

Approved 11/2/09

Minutes of the Regular Meeting
of the Union County Board of Commissioners
October 5, 2009

The Union County Board of Commissioners met in a regular meeting on Monday, October 5, 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; Matthew Delk, Assistant County Manager; Lynn G. West, Clerk to the Board of Commissioners; Jeff Crook; Staff Attorney; Keith Merritt, County Attorney; Kai Nelson, Finance Director, members of the press and interested citizens

Opening of Meeting:

At approximately 7:00 p.m., Chairman Openshaw convened the meeting and welcomed everyone present.

a. Invocation

Commissioner Baucom offered the invocation.

b. Pledge of Allegiance

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

c. Featured Community Benefit Organization

Lieutenant Michelle Starnes of the Union County Sheriff's Office and President of the Friends of the Union County Animal Shelter, Inc., shared information about the Friends of the Union County Animal Shelter, Inc. She stated that the organization was established in 2007. She said that one of the main objectives of the Friends of the Union County Animal Shelter, Inc. was to equip a spay/neuter surgery room to sterilize the animals prior to their adoption. Lieutenant Starnes said that they also treat animals that come into the shelter that are treatable such as those with heartworms.

Lieutenant Starnes stated that as of last week, the Friends of the Shelter have donated and expended over \$44,000. She stated that currently the spay/neuter room is being used only for animals from the shelter, but she said that they want to open this service to the public. She said that State law prohibits the County from providing these services to the public and requires that a veterinarian provide the services. She stated that she is working with a veterinarian to hopefully open the spay/neuter room for animals outside the shelter.

She stated that the Friends of the Union County Animal Shelter also provides funds to purchase toys and treats for the animals at the shelter. She said that she and Sheriff Cathey visited the Brown Creek Correctional Unit in Anson County, and the first two dogs that came from the Union County Animal Shelter have begun a new program at Brown Creek entitled "A New Leash on Life." Lieutenant Starnes explained that the program is an eight-week program wherein the inmates of the facility are training dogs received from shelters and rescue groups. She said that as part of the program, the inmates are required to speak in front of a group in order to pass the program.

Lieutenant Starnes stated that the Friends of the Union County Animal Shelter would be having a raffle to raise money for the organization. She said that two quilts have been donated for the raffle prizes.

She expressed appreciation to the Board for allowing her to speak at tonight's meeting on behalf of the Friends of the Union County Animal Shelter.

Lieutenant Starnes introduced Barbara Davis, Luann McCain, and Laura Minsk with Carolina Paws.

Informal Comments:

There were no informal comments.

Additions, Deletions and/or Adoption of Agenda:

Chairman Openshaw moved adoption of the agenda with the following additions: 1) Discussion about Water Permits for Refurbished Lawns (Item 8b); and 2) Direction to Manager and Staff about Testifying Regarding the Conditional Use Permit (CUP) for Historic Ventures in Waxhaw (Item 8c). The motion was passed unanimously.

Consent Agenda:

Chairman Openshaw moved approval of the items listed on the Consent Agenda. The motion was passed unanimously.

Contracts/Purchase Orders Over \$20,000: Authorized the County Manager to approve the following, pending legal review:

- 1) Sheriff’s Office: Renewal and Amendment #2 to Agreement with SimplexGrinnel; and
- 2) Purchase Requisition for the purchase of 35 ballistic vests for the Sheriff’s Office in the amount of \$22,507.50. These vests replace current vests worn by personnel that are five years old and must be replaced.

Minutes: Approved the minutes of the special meeting of April 28, 2009.

Health Department – Budget Ordinance Amendment: Adopted Budget Ordinance Amendment #12 in the total amount of \$141,543 to appropriate additional federal funding for H1N1 Preparedness and Response (\$41,543; \$94,200; and \$5,800):

BUDGET AMENDMENT							
BUDGET	Health			REQUESTED BY	Phillip Tarte		
FISCAL YEAR	FY2010			DATE	October 05, 2009		

<u>INCREASE</u>			<u>DECREASE</u>		
<u>Description</u>			<u>Description</u>		
Operating Expenses		141,543			
Federal Revenue		141,543			
Explanation:	Appropriate additional federal revenue for Health Department. These funds will be used for H1N1				
	Preparedness and Response.				
DATE			APPROVED BY		
			Bd of Comm/County Manager		
			Lynn West/Clerk to the Board		
FOR POSTING PURPOSES ONLY					
<u>DEBIT</u>			<u>CREDIT</u>		
<u>Code</u>	<u>Account</u>	<u>Amount</u>	<u>Code</u>	<u>Account</u>	
10551150-5381-1337	Professional Services	141,543	10451150-4313-1337	Federal Revenue	141,543

<u>Description</u>			<u>Description</u>		
Operating Expenses		5,342			
State Revenue		5,342			
Explanation:	Appropriate additional Criminal Justice Partnership Program State Funding for FY 2010				
DATE			APPROVED BY		
				Bd of Comm/County Manager	
				Lynn West/Clerk to the Board	
FOR POSTING PURPOSES ONLY					
<u>DEBIT</u>			<u>CREDIT</u>		
<u>Code</u>	<u>Account</u>	<u>Amount</u>	<u>Code</u>	<u>Account</u>	
10558900-5699	Payments to Other Agencies	5,342	10458900-4470	State Revenue	5,342

Old Business:

Discussion of Planning Board Recommendation:

Chairman Openshaw recognized Vice Chair Rogers for discussion on this item. She stated that she had requested this item be included on the agenda to try and reach a resolution tonight.

Vice Chair Rogers said that her comments were not to take away anything from the boards that had met to discuss this item, the Planning Board and the Schools' Facilities Committee, but it has been approximately two months since the Board of Commissioners had asked that the two boards meet and discuss this matter. She stated that it was her understanding that the two boards had met and drafted some guidelines, for which there had been a consensus that the guidelines would be presented to the Board of Education and the Board of Commissioners. She reviewed that a special meeting of the Planning Board was called on September 28, and, at that time, the Planning Board voted to reject the compromise. She stated that she personally did not see any reason to continue discussions of this matter. She said that she was not in favor of requiring the schools to go through a major development permitting process. She stated that an issue had been brought to the attention of the Board of Commissioners, and the issue was studied with over two hours of conversation between the schools and the Planning Board about what had been discovered.

