

July 24, 2006

The Union County Board of Commissioners met in a regular meeting on Monday, July 24, 2006, at 7:00 p.m. in the Commissioners' Formal Board Room, ninth floor, Union County Government Center, 500 North Main Street, Monroe, North Carolina. The following were

PRESENT: Chairman Roger Lane, Vice Chairman Hughie Sexton, Commissioner Kevin Pressley, Commissioner Stony Rushing, and Commissioner Richard Stone

ABSENT: None

ALSO PRESENT: Mike Shalati, County Manager, Lynn G. West, Clerk to the Board of Commissioners, Jeff Crook, Senior Staff Attorney, Christie Putnam, Public Works Director, Kai Nelson, Finance Director, members of the press, and other interested citizens

**OPENING OF MEETING:**

Chairman Lane opened the meeting, welcomed everyone present, and asked that all cellular telephones be silenced during the meeting.

a. ***Invocation***

Chairman Lane led the body in reciting the Pledge of Allegiance to the American flag.

b. ***Informal Comments***

Jim King addressed the Board regarding the Veterans Day holiday. He said that he does not believe enough can be done to honor or support veterans. However, he stated that he did not agree that the proposed Veterans Day holiday for County employees is the way to show that support and honor.

He discussed the number of paid holidays, sick days, and vacation days that County employees receive. He stated that most companies in Union County do not give their employees those types of benefits. Mr. King said that he had calculated that counting weekends and adding another holiday for Veterans Day, the County offices would be closed 31.6 percent of the total days of the year. He suggested that the County should revert to observing a rotating holiday or making Veterans Day an optional holiday for County offices.

Mr. King stated that closing the offices on Veterans Day is an expense to the County. He urged the Board to think this matter through and not close County offices for an additional day.

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

Chairman Lane requested that an item be added to the Agenda to consider the adoption of the *"Resolution of the County of Union, North Carolina, declaring the Intent of the County of Union, North Carolina to reimburse itself for Capital Expenditures Incurred in Connection with the Acquisition, Construction, Improvement, Equipping and Furnishing of School Facilities in the County from the Proceeds of Certain Tax-Exempt Obligations to be Issued in Calendar Year 2006 or 2007."* He stated that without objection from the Board, this item would become Item 6c.

Commissioner Rushing requested to move Item 6 from the Consent Agenda - Budget Amendment #3 Appropriating Contingency Funds for Board of Commissioners' Legal Expenses to the regular agenda. Chairman Lane stated that this item would become 5d.

Commissioner Stone noted that the resolution and Budget Amendment in regards to Item 13 on the regular agenda - House Bill 320, SL 2005-345, Section 27B were either faxed to the Board late this afternoon or the Board had received this information immediately prior to the meeting. He stated that the resolution and budget amendment are not time sensitive and offered that the Board could postpone action on these items until the next meeting, if it so desired.

Vice Chairman Sexton requested the addition of two items to the regular agenda: 1) update on discussions with the environmental legal counsel regarding the Monroe Bypass that the Board had requested to investigate the prospects of possibly instituting a legal action against the environmental agencies in regards to the Monroe Bypass; and 2) an update by Senator Eddie Goodall on Senate Bill 350. Chairman Lane stated that the item for an update on the environmental legal counsel would become Item 13c and the update from Senator Goodall would become Item 4d on the Regular agenda.

With there being no further additions or deletions to the agenda, Commissioner Pressley moved to approve the agenda as modified. The motion was passed unanimously.

**CONSENT AGENDA:**

Chairman Lane moved to approve the items listed on the Consent Agenda as modified. The motion was passed unanimously.

***Sheriff's Office:*** Approved Amendment to Deputy Contract with Town of Indian Trail to add two deputies.

***Amendment to Personnel Resolution Regarding Separation Allowance:*** Adopted Amendment to Article XI, Section 8, to the County's Personnel Resolution entitled Special Separation Allowance as follows:

**ARTICLE XI**  
**SECTION 8**  
**Special Separation Allowance**

Every County employee who is a member of the North Carolina Local Governmental Employee Retirement System shall receive, beginning on the last day of the month in which the employee retires on a basic service retirement, an annual separation allowance equal to .085 percent of the annual equivalent of the employee's most recent base rate of compensation for each year of creditable service. The allowance shall be paid in 12 equal installments on the last day of each month. The calculation formula is last salary x 0.85 percent x Number of Years of Creditable Service. To qualify for the allowance, the local government employee shall:

- (1) Have (a) completed 30 years or more of creditable service or, (b) have attained 55 years of age and completed five or more years of creditable service; and
- (2) Not have attained 62 years of age; and
- (3) Have completed at least five years of continuous service as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect a qualification to receive the allowance, provided the employee returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.

As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the employee is a member.

The special separation allowance payments shall cease at the time the retired employee reaches 62 years of age. Also, if a retired employee dies or is re-employed in any capacity by a North Carolina city, town, county or the State of North Carolina, payments shall also cease; provided, however, that a retired employee may continue to receive separation allowance payments if (i) the employee returns to work for Union County government on a temporary part-time basis, (ii) such employment is terminable at will without regard to termination procedures otherwise available to County employees under this Personnel Resolution, and (iii) the employee is otherwise qualified to receive the allowance.

Union County will not entertain individual requests for waiver of this policy.

This provision for the special separation allowance is effective July 1, 1990.

