would be unethical conduct and is no different than a county commissioner meeting privately with a major developer to discuss his special interest project.

He noted that everyone makes mistakes but when a mistake is committed, it should be confessed and everyone would benefit from the admission.

The Chairman next recognized Dean Arp, Chairman of the School Board. Chairman Arp thanked the Commissioners for the opportunity to address this matter. He said he was also a professional engineer by trade and Chairman of the Facilities Committee. Chairman Arp noted that these issues come up before him in his private business as well as in his role as Chairman of the Board of Education. He said that the School Board accepts full responsibility for its action on this issue, but wants to provide answers to the questions raised without in any way appearing arrogant or appearing to deflect responsibility. He assured he wanted to provide a full explanation to the issues brought forth.

First, he wanted to register the School Board's opposition to the proposed change. He read the following:

- 1.) Oppose any change to the Union County Land Use Ordinance regarding the schools such as reclassification of schools as a major development.
- 2.) As an alternative, propose a voluntary memorandum of understanding between the Union County Board of Education and the Union County Board of Commissioners for the school system to provide notice to a single point of contact for the county regarding notice of permits. Details can be worked out between the Union County Public Schools and the Union County staff, as the Board of Commissioners deems appropriate.
- 3.) Propose a joint resolution to seek State authority and provide personnel for in-county storm water quality permitting, as a pro-active step that could assist the schools as well as commercial developments, etc.

He said his point is to set forth the impact of the proposed land use changes on this ordinance. He stated that Dr. Davis will expand on the background information to refresh everyone on the conditions in the Marvin Ridge Middle/High School in which this was built and he would close with additional comments.

Dr. Davis said he was delighted to be able to present the School System's side of this situation. He said as many of the members will recall that in 2005, 2006, and 2007, the County was in a tremendous tidal wave of growth and the school system was affected by the growth first and foremost. He reminded that Vice Chair Rogers was a school board member and member of the Facilities Committee with the situation at Weddington Middle School, which was built for 1,000 students and which by 2005 had a 20-day ADM figure of 1,671 students and in 2006 had an ADM figure of 1,940 students. He pointed out that the school had 32 mobile classrooms on its campus. He noted that Weddington High School which was built for 1,400 had 1,888 students in 2005 and 2,094 students in 2006 with 12 mobile units.

He said that approval for stormwater issues are very confusing and especially confusing at this particular time because there were some changes in the rules going on. Dr. Davis said the question has been raised about Stormwater Phase II. He said Phase II did not really apply to the Marvin Ridge site, it was the 401-404 water quality issues that applied to Union County. Dr. Davis said that because of the need to fast track this school and get it built in a timely manner to relieve the overcrowded situation, DWQ worked with the schools in the permitting process. He said they knew the construction project was underway and could have stopped it at any time, but did not do so because they knew the requirement for construction. He voiced his appreciation to DWQ for its spirit of cooperation in the latitude that it gave to the system. He said he did not personally know Mr. Randall but was disappointed in his statement in the newspaper but does understand that he is a fine gentleman who does know his stuff. He said Mr. Randall was not directly involved with Union County's situation, as far as he knew, but there were others with DWQ that they were working with at that point in time. He admitted that the staff did miss a deadline for a response for an express review in April 2007 because the staff could not respond with the information that was required within the time given. However, he noted that this lapse was due to the 401 water quality, not the phase II stormwater situation. Dr. Davis said the result of this was that the schools had to convert two existing sediment ponds into stormwater retention ponds and had to construct a third stormwater retention pond. He said this was approved after negotiations with DWQ and due to the good working relationship that the school staff had with them as well as DWQ's understanding of the timeline. He said this was negotiated from five storm water retention ponds down to three, which was a savings of over \$100,000. Dr. Davis assured there was no action or inaction on the part of the school system that led to this cost of \$383,000 plus the engineering costs. He said he would be the first to admit any responsibility if the schools had or had not taken action that it needed to do. Dr. Davis admitted there was some confusion and if there were any honest mistakes made, he would accept responsibility for those.

Dr. Davis emphasized that Marvin Ridge was built to relieve the overcrowding situation and the school's construction budget was set at \$75 million. He pointed out that including the change discussed tonight that both schools were constructed for about \$60 million. He stressed that during the entire process they had worked in good faith with the DWQ and the proposed amendment to the

zoning ordinance will not really accomplish anything that has happened in this situation but it will slow the building process, slow the renovation process, and slow the school system's ability to even locate mobile units. He said the process governed under this change will only cost the taxpayers more money and fail to meet the educational needs of the County's students. He said he strongly supported the action of the Board of Education requesting a Memorandum of Understanding to provide some checks and balances to prevent anything like this from happening again.

Chairman Arp stated that he had distributed a timeline for the Board as well and noted that the timeline itself is not what is in dispute. He said what is incorrect are the conclusions that are drawn from the items in the timeline. He noted that for instance the document is talking about meeting a Stormwater Phase II Management Plan deadline and that is not an issue because the schools did not have to meet that timeline because they were in fact grandfathered and there was no deadline missed that invoked that penalty. He said what generally happened was that the 401-404 water quality required the schools to treat the water runoff and those structures had to be in place by the end of the Certificate of Occupancy. He said they negotiated with the State because it originally wanted the entire site treated requiring five basins. He said the schools received a price in order to do that and the cost was \$500,000. He assured that the Board of Education's support staff and its engineers thought that it could be treated in a more cost-effective way and they proposed two basins to be treated. He stated the Division of Water Quality worked with the schools in an extraordinary way and that is the way the fast-track project went. Mr. Arp emphasized that if it had been necessary to get final approval before construction, it would have been delayed at least four months. He said that delay would have been in excess of \$250,000 a month in additional cost if the permits had been required before construction.

Mr. Arp said the schools' engineers negotiated with the DWQ to provide an acceptable solution and what was finally agreed upon was that instead of treating the whole site that three basins would be treated. He explained it was kicked out of express review because the plans had been submitted with two basins to be treated, and they asked for documentation for all five basins. He said within the 30 days response time in the express review program, the schools' engineers did not have sufficient time to design that. Mr. Arp assured that their attorney recommended a course of action to negotiate the final structures and the engineers came to an understanding that the Board of Education could meet the requirement and the intent of the water quality program by treating just three of the basins. He said that where the confusion develops is when the Board of Education speaks about the stormwater quality regulations changed from the amount of impervious area from 30 percent to 24 percent as well as the stormwater phase II requirements that were enacted in July 2007. Again, he emphasized that it was not the issue regarding the opposition and the extended time on it. He said the schools were very much appreciative of the State working with the schools so the schools could fast track the construction and occupancy of this school and still meet the water quality requirements as construction progressed. He noted that in the end the schools did receive approval to treat three ponds by modifying the sediment basins by changing them into water treatment

basins and adding a third one. He apologized for the mistake in terms of the communication issues with school staff member Don Hughes. Mr. Arp said that what is not apparent here is that the Planning Board is a governmental board and that communication should have come to the Board of Education and there should have been board to board communication and the Planning Board's communication should not have been to junior level staff. Dr. Davis was consulted and his staff is under his control and direction; however, if a board wants one of the school staff members to appear, that communication needs to be from board to board and preserve staff to staff communication. He said he was sorry that the issue developed; but, in the future, he requested that the process be preserved for board to board communication requesting information and each respective board can appropriate the correct amount of staff to address the concern. He said the Board of Education's whole issue is that it is not in opposition to the work of the Planning Board. Mr. Arp noted that what would occur is if these regulations are enacted they will extend time and money to a process that will not permit the building of schools faster. He said it was this very issue on Marvin Ridge that the Board of Education can see the common sense approach that DWQ took with the schools to provide an eventual solution was great. He agreed that he did not dispute any of the timelines but rather the conclusions. Mr. Arp offered to answer any questions.

The Chairman asked for additional comments against the Planning Board's proposal for a major development process. With there being none, he asked the Staff Attorney if the Board would need to take action on the motion put forth by Vice Chair Rogers.

Mr. Crook replied that the Board had taken action to allow the Commissioners to ask questions prior to closing the hearing.

Commissioner Mills directed his question to Mark DiBiasio and asked if these regulations had been in place would it have caught the problems that are being discussed this evening.

Mr. DiBiasio responded that he thought that it would have caught an inkling of the issue because the County would have had its storm water inspector watching the letters go back and forth and could have at least asked questions and would have been a third person in the loop instead of only reviewing communications.

In order to get a timeline in his mind, Commissioner Mills asked Mr. Arp if the School Board was pressured to have the schools built and opened. He asked if he understood correctly that the school personnel was notified by the State there was an issue and the schools continued construction while it mitigated the solution.

Mr. Arp agreed with Commissioner Mills' synopsis and explained that never in dispute were the requirements of the 404, which is in place when streams and jurisdictional waters are being impacted, or the 401, which is a State requirement. He explained

the Storm Water Management Plan, which covers the Phase II permit requirements, as well as the water quality issues of 404 and 401. He said that is covered as well and that due to the fast-track nature DWQ worked with the Schools to allow the beginning of the construction of the school so that a cost increase would not be incurred nor a delay was not realized while working through the process to have those storm water management and treatment facilities in place by the Certificate of Occupancy.

Commissioner Mills said that he was under the impression, after talking with Mark DiBiasio last week, that the Schools thought there was some type of resolution that could be worked out with a Memorandum of Understanding possibly with the staff. He asked if this is something that can be done internally to keep from having to slow the process down and prevent the Schools from having to go through the Planning Board.

Mr. Arp responded that the Board of Education's proposal is again a voluntary effort to acknowledge the issue that was raised. He assured the Schools did not have a problem in the Voluntary Memorandum of Understanding with setting out a process by which the County can designate one person to whom the Schools can provide all the notices and paperwork so that the County can track it in whatever manner the Commissioners deem appropriate for staff. He said he did not want to dictate that but the individual would be provided notices of all permits, information, etc., so if the Planning Board wants to know the status of the projects, the staff designee could provide them with that information and have the documentation. He said what it precludes is the compressed timeframe in which the Schools have to obtain permits and go through a permit approval. Mr. Arp said it still allows the Schools the freedom to proceed through a fast-track process. He pointed out that it is the Schools understanding that changing to a Major Development process would impact even additions and renovations to the schools and would have unintended consequences for the construction program. He noted that the Schools would have to go through the Board of Adjustments for even moving trailers during the summer months. Mr. Arp said he thought the Voluntary Memorandum of Understanding could provide a process by which another set of eyes on the County's side could track the permit process without separating the Schools from its critical fast-track work.

Commissioner Mills asked Jim King if this could be worked through Ms. Amy Helms on the Planning Staff? Mr. King said that he had no authority to speak for the Planning Board, and it would have to come before the Board but noted there had been internal conversations with a few of the Planning Board members. He noted that what the Schools call a Memorandum of Understanding and what the Planning Board understands to be a Memorandum of Understanding are two separate worlds. He noted that the Schools want to designate someone from the County to receive a courtesy copy of what they are doing, but the individual would have no authority. He said his understanding and that of the Planning Board is that a Memorandum of Understanding would be a requirement that the Schools would have to go before the Planning Board for everything – additions of mobile classrooms (not moving classrooms), building cafeterias, wings, etc., so that an independent set of eyes is looking at the project. He reiterated that his understanding of the

MOU is that the Schools would have to come before the Planning Board for all new additions or additions to existing buildings for another set of eyes to review all plans and permits. He stressed that if it goes back to staff, then there is one government entity looking at another government entity. He said if the Schools had done what it should have done with the 401 Water Quality Certification, it would have been grandfathered in 2005. He said personally the only way he would go with a Memorandum of Understanding (MOU) would be if they would agree to go before the Planning Board with all plans – new buildings or additions.

He asked the Board to look at Number seven in its package. Mr. King said the Schools' representative had said that they talked with DWQ during the process; however, the letter dated June 5, 2007, from DWQ says: **Should you choose to pursue building this school, you must reapply and resubmit through the regular 401 wetlands program with modified application that clearly addresses all the DWQ identified previous correspondence. Please be aware that you have no authorization under 401 of the Clean Water Act for this activity and any work done within the waters of the State would be a violation of the North Carolina General Statutes Administrative Codes.** He reminded that the middle school was already occupied at that time and the high school was being readied for occupancy. He stressed that at that point Union County had illegal schools.

Commissioner Kuehler addressed Chairman Arp of the Union County Board of Education and stated that she had reviewed everything in both packets and it appears to her that there were lots of timelines missed throughout the projects. She asked Chairman Arp if it is his opinion that even if all t's were crossed and i's dotted and every single deadline complied with, would the Board of Education have incurred that additional cost. Chairman Arp responded that he, the Board of Education, and its staff believe that the additional money is related completely to the November 30, 2005, requirement to treat the stormwater runoff for the site; therefore, that cost would have been incurred. He noted that there was no "grandfathering" associated with that requirement under Item Number five.

Commissioner Kuehler next asked when the Schools started the process with DWQ and if November 30, 2005, was when the requirement was given to the schools. Mr. Arp said that the Schools applied for express review for the NCDWQ 401 Water Quality on October 1, 2006. He said that is where confusion about the Stormwater II Regulations began. He said that the State had passed the regulations in July 2006 to become effective in July 2007 for Stormwater Phase II Post Construction. He again stated that is where the confusion is in that the Schools were grandfathered then and there was not a deadline that required them to take that action. He said the Stormwater Management Plan was in satisfaction of the November 30, 2005, Water Quality Certification Permit. Mr. Arp said to answer the question more directly: this additional work was not caused by a missed deadline or penalties.

Commissioner Kuehler asked if someone could explain why the additional money was incurred. Chairman Arp replied that it was incurred because the structures had to be treated on the site.

Commissioner Kuehler then asked if that step was not known in the beginning of the construction.

Mr. Arp clarified that the Department of Water Quality allowed Union County Schools to begin construction and land disturbing activities to construct the school building while the amount and quality of the water quality treatment program was determined. He said the initial assessment was that the Schools needed to treat the entire site. He said there was a discrepancy about the parcels of land, and at the same time Phase II changed, other regulations also changed that affected the impervious areas where certain things would not have to be done. He said they did in fact have to go back and meet the 24 percent rule; the question whether or not the athletic fields had to be treated and in which basins had to be negotiated. Mr. Arp said that is the elongated process that is being talked about.

Commissioner Kuehler asked if the original estimate on the cost was low. Mr. Arp replied that there was not an estimate; it was not included in the bid packages that were sent out because it had not been designated. He stressed that DWQ allowed the Schools to bid the building and go forward with that and then do the water quality issues separately. He said it was his understanding that it did not apply and the Schools would not have to do any additional work. Mr. Arp said, obviously, that was a different understanding than what DWQ had. He said that was partly one of the mistakes; the Schools' engineers did not understand the full complexity of what DWQ was asking to be done.

Commissioner Kuehler explained that she was trying to determine if this situation had happened at Rea View School. Chairman Arp responded he did not believe so, not in this way. Commissioner Kuehler said she had noted there was a request by the schools for additional money for Rea View School, some of which was for DOT. Mr. Hughes responded some wetland mitigation had to be done at Rea View that was not known at the time of bidding. He reiterated it involved wetland mitigation, DWQ compliance, and converting some sediment ponds into biocells, which is another treatment for water quality. He said the same issues occurred at Rea View as happened to Marvin Ridge, but on a much smaller scale. He noted there were other DOT issues and everyone knows you have to do what DOT says or the school is not allowed to be opened. He noted there was also a requirement for additional fill and a road had to be moved so that more wetland mitigation was not required. He said it was cheaper to move the road than to pay mitigation fees. Mr. Hughes said that paying the fines on disturbing the wetlands would have been more than changing the roads.

Chairman Arp said that one of the issues that everyone needs to be made aware of is that the money spent was not over the funds allowed. He said that there was initially an original price of \$59,544,000 for the school and by the time the \$500,000 deduct for the change order is removed the school is \$80,000 less. He said he was not belittling that amount of money but what he wanted to highlight is that the Schools worked with DWQ to change it from what he saw as being a \$500,000 change order down to \$382,000.

Commissioner Kuehler asked Mr. King to address how the text amendment would prevent a similar occurrence compared to a Memorandum of Understanding. She also asked if a specific school-related ordinance would be better than to try to fit them into the major development process.

Mr. King responded by asking if she thought one person looking at a project plan is better than having five persons. He said that if the Commissioners thought that the answer was one person, then four of the commissioners should resign. He said the Planning Board has seven members with varied backgrounds and seven sets of eyes and nine sets if the alternates are included in that number. Mr. King said there would be nine persons in lieu of one government employee reviewing the projects. He noted that if the Planning Board saw something wrong with the design, it could only suggest recommended changes.

In response to a question by Commissioner Kuehler, Mr. King said his preference would be a review by the Planning Board instead of one government employee. He said he only spoke for himself and not the Planning Board but in response agreed to remove the Board of Adjustment from the equation if that was what they wanted.

The Chairman stated that he would like to see all three integrated—the Schools' process, the Planning Board, and the County's Storm Water personnel because he thought there was value in more persons reviewing the plans and permits.

Mr. King said that in a Major Development permit, the staff comes to the Planning Board and gives its review of the project and the Planning Board has authority to look at the individual permits. He said this is what happened on the project that caused the Planning Board to initiate this ordinance amendment – the Schools did not follow the number one condition of the DWQ 401 requirement. He said he would not guarantee that the Planning Board would always catch everything, but that the odds are better that it would be caught if the Planning Board or any independent board was involved before it cost the taxpayers additional dollars.