Vice Chair Rogers stated that she believed there was no malfeasance on the part of the schools or the school board in connection with this matter, and there were no errors that caused the \$300,000 plus for the stormwater retention ponds. She said the State was happy with the schools and she personally was happy with what she had found and even happier that during this process, there were some areas identified that could be improved upon. She stated that she would like to move forward with the matter and approve the following guidelines for the Union County Public Schools: 1) Develop internal guidelines and checklists that track the permitting process for school construction; 2) The checklist would be incorporated into the Board of Education's final review of the project before funding is sought from the Union County Commissioners; and 3) Notify the Board of Education of any notice of violations, any threat of sanctions or penalties. The Board of Education would take any appropriate actions.

Vice Chair Rogers moved to deny the text amendment proposed by the Planning Board to Section 146 of the Table of Uses in the Union County Land Use Ordinance.

Jeff Crook, Senior Staff Attorney, stated that the Board's motion should include adoption of a consistency statement to deny the amendments as well.

Vice Chair Rogers amended her motion to include adoption of the following Consistency Statement:

“Whereas, 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, but that denial of the proposed text amendments is reasonable, in the public interest, and consistent with the Union County Land Use Plan because the current practice of permitting schools by right is adequate and is consistent with the Standardized Zoning Regulations for Schools recently undertaken by Union County.”

Vice Chair Rogers said that she served on the school board when it had worked on the standardized zoning, and it took a lot of effort by the 14 municipalities and the County. She stated that she believed that the guidelines that have been established have opened up to the public more information as far as the permitting process and the process is now more transparent. She said that in the future, if it is determined that the process needs to be tweaked, she thought the schools were more than willing to meet with the Board of Commissioners and discuss it.

Chairman Openshaw said that he has been a big supporter of the schools. He stated that he did not blanketly endorse the schools, but he is a strong advocate for the schools. He said that he was delighted to learn that Marvin Ridge High School has been selected as the top academic high school out of Mecklenburg, Cabarrus, and Union Counties. He stated that he disagreed with Vice Chair Rogers’ position because he believed it is the Board of Commissioners’ fiduciary responsibility to assist the schools with the oversight of their development projects. He said that he was not advocating the requirement for a major development permit but preferred some middle ground where the schools would have to bring the permits to the staff; and, ultimately, staff would make a presentation to the Planning Board to track the progress of the requirements within the permits. Chairman Openshaw stated that this was an opportunity for the County to help keep the schools’ costs in line as best it can.

Commissioner Kuehler commented that she did not support the major development permit approval process. She said that she was not sure she agreed with the statement that the schools did nothing wrong, but she certainly did not think the schools had committed malfeasance. She stated that she did think there were some mistakes along the way. Commissioner Kuehler expressed appreciation to both the Planning Board and the schools for their work on this matter. She reminded that the comment had been made during the public hearing on the proposed text amendments that the schools were one of the largest developers in the county, and as such, there have been changes to the stormwater requirements. She said that she too would advocate having another pair of eyes looking at the permitting process for development of the schools. She stated that she did not know what the answer is to this issue, but she did believe the major development permit would create more of a problem than it would help.

Commissioner Baucom said that he was confused by the comments tonight, and what he thought he was hearing from the Chairman and Commissioner Kuehler was that neither was in favor of the major development permitting classification. He stated that the motion made by Vice Chair Rogers would deny the text amendment changes. Vice Chair Rogers stated that this was correct.

Chairman Openshaw clarified that he was not in favor of the major development permit requirement but was in favor of an alternative. He reiterated that he thought there needed to be a middle ground where there would be more eyes reviewing the process. He said that if the motion on the floor does not pass, then he would offer an alternate motion to have review of the permits by staff and to track the requirements of the permits to determine if the requirements have been met.

Commissioner Baucom stated that he did not support the text amendment changes.

Commissioner Mills pointed out that the proposed text amendments had been brought by the Planning Board, and usually text amendments are brought by outside organizations, agencies, developers, etc. He said that he had spoken with Mark DiBiasio, Vice Chairman of the Planning Board, and asked if the text amendments would have discovered the problems in this situation, and Mr. DiBiasio had said “no.” Commissioner Mills stated that he did not understand why the Board of Commissioners would go forward with the matter. He said that he had full confidence in Don Hughes and Dr. Davis to handle the situation.

Chairman Openshaw asked Mr. Crook if the motion on the floor did not pass, would he be allowed to offer an alternate motion. Mr. Crook responded that he thought it would allow the Chairman to offer an alternative but stressed that it would not be a land use ordinance amendment. He explained that an amendment to the Land Use Ordinance could be initiated, but the Board could not vote on an amendment tonight.

Vice Chair Rogers clarified that her motion was to deny the proposed text amendment and from the comments she was hearing, it appeared that the motion would pass.

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

Following the vote, Chairman Openshaw offered the following alternatives: 1) to go with his proposal that the staff and Planning Board will review the permits and the requirements within and track their progress; or 2) the Board of Commissioners could appoint two members from the Board to meet with the School Board’s representatives to develop some language. He asked for

discussion on the two alternatives and said if there was a consensus on either of these points, then he would adhere to his first proposal as his motion.

Commissioner Mills asked Dean Arp, Chairman of the Board of Education, how many schools are in the planning stage of construction. Chairman Arp responded that there are no new schools proposed for construction at this time.

Commissioner Mills moved to postpone action on this matter at this time. He said that action was not necessary since there were no new schools to be built at this time.

Vice Chair Rogers asked permission for Chairman Arp to come to the podium to address the Commissioners' questions. Chairman Arp stated that he respected the Board of Commissioners, and he did not want to enter into the Board's debate regarding this matter; however, he said he would like to qualify the school board's position.

Chairman Arp stated that they had listened to the comments of the Planning Board, and when the checklist was negotiated regarding the differences in the process, the school board still believes it is the right thing to do. He said that the schools would still enact the following three guidelines:

- 1) Develop internal guidelines and checklists that tract the permitting process for school construction.
- 2) The checklist would be incorporated into the Board of Education's final review of the project before funding is sought from the Union County Commissioners.
- 3) Notify the Board of Education of any notice of violations, any threat of sanctions or penalties. The Board of Education would take any appropriate actions.