***Cooperative Extension:*** a) Authorized Manager to Approve Grant Agreement providing State funds for the Urban Forester Program (no additional county funds required); b) approved Budget Amendment #2 to the Cooperative Extension Services Budget increasing Personnel Services by \$50,050 and Revenue by \$30,000 and decreasing Payments to Other Governments by \$20,050, and c) approved adding Urban Forester

Position, Pay Grade 69, to the County's Pay Plan and Classification System and increased Cooperative Extension position authorization from 12 FTE's to 13 FTE's.

**Finance Department:** Approved Motor Vehicle Tax Refund Overpayments for June 2006 in the amount of \$7,286.24

**Public Works Department:** Approved refund to Union County Public Schools for Porter Ridge School Excess Capacity Fee in the amount of \$7,250.

**Budget Amendment #3 Appropriating Contingency Fund for Board of Commissioners' Legal Expenses:** Moved to regular agenda at request of Commissioner Rushing

**Tax Administrator:** Approved Collector's Annual Settlement Report for Fiscal Year Ending June 30, 2006, as set forth below:



**UNION COUNTY**  
**Office of the Tax Administrator**  
**Collections Division**

407 N. Main Street  
P.O. Box 38  
Monroe, NC 28111-0038

704-283-3848  
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**PRELIMINARY REPORT FOR FISCAL YEAR 2005-2006**

TO: Union County Board of Commissioners

FROM: John C. Petoskey, Tax Administrator  
Vann Harrell, Assistant Collector of Revenue

CC: Mike Shalati, County Manager  
Kai Nelson, Finance Director

RE: Annual Settlement

DATE: July 14, 2006

In accordance with N.C.G.S 105-375(a)(1), I respectfully submit the following Report:

Attached to this Report are discs containing (1) a list of the persons owning real property whose taxes for 2005 remain unpaid along with the principal amount owed by each person, (2) a list of the persons not owning real property whose personal property taxes for 2005 remain unpaid along with the principal amount owed by each taxpayer, (3) a list of unpaid 2005 registered motor vehicle taxes, (4) a list of persons with unpaid delinquent real and personal property taxes, and (5) a list of persons with unpaid delinquent registered motor vehicle taxes.

We respectfully request that this list of personal property owners be declared insolvent under the guidelines of N.C.G.S 105-373(a)(2) and allowed as a credit to the Collector in this settlement. However, these

accounts will remain in the hands of the Collector for further collection activities pursuant to the North Carolina General Statutes.

In compliance with N.C.G.S. 105-373(a)(3), attached hereto is a report entitled "Settlement for Current Real Estate and Personal Property Taxes for Fiscal Year 2005-2006" dated July 14, 2006 setting forth my full settlement for all real and personal property taxes in my hands for collection for the fiscal year 2005-2006.

In compliance with N.C.G.S. 105-373(a)(4)(b), attached hereto is a report entitled "Fiscal year 2005-2006 Settlement for Delinquent Real and Personal Property Taxes for Tax Years 1995-2004" dated July 14, 2006 setting forth my full settlement for all delinquent real and personal property taxes collected during the fiscal year 2005-2006.

In compliance with N.C.G.S. 105-373(a)(3), attached hereto is a report entitled "Settlement for Current Motor Vehicle Taxes for Fiscal Year 2005-2006" dated July 14, 2006 setting forth my full settlement for all registered motor vehicle taxes in my hands for collection for the fiscal year 2005-2006.

In compliance with N.C.G.S. 105-373(a)(4)(b), attached hereto is a report entitled "Fiscal year 2005-2006 Settlement for Delinquent Registered Motor Vehicle Taxes for Tax Years 2001-2004" dated July 14, 2006 setting forth my full settlement for all delinquent registered motor vehicle taxes collected during the fiscal year 2005-2006

Further, I hereby certify that I have made diligent efforts to collect the taxes due from the persons listed in such a manner that is reasonably necessary as prescribed and allowed by law.

Respectfully Submitted,

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

SWORN TO AND SUBSCRIBED BEFORE ME, this \_\_\_\_\_ day of July, 2006.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



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**SETTLEMENT FOR CURRENT REAL AND PERSONAL PROPERTY TAXES  
FOR FISCAL YEAR 2005-2006**

**TO:** Union County Board of Commissioners  
**FROM:** John C. Petoskey, Tax Administrator  
Vann Harrell, Assistant Collector of Revenue

CC: Mike Shalati, County Manager  
Kai Nelson, Finance Director

DATE: July 14, 2006

**CHARGES TO TAX COLLECTOR**

1.	Total amount of all taxes, fire fees, & late list penalties Placed in the Tax Collector's hands for collection for The year:	\$86,251,778.23
2.	Misc. Adjustment to monthly collection reports:	\$ 82.29
3.	All interest, costs, and fees collected by the Tax Collector	\$ 213,377.05
4.	General Ledger correction and system billing error	\$ 1,626.13

**TOTAL: \$86,466,863.70**

**CREDITS TO TAX COLLECTOR**

1.	All sums deposited by the Tax Collector to the credit Of the taxing unit or received for by the proper official:	\$84,745,674.17
2.	Miscellaneous adjustment to monthly collection report:	\$ 82.29
3.	Releases allowed by the governing body:	\$ 350,891.81
4.	The principal amount of taxes constituting liens Against real property:	\$ 1,119,773.03
5.	The principal amount of taxes determined to be Insolvent and to be allowed as credits to the Tax Collector by the governing body:	\$ 242,733.29
6.	Small under/over payments write-off (<\$1.00):	\$ 117.71
7.	\$5.00 minimum bill write-offs:	\$ 7,591.40