Mr. Arp said this is a point of disagreement. He said this is a text change without really it being called a text change because it would still accomplish the same in that it will slow the Schools down in terms of the fast track of the schools and necessary construction.



Commissioner Kuehler said that she meant no offense but it seems that slowing the project might have been prudent in this situation.

Chairman Arp explained that if the time had been compressed to get what is being required by the Planning Board, construction would have been slowed down by four months and the school would not have been opened when it was and additional mobile classrooms would have been required. He said that if all the construction is not completed in the summer before school reopens, the school year is almost lost.

Dr. Davis interjected that he thought if this proposed process, as required in the major development ordinance, had been in place and school construction slowed that it would have cost the county much more than its \$383,000 plus the safety factor of having almost 2,100 students in a school designed for 1,000 students. He said that the Schools had gotten to the point it was bringing the local legislative delegation out to look at the overcrowding situation.

Chairman Arp said there were some substantial differences between the proposal of Mr. King and the one proposed by the Board of Education. He said the Board of Education does not want to increase the work of its staff and that is why it is proposing to have one point of contact person. He said whatever else the Board of Commissioners decided would be through whatever steps it wants its staff to follow. He said certainly questions could be raised because the Board of Education is not saying that the County staff cannot comment on its proposed action. Mr. Arp said that he does not agree with Mr. King or the Planning Board that money was spent that it would not have had to spend if it had been reviewed by the Planning Board. He stressed there is no documentation out there that states if the schools had done certain things, they would not have incurred these costs. He stressed there would have been additional costs at the beginning and additional costs for delaying the opening the schools.

Vice Chairwoman Rogers said the question that the Planning Board brought up was that the Schools missed a deadline in the construction program, which cost additional money. Vice Chair Rogers reviewed the comments and the problems surrounding the DWQ deadline and the response from two basins to a five basin application. She asked if there had been any additional costs or penalties involved with this change. Mr. Arp stated that the only additional costs were for the review only. She noted that after discussing the situation with the attorney, negotiations had taken place with DWQ to assure that the concerns of DWQ could be met by going from five to three basins.

Mr. Arp responded there are two parts to the construction program – the building and before that happens there is a requirement for a construction runoff plan. The 401 is for post-construction runoff and afterwards. He read from Item 1 of the original 401 Quality Certificate that “before any permanent building is occupied at the site, the facility shall be constructed, operational and storm water plan implemented.” He agreed that was not done because they were in negotiations on what was the appropriate amount of water that should be treated.

Vice Chair Rogers emphasized that the \$382,000 was not a penalty imposed by the State but was a bid cost due to negotiations to go from five basins to three basins.

She said that another issue she had heard was about the staff not meeting with the Planning Board. Vice Chair Rogers said it was her understanding that Mr. Arp believed that it should be board to board and/or staff to staff.

Chairman Arp acknowledged that he had received a letter from Mr. DiBiasio, but he did not understand that he was being requested to make a response or to act. He said the second letter was then sent to Don Hughes, a member of Dr. Davis’s staff, to attend the meeting. Dr. Davis stated that Mr. Hughes did not make the decision to not attend the meeting; he had made the decision for Mr. Hughes to not attend the meeting. He further said that as far as the innuendos about lies and incompetence that he wanted to make it clear that Mr. Hughes is one of the most competent individuals that he knows. He said he responded to a request from Mr. Black that came from the Planning Board to write a written explanation as to why he did not send someone to the Planning Board’s meeting. He stated there were two reasons: a governmental entity directing correspondence to staff. He said he also knew the Planning Board was discussing the issue with county staff. He assured that he did not want to send his staff to a situation that he or they were not familiar with. He stated it was never suggested by Don Hughes that they meet privately. He said in addition, it should be noted that Mr. Hughes asked the Planning Board to submit its questions by e-mail. Dr. Davis stated that when he appears before a board that he does so with the blessing of his board and this issue had not been discussed with the Board of Education. He explained the suggestion to meet with them was to gain insight into the subject and provide available information. He said the Board of Education holds him accountable and he holds his staff accountable. He again reiterated that he was responsible for Don Hughes not attending the meeting – not the Board of Education, not Don Hughes, and not Mike Webb.

The Vice Chair agreed with Mr. King that there is a lot of talent on the Planning Board and that it is always good to have more eyes. She said that as she reads the Major Development Process, she is not in agreement with the schools having to take this step. She said she could agree with the two units looking at the process and bringing back a suggestion to the Board of Commissioners.

Commissioner Baucom asked if the decision to not respond within a 30-day timeline was a cognizant decision because of the inability to get the information within the 30 days.

Mr. Arp responded that when DWQ came back and wanted the entire site to be treated rather than just the two basins that had been submitted, there was not a way for the engineers to supply the additional design documentation in the 30-day timeframe; therefore, they were not complying with the program.

Commissioner Baucom asked if the delay was caused by an engineering failure.

Mr. Arp said that the engineers and staff definitely failed to meet the expectations of DWQ. He said their staff did not believe that it would require five basins.

Mr. Arp explained that they are trying to prove there was no malfeasance involved, and they wanted to work forward in a cooperative way and openly with DWQ for complying with their timelines. He said that having to comply with the requirements of the proposed text amendment does not fix the perceived issues but adds to the paperwork.

At the request of Commissioner Baucom, Mr. King said that the problem was that the Board of Education did not comply with the 401 Water Quality Certification which says a permit must be received from the State for the entire water runoff.

Commissioner Baucom said he was not ready to vote tonight but wanted to see the entities sit down and work out viable options and then come back to the Board.

Commissioner Mills suggested as a possible trial program that Don Hughes copy everything to Amy Helms and the Planning staff and then the information could be copied to the Planning Board. He asked Mr. King if that would satisfy the Planning Board's needs.

Mr. King responded that it would not.

Mr. Arp said he has a resolution to present to the Board of Commissioners in opposition to the text amendment presented tonight. He said he would take the proposal back to his Board but thought that the proposal presented within the resolution is similar to Commissioner Mills' suggestion.

Mr. DiBiasio interjected that the School system is two phases – a construction company and a school board and that it needs to be addressed that way. He said the Planning Board deals with the construction company and when its staff calls asking question it should be directed to staff such as the project manager. Mr. DiBiasio stressed that it should be addressed as a construction company.

Mr. King again read from a letter of January 27, 2009, relating to non-compliance resulting from construction of permanent structure on the site with no approved storm water master plan in place. He said the Planning Board asked for all the information that they had on the 401 certificate and, because of varied reasons, all the material was not provided and is no longer available.

Mr. Arp addressed this issue stating that the staff had responded to this letter to the satisfaction of DWQ.

Mr. Greene volunteered the county staff to work with the school staff while the Board of Education and the Planning Board work together to offer a solution to this dilemma.

Chairman Openshaw moved to follow Vice Chair Rogers' suggestion. It was noted by Mr. Crook that the first issue to be addressed would be whether or not to close the public hearing at this time.

At approximately 8:40 p.m., motion was made by Commissioner Baucom that the public hearing be closed. The motion passed unanimously.

Mr. Arp agreed to take the suggestion back to the School Board to seek its agreement to the proposed meeting.

Vice Chair Rogers said the only concern she would have is by not making it a formal motion would it result in confusion or inaction and she suggested that it be a formal motion and made a part of the record.

Commissioner Mills moved that the county staff and school board staff work along with the Planning Board and the Board of Education to develop an agreeable solution.

The Chairman noted that Mr. Arp was Chair of the Board of Education and the Facilities Committee and that he would go with the motion of Vice Chair Rogers to allow the School Board to work with the Planning Board.

Motion was made by Vice Chairman Rogers that the Rules of Procedure be suspended to allow the Board of Commissioners to give general direction tonight.

Mr. Crook pointed out that if the Board did not suspend its rules tonight to give direction, that this item would come back to the Board on its next regular meeting for a vote. He suggested that the Board could take other action consistent with its Rules of Procedure.

After receiving an opinion from the attorney, the Chairman called for a vote on the motion to suspend the Rules of Procedure.

The motion to suspend passed by a vote of four to one. Chairman Openshaw, Vice Chair Rogers, Commissioner Baucom, and Commissioner Mills voted in favor of the motion. Commissioner Kuehler voted against the motion.

Commissioner Baucom moved to suspend the Rules of Procedure, but it was noted that a motion was already on the floor.

The Chairman stated the second motion is a recommendation to the Board of Education that it allow its Facilities Committee to interface with the Planning Board to provide a workable plan with staff included if desired.

Commissioner Baucom offered as a friendly amendment that the Board of Education be substituted and the words Facilities Committee be removed from the motion to give more options to the Board of Education.

Vice Chair Rogers stated that she would prefer the motion stand with the Facilities Committee working with the Planning Board.

Commissioner Baucom then offered an amendment to allow the Board of Education to determine how it will proceed with the action so that the Board of Education would be bringing forth the recommendation with the Planning Board.

After additional discussion, the amendment passed unanimously.

The Chairman then called for a vote on the main motion offered by him and as amended by Commissioner Baucom. The motion as amended passed unanimously.

At approximately 8:52 p.m., the Chairman called for a brief recess. At the conclusion of the recess, the Chairman reconvened the meeting at approximately 9:02 p.m. and stated the next item of business.

**INFORMAL COMMENTS:**

The Chairman recognized Bob Hord, 5173 Four Wood Drive, Stallings, who stated he was representing a group of citizens who opposed the proposed change in water disinfection from chlorine to chloramines. He stated the following reasons for opposition:

- 1.) Chloramines kills fish.
- 2.) Not suitable for dialysis.
- 3.) In Washington, DC, chloramines caused lead leaching into the water system.
- 4.) There are by-products that come off chloramines that are carcinogenic and may cause problems worse than what the Public Works Department is trying to fix.
- 5.) A 30-day notice is not sufficient to allow homeowners to prepare a system to remove the chloramines. He said a reverse osmosis system used to remove chlorine is not a system that will remove chloramines.
- 6.) Chloramines are used because it is less costly than other options; it's cheap.
- 7.) He said there are attempts in three other states to band the use of chloramines.

Mr. Hord requested that the system be slowed and citizens be allowed to come in and meet with the staff to get all their questions answered and be better educated about its use. He asked that it be placed on the agenda for discussion to allow the Board to act to slow the process down.

Mr. Hord said that he had called several times to the "hot-line number" given by the County's staff. He said the first call he made was in reference to safety to fish and was told to call to a pet store. The second time he called about a system of removal of chloramines, he was referred to Google.

Commissioner Mills noted that as of last year Monroe is already on chloramines for disinfection. Mr. Hord agreed.

The County Manager explained that Mr. Goscicki has prepared a report on chloramines and has it available for distribution tonight.

Mr. Greene agreed that the staff would call Lancaster County personnel and ask for a delay on the implementation of the change in disinfection to chloramines. He said that was an operational decision and Union County does not have control of that action.

The Chairman told Mr. Hord that after talking with Mr. Goscicki tonight, he could come back to the Board on August 31.

The Chairman distributed a written statement by Werner Thomisser who was unable to be present.

**ADDITIONS, DELETIONS OR ADOPTION OF THE AGENDA:**

The Chairman asked if there were any changes to the agenda.

Commissioner Kuehler requested that Regular Agenda Item 17 – Legal Fees for Individual Commissioners be removed from the agenda. With there being no other changes, the Chairman moved adoption of the agenda with deferral of Item 17. He called for a vote on the motion.

The motion to approve the agenda with deferral of Item 17 passed by a vote of four to one. Chairman Openshaw, Vice Chair Rogers, Commissioner Kuehler and Commissioner Mills voted for the motion and Commissioner Baucom voted against the motion.

**CONSENT AGENDA:**

Motion was made by Commissioner Mills that the items listed on the Consent Agenda be approved as presented. The motion passed unanimously.

*Contracts/Purchase Orders Over \$20,000:* Authorized the County Manager to approve the following, pending legal approval: a) Inspection Department: Purchase Order or Contract Amendment in the amount of \$26,000 to procure Posse Software Upgrade from Computroniz; b) Library: Agreement with TW Telecom (TWTC) in the total amount of \$117,079.72 (Three-Year Agreement/\$39,024 per year) for an IP VPN (Virtual Private Network); and c) Local Agreement with Health Quest per FY 2010 budget in the amount of \$22,500.

***Minutes:*** Approved minutes of the regular meetings of May 4, 2009, and July 20, 2009.

**Health Department:** Adopted Budget Amendment #6 for additional \$58,258 in federal WIC Funds as recorded below:

BUDGET AMENDMENT									
BUDGET	Health - WIC			REQUESTED BY	Phillip Tarte				
FISCAL YEAR	FY2010			DATE	August 11, 2009				
<b><u>INCREASE</u></b>				<b><u>DECREASE</u></b>					
<u>Description</u>				<u>Description</u>					
Operating Expenditures	58,258								
State Grant Revenue	58,258								
Explanation:	Appropriate additional WIC funds for Health Department								
DATE				APPROVED BY	Bd of Comm/County Manager Lynn West/Clerk to the Board				





		58,258				
	Prepared By	bl				
	Posted By					
	Date				Number	6

**Technical Corrections to the Minutes of the Regular Meeting of October 6, 2008:** Approved technical correction to the minutes of the regular meeting of October 6, 2008, to clarify the action by the Board and to incorporate the language of the text amendments to the Union County Land Use Ordinance in its entirety as adopted by the Board at the October 6, 2008, meeting in regards to floodways and floodplains (Special Flood Hazard Areas) as recorded below:

TECHNICAL CORRECTION TO APPROVED MINUTES OF OCTOBER 6, 2008:

**TEXT AMENDMENT TO LAND USE ORDINANCE REGARDING FLOODWAYS AND FLOODPLAINS (SPECIAL FLOOD HAZARD AREAS):**

Chairman Baucom announced the item and asked for a motion.

Commissioner Openshaw requested to have an opportunity to read the minutes of the Planning Board prior to acting on this item. He said the documentation or earlier presentation implied that there is only one change, but he thought from his research that the statement may be inaccurate.

The Chairman asked if there is a motion to delay action.

The County Manager pointed out that there is a need for the action to take place prior to October 16.

Lee Jenson, representing the Union County Planning Department, stated that there are actually two changes; these were made based on comments received from the State of North Carolina after its review. He said the changes were mainly clarifications: the first one was the addition of some dates under Section 386 in the second paragraph. Mr. Jenson said that his department had to ask the State for the dates and they researched the information and did not get the information back to the County before the Planning Board's action. He noted the dates were blank during the Planning Board's meeting. The second change was made in three locations of the Ordinance. Mr. Jenson said these changes were made in Section 400 (a) (2), Section 401 (b) (2), and 402 (a) (2). It was included in

the documentation that the text amendment will be incorporated into the County's Land Use Ordinance text approved by North Carolina and FEMA. It was further noted in the documentation that the Planning Board has recommended that the Board of County Commissioners take the following action: Adopt a new Article XXIV Flood Damage Prevention and a new Section 117 Enforcement and Review of Floodplains and Floodways; amend Section 4 Bona Fide Farms Exempt, Section 15 Definitions, Section 79 Major Subdivision Final Plan Approval process, Section 94 Interpretations, Section 139 Floodplain and Floodway Overlay Districts, Article XVI Floodplains, Drainage, and Storm Water Management, Appendix A-5 Existing Natural, Man-Made and Legal Features, Appendix A-6 Proposed Changes in Existing Features or New Features, Appendix A-7 Documents and Written Information in Addition to Plans, Appendix F-6 Manufactured Home Park Procedures – Final Plat and Appendix G-5 Plan Preparation Requirements; and delete Section 93 Variances from Floodplain or Floodway Requirements; and delete Section 93 Variances from Floodplain or Floodway requirements, Section 253 Permissible Uses Within Floodways and Floodplains, Section 254 Construction within Floodways and Floodplains Restricted, Section 255 Special Provisions for Subdivision, Section 256 Water Supply and Sanitary Sewer Systems in Floodways and Floodplains, Section 257 Additional Duties of Administrator Related to Flood Insurance and Flood Control, Section 258 Location of Boundaries of Floodplain and Floodway Districts Section 259 Setbacks from streams Outside Designated Floodplains, and Section 260 Reserved.

Commissioner Openshaw explained that he had problems with people building in floodplains and pointed out the expense has cost Charlotte. He further said he was delighted that in the new map the water flows in the correct direction. He asked and received confirmation if necessary this document could be amended in the future.

Commissioner Lane moved adoption of a new Article XXIV Flood Damage Prevention and a new Section 117 Enforcement and Review of Floodplains and Floodways; amendment to Section 4 Bona Fide Farms Exempt, Section 15 Definitions, Section 79 Major Subdivision Final Plan Approval process, Section 94 Interpretations, Section 139 Floodplain and Floodway Overlay Districts, Article XVI Floodplains, Drainage, and Storm Water Management, Appendix A-5 Existing Natural, Man-Made and Legal Features, Appendix A-6 Proposed Changes in Existing Features or New Features, Appendix A-7 Documents and Written Information in Addition to Plans, Appendix F-6 Manufactured Home Park Procedures – Final Plat and Appendix G-5 Plan Preparation Requirements; and deletion of Section 93 Variances from Floodplain or Floodway Requirements; and deletion of Section 93 Variances from Floodplain or Floodway requirements, Section 253 Permissible Uses Within Floodways and Floodplains, Section 254 Construction within Floodways and Floodplains Restricted, Section 255 Special Provisions for Subdivision, Section 256 Water Supply and Sanitary Sewer Systems in Floodways and Floodplains, Section 257 Additional Duties of Administrator Related to Flood Insurance and Flood Control, Section 258 Location of Boundaries of Floodplain and Floodway Districts Section 259 Setbacks from streams Outside Designated Floodplains, and Section 260 Reserved.