Further, Chairman Arp stated that the school system's staff does not have a problem with forwarding copies of all of its communications and checklists to the single point of contact for County staff, Ms. Amy Helms, which was part of the original offer to the Planning Board, in an effort to have an open, transparent process. Chairman Arp said that the schools believe that these changes address the concerns raised and are in keeping with the principles of limited, responsible government that is open and transparent. He stated that the schools still accept their responsibility for construction projects. He said that the Board of Commissioners would not have to vote on these guidelines but stressed that the Board could be assured that the schools would adhere to the guidelines. He stated that the schools want to dispose of this issue in a professional, responsible manner.

Commissioner Mills reiterated his suggestion to allow the schools to deal with these issues and that the Board of Commissioners move on to other matters.

Vice Chair Rogers stated that she did not want to take away from anything that the Planning Board did, and she did not consider it a waste of time. She said that she thought the Board of Commissioners had a responsibility to look into the matter and the Board has looked into it. However, she said that she did not agree with the direction that the Planning Board recommended. She said that she thought the school board would be voting on the guidelines that Chairman Arp has outlined, and it will provide a more open, transparent responsible government without being overbearing on the system.

Chairman Openshaw said that he was glad that the school board would be adopting the guidelines. He said that he views it as an insurance policy for the taxpayers that the Planning Board and the staff review the information, and it should automatically go through the Planning Board. He stated that he would adhere to his original motion to have the permits submitted to County staff and the Planning Board for its review in tracking the fulfillment of the requirements for the permits. Further, he included in his motion that any disagreements regarding these matters should come to the Board of Commissioners rather than to the Board of Adjustment. He said this should also make the process go much faster which was a concern expressed at the last meeting.

Commissioner Mills said that he thought there was a misconception of what the Planning Board does. He questioned if a developer came to the county tomorrow with 500 homes to be constructed and met all the criteria in the Land Use Ordinance, what would happen at that point. Richard Black, Planning Division Director, responded that if all the requirements are met, the project would be approved. He said if all the requirements were met and the project were denied, then the section of the ordinance that was not being fulfilled would have to be pointed out.

Chairman Openshaw questioned the relevancy of this question to the discussion. Commissioner Mills said that all the homes and developments that were built have no basis or bearing on the Board of Commissioners as long as they met the guidelines that were adopted in the Land Use Ordinance. Chairman Openshaw said that Commissioner Mills was missing his point that the County should have been looking more strictly at its ordinances. He stated that in his opinion there should have been more thought put into the requirements for development in Union County. He said that the procedure is a major development permit is brought to the Planning Board; the staff reviews it; and if the staff finds no errors, then they present it to the Planning Board; and the Planning Board gets a chance to examine it to see if it finds errors with it. He stated that if the Planning Board does find errors, then it responds. He said this was what he was suggesting.

Following further comments by Chairman Arp, Chairman Openshaw said that he would like some time to work this matter out. He reiterated that there should be some oversight of school construction by the County.

Commissioner Kuehler said that she thought when this matter had been brought up, there was an alternative, but there seems to still be some communication that could take place to bring the matter to a better resolution. She asked if the Board of Education would be willing to have this discussion at a later time.

Chairman Arp said that what he would say and what he had the authority to say is what the Board of Education has voted on already, which is, in an effort to resolve these matters, establishing a single point of contact for County staff and copying the County with all notices of the permits, etc. He stated that this point is still valid. Further, he said that the Board of Education has voted to direct the Superintendent to develop the three guidelines that he had reviewed previously. He said that these are the two things that he has the authority to say that the Board of Education will enact.

Commissioner Kuehler said that the schools have Memorandums of Understanding with a number of the municipalities. She asked if the information offered by Chairman Arp would need to be included in a Memorandum of Understanding with the schools.

Mr. Crook said that he was not entirely clear on what the motion would entail. He stated that it seemed to be outside of any kind of formal process, and it could be addressed in a Memorandum of Understanding. He said that if the motion were initiating any kind of amendment to the Land Use Ordinance, that is when the Board of Adjustment or the Planning Board would be brought into the matter.

Commissioner Baucom expressed appreciation to the school board for bringing forth the suggestions and for its willingness to move forward in this matter. He said that he thought the schools had met the intent of what had been laid out. He stated that he did not see any reason that this Board needs to create another layer, bigger government, just for the sake of having it. He said that the schools have agreed that they will report everything to one County staff person, and then if there are any challenges or issues, then it will be addressed by the Board of Commissioners. He further said that he thought it was adding multiple layers and multiple timing issues and maybe staff issues. He reiterated that he did not see a need for it, but at the very least, he thought the Board of Commissioners should be willing to wait until the school board takes its action and the Board of Commissioners looks to see if in fact the school system does what it has said.

Following his comments, he said that he would ask that the motion be tabled until whatever time it takes the school board to bring the information forward to the Board of Commissioners or he would seek an amendment to the Chairman's motion.

Chairman Openshaw agreed to withdraw his motion for Commissioner Baucom's motion to table the matter to allow the school board time to bring the information forward to the Board of Commissioners.

Vice Chair Rogers asked for clarification purposes what was the new motion on the floor.

Commissioner Baucom repeated his motion that the Board of Commissioners not address this issue until the school board brings back its actions on this matter.

Chairman Arp pointed out that the school board has already taken its actions.

Chairman Baucom said that he understood what Chairman Arp was saying but perhaps tomorrow night, the school board was planning to take action in a formal manner or would seek to take formal action.

Chairman Arp explained that the Board of Education has directed the superintendent to develop the internal guidelines which would be enacted by the Superintendent's process. He said that the guidelines have already been developed and enactment of the guidelines would commence after the presentation to the school board tomorrow night.

Dr. Davis said that the administration's guidelines are the administration's way to implement the policy. He stated that tomorrow night, staff would inform the school board of the guidelines that have been developed. He said it was not really an approval process by the school board.

Commissioner Baucom said that with the motion on the floor, the Board of Commissioners would be looking for the guidelines to come before this Board, and there is no time limit placed on it.