**TOTAL: \$86,466,863.70**



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**FISCAL YEAR 2005-2006**  
**SETTLEMENT FOR DELINQUENT REAL AND PERSONAL PROPERTY**  
**TAXES FOR YEARS 1995 - 2004**

**TO:** Union County Board of Commissioners  
**FROM:** John C. Petoskey, Tax Administrator  
 Vann Harrell, Assistant Collector of Revenue

**CC:** Mike Shalati, County Manager  
 Kai Nelson, Finance Director

**DATE:** July 14, 2006

**CHARGES TO TAX COLLECTOR**

1.	Total amount of delinquent taxes placed in the Tax Collector's hands for collection for this year:	\$ 2,328,755.05
2.	All interest, costs, and fees collected by the Tax Collector	\$ 133,090.86
<b>TOTAL:</b>		<b><u>\$ 2,461,845.91</u></b>

**CREDITS TO TAX COLLECTOR**

2.	All sums deposited by the Tax Collector to the credit Of the taxing unit or receipted for by the proper official:	\$ 1,399,670.07
2.	Releases allowed by the governing body:	\$ 12,559.00
3.	Write-offs allowed by governing body:	\$ 68.15
4.	The principal amount of taxes constituting liens Against real and personal property:	\$ 1,049,548.69
<b>TOTAL:</b>		<b><u>\$ 2,461,845.91</u></b>



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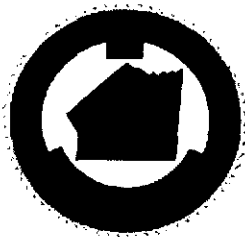
**FY 05-06 Breakdown of Settlement for Delinquent Real and Personal Property Taxes for Tax Years 1995-2004**

<b>Charges to the Collector</b>				
	Beginning Balance	Levy Added	Supplementals	Total Balance
2004	\$ 1,253,434.61	\$121,241.23	\$ -	\$ 1,374,675.84
2003	\$ 376,463.38	\$ 41,060.88	\$ -	\$ 417,524.26
2002	\$ 189,829.82	\$ 19,192.54	\$ -	\$ 209,022.36
2001	\$ 108,165.40	\$ 3,389.94	\$ -	\$ 111,555.34

2000	\$	66,178.83	\$	-	\$	-	\$	66,178.83
1999	\$	53,513.76	\$	-	\$	-	\$	53,513.76
1998	\$	36,846.41	\$	-	\$	-	\$	36,846.41
1997	\$	23,617.15	\$	-	\$	-	\$	23,617.15
1996	\$	17,801.29	\$	-	\$	-	\$	17,801.29
1995	\$	18,019.81	\$	-	\$	-	\$	18,019.81
Totals	\$	2,143,870.46	\$	184,884.59	\$	-	\$	2,328,755.05

<b>Credits to the Collector</b>					
	Sums Deposited	Releases	Write-offs	Balance of credits to Collector	Principal amount outstanding
2004	\$ 947,824.42	\$ 7,899.44	\$ 2.75	\$ 955,726.61	\$ 418,949.23
2003	\$ 187,956.64	\$ 2,880.80	\$ 18.31	\$ 190,855.75	\$ 226,668.51
2002	\$ 69,564.16	\$ 1,101.65	\$ 14.59	\$ 70,680.40	\$ 138,341.96
2001	\$ 27,395.25	\$ 188.80	\$ 16.32	\$ 27,600.37	\$ 83,954.97
2000	\$ 14,127.51	\$ 65.33	\$ 16.18	\$ 14,209.02	\$ 51,969.81
1999	\$ 8,920.55	\$ -	\$ -	\$ 8,920.55	\$ 44,593.21
1998	\$ 4,405.10	\$ 143.04	\$ -	\$ 4,548.14	\$ 32,298.27
1997	\$ 2,865.68	\$ 109.32	\$ -	\$ 2,975.00	\$ 20,642.15
1996	\$ 1,776.16	\$ 105.13	\$ -	\$ 1,881.29	\$ 15,920.00
1995	\$ 1,743.74	\$ 65.49	\$ -	\$ 1,809.23	\$ 16,210.58
Totals	\$ 1,266,579.21	\$ 12,559.00	\$ 68.15	\$ 1,279,206.36	\$ 1,049,548.69

\* The dollar amounts shown are not reflective of interest amount shown collected on previous page



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**SETTLEMENT FOR CURRENT REGISTERED MOTOR VEHICLE TAXES**  
**FOR FISCAL YEAR 2005-2006**

**TO:** Union County Board of Commissioners  
**FROM:** John C. Petoskey, Tax Administrator  
Vann Harrell, Assistant Collector of Revenue  
  
**CC:** Mike Shalati, County Manager



Kai Nelson, Finance Director

**DATE:** July 14, 2006

**CHARGES TO TAX COLLECTOR**

2.	Total amount of all taxes placed in the Tax Collector's hands for collection for the year:	\$10,200,709.70
2.	All interest, costs, and fees collected by the Tax Collector	\$ 97,834.40
<b>TOTAL:</b>		<b><u>\$10,298,544.10</u></b>