The motion further included that pursuant to N. C. G. S. 153A-341, the Board of Commissioners does hereby find and determine that the proposed text amendments are consistent with the Union County Land Use Plan and that the adoption of the proposed text amendments is reasonable and in the public interest because the amendments are designed to minimize public and private losses due to flood conditions within flood prone areas and thereby promote the public health, safety, and general welfare. The motion passed unanimously.

Add new article XXIV

**Article XXIV**  
**FLOOD DAMAGE PREVENTION**

**Sec. 380 STATUTORY AUTHORIZATION.**

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3 and 4 of Article 18 of Chapter 153A; and Part 121, Article 6 of Chapter 153A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of County Commissioners of Union County, North Carolina, does ordain as follows:

**Sec. 381 FINDINGS OF FACT.**

- (a) The flood prone areas within the jurisdiction of Union County are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the

occupancy in flood prone areas of uses vulnerable to floods or other hazards.

**Sec. 382 STATEMENT OF PURPOSE.**

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

- (a) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (b) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (c) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (d) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (e) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

**Sec. 383 OBJECTIVES.**

The objectives of this ordinance are to:

- (a) protect human life, safety, and health;
- (b) minimize expenditure of public money for costly flood control projects;
- (c) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) minimize prolonged business losses and interruptions;
- (e) minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;

(f) help maintain a stable tax base by providing for the sound use and development of flood prone areas; and

(g) ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

**Sec. 384 DEFINITIONS.**

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this article.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Disposal” means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

“Essential Services” means an activity or structure that is required to provide safe movement of traffic and the provision of utilities. Specifically, these services are: street, road, highway, and railroad crossings, overhead and underground utility crossings where crossings are made perpendicular to the stream, municipal and county owned sanitary sewers, stormwater facilities, and stream restoration activities.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the initial effective date of the floodplain management regulations adopted by the community.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland or tidal waters; and/or
- (2) the unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain”

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this article, prior to the commencement of any development activity.



“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this article and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

“Freeboard” means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

“Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program”.

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Lowest Adjacent Grade (LAG)” means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this article.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“Mean Sea Level” means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Encroachment Area” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of the initial Flood Insurance Rate Map.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Recreational Vehicle (RV)” means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

“Reference Level” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, or A99.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In “Special Flood Hazard Areas” where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

“Remedy a Violation” means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

“Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

“Salvage Yard” means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

“Solid Waste Disposal Facility” means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

“Solid Waste Disposal Site” means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

“Special Flood Hazard Area (SFHA)” means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Section 356 of this ordinance.

“Start of Construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or

foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement”.

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

“Threat to Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Variance” is a grant of relief from the requirements of this article.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

**Sec. 385 LANDS TO WHICH THIS ORDINANCE APPLIES.**

This article shall apply to all Special Flood Hazard Areas within the jurisdiction of Union County and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

**Sec. 386 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.**

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Union County dated October 16, 2008 which are adopted by reference and declared to be a part of this ordinance.

The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date: Union County Unincorporated Area, dated July 18 1983, Town of Fairview, dated October 16, 2008, Town of Hemby Bridge, dated October 16, 2008, Town of Indian Trail, dated March 21, 1980, Village of Lake Park, dated January 17, 1997, Town of Marshville, dated July 5, 1994, Village of Marvin, dated January 17, 1997, Town of Mineral Springs, dated July 18, 1983, City of Monroe, dated January 19, 1983, Town of Stallings, dated July 5, 1994, Town of Unionville, dated October 16, 2008, Town of Waxhaw, dated July 5, 1994, Town of Weddington, dated January 17, 1997, Village of Wesley Chapel, dated January 17, 1997, Town of Wingate, dated December 1, 1981.

**Sec. 387 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.**

A Floodplain Development Permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Sec. 386 of this ordinance.

**Sec. 388 COMPLIANCE.**

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this article and other applicable regulations.

**Sec. 389 ABROGATION AND GREATER RESTRICTIONS.**

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**Sec. 390 INTERPRETATION.**

In the interpretation and application of this article, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

**Sec. 391 WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This article does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of Union County or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

**Sec. 392 PENALTIES FOR VIOLATION.**

Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or

imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Union County from taking such other lawful action as is necessary to prevent or remedy any violation.

**Sec. 393 DESIGNATION OF FLOODPLAIN ADMINISTRATOR.**

The Land Use Administrator, hereinafter referred to as the “Floodplain Administrator”, is hereby appointed to administer and implement the provisions of this article.

**Sec. 394 FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT AND CERTIFICATION REQUIREMENTS.**

- (a) **Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
- (1) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
    - (i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
    - (ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Sec. 386, or a statement that the entire lot is within the Special Flood Hazard Area;
    - (iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Sec. 386;
    - (iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Sec 386;
    - (v) the Base Flood Elevation (BFE) where provided as set forth in Sec. 386; Sec. 395; or Sec. 400;
    - (vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
    - (vii) the certification of the plot plan by a NC registered land surveyor or professional engineer.



- (2) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

  - (i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
  - (ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE or A will be floodproofed; and
  - (iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
- (3) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.
- (4) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include but are not limited to:

  - (i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
  - (ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Sec. 398(b)(4)(c) when solid foundation perimeter walls are used in Zones A, AE, and A1-30.
- (5) Usage details of any enclosed areas below the lowest floor.
- (6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
- (7) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
- (8) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Sec. 398(b), (6) and (7) of this ordinance are met.

(9) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(b) **Permit Requirements.** The Floodplain Development Permit shall include, but not be limited to:

(1) A description of the development to be permitted under the floodplain development permit.

(2) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Sec. 386.

(3) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.

(4) The Regulatory Flood Protection Elevation required for the protection of all public utilities.

(5) All certification submittal requirements with timelines.

(6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

(7) The flood openings requirements, if in Zone A, AE or A1-30.

(c) **Certification Requirements.**

(1) Elevation Certificates

(i) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

(ii) An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period

and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

(iii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(2) Floodproofing Certificate

If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(3) If a manufactured home is placed within Zone A, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Sec. 398(b)(3)(b).

(4) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(5) Certification Exemptions. The following structures, if located within Zone A, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified Sec. 394(c)(1) and Sec. 394(c)(2):

(i) Recreational Vehicles meeting requirements of Sec. 398(b)(6)(a);

(ii) Temporary Structures meeting requirements of Sec. 398(b)(7); and

(iii) Accessory Structures less than 150 square feet meeting requirements of Sec. 398(b)(8).

**Sec. 395 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.**

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (a) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.
- (b) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- (c) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (d) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (e) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Sec. 402 are met.
- (f) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Sec. 394 (c).
- (g) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Sec. 394 (c).
- (h) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of Sec. 394 (c).
- (i) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Sec. 394 (c) and Sec. 398(b)(2).
- (j) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for

example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

- (k) When Base Flood Elevation (BFE) data have not been provided in accordance with the provisions of Sec. 386, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Sec. 400(b)(2), in order to administer the provisions of this ordinance.
- (l) When Base Flood Elevation (BFE) data are provided but no floodway or non-encroachment area data have been provided in accordance with the provisions of Sec. 386, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (m) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area are above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.
- (n) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
- (o) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (p) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (q) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (r) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial

jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

- (s) Follow through with corrective procedures of Sec. 396.
- (t) Review, provide input, and make recommendations for variance requests.
- (u) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Sec. 386 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
- (v) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

**Sec. 396 CORRECTIVE PROCEDURES.**

- (a) Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.
- (b) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
  - (a) that the building or property is in violation of the floodplain management regulations;
  - (b) that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
  - (c) that following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

- (c) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (d) Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (e) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

**Sec. 397 VARIANCE PROCEDURES.**

- (a) The Board of Adjustment as established by Union County, hereinafter referred to as the “appeal board”, shall hear and decide requests for variances from the requirements of this ordinance.
- (b) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
- (c) Variances may be issued for:
  - (1) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
  - (2) functionally dependent facilities if determined to meet the definition as stated in Sec. 384 of this ordinance, provided provisions of Sec. 397(i)(2), (3), and (5) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - (3) any other type of development, provided it meets the requirements of this Section.

- (d) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
- (1) the danger that materials may be swept onto other lands to the injury of others;
  - (2) the danger to life and property due to flooding or erosion damage;
  - (3) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) the importance of the services provided by the proposed facility to the community;
  - (5) the necessity to the facility of a waterfront location as defined under Sec. 384 of this ordinance as a functionally dependent facility, where applicable;
  - (6) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (7) the compatibility of the proposed use with existing and anticipated development;
  - (8) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (9) the safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (10) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  - (11) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- (e) A written report addressing each of the above factors shall be submitted with the application for a variance.
- (f) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
- (g) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the



elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(h) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(i) Conditions for Variances:

(1) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

(2) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(4) Variances shall only be issued prior to development permit approval.

(5) Variances shall only be issued upon:

(i) a showing of good and sufficient cause;

(ii) a determination that failure to grant the variance would result in exceptional hardship; and

(iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(j) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.

(1) The use serves a critical need in the community.

(2) No feasible location exists for the use outside the Special Flood Hazard Area.

- (3) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
- (4) The use complies with all other applicable Federal, State and local laws.
- (5) Union County has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

**Sec. 398 PROVISIONS FOR FLOOD HAZARD REDUCTION.**

**(a) GENERAL STANDARDS.**

In all Special Flood Hazard Areas the following provisions are required:

- (1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.
- (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.
- (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
- (8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the

requirements of “new construction” as contained in this ordinance.

- (9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Sec. 397(j). A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Sec. 394(c).
- (11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
- (15) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple Base Flood Elevations (BFEs), the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

**(b) SPECIFIC STANDARDS.**

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data have been provided, as set forth in Section 386, or Sec. 400, the following provisions, in addition to the provisions of Sec. 398(a), are required:

- (1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the

reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Sec. 384 of this ordinance.

- (2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Sec. 384 of this ordinance. Structures located in A, AE, and A1-30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Sec. 394(c), along with the operational plan and the inspection and maintenance plan.
  
- (3) Manufactured Homes.
  - (a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Sec. 384 of this ordinance.
  
  - (b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
  
  - (c) All enclosures or skirting below the lowest floor shall meet the requirements of Sec. 398(b)(4).
  
  - (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.
  
- (4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:
  - (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

- (b) shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
- (c) shall include, in Zones A, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
  - (i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
  - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
  - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
  - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
  - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
  - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) Additions/Improvements.

- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - (i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

- (b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

  - (i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
  - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (6) Recreational Vehicles. Recreational vehicles shall either:

  - (a) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
  - (b) meet all the requirements for new construction.
- (7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

  - (a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
  - (b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
  - (c) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
  - (d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
  - (e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- (8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following

criteria shall be met:

- (a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- (b) Accessory structures shall not be temperature-controlled;
- (c) Accessory structures shall be designed to have low flood damage potential;
- (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (e) Accessory structures shall be firmly anchored in accordance with the provisions of Sec. 398(a)(1);
- (f) All service facilities such as electrical shall be installed in accordance with the provisions of Sec. 398(a)(4); and
- (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Sec. 398(b)(4)(c).

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Sec. 394(c).

**Sec. 399            RESERVED.**

**Sec. 400            STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.**

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Sec. 386, where no Base Flood Elevation (BFE) data have been provided by FEMA, the following provisions, in addition to the provisions of Sec. 398(a) shall apply:

- (a) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - (1) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of a floodplain development permit, or
  - (2) for essential services a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment. Development in floodplains, with or without adopted regulatory floodways, shall be

held to 44 CFR 65.12 including but not limited to an application to FEMA for conditional approval, individual legal notice, concurrence of any other communities impacted by the proposed actions, and certification of structures.

(b) If Sec. 400(a) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

(c) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:

(1) When Base Flood Elevation (BFE) data are available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sec. 398(a) and (b).

(2) When floodway or non-encroachment data are available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Sec. 398(b) and Sec. 402.

(3) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with the provisions of Sec. 386 and utilized in implementing this ordinance.

(4) When Base Flood Elevation (BFE) data are not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Sec. 384. All other applicable provisions of Sec. 398(b) shall also apply.

**Sec. 401                    STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.**

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(a) Standards of Sec. 398(a) and (b); and



(b) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

- (1) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of a floodplain development permit, or
- (2) for essential services a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment. Development in floodplains, with or without adopted regulatory floodways, shall be held to 44 CFR 65.12 including but not limited to an application to FEMA for conditional approval, individual legal notice, concurrence of any other communities impacted by the proposed actions, and certification of structures.

(c) If Sec. 401(a) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

**Sec. 402 FLOODWAYS AND NON-ENCROACHMENT AREAS.**

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Sec. 386. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to the standards outlined in Sec. 398(a) and (b), shall apply to all development within such areas:

(a) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

- (1) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of a floodplain development permit, or
- (2) for essential services a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment. Development in floodplains, with or without adopted regulatory floodways, shall be held to 44 CFR 65.12 including but not limited to an application to FEMA for conditional approval, individual legal notice, concurrence of any other communities impacted by the proposed actions, and certification of structures.

(b) If Sec. 402(a) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

(c) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

(1) the anchoring and the elevation standards of Sec. 398(b)(3); and

(2) the no encroachment standard of Sec. 402(a).

**Sec 403 LEGAL STATUS PROVISIONS.**

(a) EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted May 24, 1983, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Union County enacted on May 24, 1983, as amended, which are not reenacted herein are repealed.

**Sec. 404 EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.**

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

**Sec. 405 EFFECTIVE DATE.**

This ordinance shall become effective on October 6, 2008.

**Sec. 406 ADOPTION CERTIFICATION.**

I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the Board of Commissioners of Union County, North Carolina, on the 6th day of October, 2008.

WITNESS my hand and the official seal of \_\_\_\_\_, this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
*(signature)*

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**Change the following Sections as noted**

**Section 4 Bona Fide Farms Exempt.**

- (a) The provisions of this ordinance shall not apply to bona fide farms, except that:
  - (1) farm property used for non-farm purposes shall not be exempt from regulation; and
  - (2) the provisions of ~~Article XVI, Part I~~ Article XXIV regulating development in floodways and floodplains, as required for participation in the National Flood Insurance Program, shall apply to bona fide farms.
- (b) For purposes of this ordinance, a bona fide farm is any tract (or tracts of land under common ownership or control) ten acres in size or greater on which a party is actively engaged in a substantial way in the commercial production or growing of crops, plants, livestock or poultry.

From Section 15 Definitions

~~**Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year. Also known as the 100 year flood.~~

~~**Floodplain:** Any land area susceptible to being inundated by water from the base flood. As used in this ordinance, the term refers to that area designated as subject to flooding from the base flood (one hundred year flood) on the "Flood Boundary and Floodway Map"~~

prepared by the U.S. Department of Housing and Urban Development a copy of which is on file in the administrator's office. This area shall comprise the floodplain overlay zoning district established in Section 139.

**Floodway:** ~~The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. As used in this ordinance, the term refers to that area designated as a floodway on the "Flood Boundary and Floodway Map" prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the administrator's office. This area shall comprise the floodway overlay zoning district established in Section 139.~~

**Highest Adjacent Grade:** ~~The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.~~

**Historic Structure:** ~~As used in Article XVI, any structure that is:~~

~~(a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;~~

~~(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district preliminarily determined by the Secretary to qualify as a registered historic district;~~

~~(c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or~~

~~(d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:~~

(1) ~~By an approved state program as determined by the Secretary of the Interior; or~~

(2) ~~Directly by the Secretary of the Interior in states without approved programs.~~

~~**New Construction:** As used in Article XVI, for the purpose of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial Flood Insurance Rate Map (FIRM) or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.~~

~~**Start of Construction:** As used in Article XVI, “start of construction includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.~~

~~**Substantial Damage:** As used in Article XVI, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.~~

~~**Substantial Improvement:** As used in Article XVI, any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:(a) Any project for improvement of a structure to correct existing violations of state or~~

~~local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or~~

~~(b) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a historic structure".~~

**Section 79 Major Subdivision Final Plan Approval Process.**

(a) The Planning Department is hereby designated the Planning Agency for the purpose of approving or disapproving major subdivision final plats in accordance with the provisions of this section. The Planning Division Director and/or the senior planners shall review and approve or disapprove each major subdivision final plat. The final plat shall be signed by two of the above officials before recording in the Register of Deeds Office.

(b) The applicant for major subdivision final plat approval shall submit to the Planning Department a final plat, drawn to scale and otherwise acceptable to the Union County Register of Deed's Office for recording purposes. When more than one sheet is required to include the entire subdivision, all sheets shall be made of the same size and shall show appropriate match marks on each sheet and appropriate references to other sheets of the subdivision. The applicant shall also submit six prints of the plat. All major subdivision plats shall also be provided in digital format. Digital information shall satisfy the following criteria:

(1) Files shall be submitted in Auto CAD DXF, DWG or ESRI Arc Info Export format;

(2) Data submitted shall be exchanged on IBM formatted floppy disk, IBM formatted Zip Disk, or CD-ROM in ISO 9660 format.