Chairman Arp said that it would be given to the Board of Commissioners following tomorrow night's school board meeting. He said that the schools' review is basically an acknowledgement that the guidelines developed by Dr. Davis are consistent with the schools' policies. He stated that the information could be sent to the Board of Commissioners on Tuesday night or Wednesday at the latest. In response to a question by Vice Chair Rogers, Chairman Arp stated that the school board could incorporate establishing the

single point of contact for the County. He said that the school board has already offered that in a previous vote, and it would be amenable to it in order to settle this issue. He stated that this would be incorporated as the school board's word that this was going to happen.

Commissioner Baucom stated that he hoped that there would be no further action needed by this Board in this matter.

Following the lengthy discussion, the motion offered by Commissioner Baucom was passed unanimously.

Groundwater Remediation Design:

Ed Goscicki, Public Works Director, stated that at the September 9, 2009, work session, staff presented information regarding the landfill closure requirements. He explained that this was a program required by the North Carolina Department of Environmental Quality in terms of how to deal with groundwater contamination that has been monitored onsite. He said that staff had explained to the Board at the September 9 work session, that since 2007, the landfill was re-permitted and new regulations have come into place which now require the County to mitigate the contamination. He stressed that the contamination was wholly contained within the site and is not migrating offsite.

Mr. Goscicki stated that the task order before the Board for consideration is for the engineering firm of SCS Engineering to perform some significant groundwater monitoring modeling for the design and permitting for the contamination assessment program. He said that the information contained in the agenda package details the different components:

1. Design & Permitting, comprised of subtasks 4C, 4D, 4E - \$76,765
2. Water Quality Monitoring, comprised of subtasks 4A, 4B(1), 4F - \$90,951
3. Soils Evaluation, comprised of subtask 4B(2) - \$15,955 and
4. Optional Services, comprised of subtasks 4G, 4H, 4I - \$69,933

Mr. Goscicki explained that the optional services referenced in component 4 are not the County's options but are options that might or might not occur depending on what is found during the initial monitoring and modeling of the system.

		Total	507,208			Total	507,208
		Prepared By	bl				
		Posted By					
		Date				Number	10

NEW BUSINESS:

Catawba River Water Treatment Plant Reservoir Expansion:

Ed Goscicki, Public Works Director, explained that the Catawba River Water Treatment Plant is one of the few water treatment plants located on the Catawba River that draws directly from the river and not from behind a dam on the reservoir. He stated that because of this a second raw water reservoir is needed.

He explained that the project before the Board tonight is to approve the engineering services for the final design of the expanded reservoir to meet both the immediate needs and the long-term needs. He emphasized that the need for the reservoir is for drought mitigation and how to deal with limitations on water intakes during drought conditions. He introduced Jeff Coggins, project manager from Black and Veatch, the design engineer, for the reservoir expansion.

Mr. Coggins stated that Black and Veatch was retained by Union County and Lancaster Water and Sewer District to design and oversee construction of a new reservoir facility at the existing Catawba River Treatment Plant. He said that the preliminary design of the reservoir has been completed.

He estimated the total volume of usable storage of the reservoir is approximately one billion gallons. He said there would be an earthen embankment with a 100-foot plus impoundment depth. Mr. Coggins stated that the surface area of the reservoir is approximately 90 acres. He explained that the existing reservoir would continue to be used as a pre-treatment step in the reservoir train.

He explained that the first and foremost reason for the need for the new reservoir is drought mitigation. He said that basically water would be taken from the Catawba River on a regular basis keeping the reservoir full, and when the river begins to lose capacity,

the water in the reservoir will be relied on to meet the needs of the customers, both Union County and Lancaster Water and Sewer District, until the river flows increase and the reservoir capacity can be replenished.

In response to a question by Commissioner Baucom regarding whether all the water in the reservoir would be usable, Mr. Coggins stated that the one billion gallons would be usable water. He explained that there are some portions of the reservoir from which the volume could not be taken.

Vice Chair Rogers stated that Mr. Coggins had mentioned earlier that water would be taken from the river on a consistent basis to fill the reservoir, and when the river capacity is lower, the water in the reservoir could be used to service customers. She questioned whether use of the reservoir water would impact how the County would be required to move into the various drought stages since the water in the reservoir could be used versus taking water from the river. Mr. Coggins responded that the reservoir will be used as a bridge between lower river events. He said that much of this is dictated by Duke Power, and its release of water on the Catawba as it relates to drought mitigation. He explained that in true drought conditions, conservation measures still will be needed, but with the reservoir expansion, there will be a more reliable water supply. He said that the new reservoir will not solve a tremendous drought.

Mr. Coggins noted that there were other benefits of the new reservoir: 1) improved water quality; 2) more flexibility in the withdrawal of water on the river; 3) a second reservoir adds to the reliability of the raw water supply; and 4) peak shaving contract with Duke Energy which would reduce operating cost of the river pump station.

Commissioner Mills pointed out that this is a non-recreational reservoir with no boat access. Mr. Coggins said that steps are being taken to try and remove the reservoir from sight and access. He stated that the slopes on the side of the reservoir are being reshaped to assure that any runoff that might occur will be shaped away from the reservoir.

He reviewed the regulatory requirements and restrictions that impact the reservoir project. Mr. Coggins stated that in 1992 when the original withdrawal permit was obtained, there were provisions in the permit that stated that withdrawals from the river must cease or reduce when it reaches 1200 cubic feet per second (cfs) or less. He said that this provision is still in place but explained that this provision has not been as big an issue with a 12 or 18 million gallons per day plant but approaching a 36 or 54 million gallons per day plant expansion would place more and more of a burden on the reservoir to bridge a period of time when the pumps are turned off at the river. He said that FERC and Duke Energy recently underwent a relicensing which changed the release requirements for Duke Energy. He explained that in the past, Duke would release their daily release requirements all at once in one period of time whether that would be three to six hours or split up in two releases. He said that this was done for the maximum benefit of their power

generation either to save money or generate more power. He stated that during this period of time, the release caused the flow of the river to be above 1200 cfs, and the pumps were turned on and the reservoir was recharged. He said that with the relicensing, Duke would have to spread the daily release requirement over a 24-hour period.