**CREDITS TO TAX COLLECTOR**

3.	All sums deposited by the Tax Collector to the credit Of the taxing unit or received for by the proper official:	\$ 9,264,342.93
2.	Release and refunds allowed by governing body:	\$ 200,981.37
3.	Reimbursements approved by the governing body:	\$ (47,465.65)
4.	\$1.00 over and under adjustments:	\$ (316.82)
5.	The principal amount of registered motor vehicle Taxes outstanding:	\$ 881,002.27
<b>TOTAL:</b>		<b><u>\$10,298,544.10</u></b>



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**FISCAL YEAR 2005-2006**  
**SETTLEMENT FOR DELINQUENT MOTOR VEHICLE TAXES**  
**FOR YEARS 2001-2004**

**TO:** Union County Board of Commissioners  
**FROM:** John C. Petoskey, Tax Administrator  
Vann Harrell, Assistant Collector of Revenue

**CC:** Mike Shalati, County Manager  
Kai Nelson, Finance Director

**DATE:** July 14, 2006

**CHARGES TO TAX COLLECTOR**

2.	Total amount of delinquent taxes placed in the Tax
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Collector's hands for collection for this year:	\$ 1,358,932.59
2. All interest, costs, and fees collected by the Tax Collector	\$ 116,459.71
<b>TOTAL:</b>	<b><u>\$ 1,475,392.30</u></b>

**CREDITS TO TAX COLLECTOR**

4. All sums deposited by the Tax Collector to the credit Of the taxing unit or received for by the proper official:	\$ 749,265.03
2. Releases allowed by the governing body:	\$ 28,502.83
3. Write-offs allowed by governing body:	\$ 216,018.34
4. Reimbursements approved by governing body:	\$ (25,679.38)
5. \$1.00 over and under adjustments:	\$ (44.79)
6. The principal amount of delinquent motor vehicle taxes outstanding	\$ 507,330.27
<b>TOTAL:</b>	<b><u>\$ 1,475,392.30</u></b>



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**FY 05-06 Breakdown of Settlement for Delinquent Motor Vehicle Taxes  
for Tax Years 2001-2004**

<b>Charges to the Collector</b>				
	Beginning Balance	Levy Added	Supplementals	Total Balance
2004	\$ 803,283.84	\$ -	\$ -	\$ 803,283.84
2003	\$ 317,213.50	\$ -	\$ -	\$ 317,213.50
2002	\$ 137,041.71	\$ -	\$ -	\$ 137,041.71
2001	\$ 101,393.54	\$ -	\$ -	\$ 101,393.54
<b>Totals</b>	<b>\$ 1,358,932.59</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 1,358,932.59</b>

<b>Credits to the Collector</b>				
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	Sums Deposited	Total Net Releases, Refunds, Adjustments, and Reimbursements	Writeoffs	Balance of credits to Collector	Principal amount outstanding
2004	\$ 571,019.29	\$ 3,490.70	\$ -	\$ 574,509.99	\$ 228,773.85
2003	\$ 38,621.67	\$ 35.41	\$ -	\$ 38,657.08	\$ 278,556.42
2002	\$ 15,607.15	\$ (658.29)	\$ 122,092.85	\$ 137,041.71	\$ -
2001	\$ 7,557.21	\$ (89.16)	\$ 93,925.49	\$ 101,393.54	\$ -
Totals	\$ 632,805.32	\$ 2,778.66	\$ 216,018.34	\$ 851,602.32	\$ 507,330.27

\* The dollar amounts shown are not reflective of interest amount shown collected on previous page

**Tax Administrator:** Approved Departmental Monthly Report for Tax Administrator for June 2006.

**PLANNING DEPARTMENT:**

**a. Re: Amendment to Land Use Ordinance Extending the 12-Month Moratorium on Major Residential Development**

Vice Chairman Sexton moved adoption of the Amendment to the Union County Land Use Ordinance Extending the 12-Month Moratorium on Major Residential Development and adoption of the Compliance Statement in accordance with G.S. 153A-341 set forth below. The motion passed by a vote of three to two. Chairman Lane, Vice Chairman Sexton, and Commissioner Stone voted in favor of the motion. Commissioner Pressley and Commissioner Rushing voted against the motion.

**Compliance Statement:** Whereas, in accordance with the provisions of N.C.G.S. 153A-341, the Board of County Commissioners does hereby find and determine that adoption of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that adoption of the proposed text amendment is reasonable and in the public interest because it provides additional time necessary for the Board to complete ongoing efforts to resolve issues related to rapid population growth, public school overcrowding, and public school facility financing as described in the proposed amendment.

**AMENDMENT TO THE UNION COUNTY LAND USE ORDINANCE  
EXTENDING THE 12-MONTH MORATORIUM  
ON MAJOR RESIDENTIAL DEVELOPMENT**

**WHEREAS**, pursuant to N.C.G.S. § 153A-121, the Union County Board of Commissioners (the "Board") may by ordinance define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens; and

**WHEREAS**, pursuant to N.C.G.S., Chapter 153A, Article 18, the Board may enact zoning and land use regulations; and

**WHEREAS**, pursuant to N.C.G.S. § 153A-340(h), effective September 1, 2005, the Board is expressly authorized to adopt and extend temporary moratoria on any county development approval required by law; and

**WHEREAS**, on August 15, 2005, the Board adopted a twelve (12) month moratorium (the "Moratorium") on Major Residential Development (defined below in Section 1 of this Amendment) based on the following conditions, which continue to exist and have, in some instances, worsened:

- **Population Growth.** U.S. Census Bureau data shows that during the 20-year period between 1980 and 2000, Union County's population rose from 70,380 to 123,677 residents, an increase of more than 75%. For the year beginning July 1, 2003, and ending June 30, 2004, Union County's population increased from 145,980 to 153,652, making Union the 12<sup>th</sup> fastest growing county in the United States by percentage growth among counties with populations exceeding 100,000. By the year 2020, North Carolina State Demographics project Union County's population to reach 244,044, representing a 97% increase between the years 2000 and 2020.
  - **Public School Overcrowding.** Union County's rapid population increase has led to overcrowding in the County's public schools. During the 2004-2005 school year, student enrollment at over 70% of Union County's public schools exceeded capacity levels, according to an "Out-of-Capacity" worksheet prepared by the Operations Research Education Laboratory (OR/Ed. Lab) at North Carolina State University in October, 2004.
  - **New School Construction Costs.** The Union County Public Schools' Capital Improvement Plan reflects expenditures for school construction between July 1, 2006, and June 30, 2011, currently estimated at approximately Six Hundred Million Dollars, up almost Eighty Million Dollars from the Capital Improvement Plan for July 1, 2005 through June 30, 2010, in effect at the time of adoption of the Moratorium.
  - **Revenue Deficit.** According to a study completed in December, 2004 (Local Government Fiscal Impacts of Land Uses in Union County, Dorfman Consulting, December 2004), for every additional \$1.00 that Union County collects in revenues as a result of new residential growth, the County spends approximately \$1.30 in public facilities and services to accommodate that growth.
  - **Majority of Tax Revenues Spent on Education.** Educational expenditures are expected to account for 63% of the property tax revenues the County collects in 2007, as reflected in the Manager's Recommended Budget 2006-2007. This is up from 59% of property tax revenues for the 2006 budget, in effect at the time of adoption of the Moratorium. Educational expenditures account for similar percentages of the County's local option sales tax revenues and interest income.
  - **Inability to Regulate Residential Growth Within Municipalities.** There are 14 municipalities located in Union County, 12 of which have independent zoning and land use authority. Municipal governments, however, share none of the County's responsibility for funding public school facilities.
  - **Need for New Growth Strategies.** The Board has determined that a critical need exists for more effective residential growth strategies in Union County, and it is committed to developing land use regulations that will enable the County to better coordinate residential growth with the County's ability to provide adequate public school facilities, in order to protect and promote the public health, safety, and welfare, and to maintain a high quality of life for Union County residents; and
- WHEREAS**, prior to adopting the Moratorium, the Board attempted alternative courses of action to address the conditions described above, including the following:
- **Impact Fees.** Adopted resolutions in 1998, 2000, and again in 2005, supporting special legislation that would enable Union County to impose impact fees upon new residential development. Authority for impact fees has not been granted.

■ Impact Tax. Adopted a resolution in May of 2005, in support of legislation that would allow North Carolina counties to impose an impact tax on new residential development. Authority for an impact tax has not been granted.

■ Economic Development. Established Union County Partnership for Progress, an economic development corporation, and supported the County's economic development efforts in order to encourage a greater percentage of commercial and industrial development in Union County, which would lead to increased tax revenues without the increase in demand for public schools created by residential development. UCPP has recently cautioned that its progress will be slow.

■ Density Bonus Repealed. Repealed "Smart Growth" provisions of the Union County Land Use Ordinance that allowed subdivision developers to increase density if their projects conformed to certain subdivision design requirements, such as sidewalks, street lights, street connectivity, and storm water controls; and

**WHEREAS**, the Board adopted and now seeks to extend the Moratorium in order to temporarily halt further Major Residential Development approvals while the Board works to complete development of an Adequate Public Facilities Ordinance ("APFO") for public schools and to explore other possible mechanisms that would enable Union County to manage residential growth so that the demand for public school facilities created thereby does not continue to outpace the County's ability to provide such facilities; and

**WHEREAS**, the Board adopted and now seeks to extend the Moratorium to prevent the approval and ultimate construction of an unlimited number of Major Residential Development projects that would otherwise be approved and constructed without taking into consideration Union County's ability to provide adequate public school facilities to accommodate the demand for public schools generated by such projects, and to thereby prevent a further widening of the existing gap between increased demand for public schools and the County's ability to keep pace with that demand; and

**WHEREAS**, since adopting the Moratorium, the Board and its staff have worked diligently toward development of an APFO, including but not limited to the following steps:

■ After mailing Requests for Proposals to 19 professional consulting firms and interviewing the top two firms, Union County engaged White & Smith, LLC (the "Consultant") to assist in the development of an APFO;

■ Union County staff gave at least one APFO presentation to each of the following: Union County Homebuilders Association; Union County Board of Education; Union County Planning Board; Union County Chamber of Commerce; and Union County Partnership for Progress;

■ Union County obtained a Resolution of Participation in the APFO Study Process from each of the 12 municipalities in Union County with independent zoning authority (the "Participating Municipalities");

■ Representatives from Union County, the Union County Public Schools, and the Participating Municipalities formed an APFO Task Force (the "Task Force");

■ The Task Force held four meetings with the Consultant, and the Task Force held an additional meeting without the Consultant, to work on APFO-related issues, including but not limited to: adequacy standards and formulas, service districts, procedures, remedies, mitigation, reservation of capacity, and exemptions;

■ Union County staff also held a total of four meetings with the Consultant, in person and via teleconference, to work on APFO-related issues;