(c) In addition to the appropriate endorsements, as provided in Section 80, the final plat shall contain the following information:

(1) A vicinity map;

(2) The name of the subdivision, which name shall not duplicate the name of any existing subdivision as recorded in the Union County Registry;

(3) The name of the subdivision owner or owners;

- (4) The township, county and state where the subdivision is located;
- (5) The name of the surveyor and his registration number and the date of survey;
- (6) The scale according to which the plat is drawn in feet per inch or scale ratio in words or figures and bar graph;
- (7) The date of the survey and plat preparation;
- (8) The location of all rights-of-way, easements and areas to be dedicated to public use with the purpose of each stated;
- (9) The sections numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each section; and
- (10) The number of square feet or acreage of each lot shown on the plat;
- (11) All of the additional information required by G.S. 47-30(f).
- ~~(12) If the subdivision is located within a floodway or floodplain, the statement required under Section 255(b) of this ordinance.~~
- ~~(13)~~(12) Delineation of any on-site waste disposal areas.
- ~~(14)~~ (13) The location of all existing buildings on the tract to be subdivided.
- ~~(15)~~ (14) If the subdivision is located in a drinking water supply watershed, the appropriate statement required per Section 339.
- ~~(16)~~ (15) The property identification number(PIN), as provided by the Union County Tax Office.

(d) The Planning Department shall approve the proposed plat unless it finds that the plat or the proposed subdivision fails to comply with one or more of the requirements of this ordinance or that the final plat differs substantially from the plans and specification approved in conjunction with the compliance permit that authorized the development of the subdivision.

(e) If the final plat is disapproved by the Planning Department the applicant shall be furnished with a written statement of the reasons for the disapproval.

(f) Approval of a final plat is contingent upon the plat being recorded within ninety days after the approval certificate is signed by the Planning Department.

**~~Section 93 Variances From Floodplain or Floodway Requirements.~~**

~~(a) In addition to the other requirements of Section 92, a variance from any of the requirements set forth in Article XVI, Part I may be granted by the board of~~

adjustment only if it finds that:

~~(1) The variance is the minimum necessary to afford relief, considering the flood hazard; and~~

~~(2) The granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud or victimization of the public, or conflict with existing local laws or ordinances.~~

~~(b) Any applicant to whom a variance from the requirements set forth in Article XVI, Part I is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.~~

~~(c) The local administrator shall, for actions and variances involving the requirements set forth in Article XVI, Part I, maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.~~

#### **Section 94 Interpretations.**

(a) The Land Use Administrator is authorized to interpret the zoning map and to pass upon disputed questions of lot lines or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the administrator, they shall be handled as provided in Section 91.

(b) An application for a map interpretation shall be submitted to the Land Use Administrator. The application shall contain sufficient information to enable the Administrator to make the necessary interpretation.

(c) Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules shall apply:



- (1) Boundaries indicated as approximately following the centerlines of alleys, streets, highways, streams, or railroads shall be construed to follow such centerlines;
  - (2) Boundaries indicated as approximately following lot lines, city limits or extraterritorial boundary lines, shall be construed as following such lines, limits or boundaries;
  - (3) Boundaries indicated as approximately parallel to the centerlines of streets or other rights-of-way shall be construed as being parallel thereto and at such distance therefrom or indicated on the zoning map.
  - (4) Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such shorelines;
  - (5) Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map (see Section 16, Lots Divided by District Lines);
  - (6) Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereby virtue of such vacation or abandonment.
- (d) Interpretations of the location of floodway and floodplain boundary lines may be made by the administrator as provided in Section ~~258~~ 395.

Add Section 117

Section 117 Enforcement and Review of Floodplains and Floodways

This article shall not apply to Article XXIV. Article XXIV contains separate enforcement and review procedures as outlined in Section 396.

**Section 139 Floodplain and Floodway Overlay Districts.**

The floodplain (FP) and floodway (FW) overlay districts are hereby established. The land so classified may be used in a manner permitted in the underlying district only if and to the extent such use is also permitted in the applicable overlay district. The floodplain and floodway districts are further described in ~~Part I~~ of Article ~~XVI~~ XXIV of this ordinance.

## **ARTICLE XVI FLOODPLAINS, DRAINAGE, and STORM WATER MANAGEMENT**

### Part I. Floodways and Floodplains

Terms used in Article XVI, Part I are defined in Section 15 of this Ordinance.

#### Section 251 Reserved

#### Section 252 Encroachments ~~Artificial Obstructions~~ Within Floodways and Floodplains Prohibited.

- ~~(a) — No artificial obstruction may be located within any floodway, except as provided in Section 253.~~
- ~~(b) — No encroachments, including but not limited to (i) fill, (ii) new construction, (iii) substantial improvements (as defined in Section 254(b)), (iv) new development, and (v) artificial obstructions, may be permitted within floodways and floodplains, except as provided in Section 253. For purposes of this section, an artificial obstruction is any obstruction, other than a natural obstruction, that is capable of reducing the flood carrying capacity of a stream or may accumulate debris and thereby reduce the flood carrying capacity of a stream. A natural obstruction includes any rock, tree, gravel, or analogous natural matter that is an obstruction and has been located within the floodway or floodplain by a non-human cause.~~

#### Section 253 Permissible Uses Within Floodways and Floodplains.

- ~~(a) — Notwithstanding Article X of this chapter (Table of Uses), no permit to make use of land within a floodway or floodplain may be issued unless the proposed use is listed ~~as allowed both in the Table of Uses and in the following list:~~ below:~~
  - ~~(1) — General farming, pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses.~~

~~(2) — Ground level streets, roads, loading areas, parking areas, rotary aircraft ports, and other similar ground level area uses.~~

~~(3) — Lawns, gardens, play areas, and other similar uses.~~

~~(4) — Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses.~~

~~(5) — Limited crossings for driveways, streets, roads, highways, and railroad crossings and associated bridge components.~~

~~(6) — Overhead and underground utility crossings where crossings should be made perpendicular to the stream to the extent practicable.~~

~~(7) — Gravity flow municipal sanitary sewers where no practicable alternative exists.~~

~~(8) — Stormwater best management practices.~~

~~(9) — Fences, provided that disturbance is minimized and where installation does not result in the removal of vegetation.~~

~~(10) — Dam maintenance activities.~~

~~(11) — Stream restoration activities.~~

~~(12) — Water dependent structures.~~

~~(b) — The uses listed in subsections (a)(1) to (a)(4) are permissible only if and to the extent that they do not cause neither any increase in base flood levels, nor change in floodway widths or floodplain widths.~~

~~(c) — The uses listed in subsections (a)(1) to (a)(12) are permissible only if approved by FEMA, provided that such approval is required.~~

Section 254 Construction Within Floodways and Floodplains Restricted.

- ~~(a) — No zoning, special use or conditional use permit may be issued for any development within a floodplain until the permit-issuing authority has reviewed the plans prepared by a registered architect or engineer, and bears a registered seal, for any such development to assure that:~~
- ~~(1) — The proposed development is consistent with the need to minimize flood damage; and~~
  - ~~(2) — All public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and~~
  - ~~(3) — Adequate drainage is provided to minimize or reduce exposure to flood hazards; and~~
  - ~~(4) — All necessary permits have been received from those agencies from which approval is required by federal or state law.~~
- ~~(b) (a) No building may be constructed and no substantial improvement of an existing building may take place within any floodway or floodplain except as provided below. With respect to manufactured home parks that are nonconforming because they are located within a floodway or floodplain, manufactured homes may be relocated in such parks only if they comply with the provisions of subsection (i) (b). Structures that are non-conforming because they are located within the floodplain or floodway may be substantially improved if after the improvement they meet the applicable requirements of Section 254 (b) (f). For purposes of this section, "substantial improvement" means any repair, reconstruction, or improvement of a building the cost of which equals or exceeds fifty percent of the market value of the structure either (i) before the improvement or repair is started or (ii) if the structure has been damaged and is being restored, before the damage occurred. "Substantial improvement" occurs when the first alteration on any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either (i) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that are solely necessary to insure safe living conditions, or (ii) any alteration of a building listed on the National Register of Historic Places or a State Inventory of Historic Places. [Note to Planning Board: the definition of "substantial improvement" copied above is the former Section 254(g).]~~

- ~~(e) (b)~~ No ~~new residential building may be constructed and no~~ substantial improvement of a residential building may take place within any floodplain unless the lowest floor (including basement) of the ~~building or~~ improvement is elevated no lower than two (2) feet above the base flood level. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided.
- ~~(1)~~ — Residential accessory structures shall be allowed within floodplains provided they are firmly anchored to prevent flotation, designed to have low flood potential and placed on the building site so as to offer minimum resistance to the flow of floodwaters.
- ~~(2)~~ — Anchoring of any accessory buildings may be done by bolting the building to a concrete slab or by over the top ties. When bolting to a concrete slab, one half inch bolts six feet on center with a minimum of two per side shall be required. If over the top ties are used a minimum of two ties with a force adequate to secure the building is required.
- ~~(3)~~ — Service facilities such as electrical and heating equipment shall be elevated or flood proofed.
- ~~(d) (c)~~ No ~~new nonresidential building may be constructed and no~~ substantial improvements of a nonresidential building may take place within any floodplain unless the lowest floor (including basement) of the ~~building or~~ improvement is elevated or flood proofed no lower than two (2) feet above the base flood level. Structures located in A zones may be flood proofed in lieu of elevation provided that all areas of the structure below the required elevation are water tight with walls substantially impermeable to the passage of water, using structural components having the capacity of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that standards of this section are satisfied.
- ~~(e) (d)~~ When base flood elevation data is not available from a federal, state or other source, the lowest floor including basement, in subsection ~~(e) (b)~~ or ~~(d) (c)~~ above, shall be elevated at least two (2) feet above the highest adjacent grade.
- ~~(f) (e)~~ No ~~new construction and no~~ substantial improvements of a structure may take place within any floodplain unless fully enclosed areas below the lowest floor that are subject to flooding are designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum requirements:

- ~~(1) — A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;~~
- ~~(2) — The bottom of all openings shall be no higher than one foot above grade; and~~
- ~~(3) — Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.~~

~~(g) — For purposes of this section, “substantial improvement” means any repair, reconstruction, or improvement of a building the cost of which equals or exceeds fifty percent of the market value of the structure either (i) before the improvement or repair is stated or (ii) if the structure has been damaged and is being restored, before the damage occurred. “Substantial improvement” occurs when the first alteration on any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either (i) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that are solely necessary to insure safe living conditions, or (ii) any alteration of a building listing on the National Register of Historic Places or a State Inventory of Historic Places.~~

~~(h) (f) — No zoning, conditional, special use or major development permit may be issued for any development within a floodplain until the permit issuing authority has reviewed plans prepared by a registered architect or engineer, and bear a registered seal, to assure that any new construction or substantial improvements shall be:~~

- ~~(1) — Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure, resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy.~~
- ~~(2) — Constructed with materials and utility equipment resistant to flood damage.~~
- ~~(3) — Constructed by methods and practices that minimize flood damage.~~
- ~~(4) — Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.~~

~~(i) (g) Notwithstanding any other provision of this ordinance, no manufactured home may be located or relocated within that portion of the floodplain outside of the floodway a floodway or floodplain unless the following criteria are met:~~

- ~~(1) — Manufactured homes are anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist floatation, collapse, or lateral movement in accordance with the Regulations for Manufactured Homes and Modular Housing adopted by the Commissioner of Insurance pursuant to N.C.G.S. 143.143.15. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height an engineering certification is required. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.~~
- ~~(2) — Lots or pads are elevated on compacted fill or by any other method approved by the administrator so that the lowest floor of the manufactured home is at or above the base flood level.~~
- ~~(3) — Adequate surface drainage and easy access for manufactured home movers is provided.~~
- ~~(4) — Load bearing foundation supports such as piers or pilings must be placed on stable soil or concrete footings no more than ten feet apart, and if the support height is greater than seventy two inches, the support must contain steel reinforcement.~~
- ~~(5) — An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the local administrator and the local Emergency Management Coordinator.~~
- ~~(6) — The plans for meeting the requirements of subsection 254(i) (1) through (5) shall be prepared by a registered architect or engineer, and bear a registered seal.~~

- ~~(j) (h) — Whenever, pursuant to section 253 or 254 (b) (2), any portion of a floodplain is filled, in with fill dirt, slopes shall be adequately stabilized to withstand the erosive force of the base flood.~~
- ~~(k) (i) — A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions. Recreational vehicles placed on sites with special flood hazard, zones A1-30, AH, and AE on the community's FIRM, shall either:~~
- ~~(1) — be on site for fewer than 180 consecutive days;~~
  - ~~(2) — be fully licensed and ready for highway use;~~
  - ~~(3) — meet the permit requirement and the elevation and anchoring requirements for manufactured homes in this Article, to satisfy compliance with paragraphs (b)(1) and (c)(6) of the National Flood Insurance Program Regulations, 44 C.F.R. 60.3.~~

Section 255 — Special Provisions for Subdivisions:

- ~~(a) — An applicant for a major development permit authorizing a major subdivision and an applicant for minor subdivision final plat approval shall be informed by the administrator of the use and construction restrictions contained in Sections 252, 253, and 254 if any portion of the land to be subdivided lies within a floodway or floodplain.~~
- ~~(b) — Final plat approval for any subdivision containing land that lies within a floodway or floodplain may not be given unless the plat shows the boundary of the floodway or floodplain and contains in clearly discernible print the following statement: "Use of land within a floodway or floodplain is substantially restricted by Article XVI of the Union County Land Use Ordinance."~~
- ~~(c) — Subject to the following sentence, a major development permit for a major subdivision and final plat approval for any subdivision may not be given if:~~
- ~~(1) — The land to be subdivided lies within a zone where residential uses are permissible and it reasonably appears that the subdivision is designed to create — residential building lots; and~~



~~(2) — Any portion of one or more of the proposed lots lies within a floodway or floodplain; and~~

~~(3) — It reasonably appears that one or more lots described in subsections (1) and (2) of this subsection could not practicably be used as a residential building site because of the restrictions set forth in Sections 252, 253, and 254.~~

~~—— The foregoing provision shall not apply if a notice that the proposed lots are not intended for sale as residential building lots is recorded on the final plat, or if the developer otherwise demonstrates to the satisfaction of the authority issuing the permit or approving the final plat that the proposed lots are not intended for sale as residential building lots.~~

#### ~~Section 256 Water Supply and Sanitary Sewer Systems in Floodways and Floodplains.~~

~~—— Whenever any portion of a proposed development is located within a floodway or floodplain, the agency or agencies responsible for certifying to the county the adequacy of the water supply and sewage disposal systems for the development (as set forth in Sections 239 and 241 of this ordinance) shall be informed by the developer that a specified area within the development lies within a floodway or floodplain. Thereafter, approval of the proposed system by that agency shall constitute a certification that:~~

~~(a) — Such water supply system is designed to minimize or eliminate infiltration of flood waters into it.~~

~~(b) — Such sanitary sewer system is designed to eliminate infiltration of flood waters into it and discharges from it into flood waters.~~

~~(c) — Any on-site sewage disposal system is located to avoid impairment to it or contamination from it during flooding.~~

#### ~~Section 257 Additional Duties of Administrator Related to Flood Insurance and Flood Control.~~

~~—— The administrator shall:~~

~~—— (a) — Where base flood elevation data is available:~~

~~\_\_\_\_\_ (1) Verify the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures;~~

~~(2) Verify, for all structures that have been flood proofed (whether or not such structures contain a basement), the actual elevation (in relation to mean sea level) to which the structure was flood proofed; and~~

~~\_\_\_\_\_ 3) Maintain a record of all such information.~~

~~\_\_\_\_\_ (b) Where base flood elevation data has not been provided:~~

~~1) Obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source for enforcing the requirements set forth in Part I of this article; and~~

~~2) Verify and record the actual elevation constituting the highest adjacent grade, to which all new or substantially improved structures are elevated or floodproofed.~~

~~(3) Notify, in riverine situations, adjacent communities and the N.C. Department of Crime Control and Public Safety prior to any alteration or relocation of a watercourse, and submit copies of such notification to the Federal Insurance Administrator.~~

~~(4) Ensure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.~~

#### Section 258 Location of Boundaries of Floodplain and Floodway Districts.

~~\_\_\_\_\_ As used in this article, the terms floodplain and floodway refer in the first instance to certain areas whose boundaries are determined and can be located on the ground by reference to the specific fluvial characteristics set forth in the definitions of these terms. These terms also refer to overlay zoning districts whose boundaries are the boundaries of the floodways and floodplains shown on the maps referenced in **Subsections 251(2) and (3)** Section 15 Definitions of Basic Terms: Floodplain and Floodways and Section 142 Official Zoning Map, which boundaries are intended to correspond to the actual, physical location of floodways and floodplains. (These overlay districts thus differ from other zoning districts whose boundaries are established solely according to planning or policy, rather than physical, criteria.) Therefore, the administrator is authorized to make necessary interpretations as to the exact location of the boundaries of~~

~~floodways or floodplains if there appears to be a conflict between a mapped boundary and actual field conditions. Such interpretations, like other decisions of the administrator, may be appealed to the board of adjustment in accordance with the applicable provisions of this ordinance.~~

~~Section 259 Setbacks from Streams Outside Designated Floodplains.~~

~~———— In any area that is located outside a designated floodplain but where a stream is located, no building or fill may be located within a distance of the stream bank equal to twenty feet on each side.~~

~~Section 260 Reserved.~~

**A-5. Existing Natural, Man-Made and Legal Features**

(1) Development site plans shall show all existing natural, man-made, and legal features on the lot development is to take place, including but not limited to those listed below. In addition, the plans shall also show those features indicated below by an asterisk that are located within fifty feet in any direction of the lot where the development is to take place, and shall specify (by reference to the Table of Permissible Uses or otherwise) the use made of adjoining properties.