Mr. Coggins stated that the existing interbasin transfer withdrawal permit was issued in 1992. He said that the permit expires in May 2012. He explained that there are special provisions in the permit, one of which requires an expansion to install an intake structure and pump station with capacity of 100 million gallons per day. Further, he said that there is also a provision for expansion of the existing reservoir to 300 million gallons per day or greater for drought mitigation purposes. He pointed out that these two provisions have not been met yet but are contemplated as part of the water plant expansion project and the reservoir project. Mr. Coggins stated that meeting these two requirements will go a long way toward meeting the requirements of the original permit and also help with the repermitting of the interbasin transfer and withdrawal permit.

In summary, he stated that the preliminary design for the reservoir is complete and the environmental permitting is progressing. He said that an archaeological study and an endangered species study have been done on the streams. Mr. Coggins said that this week they will be conducting an endangered plant species study, and to date, nothing has been found of significance. He reported that the project is on schedule with the design to be completed in the summer of 2010. He said that it is anticipated that the construction period will be two years with the construction to be completed in the fall of 2012. He stated that the preliminary construction costs are on budget at approximately \$30 million, one-half of which would be the responsibility of Union County.

Mr. Goscicki stated that the proposed Task Order was reviewed by the Catawba River Treatment Plant Board and staff and has been approved by that board in terms of scope and the recommended fee. He said that the County's staff has also reviewed the Task Order and finds the fee to be an acceptable level for the magnitude of the project. He stated that Lancaster Water and Sewer District's Board has already approved the Task Order.

Commissioner Kuehler said that what had caught her attention was the benefit from the reservoir of better quality of water. She questioned if the reservoir would improve the water quality to a point where chloramines would not be needed. Mr. Goscicki responded that chloramines would still be needed.

Following the presentation, Commissioner Mills moved to authorize the County Manager to approve Task Order #2 with Black & Veatch International Company, pending legal review, and adoption of Capital Project Ordinance Amendment #128. The motion was passed unanimously.

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 W&S Oper Fd	62,262,085	1,005,763	63,267,848	Catawba River Water Treatment Plant Reservoir Expansion - A&E	705,944	1,005,763	1,711,707									
64471400-4061				64571400-5594-WP003												
Contributed Capital CRWTP- Reservoir Expansion	296,389	-	296,389	Catawba River Water Treatment Plant Reservoir Expansion - Construction	1,996,556	-	1,996,556									
				64571400-5595-WP003												
				All Other Water & Sewer Capital Projects	59,855,974	-	59,855,974									
				64471400-4061												
	62,558,474	1,005,763	63,564,237		62,558,474	1,005,763	# 63,564,237									
Prepared By	bl															
Posted By																
Date								Number	CPO - 128							

Commissioner Mills requested that staff organize and schedule a trip for the Board to visit in the spring of 2010 the Catawba River Water Treatment Plant.

Discussion of Water Exemption for Refurbished Lawns (This item was added to the agenda at the request of Chairman Openshaw):

Chairman Openshaw stated that he had received a number of e-mails and telephone calls from people asking about variances from the Water Conservation Ordinance for major overhauls of their lawns. He said that he was proposing to allow variances for refurbished lawns under the Ordinance as is done for new lawns.

The County Manager stated that the Ordinance allows for a 45-day exemption for new construction and the property owner must display a sign on the property. He said that the Chairman had sent staff an e-mail regarding this matter, and he had met this afternoon along with the Assistant County Manager, the Public Works Director, and Senior Staff Attorney to discuss this issue. He stated that Mr. Goscicki, the County's Public Works Director, and his staff, have been working with several other similar requests. He said that Mr. Crook, Senior Staff Attorney, has drafted a proposed Amendment to the Water Conservation Ordinance which has been provided for the Board's consideration. He requested that Mr. Crook explain the proposed amendment.

Mr. Crook explained that under the current ordinance, during Stages II and III of the Water Shortage Conditions, a variance could be obtained for new construction. He said that he thought Chairman Openshaw was addressing someone who has an existing lawn and they want to renew an existing lawn with sod, etc. He stated that staff has concerns about allowing a variance for existing lawns during Stage III of the Water Shortage Condition where under the low inflow protocol with Duke Energy, irrigation is pretty much bound to one day per week. Mr. Crook stated that the amendment would be the same for Stage III as for new construction but would allow additional variances during Stage II of the Water Shortage Conditions to address the situation that was described in the Chairman's e-mail.

Chairman Openshaw said the one variable that he saw that was difficult to quantify is where to draw the line between a major refurbishment versus spreading grass seeds. He said if someone comes in for a permit and can show a contract for a major refurbishment, he did not really see any difference between that situation and new construction. However, he said when it comes to obtaining a permit and spreading seed, he was not sure he felt the same. He stated that he would also like to have language in the amendment to state that issuance of new permits would be subject to cancellation when there are stresses on the water system. Further, he said that he would like to have included in the ordinance that "under Union County policy, irrigation may be reduced to one day per week in the future" and "issuance of a permit is not verification that sufficient water will be available to maintain landscaping in the future."

Chairman Openshaw said that he wanted to disclose to someone coming in to apply for a water permit, that these provisions are spelled out. Mr. Crook responded that there are provisions in Article X in the existing ordinance for withholding future variances in the event the demand is such that it would affect the ability to transmit capacity.

Mr. Greene said that in regards to Stage III, irrigation would be limited to one-day per week. He stated that it would not be wise to allow someone to re-vegetate his or her lawns under those conditions. Chairman Openshaw pointed out that it was being

allowed with new construction, and he said that if the County was in water constraints, then he did not think a variance should be issued for anyone.

Mr. Greene responded that with new construction there is an additional concern with erosion. It was noted that once a variance is issued, unless the Board and Manager declare a Stage IV Water Shortage Condition, the variance would continue. Mr. Gosicki pointed out that a variance is only in effect for a 45-day period.

At approximately 8:30 p.m., the Chairman called for a five-minute recess to allow an opportunity to review the Amendment to the Water Conservation Ordinance as prepared by Mr. Crook.