- Union County staff held two meetings with representatives from the Union County Board of Education, one of which included the Consultant, to work on APFO-related issues;
- Union County staff met an additional two times to work on the APFO;
- The Consultant presented the Board a draft APFO at the Board's meeting on June 5, 2006; and

**WHEREAS**, although the Board has taken all reasonable and feasible steps to adhere to the 12-month schedule set forth in the Moratorium for addressing the problems and conditions leading to adoption of the Moratorium, the APFO development process has required more meetings of the Task Force and more meetings with the Consultant than initially contemplated, the process of developing an APFO in final draft form, an exceedingly complex document, has taken longer than anticipated, and thus provision of the APFO for consideration and implementation by the Participating Municipalities, whose cooperation is critical, has been unavoidably delayed; and

**WHEREAS**, on June 5, 2006, and June 19, 2006, the Board approved a revised schedule for completing development of an APFO that includes the following key dates:

- July 10: Board holds APFO work session with Consultant, to include involvement of Participating Municipalities and Planning Board
- August 1: Planning Board considers APFO
- August 2 – Sept. 4: Planning Board holds additional meetings, as it deems necessary
- Sept. 5: Planning Board issues recommendations
- Sept. 6-26: Consultant finalizes and formats APFO
- Oct. 3 & 10: Notice of public hearing is published
- Oct. 16: Board holds public hearing
- Nov. 6: Board takes final action on APFO
- Nov. 7: Moratorium, as extended, expires.

**NOW, THEREFORE, BE IT ORDAINED** by the Union County Board of Commissioners as follows:

1. The Moratorium adopted by the Board on August 15, 2005, which is currently scheduled to expire on August 15, 2006, shall be extended until November 7, 2006, or until the day following final action by the Board on the APFO if final action occurs prior to November 6, 2006 (the "Extension Period").

For purposes of this Amendment, the term "Major Residential Development" refers to any undertaking that would result in the creation of more than five residential lots or more than five dwelling units, including by way of illustration but not limitation: major subdivisions; multi-family dwellings; duplexes; apartment houses; and manufactured home parks and subdivisions. This term also refers to any undertaking that would result in the creation of more than five residential lots or more than five dwelling units if the proposed project were combined with any adjacent project approved during the Moratorium period, including the Extension Period, and sharing a common owner or developer.

The Moratorium does not apply to the following:

- A. Those projects for which a valid zoning/building, special use, conditional use, or major development permit was issued before the Board adopted the Moratorium. Such projects may be constructed in accordance with the terms of such permit, so long as the issued permit remains unexpired and unrevoked; provided, however, that if a project is intended to be constructed in phases or sections, the project may move forward only with respect to those phases or sections for which a valid zoning/building, special use, conditional use, or major development permit was issued before the Board adopted the Moratorium.
  - B. Those projects for which a completed application for a zoning/ building, special use, conditional use, or major development permit was filed before the Board adopted the Moratorium, but for which the requested permit was not issued before such date, so long as the requested permit is or was issued within one year from the date of application. Such projects will be treated as though the requested permit was issued before the Board adopted the Moratorium. If a project is intended to be constructed in phases or sections, the project may move forward only with respect to those phases or sections for which a completed application was submitted before the Board adopted the Moratorium. An application shall be considered completed if the application fee has been paid, if required, and the application is in appropriate form and contains sufficient information so that it would normally be accepted for processing by the County. If the permit applied for is validly denied, or if no final action is taken on the permit application within one year of the application date due to lack of diligence on the part of the applicant, or if the permit is issued but later expires or is revoked, then all future applications regarding the subject property shall be subject to the Moratorium throughout the Moratorium period, including the Extension Period.
  - C. Nursing Care Homes or Institutions; Handicapped, Aged or Infirm Homes or Institutions; Group Care Homes or Facilities; Family Care Homes; Independent Living Centers; Continuing Care Facilities; Intermediate Care Homes and Facilities; Housing for Older Persons (as defined in N.C.G.S. § 41A-6(e)(3)); Continuing Care Retirement Communities (as defined in N.C.G.S. § 58-64-1); Half-way houses; Orphanages; Sorority or fraternity living quarters; and Dormitories associated with colleges or universities.
2. Throughout the Moratorium period, including the Extension Period, all Union County departments and boards, all divisions and agencies therein, and all officers, employees, and members of the same (including but not limited to: the Planning Division Director and his staff; the Director of Inspections and his staff; the Land Use Administrator; the Planning Board and its members; and the Board of Adjustment and its members) shall cease accepting and processing all applications or other forms of requests ("applications") for permits or other forms of approval ("permits" or "approvals") associated with Major Residential Development. Applications subject to the Moratorium include, by way of illustration but not limitation: sketch plans for major subdivisions submitted to Planning Staff; applications for major development permits for major subdivisions submitted to the Planning Board; applications for building permits for multi-family dwellings submitted to the Inspections Department; applications for special use permits for residential development projects not permitted by right in the applicable zoning district submitted to the Board of Adjustment; and sketch plans for minor subdivisions exceeding five lots submitted to the Planning Director.
  2. This Amendment for an extension of the Moratorium shall become effective upon adoption and shall be incorporated into the Union County Land Use Ordinance as Appendix I.
  3. To the extent that any provision of this Amendment is inconsistent, or could be construed as inconsistent, with any provision of the Union County Land Use Ordinance, such inconsistency shall be resolved in favor of the provision that most closely serves the goals of the Moratorium and this Amendment.