(2) Existing natural features:

- (a) Tree line of wooded areas.
- (b) Individual tree eighteen inches in diameter or more identified by common or scientific name.
- (c) Orchards or other agricultural groves by common or scientific name.
- (d) Streams, ponds, drainage ditches, and swamps, ~~boundaries of floodways and floodplains.~~

(e) ~~(If the proposed development is a subdivision or mobile home park of more than fifty lots or if more than five acres of land are to be developed),~~ base flood elevation data (See Article XVI, Part I). Floodplain information as required by Article XXIV.

#### **A-6. Proposed Changes in Existing Features or New Features**

(1) Development site plans shall show proposed changes in (i) existing natural features (see A-5 (2)), (ii) existing manmade features (see A-5(3)), and (iii) existing legal features (see A-5(4)).

(2) Development site plans shall also show proposed new legal features (especially new property lines, street right-of-way lines, buffer areas and utility and other easements), as well as proposed man-made features, including, but not limited to, the following:

(a) The number of square feet in every lot created by a new subdivision.

(b) Lot dimensions, including lot widths measured in accordance with Section 183.

(c) The location and dimensions of all buildings and freestanding signs on the lot, as well as the distances all buildings and freestanding signs are set back from property lines, streets or street right-of-way lines (see Section 184).

(d) Principal side(s) building elevations for typical units of new buildings or exterior remodeling of existing buildings, showing building heights (see Section 186) and proposed wall sign or window sign area;

(e) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structures.

(f) Elevation in relation to mean sea level to which any non-residential structures will be flood-proofed as required by Section 398.

#### **A-7. Documents and Written Information in Addition to Plans**

In addition to the written application and the plans, whenever the nature of the proposed development makes information or documents such as the following relevant, such documents or information shall be provided. The following is a representative list of the types of information or documents that may be requested:

- (1) Documentation confirming that the applicant has a legally sufficient interest in the property proposed for development to use it in the manner requested, or is the duly appointed agent of such a person.
- (2) Certifications from the appropriate agencies that proposed utility systems are or will be adequate to handle the proposed development, as set forth in Article XV, and that all necessary easements have been provided.
- (3) For proposed non-residential flood proofed structures, or for enclosed areas below the lowest floor that are subject to flooding, certification from a registered professional engineer or architect that the proposed structure meets the criteria in ~~Article XVI, Section 254(d), (f)~~ Section 398.
- (4) Certification and supporting technical data from a registered professional engineer demonstrating that any proposed use within a floodway if permitted under ~~Article XVI, Section 253~~ Article XXIV, shall not result in any increase in flood levels during occurrence of the base flood discharge.

#### **F-6. Manufactured Home Park Procedures - Final Plat**

- (1) Application Deadline: All material must be submitted in accordance with deadlines established by the Land Use Administrator and/or board of adjustment.
- (2) Required Material:
  - (a) Approved plans for water supply, waste disposal, and other utilities subject to Article XV.
  - (b) Conformance with Article XVI, concerning ~~floodplain, drainage, and storm water management~~ and Article XXIV concerning floodplain.

(c) Street plans approved by N.C. Department of Transportation.

(d) The final plat and five (5) copies shall be submitted.

(e) The final plat shall be drawn in waterproof ink on satisfactory reproducible materials on sheets 18" x 24".

#### **G-5. Plan Preparation Requirements**

(1) Name, address, and telephone number of applicant.

(2) Interest of the applicant in the proposed campground.

(3) Date of plat.

(4) Name(s) of the adjoining property owner(s).

(5) North arrow, and vicinity map.

(6) Name and seal of the registered surveyor or engineer.

(7) The plan will have a title indicating the type of campground as defined in G-2, in large letters.

(8) The names of proposed streets, subject to Section 223.

(9) Complete engineering plans and specifications of the proposed campground showing:

(a) The area and dimensions of the entire tract of land;

(b) The land use occupying the adjacent properties;

- (c) The number, size, and location of camping unit sites and parking areas;
- (d) The location, right-of-way, and surface roadway width, and surfacing materials of roadways and walkways;
- (e) The proposed interior vehicular and pedestrian circulation patterns;
- (f) The location of service buildings, sanitary stations, and any other existing or proposed structures;
- (g) The location of water and sewer lines and rise pipes;
- (h) Plans and specifications of the water supply, sewage disposal, and refuse facilities;
- (i) Plans and specifications of all buildings constructed or to be constructed within the campground;
- (j) The location of all drainage easements, including conformance with Article XVI, concerning ~~floodplain~~, storm water management, and erosion control and Article XXIV concerning floodplain;
- (k) The location and details of lighting, electric, and gas systems;
- (l) Road design, including construction materials, roadway width, and drainage pipe size(s);
- (m) Contour lines with no larger than five (5) foot intervals, and the 100-year flood boundary.

***Request by Centralina Council of Governments for Removal of Members' Names from Roster of Nursing Home Community Advisory Committee or Adult Care Home Community Advisory Committee due to Resignation by member or Ineligibility to Serve:***  
 Authorized removal of the following names from the roster of the Nursing Home Community Advisory Committee: Vann Davis (term expired – ineligible to remain on Committee), Rhonda Kiker (ineligible to remain on Committee) and Denise Whitley (ineligible to remain on Committee) and authorized removal of the following names from the roster of the Adult Care Home Community Advisory Committee: Carolyn Baucom (resigned), Helen Clayton (ineligible to remain on Committee), Elise Gregorich (resigned), Kenneth Harrison (term expired – ineligible to remain on Committee), Georgia Howard (resigned), and Brenda Little (term expired).

**2009 Enterprise System Revenue Bonds:** *Adopted (1) Bond Order authorizing the issuance of the County of Union, North Carolina Variable Rate Enterprise Systems Revenue Bonds in the aggregate principal amount not to exceed \$20,000,000 as recorded below; and adopted 2) Resolution authorizing the approval, execution and delivery of various documents in connection with the issuance of the County of Union, North Carolina Variable Rate Enterprise Systems Revenue Bonds, Series 2009; providing for the sale of the bonds; setting forth the terms and conditions upon which the Bonds are to be issued; and providing for certain other matters in connection with the issuance, sale and delivery of the Bonds as recorded below:*

**BOND ORDER AUTHORIZING THE ISSUANCE OF THE COUNTY OF UNION, NORTH CAROLINA  
VARIABLE RATE ENTERPRISE SYSTEMS REVENUE BONDS IN THE AGGREGATE PRINCIPAL  
AMOUNT NOT TO EXCEED \$20,000,000**

*WHEREAS*, the County of Union, North Carolina (the “*County*”) is authorized by The State and Local Government Revenue Bond Act, General Statutes of North Carolina, Section 159-80 *et seq.*, as amended (the “*Act*”), to issue, subject to the approval of the Local Government Commission of North Carolina, at one time or from time to time, revenue bonds and revenue refunding bonds of the County for the purposes as specified in the Act; and

*WHEREAS*, the County has determined to issue its Variable Rate Enterprise Systems Revenue Bonds, Series 2009 (the “*2009 Bonds*”) in an aggregate principal amount of not to exceed \$20,000,000 to provide funds to (1) to finance the costs of extensions, additions and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the County’s enterprise systems (the “*Project*”) and (2) to pay the costs of issuing the 2009 Bonds; and

*WHEREAS*, the County will issue the 2009 Bonds under (1) the General Trust Indenture dated as of May 1, 1996 (the “*General Indenture*”) between the County and First Union National Bank of North Carolina, the successor to which is U.S. Bank National Association, as trustee (the “*Trustee*”), as amended, and (2) Series Indenture, Number 3 dated as of August 1, 2009 (the “*Third Series Indenture*”) between the County and the Trustee; and

*WHEREAS*, the County and the Local Government Commission of North Carolina have arranged for the sale of the 2009 Bonds to Merrill Lynch, Pierce, Fenner & Smith Incorporated (the “*Underwriter*”) pursuant to the terms of a Purchase Contract to be dated on or about August 19, 2009 (the “*Purchase Contract*”); and

*WHEREAS*, an application has been filed with the Secretary of the Local Government Commission of North Carolina requesting Commission approval of the 2009 Bonds as required by the Local Government Revenue Bond Act, and the Secretary has notified the Board of Commissioners of the County (the “*Board*”) of the County that the application has been approved by the Local Government Commission.



*NOW, THEREFORE, BE IT ORDERED* by the Board, as follows:

**Section 1.** In order to raise the money required for (1) the financing of the costs of the Project and (2) the payment of other costs associated with the issuance of the 2009 Bonds as set forth above, in addition to any funds which may be made available for such purpose from any other source, the 2009 Bonds are hereby authorized and shall be issued pursuant to the Act.

**Section 2.** The aggregate principal amount of the 2009 Bonds authorized by this order shall not exceed \$20,000,000. The 2009 Bonds hereby authorized shall be special obligations of the County, secured by and paid solely from the proceeds thereof or from revenues, income, receipts and other money received or accrued by or on behalf of the County from or in connection with the operation of the Enterprise Systems (as defined in the General Indenture).

**Section 3.** The issuance of the 2009 Bonds by the County, in substantially the form to be set forth in the Third Series Indenture, be and the same hereby is in all respects approved and confirmed. The form and content of the 2009 Bonds and the provisions of the Third Series Indenture with respect to the 2009 Bonds shall be approved and confirmed in a subsequent resolution of the Board.

The principal of, premium, if any, purchase price and interest on the 2009 Bonds shall not be payable from the general funds of the County, nor shall they constitute a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues except the funds which are pledged under the General Indenture. Neither the credit nor the taxing power of the State of North Carolina or the County are pledged for the payment of the principal of, premium, if any, purchase price or interest on the 2009 Bonds, and no holder of the 2009 Bonds has the right to compel the exercise of the taxing power by the State of North Carolina or the County or the forfeiture of any of its property in connection with any default thereon.

**Section 4.** The 2009 Bonds shall be sold to the Underwriter pursuant to the terms of the Purchase Contract as the same shall be approved in a subsequent resolution of the Board.

**Section 5.** The proceeds from the sale of the 2009 Bonds shall be deposited in accordance with the Third Series Indenture.

**Section 6.** If any one or more of the agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining agreements and provisions and shall in no way affect the validity of any of the other agreements and provisions hereof or of the 2009 Bonds authorized hereunder.

**Section 7.** All resolutions or parts thereof of the Board in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**Section 8.** This Bond Order shall take effect immediately on its adoption and pursuant to N.C.G.S. § 159-88 need not be published or subjected to any procedural requirements governing the adoption of ordinances or resolutions by the Board other than the procedures set out in the Act.

This Bond Order is hereby adopted by the Board of Commissioners of the County of Union, North Carolina this 11th day of August, 2009.

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**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF UNION, NORTH CAROLINA, AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF COUNTY OF UNION, NORTH CAROLINA VARIABLE RATE ENTERPRISE SYSTEMS REVENUE BONDS, SERIES 2009; PROVIDING FOR THE SALE OF THE BONDS; SETTING FORTH THE TERMS AND CONDITIONS UPON WHICH THE BONDS ARE TO BE ISSUED; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF THE BONDS.**

*WHEREAS*, the County of Union, North Carolina (the “*County*”) is authorized by The State and Local Government Revenue Bond Act, General Statutes of North Carolina, Section 159-80 *et seq.*, as amended (the “*Act*”), to issue, subject to the approval of the Local Government Commission, at one time or from time to time revenue bonds of the County for the purposes as specified in the Act; and

*WHEREAS*, the County has determined to issue its Variable Rate Enterprise Systems Revenue Bonds, Series 2009 (the “*2009 Bonds*”) in an aggregate principal amount of not to exceed \$20,000,000 to provide funds to (1) to finance the costs of extensions, additions and capital improvements to, or the renewal and replacement of capital assets of, or purchasing and installing new equipment for, the County’s enterprise systems and (2) to pay the costs of issuing the 2009 Bonds, as described in the Bond Order of the County adopted August 11, 2009; and

*WHEREAS*, the County will issue the 2009 Bonds under (1) the General Trust Indenture dated as of May 1, 1996 (the “*General Indenture*”) between the County and First Union National Bank of North Carolina, the successor to which is U.S. Bank National Association, as trustee (the “*Trustee*”), as amended, and (2) Series Indenture, Number 3 dated as of August 1, 2009 (the “*Third Series Indenture*”) between the County and the Trustee; and

*WHEREAS*, the County desires to execute and deliver a Purchase Contract to be dated on or about August 19, 2009 (the “*Purchase Contract*”) among the County, the Local Government Commission (the “*Commission*”) and Merrill Lynch, Pierce, Fenner & Smith Incorporated

(the “*Underwriter*”), pursuant to which the County and the Commission will sell the 2009 Bonds to the Underwriter in accordance with the terms and conditions set forth therein; and

*WHEREAS*, copies of the forms of the following documents relating to the transactions described above have been filed with the County and have been made available to the Board of Commissioners of the County (the “*Board*”):

1. the General Indenture;
2. the Third Series Indenture;
3. the Purchase Contract;
4. the Reimbursement and Security Agreement dated as of August 1, 2009 (the “*Reimbursement Agreement*”) between the County and Bank of America, N.A., as credit provider;
5. the Remarketing Agreement dated as of August 1, 2009 (the “*Remarketing Agreement*”) between the County and Merrill Lynch, Pierce, Fenner & Smith Incorporated, as remarketing agent for the 2009 Bonds (the “*Remarketing Agent*”);
6. the Official Statement (the “*Official Statement*”) with respect to the 2009 Bonds.

*NOW THEREFORE, THE BOARD OF COMMISSIONERS OF THE COUNTY OF UNION, NORTH CAROLINA DOES RESOLVE AS FOLLOWS:*

***Section 1.*** That the issuance of the 2009 Bonds by the County in the principal amount not to exceed \$20,000,000 maturing not later than June 1, 2034, in substantially the form and content set forth in the Third Series Indenture, subject to appropriate insertions and revisions in order to comply with the provisions of the General Indenture and the Third Series Indenture, be and the same hereby are in all respects approved and confirmed, and the form and content of the 2009 Bonds set forth in the Third Series Indenture be and the same hereby are in all respects approved and confirmed, and the provisions of the General Indenture and the Third Series Indenture with respect to the 2009 Bonds (including without limitation the maturity dates and rates of interest) be and the same hereby are approved and confirmed and are incorporated herein by reference.

***Section 2.*** The 2009 Bonds shall be special obligations of the County. The principal of, purchase price and interest on the 2009 Bonds shall not be payable from the general funds of the County, nor shall they constitute a legal or equitable pledge, charge, lien or encumbrance upon any of its property or upon any of its income, receipts or revenues except the funds which are pledged under the General Indenture and the

Third Series Indenture. Neither the credit nor the taxing power of the State of North Carolina or the County are pledged for the payment of the principal of, purchase price or interest on the 2009 Bonds, and no holder of 2009 Bonds has the right to compel the exercise of the taxing power by the State of North Carolina or the County or the forfeiture of any of its property in connection with any default thereon.

**Section 3.** That the form and content of the Third Series Indenture and the same hereby are in all respects approved and confirmed, and the Chairman, the County Manager, the Finance Director and Clerk to the Board of the County be and they hereby are authorized, empowered and directed to execute and deliver the Third Series Indenture for and on behalf of the County, including necessary counterparts, in substantially the form and content presented to the County, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, their execution thereof to constitute conclusive evidence of their approval of any and all such changes, modifications, additions or deletions therein, and that from and after the execution and delivery of the Third Series Indenture, the Chairman, the County Manager, the Finance Director and Clerk to the Board of the County are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Third Series Indenture as executed. The Trustee is hereby appointed as Paying Agent and Registrar thereunder.

**Section 4.** That the 2009 Bonds shall be sold to the Underwriters pursuant to the terms of the Purchase Contract. The form and content of the Purchase Contract are in all respect approved and confirmed, and the Chairman, the County Manager or the Finance Director of the County is hereby authorized, empowered and directed to execute and deliver the Purchase Contract for and on behalf of the County, including necessary counterparts, in substantially the form and content presented to the County, but with such changes, modifications, additions or deletions therein as shall to him or her seem necessary, desirable or appropriate, his execution thereof to constitute conclusive evidence of his or her approval of any and all such changes, modifications, additions or deletions therein, and that from and after the execution and delivery of the Purchase Contract, the Chairman, the County Manager and the Finance Director of the County are each hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Purchase Contract as executed.

**Section 5.** The form and content of the Reimbursement Agreement and the Remarketing Agreement be and the same hereby are in all respects approved and confirmed, and the Chairman, the County Manager or the Finance Director of the County be and they hereby are each authorized, empowered, and directed to execute and deliver the Reimbursement Agreement and the Remarketing Agreement for and on behalf of the County, including necessary counterparts, in substantially the form and content presented to the County, but with such changes, modifications, additions or deletions therein as shall to them seem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of his or her approval of any and all such changes, modifications, additions or deletions therein, and that from and after the execution and delivery of the Reimbursement Agreement and the Remarketing Agreement, the Chairman, the County Manager and the Finance Director of the County are each hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Reimbursement Agreement and the Remarketing Agreement as executed.