The Chairman reconvened the meeting at approximately 8:45 p.m. and asked Mr. Crook for his recommendations. Mr. Crook stated that during the break, staff had discussed the Chairman's concern about the language that would enable a variance during Stage II of the Water Shortage Conditions for newly installed replacement sod or natural ground cover. He said that there was discussion with the Public Works Director as to what constituted natural ground cover and would that include the killing of an entire lawn with an herbicide and then reseeding the entire lawn. He stated that when staff had met about this issue this afternoon, that specific concern had not been discussed. Mr. Crook said his understanding was that the Public Works Director's interpretation is that it would not include a total reseeding of a lawn and would not qualify for a variance. He stated that if it were the Board's intent to enable a variance in that circumstance, the language in the Amendment needed to be modified or clarified so that staff would have clear direction.

Mr. Crook referred to the language in the fourth paragraph of Article X, which had been repeated in (iii) of the second paragraph, and he said if the language is changed in one place, it would need to be changed in both places. He said it had been suggested to change the language to read as follows: "or such newly installed or replacement sod or natural ground cover (to include total reseeding) . . ." Commissioner Mills suggested the wording "to include total lawn eradication and reseeding." Chairman Openshaw asked if the Board could agree on the wording, that it could adopt the Ordinance giving staff the latitude to make those changes. Mr. Crook explained that in adopting an ordinance, that the Board would need to adopt the exact language to be included.

Commissioner Baucom suggested allowing staff time to develop the appropriate language for the amendment and to bring the amendment to the Board for adoption at the next Board meeting. Chairman Openshaw suggested using the term "eradication" in the amendment in order that it could be adopted tonight, and if staff was able to develop better terminology, then the amendment could be

brought to the Board at a later time for adoption of the new language. Mr. Crook suggested adding after natural ground cover “(to include total reseeded after existing lawn eradication)” in the second and fourth paragraphs of Article X of the ordinance.

Chairman Openshaw moved adoption of the Amendment with the language as read by Mr. Crook. Commissioner Baucom stated that he was not certain of the language that was being proposed. Mr. Crook stressed that the language needed to be certain, and the Board’s vote had to be unanimous in order for the Amendment to become effective. Mr. Crook again pointed out that the change would need to be made in the second paragraph of Article X under (iii) and in the fourth paragraph. For clarification purposes, he said that the Public Works Director and the Manager were concerned that it should be defined to the parameters of an established lawn so someone would not come in during a drought condition and clear trees and install a lawn.

After further discussion regarding the language to be added, Commissioner Baucom reiterated that the language needed to be correct and that it should be brought back to the Board for adoption at a later time. Mr. Crook offered if the Board would like to take a brief recess of the meeting, he could develop and come back tonight with the suggested language.

Vice Chair Rogers said that from the e-mails that she has received, there is an urgency to adopt the amendment tonight as now is the season to plant lawns, and she was concerned if the Board waited until October 19th to take action, the germination of the seed would not occur. Commissioner Baucom responded that it is not sensitive from a moisture standpoint, and again urged that the Board make sure the language in the amendment was correct.

Commissioner Baucom asked if staff were amenable to the new construction aspect of a variance. Mr. Greene responded that staff was agreeable with this provision which is already included in the current ordinance.

Commissioner Mills asked if this item could be added to the October 7th work session. Mr. Crook responded that it was too late to add an item to the public notice that has been issued for that work session. He stated that for an ordinance adoption, he would prefer that the Board’s action be taken at a regular meeting.

Chairman Openshaw stated that if Commissioner Baucom wished to vote against the motion, then the amendment would need to be brought back to the Board at its next regular meeting.

Commissioner Baucom asked Mr. Crook what would be the need for a complete kill of a lawn in this process. Mr. Crook responded that from a legal perspective, he could not address any of the more technical issues in the meeting. He said that from a

legal perspective, it would be carving out an exception during a drought. He advised that the exception should be very narrowly drawn. Commissioner Baucom further asked if it would preclude anyone who had an area of their lawn that they wanted to reseed. Mr. Crook stated that for reseeding of a lawn, he thought the assumption had been with Public Works that two-day per week irrigation would be sufficient.

Chairman Openshaw said that the problem is with the two-day per week watering whether it is a drought or not. He asked if the language could be separated to develop language in connection with a drought but still expand the ability to issue a variance.

Commissioner Baucom asked for assurance from the Manager, Senior Staff Attorney, and the Public Works Director regarding their comfort levels with the language as presented in the amendment. Mr. Greene said he was comfortable with the original language as prepared by Mr. Crook, but he did not understand the eradication portion. He said he thought it would encourage residents to eradicate their entire lawns in order to qualify for a variance under the ordinance when some of the lawn might be in good condition.

Mr. Goscicki said that he agreed with the Manager's comments and when staff had discussed the matter this afternoon, he thought the discussion was regarding resodding of lawns.

Commissioner Baucom stated that he would be comfortable making a substitute motion to adopt the amendment as presented by staff tonight, and then if additional changes needed to be made, those could be addressed at a future date.

Vice Chair Rogers noted that the amendment would not allow for a variance for reseeding of a lawn. Commissioner Baucom stated that he had thought it included reseeding. Mr. Crook stated that he too had assumed it meant reseeding of a lawn but said that as Mr. Goscicki had noted, under his interpretation, the amendment would not include reseeding of lawns.

Mr. Greene suggested revising the language in paragraph 2 under (iii) and in paragraph 4 to read as follows: "... newly installed replacement sod, reseeding, or natural ground cover."

Commissioner Baucom agreed to amend his substitute motion to include the word "reseeding" after "installed replacement sod" in paragraphs 2 under (iii) and 4. Mr. Crook stated that from a legal perspective, he thought it did not need to be reseeding of part of a lawn but "total reseeding." He stated that he thought that was the intent as discussed by staff this afternoon.

Mr. Greene suggested inserting “complete reseeding” following “newly installed replacement sod” in paragraphs 2 under (iii) and 4.

Chairman Openshaw requested that Mrs. West repeat the amended substitute motion as offered by Commissioner Baucom. Mrs. West stated that the substitute motion as amended was to adopt the Amendment to the Water Conservation Ordinance as proposed by staff with the addition of the following language in paragraphs 2 under (iii) and 4: “. . . newly installed replacement sod, complete reseeding, or natural ground cover.”