Adopted this the 24th day of July, 2006.

**b. Amend Section 114 Penalties and Remedies for Violations**

Vice Chairman Sexton moved adoption of the Amendment to Section 114 - Penalties and Remedies for Violations to the Union County Land Use Ordinance and adoption of the Compliance Statement in accordance with G.S. 153A-341 as set forth below. The motion was passed by a vote of three to two. Chairman Lane, Vice Chairman Sexton, and Commissioner Stone voted in favor of the motion. Commissioner Pressley and Commissioner Rushing voted against the motion.

**Compliance Statement:** Whereas, in accordance with the provisions of N.C.G.S. 153A-341, the Board of County Commissioners does hereby find and determine that adoption of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that adoption of the proposed text amendment is reasonable and in the public interest because it strengthens the mechanisms available for enforcing the Union County Land Use Ordinance.

**Section 114 Penalties and Remedies for Violations.**

- (a) Violations of the provisions of this ordinance or failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with grants of variances or special use permits, or conditional use permits shall constitute a misdemeanor, punishable by a fine of up to five hundred dollars or a maximum thirty days imprisonment as provided in G.S. 14-4.
- (b) Any act constituting a violation of the provisions of this ordinance or a failure to comply with any of its requirements, including violations of any conditions and safeguards established in connection with the grants of variances or special or conditional use permits, shall be subject to penalties. The following penalties are hereby established:

Warning Citation - Correct Violation Within 10 days  
First Citation - ~~\$25.00~~ **\$50.00**  
Second Citation - ~~\$50.00~~ **\$200.00**  
Third and Subsequent Citations  
For Same Offense - ~~\$100.00~~ **\$500.00**

If the offender fails to pay this penalty within ten days after being cited for a violation, the penalty may be recovered by the county in a civil action in the nature of debt. A civil penalty may not be appealed to the board of adjustment if the offender was sent a final notice of violation in accordance with Section 113 and did not take an appeal to the board of adjustment within the prescribed time.

- (c) This ordinance may also be enforced by any appropriate equitable action.
- (d) Each day that any violation continues after notification by the administrator that such violation exists shall be considered a separate offense for purposes of the penalties and remedies specified in this section.



- (e) In addition, pursuant to North Carolina Statute 160A-175, the County may seek a mandatory or prohibitory injunction and an order of abatement commanding the offender to correct the unlawful condition upon or cease the unlawful use of the subject premises.
- (f) Any one, all, or any combination of the foregoing penalties and remedies may be used to enforce this ordinance.

**c. Amend Article XVI, Part I. Floodways and Floodplains**

Vice Chairman Sexton moved adoption of the Amendment to Article XVI - Floodplains, Drainage, Storm Water Management of the Union County Land Use Ordinance and adoption of the Compliance Statement in accordance with N.C.G.S. 153A-341 as set forth below. The motion was passed by a vote of three to two. Chairman Lane, Vice Chairman Sexton, and Commissioner Stone voted in favor of the motion. Commissioner Pressley and Commissioner Rushing voted against the motion.

**Compliance Statement:** Whereas, in accordance with the provisions of N.C.G.S. 153A-341, the Board of County Commissioners does hereby find and determine that adoption of the proposed text amendment is consistent with the adopted Union County Land Use Plan, and that adoption of the proposed text amendment is reasonable and in the public interest because it preserves floodplains that can be used for open space, greenways, parks, and storm water management.

**ARTICLE XVI  
FLOODPLAINS, DRAINAGE, 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(a)), (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**. With respect to manufactured home parks that are nonconforming because they are located within a floodway, manufactured homes may be relocated in such parks only if they comply with the provisions of subsection (i). **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.**~~
- (c) ~~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) 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) When base flood elevation data is not available from a federal, state or other source, the lowest floor including basement, in subsection (c) or (d) above, shall be elevated at least two (2) feet above the highest adjacent grade.
- (f) 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) — 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) — 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 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 flotation, 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 this 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 (b) (1) through (5) shall be prepared by a registered architect or engineer, and bear a registered seal.~~

~~(j) (b) Whenever, pursuant to section 253, 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) (c) 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.**

**Part II. Drainage, Erosion Control, Storm Water Management**

**UPDATE ON SENATE BILL 350:**

Chairman Lane recognized Senator Eddie Goodall to provide the Board with an update regarding the ETJ provision of Senate Bill 350.

Senator Goodall explained that during the short session of the General Assembly, there are not supposed to be any controversial local bills taken up. He stated that Representative Pryor Gibson had filed House Bill 2726 that provided ETJ for Marshville and Wingate and amended General Statute 160A-360e which generally gives the power of ETJ to County Commissions. Senator Goodall stated that Representative Gibson had signed a statement that said no public hearing would be required, that the bill was non-controversial, and was approved for introduction by each member of the House of Representatives and Senate whose district includes the area to which the bill applies. Senator Goodall said that neither he nor Representative Blackwood or Representative Almond had been apprised of this bill. He stated that once they had reviewed the proposed bill, they had asked the House Principal Clerk to disregard the bill, that it should not be considered during the short session because the statement by Representative Gibson was false. He said that was why the House Principal Clerk had disregarded the bill as requested; however, Representative Gibson found Senate Bill 350, which was available to be considered this year because it passed the Senate last year.