**Section 6.** The form, terms and content of the Official Statement are in all respects authorized, approved and confirmed, and the use of the Official Statement by the Underwriter in connection with the sale of the 2009 Bonds is hereby in all respects authorized, approved and confirmed. The Chairman, the County Manager or Finance Director of the County is authorized to execute the Official Statement on behalf of the County.

**Section 7.** The Finance Director of the County is hereby authorized to execute a no-arbitrage certificate in order to comply with Section 148 of the Internal Revenue Code of 1986, as amended, and the applicable Income Tax Regulations thereunder.

**Section 8.** No stipulation, obligation or agreement herein contained or contained in the 2009 Bonds, the General Indenture, the Third Series Indenture, the Purchase Contract, the Reimbursement Agreement, the Remarketing Agreement or any other instrument related to the issuance of the 2009 Bonds shall be deemed to be a stipulation, obligation or agreement of any officer, agent or employee of the County in his or her individual capacity, and no such officer, agent or employee shall be personally liable on the 2009 Bonds or be subject to personal liability or accountability by reason of the issuance thereof.

**Section 9.** The County Manager and the Finance Director of the County are each hereby authorized, empowered and directed to do any and all other acts and to execute any and all other documents, which they, in their discretion, deem necessary and appropriate in order to consummate the transactions contemplated by (i) this Resolution, (ii) the General Indenture, (iii) the Third Series Indenture, and (iv) the other documents presented to this meeting; except that none of the above shall be authorized or empowered to do anything or execute any document which is in contravention, in any way, of (a) the specific provisions of this Resolution, (b) the specific provisions of the General Indenture or the Third Series Indenture, (c) any agreement to which the County is bound, (d) any rule or regulation of the County or (e) any applicable law, statute, ordinance, rule or regulation of the United States of America or the State of North Carolina.

**Section 10.** From and after the execution and delivery of the documents hereinabove authorized, the Chairman, the County Manager, the Finance Director and the Clerk to the Board of the County are each hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of said documents as executed, and are further authorized to take any and all further actions to execute and deliver any and all other documents as may be necessary in the issuance of the 2009 Bonds, the execution and delivery of the Third Series Indenture and the Purchase Contract and the on-going administration of transaction contemplated by the issuance of the 2009 Bonds and the execution and delivery of the Third Series Indenture, the Reimbursement Agreement and the Remarketing Agreement.

The Chairman, the County Manager, the Finance Director and the Clerk to the Board of the County are each hereby authorized and directed to prepare and furnish, when the 2009 Bonds are issued, certified copies of all the proceedings and records of the County relating to the 2009 Bonds, and such other affidavits, certificates and documents as may be required to show the facts relating to the legality and marketability of the 2009 Bonds as such facts appear on the books and records in such party's custody and control or as otherwise known to them; and all such

certified copies, certificates, affidavits and documents, including any heretofore furnished, shall constitute representations of the County as to the truth of all statements contained therein.

**Section 11.** All acts and doings of the Chairman, the County Manager, the Finance Director and the Clerk to the Board of the County that are in conformity with the purposes and intents of this Resolution and in the furtherance of the issuance of the 2009 Bonds and the execution, delivery and performance of the Third Series Indenture and the Purchase Contract shall be, and the same hereby are, in all respects approved and confirmed.

**Section 12.** If any one or more of the agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining agreements and provisions and shall in no way affect the validity of any of the other agreements and provisions hereof or of the 2009 Bonds authorized hereunder.

**Section 13.** All resolutions or parts thereof of the Board in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

**Section 14.** This Resolution shall take effect upon its adoption.

**FY 2010 Union County Public Schools Capital Outlay:** Adopted Capital Project Ordinance Amendment #123 as recorded below:

CAPITAL PROJECT ORDINANCE AMENDMENT									
BUDGET		General Capital Project Ordinance Fund				REQUESTED BY		Kai Nelson	
FISCAL YEAR		FY 2009-2010				DATE		August 11, 2009	
PROJECT SOURCES					PROJECT USES				
Source Description and Code	Project To Date	Requested Amendment	Revised Project	Project Description and Code	Project To Date	Requested Amendment	Revised Project		

IFT From General Fund	-	2,344,169	2,344,169	FY2010 School Capital Outlay	-	2,344,169	2,344,169
	-	2,344,169	2,344,169		-	2,344,169	2,344,169
<b>EXPLANATION:</b>							
To establish CPO for FY2010 School Capital Outlay Allocation. The capital outlay appropriation is allocated by project pursuant to 115C-429b within Category I. Category II and Category III appropriations are allocated at the purpose level. At the completion of this capital project, this Capital Project Ordinance will be closed.							
<b>DATE:</b>							
<b>APPROVED BY:</b>							
Bd of Comm/County Manager Lynn West/Clerk to the Board							
<b>FOR FINANCE POSTING PURPOSES ONLY</b>							
<b>PROJECT SOURCES</b>				<b>PROJECT USES</b>			
Source Description and Code	Project To Date	Requested Amendment	Revised Project	Project Description and Code	Project To Date	Requested Amendment	Revised Project
IFT From General Fund	-	2,344,169	2,344,169	FY2010 School Capital Outlay	-	2,344,169	2,344,169
41459200-4010-S05				41559200-5630-S05			





VRM600	508SYS0973	8031A041	12647
VRM600	508SYS0974	8031A042	12646
VRM600	508SYS0972	8031A040	12652
VRM600	508SYS0970	8031A03D	12653
VRM600	508SYQ0390	8031719A	12527
VRM600	508SYQ0386	80317196	12524
VRM600	508SYS0975	8031A043	12649
VRM600	508SYQ0387	80317197	2456
VRM600	508SYQ0389	80317199	12525
VRM600	508SYS0971	8031A03E	2496
VRM650	508SAG0446	8032968B	12869
VRM650	508SAL0460	8032A952	12883
VRM650	508SAG0439	80329864	12847
VRM650	508SAL0463	8032A955	12887
VRM650	508SAG0431	8032985B	12831
VRM650	508SAG0422	80329852	12813
VRM650	508SAG0444	80329869	12857
VRM650	508SAG0425	80329855	2466
VRM650	508SAG0447	8032986C	12868
VRM650	508SAG0430	8032985A	2442
VRM650	508SAG0438	80329863	3162
VRM650	508SAL0461	8032A953	2417
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VRM650	508SAG0420	80329850	2438
VRM650	508SAG0429	80329859	12827
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VRM650	508SAL0462	8032A954	12885
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VRM650	508SAG0428	80329858	2458
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VRM650	508SAG0445	8032986A	2426
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VRM650	508SAG0426	80329856	12821
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VRM850	736SDW1815	8034DCC7	2600
VRM850	736SGY7627	8035E711	
VRM850	736SDU0599	8034D646	2592
VRM850	736SDU0605	8034D6AC	3161
VRM850	736SGE3677	8035BAA8	
VRM850	736SDW1817	8034DCC9	2582
VRM850	736SGY7629	8035E713	
VRM850	736SGE3624	8035BA70	
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VRM850	736SDU0600	8034D6A7	2586
VRM850	736SDU0602	8034D6A9	2590
VRM850	736SGY7633	8035E717	

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VRM850	508SFU014	8035946A	
VRM850	736SDW1810	8034DCC2	
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VRM850	736SGE3663	8035BA99	
VRM850	508SHA0118	8035E8EA	
VRM850	736SGY7636	8035E71A	
VRM850	736SGY7650	8035E729	
VRM850	736SGY7628	8035E712	
VRM850	736SGY7651	8035E72A	
VRM850	736SGY7647	8035E726	
VRM850	736SGY7653	8035E72C	
VRM850	736SGY7648	8035E727	
VRM850	736SFJ4017	80358116	
VRM850	508SHA0116	8035E8E8	
VRM850	736SFJ1509	80357B9C	
VRM850	736SGE3704	8035BAC5	
VRM850	736SFJ1510	80357B9D	
VRM850	736SGE3655	8035BA91	
VRM850	736SGE3679	8035BAAA	
VRM850	736SGE3670	8035BAA1	
VRM850	736SFJ1507	80357B9A	
VRM850	736SGY7654	8035E72D	
VRM850	736SFJ1505	80357B98	
VRM850	736SGE3659	8035BA95	
VRM850	736SFJ4010	8035810E	
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VRM850	736SFJ4008	8035810C	

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VRM850	736SFJ4026	80358120	
VRM850	736SGY7637	8035E71B	
VRM850	736SGY7630	8035E714	
VRM850	736SGY7634	8035E718	
VRM850	508SGY0916	8035E836	
VRM850	736SFJ1457	80357B65	
VRM850	736SFJ4018	80358117	
VRM850	736SGY7625	8035E70E	
VRM850	736SGY7624	8035E70D	
VRM850	736SGE3657	8035BA93	
VRM850	736SFJ0907	803579DA	
VRM850	736SGE3644	8035BA85	
VRM850	736SGE3672	8035BAA3	
VRM850	736SFJ4029	80358123	
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VRM850	736SGY7646	8035E725	
VRM850	736SDW1811	8034DCC3	2567
VRM850	736SDU0596	8034D6A3	2563
VRM850	736SDW1818	8034DCCA	2574
VRM850	736SDW1859	8034DD06	2580
VRM850	736SFJ1460	80357B68	
VRM850	736SDU0597	8034D6A4	2594

**Information Only: No Action Requested:** The following documents were included in the agenda package for informational purposes only: 1) Public Works Report of Water Permit Application Submission – Gray Byrum Road and NC Highway 16 Water Main Relocation; 2) Personnel Report for July 2009; 3) Inspection Department’s Report for July 2009; and 4) Contract List: a) Finance; b) Information Systems; c) Inspections; d) Internal Auditor; and e) Legal

**PUBLIC INFORMATION OFFICER:**

Brett Vines, Public Information Officer, stated that DSS is accepting donations for school supplies and school uniforms. He said that checks are welcomed at DSS, 1212 W. Roosevelt Boulevard., Monroe, NC.

He further stated that the Sheriff's Office is hosting a Golf Tournament on October 12 at Stonebridge. Mr. Vines said that funds support the Sheriff's youth programs.

Mr. Vines reminded the citizens about the parks in Union County. He said that 38,000 people have used the Day Use Area at Cane Creek and there have been 7,300 campers. He also recommended that citizens use the libraries in Monroe, Marshville, Union West and Waxhaw.

He next highlighted the programs that are broadcast on the Government Channel – UCTV 16. He said the current Union County Spotlight episode is featuring chloramines.

#### **FIRE STUDY REQUEST FOR PROPOSALS:**

Neal Speer, Fire Marshal, reminded that this Board had approved an RFP for a fire study in April 2009. He stated that the RFP was sent out and several proposals were received. He briefly reviewed the RFP specifications and stated that the same committee that assisted with preparing the RFP evaluated the proposals received and noted that each vendor was scored independently by the committee members and the scores were collectively tallied. He said that the number one ranked vendor by the Committee was Emergency Services Education and Consulting Group (ESECG) with a proposed cost of \$76,000; the second ranked vendor was Emergency Services Consultant International with a proposed cost of \$192,271; and the third ranked vendor was Matrix Consulting Group with a proposed cost of \$118,300.

He explained that ESECG is a division of Volunteer Firemen's Insurance Services (VFIS) which has provided insurance coverage to fire departments and rescue squads since 1969. He stated in 1979, their training group was created to provide their clients with driving training, as well as accident and loss prevention education. Mr. Speer said out of this group developed the Emergency Services Education and Consulting Group that provides consulting services. He explained that collectively the organization provides advice and counsel to over 200 public safety organizations annually.

Mr. Speer reported that ESECG was selected because the committee felt the proposal best met the requirements of the RFP. He said that ESECG recently conducted fire service or rescue studies in Carteret County and Mecklenburg County, NC. He further

stated that committee members contacted both counties' personnel independently and both expressed satisfaction with the quality of work that ESECG performed in these counties. He further reported that ESECG can meet the six-month time frame to complete the study that is outlined in the RFP.

The Fire Marshal pointed out that the proposed cost of the number two ranked vendor is \$113,271 more than the number one ranked vendor and the number three ranked vendor is \$42,300 more than the number one ranked vendor.

The County Manager explained that to accept the recommendation as presented to award the contract to ESECG, the Board would need to approve the budget amendment #7 included in the package in the amount of \$11,057. It was noted that the budget contains \$64,943 for the fire service study.

Commissioner Mills asked if all vendors met the full criteria as outlined. Mr. Speer responded that it was determined that some better met the criteria than others and detailed the responses. He noted that Carteret and Mecklenburg Counties are both in the process of implementing the recommendation of ESECG. He reported that two of the proposals did not meet the criteria. He said that it was important to note that ESECG met all the criteria and had done work in North Carolina.

Commissioner Kuehler asked the Staff Attorney if it is a conflict of interest that ESECG also has a subsidiary that provides insurance to many of the fire departments in the area.

Mr. Crook responded that he did not see a legal conflict of interest but the Board would need to satisfy itself that the consulting services it is obtaining is independent and provides what the commissioners are requesting in the RFP. He said it would seem that initially the interest would be to protect the insurance company and that is why they do training which would coincide with the County's interest.

Commissioner Baucom asked what happened if the firm makes a recommendation and the County does not implement same.

The Chairman asked how these agencies do business here. He stated unfortunately there have been experiences in the past when cash exchanged hands under the table to influence decisions. He said he was not saying that would happen but the question has to be asked. He said he would like to know how they do business here, who interacts with them, who makes the decision to buy insurance, and how much of a Chinese wall is there between the subsidiary and the parent company. Mr. Greene responded that the

fire departments and their board makes the decision for purchasing insurance and the study would be undertaken by Mr. Speer and his committee who would be working with ESECG for the fire service study and there would be no direct connection in that sense.

Commissioner Kuehler said that she wanted assurance that Union County is getting an unbiased study, true assessment, of what is going on without any conflict because it does business within Union County. She gave an example that her son had a speech impediment when he was younger and she wanted to have him diagnosed. She said that most of the places she would take him to determine how he could be helped also provided the services. She said she saw this as a similar situation and wanted assurance that Union County gets an unbiased study.

Commissioner Mills interjected that he did not know of any time or anybody in Union County that took money under the table.

The Chairman responded that he had experienced this in other places.

Commissioner Baucom stated that he was challenged in that he thought the study could be really good; that it should be done, but it should be done for the right reasons and with a purpose. He further outlined his concerns and said part of the challenge is with the financial times being experienced now that after the money is invested and the recommendations are brought back that if these recommendations require additional money to implement, how will the County meet those recommendations. He said secondly, if the County does not comply with the recommendations, would the County be opening itself up for legal liabilities because there have been issues identified and the County has not taken corrective action. He stated that the third point is if the study is done now and the County is not able to implement the recommendations and would want to wait until the economics improve is the study as viable or as current as it should be.

The Staff Attorney responded that if the Board wishes to discuss liability that he would recommend that it go into closed session. At approximately 9:32 p.m., the Chairman moved that the Board go into closed session in accordance with G. S. 143.318.11 (a) (3) to consult with an attorney as recommended by the Staff Attorney. The motion passed by a vote of four to one. Commissioner Kuehler, Commissioner Baucom, Commissioner Mills and Commissioner Openshaw voted in favor of the motion. Vice Chair Rogers voted against the motion.

The Board members moved from the Board Room to the Conference Room, first floor, Government Center, where the Chairman convened the closed session.



At the conclusion of the closed session at approximately 9:39 p.m., Chairman Openshaw moved that the Board go out of closed session. The motion was passed unanimously.

The Board members moved from the Conference Room to the Board Room, where the Chairman reconvened the regular meeting.

Commissioner Mills moved that this item be deferred. The motion to defer passed unanimously.

The County Manager pointed out that the Fire Commission will meet and discuss this issue next week.

**COMMUNITY BENEFIT ORGANIZATIONS:**

The Chairman moved to defer Item 8, Community Benefit Organizations, until the September meeting. The motion passed unanimously.

**DISPOSAL OF SURPLUS WELL LOT:**

Al Greene, County Manager, stated that representatives of Historic Ventures are present tonight. He said that Historic Ventures, LLC, has submitted another bid for the well lot owned by Union County containing 0.82 acres (Parcel #05113019) located in Waxhaw, North Carolina, in the amount of \$86,000. He stated that the bid is based on an appraisal that Historic Ventures had performed and the direction to the appraisal was to assume a commercial rezoning for the property. Mr. Greene said the staff's recommendation for the Board is adoption of the Resolution Authorizing the Upset Bid Process.

Commissioner Baucom moved to adopt the Resolution Authorizing the Upset Bid Process as set out below:

**RESOLUTION AUTHORIZING UPSET BID PROCESS**

WHEREAS, Union County is the owner of a vacant parcel of real property near N. Broad Street in Waxhaw, North Carolina, described as that parcel of land containing approximately 0.82 acre according to a survey by Walter L. Gordon and T.C. Dove dated August 10, 1970, and being further described as the second parcel conveyed to Union County by the Town of Waxhaw by deed dated

June 12, 2007, and recorded in Book 4593, Page 194 in the office of the Union County Register of Deeds (the “Subject Property”); and

WHEREAS, pursuant to N.C.G.S. § 160A-269, Union County is authorized to dispose of real property by upset bid after receipt of an offer for the property; and

WHEREAS, Union County has received an offer to purchase the Subject Property in the amount of Eighty Six Thousand Dollars (\$86,000), submitted by Historic Ventures LLC (“Historic Ventures”); and

WHEREAS, Historic Ventures has paid the required five percent (5%) deposit on its offer.