Following further discussion, Mr. Greene stated that staff needs to bring the Water Conservation Plan back to the Board at a future time. He suggested that if the Board could agree on acceptable language for the ordinance on an interim basis, then staff could come back with better language at a future date.

With there being no further discussion, the substitute motion, as amended, was passed unanimously.

AMENDMENT TO WATER CONSERVATION ORDINANCE

WHEREAS, an amended and restated Water Conservation Ordinance was approved by the Union County Board of Commissioners on April 6, 2009; and

WHEREAS, the Board desires to modify the Ordinance to enable variances for newly installed replacement sod or natural ground cover within the parameters of an established lawn during any period that a Stage II Water Shortage Condition is in effect.

NOW, THEREFORE, BE IT ORDAINED BY THE UNION COUNTY BOARD OF COMMISSIONERS that the Water Conservation Ordinance is amended as set out below.

1. Delete Article X of the Water Conservation Ordinance as written, and replace with the following:

Article X

UCPW is authorized to issue variances in accordance with this Article permitting any customer satisfying the requirements of this Article to use water for a purpose that would otherwise be prohibited by water conservation controls then in effect.

During any period that declaration of a Stage II Water Shortage Condition is in effect, UCPW may issue variances provided that each of the following conditions is satisfied: (i) the customer applies for a variance using forms provided by UCPW; (ii) the customer pays a variance registration fee in such amount as determined by the Director, not to exceed twenty-five dollars (\$25.00); (iii) the application pertains to a new lawn and/or landscape installed incident to new construction, or to newly installed replacement sod, complete reseeding, or natural ground cover within the parameters of an established lawn; (iv) if pertaining to new lawn and/or landscape installed incident to new construction, the customer applies for a variance either before issuance of a certificate of occupancy or within ninety (90) days after issuance of a certificate of occupancy relative to this new construction; and (v) the customer submits with the application such supporting documentation as required by UCPW to substantiate that these conditions have been satisfied.

During any period that declaration of a Stage III Water Shortage Condition is in effect, UCPW may issue variances provided that each of the following conditions is satisfied: (i) the customer applies for a variance using forms provided by UCPW; (ii) the customer pays a variance registration fee in such amount as determined by the Director, not to exceed twenty-five dollars (\$25.00); (iii) the application pertains to a new lawn and/or landscape installed incident to new construction; (iv) the customer applies for a variance either before issuance of a certificate of occupancy or within ninety (90) days after issuance of a certificate of occupancy relative to this new construction; and (v) the customer submits with the application such supporting documentation as required by UCPW to substantiate that these conditions have been satisfied.

Upon receipt of a variance from UCPW, the customer may be permitted to water such newly installed lawn and/or landscape, or such newly installed replacement sod, complete reseeding, or natural ground cover, for a period not to exceed forty-five (45) days from the date of issuance of the variance. During the period that the variance is in effect, the customer shall post signage provided by UCPW to signify the customer's temporary exempt status from water conservation controls otherwise in effect. The customer shall post such sign within two (2) feet of the driveway entrance. In any variance issued pursuant to this Article, UCPW may impose such conditions and restrictions as are appropriate to require that water used from the Union County water system be minimized to the extent practical. Variances issued pursuant to this Article shall terminate upon the earlier occurrence of the following: (i) forty-five (45) days from the date of issuance; or (ii) declaration by the County Manager pursuant to Article V, Section I, of a Stage IV Mandatory Water Shortage Condition. In addition, the County Manager may direct that UCPW cease issuance of new variances in the event it is determined that further issuance will likely result in increased demand that will equal or exceed the treatment and/or transmission capacity of the system or portions thereof.

Any customer receiving a variance pursuant to this Article who violates the terms thereof shall be subject to a civil penalty pursuant to Article VII, Section I(c), and to revocation of the variance. Any person who has violated the terms of any variance issued pursuant to this Article or any mandatory water conservation control imposed pursuant to this Ordinance may be denied a variance, notwithstanding any provision of this Article to the contrary.

2. Except as herein amended, the terms and provisions of the Water Conservation Ordinance shall remain in full force and effect.

Adopted this the 5th day of October, 2009.

Direction to Manager to Have Someone from Staff Speak During the Conditional Use Permit Hearing at the Town of Waxhaw for Historic Ventures Regarding Potential Stormwater Impact on the County's Adjacent Property and to Clarify the Situation with Regards to Availability of Water and Sewer on that Particular Piece of Property (Added to Agenda at Request of Chairman Openshaw):

Chairman Openshaw said that he would like to hear the rationale for what is available in connection with water and sewer and how it will be parceled out, but he did not necessarily need that explanation at this meeting. He said he would like to have this information so that when Waxhaw Town Council is making its decision on the conditional use permit for Historic Ventures, Waxhaw will have precise numbers as far as the County is concerned.

Mr. Greene responded that he understood the question about the availability of water and sewer to the property, but he would like clarification regarding the comments on stormwater. Chairman Openshaw explained that Historic Ventures has two approved plans from the Waxhaw Planning Board, one that includes the County-owned tract and one design without that parcel. He stated if the conditional use permit is issued without the County-owned property, then there will be a stormwater pond adjacent to the County's property. He said that he was concerned about the overflow from the stormwater pond and its impact on the County-owned property.

Mr. Greene asked if the comment would be that the County hopes that the ultimate stormwater design, which has not been completed, would be such that it would prevent overflow onto the County-owned property. Chairman Openshaw stated that this was correct, and it should be included in the public hearing record.

Commissioner Baucom questioned if there needed to be a motion to that effect. Chairman Openshaw asked the Manager if it was acceptable to him to receive direction from the Board without having a motion on this issue, since there had been no opposition expressed by the Board. Mr. Greene stated that he understood the Board's direction, and assured he had no problem with receiving it as direction from the Board. He stated that staff would find out when Waxhaw would be conducting the public hearing and someone from the County would attend.