NOW, THEREFORE, BE IT RESOLVED by the Union County Board of Commissioners (the “Board”) as follows:

1. The Board proposes to accept Historic Ventures’ offer and authorizes sale of the Subject Property through the upset bid procedure of N.C.G.S. § 160A-269; provided that final acceptance of the final high offer shall be subject to approval by the Board. The Board reserves the right to withdraw the Subject Property from sale at any time before the final high bid is accepted and further reserves the right to reject at any time all bids.
2. The Clerk to the Board shall cause a notice of the proposed sale to be published. Such notice shall include a general description of the Subject Property, the amount and terms of the offer, and a statement that within ten (10) days any person may raise the bid in accordance with the procedure outlined in this Resolution.
3. Persons desiring to upset the offer that has been received shall submit a sealed bid with their offer to the office of the Clerk to the Board within ten (10) days after the notice of sale is published. Bids shall be submitted no later than 5:00 p.m. on the last day of the 10-day period, and the Clerk shall date-stamp bids upon receipt. The mailing and physical address of the Clerk to the Board is as follows:

Ms. Lynn West, Clerk to the Board  
500 N. Main Street, Room 925  
Monroe, NC 28112

The envelope containing the bid shall be clearly marked "Sealed Bid for Property Located near N. Broad St. in Waxhaw." It shall be the specific responsibility of the bidder to deliver his bid to the Clerk to the Board at the appointed place and prior to the announced time for the opening of bids. Late delivery of a bid for any reason, including delivery by United States Mail or other carrier, will disqualify the bid.

4. A qualifying higher bid is one that raises the existing offer by not less than ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder. A qualifying higher bid must also be accompanied by a deposit in the amount of five percent (5%) of the bid. The deposit may be made in cash, cashier's check, or certified check. The County will return the deposit on any bid not accepted, and will return the deposit on an offer subject to upset if a qualifying higher bid is received. If the Board agrees to sell the Subject Property, the County will return the deposit of the final high bidder at closing. If, after acceptance by the Board of the final high bid, the final high bidder fails to close the sale in accordance with the terms of this Resolution and any purchase agreement, then in such event the bid deposit of the high bidder shall be forfeited.
5. At the conclusion of the 10-day period, the Clerk to the Board shall open the bids, if any, and the highest such qualifying bid will become the new offer. If there is more than one bid in the highest amount, the first such bid received will become the new offer. If a qualifying higher bid is received, the Clerk to the Board shall cause a new notice of upset bid to be published, and shall continue to do so until a 10-day period has passed without any qualifying upset bid having been received. At that time, the amount of the final high bid shall be reported to the Board of Commissioners. The Board shall determine whether or not to accept the final high bid not later than ninety (90) days after the final upset bid period has passed.
6. Bidders shall not attach any conditions to their bids. Any conditions attached to bids received for purchase of the Subject Property shall render the bid non-responsive, and such bid shall not be considered by the Board.
7. The buyer must pay with cash at the time of closing.
8. Title to the Subject Property shall be transferred to the buyer by Quitclaim Deed.

Commissioner Kuehler questioned the cost to the County to go through the upset bid process. Jeff Crook, Senior Staff Attorney, responded that the costs would be the advertising costs, and those costs would be determined by the number of upset bids there were in the process.

Commissioner Kuehler stated that she had reviewed the appraisal and was a little surprised that the appraisals that were used were down the street when the parcels surrounding the lot were just purchased in 2008. He said that it seems to make sense that the surrounding parcels of the well lot would be the best comparisons. She stated that she would like to see what those comparisons are rather than an appraisal that is some miles away.

Chairman Openshaw said that there are still a couple of variables that a sale tonight would eliminate and two of those variables are the potential for a library site and the potential for a land swap. He stated that he did not see the need for the upset bid process from his perspective, and he would not be voting tonight on this lot at this price.

Commissioner Baucom stated that the motion would move the property forward for the upset bid process.

Chairman Openshaw said that he understood but he was not willing to part with the property at that price. He stated that he looked at it as a waste of time.

With there being no further comments, Chairman Openshaw called for a vote on the motion to adopt the Resolution Authorizing the Upset Bid Process. The motion failed by a vote of two to three. Commissioner Baucom and Commissioner Mills voted in favor of the motion. Chairman Openshaw, Vice Chair Rogers, and Commissioner Kuehler voted against the motion.

Chairman Openshaw stated that he would like to advance several of the agenda items forward to accommodate some of the members of the audience: 1) Item 11 – Union County Public Schools Administrative Budget – Bonds (move to Item #10); and 2) Item 10 – Proclamation for Honor Air Program (move to Item #14a); and 3). There were no objections to the Chairman's requests to advance those items on the agenda.

## **UNION COUNTY PUBLIC SCHOOLS ADMINISTRATIVE BUDGET – BONDS:**

Kai Nelson, Finance Director, explained that annually the schools and the County appear before the Board in connection with the schools' bond administration budget. He stated that the budget for the FY 2009-2010 is approximately \$572,000. He said that \$500,000 is for approximately seven positions and \$72,000 in operating costs in connection with the bond administrative budget.

Mr. Nelson said that included in the agenda package is a history of bond expenditures in relationship to capital expenditures. He stated that at the time the 2006 bond referendum was compiled, it was anticipated that bond administration expenses would go through 2008. He said that the schools and the County have spent quite a bit of time over the past few years in terms of appropriately allocating personnel costs to bond administration and are continuing to work on that process. He stated that he believed the reality is that in the current fiscal year, capital expenditures are continuing to decline, and going through the end of 2010, bond administration dollars will be exhausted notwithstanding what the Board might do with the tax supported capital improvement plan for the next four or five year period.

Mr. Nelson stated that he thought the challenge for both the schools and the County will continue to be an allocation methodology that is reflective and appropriate for bond administration. He said at one time there were a number of personnel charged to bond administration. He stated that generally the County's perspective on what is eligible for bond administration is pretty narrow. He said that County staff continues to work with the schools to refine the process and a Capital Project Ordinance is included in the agenda package that will continue through the current fiscal year per the schools' request, but there will be a huge challenge going into the next fiscal year in terms of how the costs are allocated, because as the projects decline, then presumably the need for bond administration also declines.

Commissioner Kuehler asked if the positions that the administrative costs are allocated to are long or short-term employees. Mr. Nelson responded that these are regular full-time positions within the school system whose costs are being allocated 100 percent to bond administration. Commissioner Kuehler further asked when the construction is over, would these be permanent employees with the schools. Mr. Nelson stated that the question really becomes if the bond program and its magnitude of the program is substantially reduced, to what extent would those positions thereby be eliminated or shifted to current expense. He said if the positions are shifted to current expense because of a necessity for the school system, such as the assistant director and the assistant director is needed regardless of the magnitude of the capital expenditures occur, then it really should not be allocated to bond administration, it is a current expense.

He reiterated that the schools and the County have had a number of discussions over the years. He said that as the capital expenditures decline, there will be some difficult financial issues to deal with in FY 2011.

Commissioner Kuehler asked if there is a plan in place for these costs in the future. Mr. Greene responded that was what Mr. Nelson is recommending that a plan needs to be developed this year.

Chairman Openshaw commented that if these positions are necessary due to construction, then a number of the positions should be supplied by the contractor. He said that he could understand why some of the positions would survive because of the retrofitting of the school projects. He stated that he would like for the County staff to make an attempt to work this out with the schools before getting into the next budget year.

Mr. Nelson responded that he has communicated today with the schools in part as a result of the QSAB where the Board authorized the Chairman and Clerk to sign the schools' filings to DPI (Department of Public Instruction). He said that there were a number of issues somewhat ancillary to the filing, because there is no tax supported capital improvement plan to include the schools, the need to revisit the County's debt capacity model, and the need to look at financial policies and its repayment plan. Mr. Nelson said that it is staff's intent to come to the Board in October of this year with those plans. He stated that in part this will give the Board the first indication of its future capital improvement plan and its ability to fund the plan. He said that if there is funding of schools' CFS projects in the magnitude of \$20 or \$30 million per year through bond issues, then clearly some of the bond administration relative to those projects would occur. He stated that in part the whole aspect of bond administration and the renovation projects is affordability. Mr. Nelson said in the meantime, staff supports the schools' request for another year of bond administration money.

Following Mr. Nelson's presentation, Commissioner Mills moved adoption of Capital Project Ordinance #124.

CAPITAL PROJECT ORDINANCE AMENDMENT											
BUDGET	School Bond Fund - 55					REQUESTED BY	Kai Nelson				
FISCAL YEAR	FY 2009-2010					DATE	August 11, 2009				

PROJECT SOURCES				PROJECT USES			
Source	Project To Date	Requested Amendment	Revised Project	Project Description and Code	Project To Date	Requested Amendment	Revised Project
G.O. Bond Proceeds	492,330,135	468,354	492,798,489	School Administrative Costs (115C-429b project allocation)	3,111,407	468,354	3,579,761
All Other Revenue	1,363,308	-	1,363,308	All Other School Projects	490,582,036	-	490,582,036
						-	-
						-	-
	493,693,443	468,354	494,161,797		493,693,443	468,354	494,161,797
<b>EXPLANATION:</b>	Funding request submitted by UCPS for Facilities, Planning and Construction operating budget pursuant to 115C-429b. At the completion of this capital project, any excess appropriation will be reallocated to an "unallocated bond savings account" and this Capital Project Ordinance will be closed.						
<b>DATE:</b>				<b>APPROVED BY:</b>			
					Bd of Comm/County Manager Lynn West/Clerk to the Board		

FOR FINANCE POSTING PURPOSES ONLY							
<b>PROJECT SOURCES</b>				<b>PROJECT USES</b>			
Source	Project	Requested	Revised	Project	Project	Requested	Revised
Description and Code	To Date	Amendment	Project	Description and Code	To Date	Amendment	Project
G.O. Bond Proceeds	492,330,135	468,354	492,798,489	School Administrative Costs (115C-429b project allocation)	3,111,407	468,354	3,579,761
55491100-4710-530				55559200-5586-548			
Prepared By	dhc						
Posted By							
Date						Number	CPO - 124



Commissioner Baucom questioned whether action by the Board on the Capital Project Ordinance were time sensitive. Mr. Nelson responded that it was somewhat time sensitive. He said that it was noted in the agenda package that there was approximately \$100,000 left in the bond administration costs from last year, and approximately \$600,000 is needed on an annual basis. He further stated that based on the current method of allocating these positions plus cost, these numbers are accurate. Mr. Nelson added that in connection with the CIP that the schools worked on with the County in the spring, which was never submitted to the Board in the May or June timeframe, this money is included in that capital improvement plan.

Commissioner Baucom stated he was not sure Mr. Nelson had answered his question. He asked if the funding is appropriate.

Al Greene, County Manager, stated that he did not know if county staff can assess that question. He said that staff has worked to meet the needs of the schools', and it is believed that work needs to continue to meet their needs for the current fiscal year. He stated that assessing the positions, the work that these positions perform, and whether that work is dedicated to bond projects is beyond the County's capability at the staff's level. He said that it is believed that those questions need to be answered in the coming year.

Mr. Nelson stated that this recommended action continues the method of allocation that the schools' staff and the County staff agreed to earlier. He said that this particular effort was based on the size of the capital improvement plan at the time and the projects underway. He stated that County staff believes that the schools make some valid points with regards to renovation projects and new facilities, that you cannot necessarily go on value and size as measured by dollars alone.

Vice Chairwoman Rogers stated from having worked with an architect/engineering firm for 12 years, this was part of what she did, the smaller projects typically take more administrative power than larger projects. She said that when a school is completed, there is still a lot of close-out documentation that needs to be done to clean up requirements. She also said that engineering is very cyclical and when they had 100 engineers for that project and when the project was over, if there was not another project to backfill, there were some layoffs. She stated that she was not going to get into this about the schools, because she views this as micromanaging and that is not her responsibility as a Commissioner. She said it is her responsibility to question it, but Mr. Hughes is an architect, and he understands those idiosyncrasies and if the schools are saying they need that right now, she could certainly see where they do, and she believes they understand that this is a problem that needs to be addressed.

Following her comments, Vice Chairwoman Rogers moved to call the question on the motion. [No vote was taken on the motion to call the question.]

Chairman Openshaw called for a vote on the motion by Commissioner Mills. The motion passed unanimously.

Mr. Nelson added that he had confidence in Don Hughes' competence and ethics.

**REPORT OF 1996 AND 2001 GENERAL OBLIGATION DEBT REFUNDING:**

Kai Nelson, Finance Director, reminded that the Board adopted a refunding ordinance in May 2009 to refund some 1996 water and sewer bonds and 2006 school bonds. He said that the market looked very appealing at that time and then fell away. He stated that the Board had established a three (3) percent savings, and three (3) percent was not attainable in the month of June. He said that the market came back around in July, and he reported that the good news is that the bonds were sold on July 16 and are closing on Thursday of this week. He referred to two documents included in the agenda package: 1) a savings schedule showing roughly \$160,000 per year and 2) a table summarizing the refinancings the County has done from 2003 to the present. He noted that the annual cash flow savings total now almost \$13.5 million with an annual savings of approximately \$844,000.

Mr. Nelson stated when there are opportunities for the County to lower its mortgage payments, those opportunities are taken.

At the request of Chairman Openshaw, Mr. Nelson explained the Indian Trail General Obligation Bond shown on the documentation included in the agenda package.

Vice Chairwoman Rogers thanked Mr. Nelson and his staff for their constant diligence in monitoring the bonds and saving the County dollars.

**TAX ADMINISTRATOR – ORDER OF COLLECTION:**

John Petoskey, Tax Administrator, stated that he had explained to the Board in July that North Carolina General Statutes require property tax collectors to have the taxing authority to take two actions. He explained that the first action under G.S. 105-373 was to approve the report of the annual settlement which was a report of all taxes that were billed and collected in 2008, and this was done in July. Mr. Petoskey said that the second action is under G.S. 105-321, which is the order or charge to collect taxes for 2009. He stated that the second action establishes the collector's authority to exercise the powers used in the collection process. He explained that in effect it perfects the lien.

Mr. Petoskey noted that the Order of Collection does not include the public service companies or the motor vehicle taxes. He said that those classifications of property are either billed monthly or based on information provided by the State. He stated that the Order of Collection is based on personal and real property. He said an adopted Order of Collection will enable the taxes to be billed next week.

Following the explanation by Mr. Petoskey, Vice Chairwoman Rogers moved to adopt the Order of Collection. The motion passed unanimously.

**ORDER OF COLLECTION  
TAX CHARGE FOR FISCAL YEAR 2009 – 2010**

STATE OF NORTH CAROLINA  
COUNTY OF UNION

TO: John C. Petoskey, Tax Administrator for the County of Union

You are hereby authorized, empowered, and commanded to collect the taxes set forth in the 2009 tax records as filed in the Office of Tax Administrator, and in the tax receipts delivered to the Tax Administrator's Office in August 2009, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be first lien on all real property of the respective taxpayers in Union County, Hemby Bridge Fire Protection District, Stallings Volunteer Fire Protection District, Springs Fire District, Waxhaw Fire District, and Wesley Chapel Fire District. You are further authorized, empowered, and commanded to collect the 2009 taxes charged and assessed as provided for by law for adjustments, changes, and additions to the tax records and tax receipts delivered to you which are made in accordance with law.

This Order shall be a full and sufficient authority to direct, require, and enable you to levy on and sell any real or personal property and attach wages and/or other funds of such taxpayers, for and on account thereof, in accordance with the law.

The Tax Charge will be adjusted monthly according to releases, discoveries, and motor vehicle billings.

Witness my hand and official seal this 11<sup>th</sup> day of August 2009.

Lanny Openshaw, Chairman  
Union County Board of Commissioner

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Attest:

\_\_\_\_\_  
Lynn G. West, County Clerk

Accepted:

\_\_\_\_\_  
John C. Petoskey, Tax Administrator

Union County	\$	139,920,043.58
Late List Penalty	\$	108,696.59
Hemby Bridge Fire Tax District	\$	980,826.23
Late List Penalty	\$	522.07
Stallings Tax District	\$	808,670.37
Late List Penalty	\$	815.98
Wesley Chapel Tax District	\$	1,025,156.98
Late List Penalty	\$	186.45
Waxhaw Fire Tax District	\$	405,706.54
Late List Penalty	\$	170.58
Springs Fire Tax District	\$	302,388.95
Late List Penalty	\$	148.36
Fire Fees	\$	1,226,437.41
<b>TOTAL</b>	<b>\$</b>	<b>144,779,770.09</b>

**SOUTH PIEDMONT COMMUNITY COLLEGE:**

Kai Nelson, Finance Director, stated that included in the agenda package was the excerpt of the minutes from the Board's special meeting of September 15, 2008, which has the action by the Board highlighted with regard to South Piedmont Community College's Multi-Purpose facility. Mr. Nelson said that on that date staff presented the County's tax supported capital improvement plan to the Board. He stated that there were a number of decisions that the Board took with respect to those projects.

He said that with regards to South Piedmont Community College, the Board authorized funding for architect/engineering services through the construction bidding stage. He stated that at that time architect/engineering services were estimated at approximately \$1.285 - \$1.3 million. He said that approximately 70 percent of that amount would have provided sufficient funding for the architect/engineering services firm to get through the construction bidding documents. He stated that the amount was estimated at approximately \$800,000 which was net of a state contribution of approximately \$100,000. Mr. Nelson said that subsequent to that action, it was not until June 2009 that the community college actually completed the formal engagement process of the architect/engineering services.

He stated that during that period there was some additional information with regard to roughly the \$100,000, and the staff was mistaken in its assumption that the \$100,000 would be applied against the engineering contract. He said that the \$100,000, which turned out to be \$90,000, was for advanced planning and was an addition to the engineering services. Mr. Nelson stated that when staff appeared before the Board in September in regards to the \$800,000, the action reflected in the minutes of September 15, 2008, authorizes the community college and the County to proceed with funding of the architectural component through construction documents, but there was no budget ordinance amendment. He explained that staff is before the Board today for the Capital Project Ordinance Amendment. He stated that instead of \$800,000, because of cash flow timing, it is estimated to be \$900,000 through construction documents. He said that a part of that now relates to the additional state requirement of hiring a commissioning agent.

Mr. Nelson said that the total project budget from the County's perspective of \$18.383 million does not change. He stated that the presentation before the Board tonight is the same methodology and approach that Union County uses in connection with the schools and the community college.

Following the presentation, Commissioner Baucom moved to adopt Capital Project Ordinance #125.

CAPITAL PROJECT ORDINANCE AMENDMENT									
BUDGET	General Capital Project Ordinance Fund				REQUESTED BY	Kai Nelson			
FISCAL YEAR	FY 2009-2010				DATE	August 11, 2009			

PROJECT SOURCES				PROJECT USES			
Source	Project	Requested	Revised	Project	Project	Requested	Revised
Description and Code	To Date	Amendment	Project	Description and Code	To Date	Amendment	Project
IFT From General Fund	-	900,000	900,000	SPCC Multi-Purpose Building Project	-	900,000	900,000
	-	900,000	900,000		-	900,000	900,000
EXPLANATION:	To establish CPO for SPCC Multi-Purpose Building Project. The initial appropriation from Capital Reserves is sufficient to fund AES through construction bidding documents. Total project cost is estimated at \$18.383 million. At the completion of this capital project, this Capital Project Ordinance 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	Amendment	Project	Description and Code	To Date	Amendment	Project
IFT From General Fund	-	900,000	900,000	SPCC Multi-Purpose Building Project	-	900,000	900,000
40459700-4010-PR046				40559700-5586-PR046			
	-	900,000	900,000		-	900,000	900,000
Prepared By	KDN/aar						
Posted By							
Date						Number	CPO - 125

Chairman Openshaw asked if the commissioning agent is essentially like a general contractor in that it has some oversight ability. Mr. Nelson recognized John DaVito, Vice President for Finance for South Piedmont Community College, who explained the new state requirement relative to a commissioning agent.

Mr. DaVito explained that the commissioning agent is an architect who will monitor the architect hired to do the work. He said that the commissioning agent will look at everything from schematic design to training including energy savings, how the community college does business, stormwater drainage, and HVAC systems.

Chairman Openshaw said the way that the schools are bid, it does not really provide the authority to oversee the schools.

Mr. Nelson said that in connection with both the commissioning agent and the principal architect and engineering firm the State has approved both of the contracts. Mr. DaVito confirmed this was correct.

Commissioner Kuehler said her understanding of the request tonight is that it is for housekeeping purposes, and this is something that has already been approved and the funding just needs to be allocated. Mr. Nelson responded that this is correct. Commissioner Kuehler said that she would like to have some direction on the \$18 million dollars and the source of that funding. Mr. Nelson stated that ultimately the \$18 million dollars would come from an installment financing (COPS) issue—debt issuance—county debt issuance for this project.

Commissioner Kuehler stated that there was some reference in the minutes of the September 2008 meeting regarding a state overall community college bond, and she did not recall voting on a bond last November. She said that was assuming that the state did not do the bond. Mr. Nelson commented that given the State's whole fiscal crisis, the statewide bond was probably put on hold. Mr. DaVito agreed that was correct, and the State anticipated having a bond issue in 2010. He stated that all of the community colleges had to prioritize their projects in the event the bond issue was decided by the voters. He explained that because of the economy, the bond issue has been placed on hold. However, he noted that all of the work that has been done on the projects is still there and everyone is tweaking things to make sure their number one priority is their number one priority. He stressed that South Piedmont's number one priority is very necessary with the explosion that the community college has experienced over the last four or five years. He said they are projecting probably a 15 percent increase in students in FTE's for this coming semester. Mr. DaVito said they will send in the schematics and once they receive approval from the State as to some tweaks, the size of the envelope of the building might be reduced.

Commissioner Kuehler said that this item anticipates spending a million dollars to design the project, and it is not known if there is money to construct what is being designed. She questioned if this is the way the system usually goes. Mr. Nelson stated that in September 2008, which is the last tax supported Capital Improvement Plan, that the Board saw updated, it had two community college projects: this project and the second project was the Health Technology Service Building. He explained that in connection



with the second project, the Capital Improvement Plan was based on the assumption the statewide bond referendum would pass, and the County would receive credits that it made in the multi-purpose building; and, therefore, the second building in the CIP would be paid 100 percent by the bonds.

Chairman Openshaw noted that the County would still have the costs, which Mr. Nelson has said would be a penny equivalent in taxes, in a year when it is already anticipating a dramatic effect.

Mr. Nelson said one of the Board's decisions in September was that prior to bidding the community college that SPCC would appear before the Board and give updates about the size, revise the project costs, and apprise the Board about the various stages of the project. He stated that when staff provides the Board with the CIP in October 2009, this project will be included with hopefully some updated costs based on the work of the architects.

Mr. DaVito said that the schematics are due to be submitted around August 25 and it is hoped that this will be back before the submission for the CIP in October. He stated they should have a much better feel for what they will be able to do.

Vice Chair Rogers said she wanted to make sure she understood what Mr. Nelson was saying: that the Board would be revisiting the 2009-2013 CIP and also the schools' CIP. Mr. Nelson responded that the Board could not revisit one without the other. He said that instead of the 2009-2013 CIP, it would be the 2010-2014 or 2015.

Chairman Openshaw said that there was some talk about the community college procuring four acres. Mr. DaVito responded that they have been in contact with the owner and the college has had some discussion with its Board of Trustees about obtaining funding for that land.

Mr. Greene said that there are two issues: (1) the staff has been trying to schedule workshops with the Board in connection with the community college to provide an update on the multi-purpose building; and (2) an update on the property issue.

Chairman Openshaw noted that Commissioner Baucom has a motion on the table and asked if there were any further comments. He called for a vote on the motion. The motion passed unanimously.

**PROCLAMATION FOR HONOR AIR PROGRAM (REQUESTED BY MONROE ROTARY):**

Al Greene, County Manager, stated that he thought Commissioner Mills is a member of the Monroe Rotary and might have some good information on this item.

Commissioner Mills said that Jack Hargett, who is the President of the Monroe Rotary Club (Lunch), stated that last year the Waxhaw Sunrise Rotary sponsored the Honor Air Program. He explained that this program sends World War II Veterans, free of charge, to Washington, DC, to visit the World War II Memorial. He said the Rotary Clubs in the whole district are sponsoring the Honor Air Program, and they are asking each county in the district to support their efforts with the Proclamation. He requested that Brett Vines, Public Information Office, read the Proclamation.

Following the reading of the Proclamation, Commissioner Mills moved adoption of the Proclamation as recorded below:

### **PROCLAMATION**

**WHEREAS**, the World War II Memorial in Washington, DC, was completed in 2004 and honors the 16 million men and women who served in the armed forces of the United States, the more than 400,000 who died, and all who supported the war effort from home; and

**WHEREAS**, due to health, physical, motivational or financial limitations many World War II veterans from North Carolina may never see their memorial; and

**WHEREAS**, it is the vision and objective of Jeff Miller, a North Carolina businessman, to send every local World War II veteran to see the memorial in Washington, DC through the HonorAir Project; and

**WHEREAS**, Rotary District 7680 wants to make the Flight of Honor available to the World War II veterans in the 14 counties of the Rotary District; and

**WHEREAS**, Union County is in Rotary District 7680; and

**WHEREAS**, Rotary District 7680 provided a one-day, all expense paid, chartered Flight of Honor in April and will provide another Flight of Honor in September through the generous support of corporate sponsors, service organizations, family members and caring citizens; and

**WHEREAS**, North Carolina Rotary District 7680 will honor the lives, valor and courage of World War II veterans on September 19, 2009, by sponsoring a chartered U.S. Airways flight from Charlotte to Washington, DC, thus providing 120 veterans their Flight of Honor and celebrating the accomplishments of World War II veterans:

**NOW, THEREFORE**, the Board of Commissioners of Union County does hereby declare September 19 as “WORLD WAR II FLIGHT OF HONOR DAY” in Union County and commends its observance to all citizens.

Adopted this the 11<sup>th</sup> day of August, 2009.

The motion passed unanimously.

**PRINTING OF ELECTION BALLOTS:**

Chairman Openshaw stated that he would like to switch positions of Items 15 – Printing of Election Ballots and Item 16 – Public Works Department – Solid Waste C & D Compactor Bid Award. Commissioner Mills noted that the County’s Board of Elections Supervisor, John Whitley, was also in the audience. Chairman Openshaw stated that he would continue with the agenda as is and recognized John Whitley to explain the Board of Elections item.

Kai Nelson, Finance Director, stated that he and Mr. Whitley were sharing this item and asked if the Board members had any questions.

With there being no questions from the Board, Commissioner Baucom moved to authorize the County Manager to approve the issuance of purchase orders in excess of \$20,000 in connection with the printing of election ballots.

Vice Chair Rogers asked as a point of clarification if the authorization is for this fiscal year 2010 or was the authorization for future election cycles. Commissioner Baucom responded it was for fiscal year 2010.

Chairman Openshaw said he wanted to make sure the early voting sites were included in the budget. Mr. Nelson assured that these were included.

The motion passed unanimously.

**PUBLIC WORKS DEPARTMENT – SOLID WASTE C & D COMPACTOR BID AWARD:**

Ed Gosicki, Public Works Director, stated that this was a relatively routine item other than the price. He explained that the action needed is to accept the bids and award the bid for a compactor for the landfill at a price of \$220,000. He explained that it is a refurbished compactor. He said currently there are two compactors at the landfill, one is used as the primary compactor, and the other one is used as a support. He noted that compacting C & D waste is not an option but is mandatory as a part of the Solid Waste Management Plan. He said that one of the pieces of equipment was going to cost nearly \$90,000 to repair it. He stated they had looked at the cost effectiveness of repairing the equipment with its nearly 30 years of age and decided instead to go out for bids. Mr. Gosicki said they had worked with the General Services Department. He explained the reason for recommending refurbished equipment was due to a new compactor costing a half a million dollars plus, and another compactor may be needed within the next year or so because the other one that is operational is also close to 30 years old.

He said they had done some research with surrounding communities that have gone through the refurbished bid mode and found very favorable responses. He said they had gone through a sealed bid process, and the low bidder was Road Machinery Services in the amount of \$220,000.

Commissioner Mills questioned what would be done with the old piece of equipment. Mr. Gosicki responded that he assumed it would be surplus and sold for scrap. Mr. Crook interjected that he thought the bid price included a trade-in price of \$5,000.

Commissioner Baucom asked if there had been a cost determined of refurbishing. Mr. Greene commented that if the Board could see a picture of the old equipment, it would be amazed that anyone could still be using it. He said honestly there is nothing to refurbish. Commissioner Baucom asked if the County could receive clunker value, and Mr. Gosicki said that it would receive scrap metal value.

Vice Chair Rogers said that she had noticed on the refurbished equipment it was a 90-day bumper to bumper warranty and a six month power train warranty. She questioned what the warranty would be on a new compactor. She explained the reason she had asked that question is if the repair of the old equipment is almost \$90,000 and if a repair has to be done on the power train on the refurbished equipment in the seventh month, she was trying to compare it to a brand new warranty if it is a ten year warranty. Mr.

Goscicki responded it would not be a ten year warranty on this kind of equipment and at most would probably be a multiple year warranty on the drive train and maybe a year, or two years, or maybe a little more on the other aspects. He said that the equipment operates in tough conditions.

Vice Chair Rogers said she assumed because \$250,000 was budgeted that it was the intent going into the budget to purchase a refurbished compactor. Mr. Goscicki responded that was correct. Lastly, she asked if there was a way to obtain an extended warranty on the refurbished compactor. Mr. Goscicki stated that he did not know the answer to that question but offered to look into that question. He said that the old compactor is beyond refurbishing.

Following the discussion, Vice Chair Rogers moved to accept the bids received for a Solid Waste C & D Compactor, as recorded below, award the bid to the low bidder, Road Machinery Services, in the amount of \$220,000 and authorize the Manager to approve the contract documents. The motion passed unanimously.

**Compactor Bid #2009-018**

<b>Vendor</b>	<b>Make and Model</b>	<b>Price</b>	<b>Trade-in</b>	<b>Total Bid Price</b>
Carolina Cat	1997 836 CAT	\$ 305,000.00	\$ 10,000.00	\$ 295,000.00
Carolina Cat Alt. 1	826G	\$ 240,000.00	\$ 10,000.00	\$ 230,000.00
Carolina Cat Alt. 2	2001 836 CAT	\$ 365,000.00	\$ 10,000.00	\$ 355,000.00
Road Machinery Services	CMI Terex 3-90C	\$ 225,000.00	\$ 5,000.00	\$ 220,000.00
Mid-State Equipment				No Bid

**LEGAL FEES FOR INDIVIDUAL COMMISSIONERS:**

This item was removed from the agenda as requested by Commissioner Kuehler.

**APPOINTMENTS TO THE TRANSPORTATION ADVISORY BOARD:**

Commissioner Baucom asked if this item could be deferred until the next meeting. Chairman Openshaw said that he was in favor of deferring this item.

Al Greene, County Manager, asked the Board for direction. He said that staff assumes it was the Board's intent that for the five members from the unincorporated areas of the County that each Commissioner would suggest an appointment.

Commissioner Kuehler responded this was correct.

Mr. Greene asked if the Board wanted staff to assist in identifying a Parks and Greenway representative. Chairman Openshaw said that he had made a call when this matter first came up in March, but he has not heard back from that person. He stated that if staff had a recommendation, he would be glad to listen to it, but he also had some people he wanted to talk with. Mr. Greene said that in that case staff would wait to hear from Chairman Openshaw.

Chairman Openshaw moved to defer these appointments until the next meeting. The motion passed unanimously.

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

Chairman Openshaw announced vacancies on the following boards and committees:

- a. Adult Care Home Advisory Committee (1 Vacancy)
- b. Nursing Home Advisory Committee (2 Vacancies)
- c. Region F Aging Advisory Committee
- d. Juvenile Crime Prevention Council:
  1. School Superintendent or Designee
  2. Chief Court Counselor or Designee
  3. Director DSS or Designee
  4. County Manager or Designee
  5. Member of Faith Community
  6. Chief District Court Judge or Designee
  7. Local Health Director or Designee
  8. Representative of Parks and Recreation

9. County Commissioner Appointees (2)
  10. Substance Abuse Professional
- e. Union County Industrial Facilities and Pollution Control Authority (2 Vacancies for Unexpired Terms Ending May 2014)

Vice Chair Rogers said that she thought there was a County Commissioner appointee on the Juvenile Crime Prevention Council from last meeting. Mrs. West, Clerk to the Board, noted that there were a number of County Commissioner appointments on this council and there are two remaining vacancies.

Vice Chair Rogers stated that she would like for the County to work with the schools and the various PTA's to advertise these vacancies in the school newsletters. She said that would be a great tool to get people involved.

**MANAGER'S COMMENTS:**

Al Greene, County Manager, had no comments.

Commissioner Mills asked about the ethics training. Mr. Crook stated that on the face of the statute, the training does not comply because it is not in the next calendar year. He said that he had e-mails and messages out to the sponsors and he would follow up with that.

**COMMISSIONERS' COMMENTS:**

There were no comments by Vice Chair Rogers, Commissioner Baucom, or Commissioner Kuehler.

Commissioner Mills expressed appreciation to the Board for supporting the resolution for the Honor Air Program. He said that the Rotary Clubs are looking for contributions to send the veterans to Washington, DC. He stated that included in the list of Community Based Organizations list, one of those organizations is Hometown Heroes. He said that he was sponsoring a skeet trap tournament on October 9 at the Charlotte Rifle and Pistol Club. He said this is the first one of these events and it is going to be a huge event. He stated that all of the law enforcement agencies have been invited to participate and to sponsor a team. He said the proceeds of the tournament will go to Hometown Heroes. He reminded that the National Rifle Association (NRA) Banquet will be on August 29<sup>th</sup>.

At the suggestion of Commissioner Baucom, Commissioner Mills explained that Hometown Heroes is for terminally ill children in Union County.

Chairman Openshaw suggested that the Board hold a financial summit at the end of the first quarter of the fiscal year so it can start to make adjustments on what looks to be a very challenging fiscal year. He said he would like to see that along with the CIP that the staff bring some recommendations on how to start making adjustments now rather than waiting until January. He stated earlier updates would be appreciated and if some rough financial data could be provided earlier, that would be great.

With there being no further items for discussion, at approximately 10:46 p.m., Commissioner Baucom moved to adjourn the regular meeting. The motion was passed unanimously.