Announcements of Vacancies on Boards and Committees:

Chairman Openshaw announced vacancies on the following boards and committees:

- a. Adult Care Home Advisory Committee (5 Vacancies)
- b. Nursing Home Advisory Committee (4 Vacancies)
- c. Region F Aging Advisory Committee (1 Vacancy)
- d. Juvenile Crime Prevention Council:
 1. Member of Faith Community
 2. County Commissioner Appointees (3)
 3. Substance Abuse Professional
- e. Union County Industrial Facilities and Pollution Control Authority (2 Vacancies for Unexpired Terms Ending May 2014)
- f. Parks and Recreation Advisory Committee (1 Vacancy for Unexpired Term Ending in February 2011 Due to Resignation)

Vice Chair Rogers asked for an update on the status of working with the schools to request that vacancies on the County's boards and committees be included in the schools' newsletters. Matthew Delk, Assistant County Manager, responded that Brett Vines, Union County Public Information Officer, has communicated with Mrs. Ingram, the Schools' Public Information Officer, and she was going to forward the information listing the existing vacancies to the schools' principals. Vice Chair Rogers requested that an item be included on the next regular meeting agenda to formalize this request.

Appointments to Boards and Committees:

- a. Adult Care Home Advisory Committee – Chairman Openshaw moved to appoint Chris Lombard to serve on this committee. The motion was passed unanimously.
- b. Parks and Recreation Advisory Committee (Ex Officio Members) – Chairman Openshaw stated that there is a vacancy on this committee for an ex officio member which had been filled originally by the Travel and Tourism Director for the City of Monroe. He said that the City has suggested Jan Ball, who serves as the City of Monroe’s Economic Development Specialist, to fill this position.

Chairman Openshaw moved to appoint Jan Ball, as recommended by the City of Monroe, to fill the ex officio position formerly held by the Travel and Tourism Director for the City of Monroe. The motion was passed unanimously.

Manager's Comments:

Al Greene, County Manager, reminded the Board of the work session on Wednesday, October 7, 2009, beginning at 11:00 a.m.

He expressed appreciation to the Board for all of the members responding about their availability to attend work sessions later in October. He said that after receiving those responses, staff was suggesting October 21, 2009, as the date for the first work session regarding the County’s financial position. He stated that the October 21st work session would focus on water and sewer issues, water and sewer capital improvement program, fiscal policies, etc. He said that an e-mail would be sent to the Board tomorrow regarding this work session.

Commissioners' Comments:

Commissioner Mills stated that Greg Graham, a friend of his, who is the Executive Director of the Centralina Boy Scouts of America, has taken another job in Florida. He said that Mr. Graham’s farewell meeting with the scouts in Union County was tonight. He stated that Mr. Graham would be missed and he had done a great job in Union County.

Commissioner Mills shared that he has heard comments lately from a few people that are or are not using Jesse Helms Park. He requested an update on the use of that park. He said that he did not know if it is because of the fee being charged per car entering the park, but he did not believe the park is being used as it was intended to be used.

There were no comments by Vice Chair Rogers.

Commissioner Baucom offered congratulations to Kathy Bragg, who was reappointed to the National Red Cross President's Advisory Council. He stated that Mrs. Bragg is the Executive Director of the Union County Chapter of the American Red Cross and does a great job. He said that her reappointment to the National Red Cross President's Advisory Council makes bold statements about the quality of work that the Red Cross does in Union County and of Mrs. Bragg's leadership as well as it lends credence that a county of Union's size and demographics will be represented at the national level of the Red Cross.

He noted that the Ag Appreciation event was held on September 24 at the Union County Ag Center. He expressed appreciation to Mr. Greene and the department heads who attended the event. He shared that there were approximately 600 attendees at the dinner. Commissioner Baucom said that the Union County Farm Family of the Year Award was presented to Greg Hargett, his wife, Gina, and Greg's dad, Ted Hargett. He also noted that Harry Myers, a former Union County Commissioner, was inducted into the Union County Agriculture Hall of Fame. He stated that Mr. Myers has been a lifelong resident of Union County and has operated a dairy in the County. He said that Mr. Myers built a milk processing plant in Union County when pasteurization was new.

Commissioner Baucom also noted that *CNN Magazine* ranked Union County tenth in the most job growth of any counties in the nation since 2000. He recognized Chris Plate' of the City of Monroe's Economic Development and Maurice Ewing, President of Union County Partnership for Progress, for playing vital roles in this success.

Commissioner Kuehler reminded everyone of the Governance Advisory Committee meetings. She said that some members of the public have attended these meetings, and there is a public comment period offered at each meeting. She stated that the Committee meets on the fourth Wednesday of each month, and it will be meeting on October 28, 2009, at 6:30 p.m. in the Personnel Training Room. She said that the committee consists of a very diverse group which has done a lot of work, had a lot of discussion, and has conducted a lot of research. She stated that there will be good discussions taking place at this month's meeting as well as the next several meetings about district representation and input from citizens is desirable for discussion by this committee.

Chairman Openshaw thanked Commissioner Mills for his comments about the use of Jesse Helms Park. He said that this matter was discussed recently by the Parks and Recreation Advisory Committee. He said that it seems that the organizations that wish to use the park for different events are on tight budgets, and the feeling that he had gotten is the fees that are being charged are inhibiting these groups from using the park.

The Chairman shared information about a recent newspaper article regarding the purchase and use of property for restoration of streams and wetlands. He said a fund has been established in Raleigh so that when the Department of Transportation builds new roads and violates wetlands and streams, the person who impacts the wetlands and streams has to contribute money to this fund. He said that he had read in the article that there is a 17-acre tract in Union County that is going to be restored, which is just south of Highway 84 and comes down to New Town Road near Roscoe Howey Road. He said that it will be at least 50 feet wide on either side of the stream for a total of 5,000 feet. He stated that some of the money that is deposited in Raleigh is coming back to Union County, and there are three other sites in Union County with two of those sites being on Highway 601 South and one site near the Wolfe Pond Road area.

Chairman Openshaw offered congratulations to the Union County Arts Council for having been awarded a grant of approximately \$52,000.

He reminded the Board of the Mayors-Commissioners Issues Conference (MICIC) meeting on Thursday, October 15, 2009, at 6:00 p.m. at the Mineral Springs Town Hall.

The Chairman congratulated Marvin Ridge High School for being selected as the number one academic school in the tri-county area of Mecklenburg, Cabarrus, and Union Counties.

With there being no further items for discussion, at approximately 9:20 p.m., Commissioner Baucom moved adjournment of the regular meeting. The meeting was passed unanimously.