Senator Goodall said that several local issues were placed on Senate Bill 350, including the ETJ for Marshville and Wingate and the one-percent food tax referendum for the City of Monroe, which made the bill eligible for consideration during the short session. He stated that the Senate Bill passed the House by a fairly high margin, but when it came to the Senate for consideration, Senator Goodall had voiced his opposition stating the bill was controversial. He stated that the Senate then voted not to concur and the Bill was sent to conference. Senator Goodall said that he had been assured by Representative Gibson and Senator Garwood that in conference, Sections 8a and 8b would be stripped from the bill or least the end result would be the equivalent of the towns having to come to the Board of Commissioners to negotiate ETJ. Further, he said that last week he had discovered that in the draft bill all that had been amended was to require the towns to give the Board of Commissioners 180 days notice that the towns were exercising ETJ. Senator Goodall stated that he had been assured that this would not be the final bill. He said that he sensed that this bill would be on the agenda for Wednesday or Thursday of this week. He said that he had stressed on the floor of the Senate that his interest in this bill was not that Marshville and Wingate not have ETJ but that the Board of Commissioners and the towns should negotiate ETJ and that the Board of Commissioners make the final decision.

Senator Goodall explained that he was not suggesting that Marshville and Wingate do not deserve ETJ, but his concern was with the bill process. He stated that he was not finished with the issue and assured that he would work on it until the end of the General Assembly's short session.

Chairman Lane shared that he had called the conferees himself and suggested that the other Board members also telephone them to express their opinions on whether or not the bill should be passed.

Vice Chairman Sexton expressed his appreciation to Senator Goodall for attending tonight's meeting and providing the Board with an update on the bill. He said that he had a concern with the process wherein the County was completely circumvented. He stated that he had spoken with the legal counsel for the North Carolina Association of County Commissioners, Jim Blackburn, and he also had expressed his concern about the process that had been followed in this matter and the precedent that it set not only for Union County but also for all 100 counties in North Carolina where the local jurisdiction would be circumvented.

**UNION COUNTY WORK FIRST BIENNIAL PLAN:**

- a. Request for Designation of Standard or Electing Status for the Work First Program***
- b. Approve Proposed Work First Planning Committee***

Commissioner Stone moved approval in block Items a and c: a) to designate the Standard Status for the Union County Work First Program; and c) to approve the membership for the Work First Program Planning Committee as proposed.

The motion was passed unanimously.

- c. Appointment of Member of Board of Commissioners to Serve on the Work First Planning Committee for 2007-2009 Union County Work First Plan***

Chairman Lane pointed out that an appointment of a member of the Board of Commissioners was being requested to serve on the Work First Planning Committee. Commissioner Pressley volunteered to serve on this committee.

**WORK FIRST PLANNING COMMITTEE**  
**FOR**  
**2007-2009 UNION COUNTY WORK FIRST PLAN**

Angie Mallard – Links Program	Lillian Rorie – Union Co. Public School Personnel
Ann Yow – Omnova Solutions	Linda Gaye – Family Support Program Admin.
Annette Sullivan - UCT –	Linda Kappauf – South Piedmont Comm.College

<b>Transportation</b>	
<b>Barbara Liner– DSS Board Member</b>	<b>Lori Cahoon – Legal Aide</b>
<b>Beth Yow – Special Services I</b>	<b>Margaret Griffin – Monroe Housing Authority</b>
<b>Brad Durbin – Union Co. Homeless Shelter</b>	<b>Marilyn Vaughn – WF Social Worker</b>
<b>Caroline Haigler – Piedmont High School</b>	<b>Mary Ann Rasberry – Smart Start</b>
<b>Connie Cline – Consumer Credit Counseling</b>	<b>Mary O’Neal Mauney – F&amp;C Services Intake Sup</b>
<b>Cynthia Coley – WF Participant</b>	<b>Melinda Smith– Special Services Unit II Supervisor</b>
<b>David Hollars – Centralina Council of Gov.</b>	<b>Modene Howey – Operation Reach Out</b>
<b>Deb Stein – American Red Cross</b>	<b>Monica Coble – WF Social Worker</b>
<b>Debbie Pershing – Services Program Admin.</b>	<b>Monica Evans – SW-Intake &amp; Assessment</b>
<b>Debby Fincher – WF Supervisor</b>	<b>Nancy Hayden – Caseworker - DSS</b>
<b>Debra Hinson – SW – Intake &amp; Assessment</b>	<b>Natalie Simpson – Turning Point</b>
<b>Debra Perry – Regina’s College of Beauty</b>	<b>P.E. Bazemore – City Councilman</b>
<b>Denise Mixon– WF Caseworker</b>	<b>Pam Ackerman – WF Case Worker</b>
<b>Desiree Ramirez – WF Social Worker</b>	<b>Pam Caskey – United Family Services</b>
<b>Dianne Honeycutt – SPCC</b>	<b>Pam Demarest – Union Co. Health Department</b>
<b>Donna Little – Union Regional Medical Center</b>	<b>Patricia Anneus - WF Social Worker</b>
<b>Emily Foster – SW for Union Co. Public Schools</b>	<b>Paula Brown – WF Case worker</b>
<b>Eunice McGee – Union County Community Action</b>	<b>Paula Holmes – Union Co. Community Action</b>
<b>Faye Love – Intake &amp; Assessment Supervisor</b>	<b>Paula Jones – Vocational Rehabilitation</b>
<b>Fedder Williams– SPCC</b>	<b>Phyllis Slaymon – Christian Womens Corp.</b>
<b>Freddie Valadez – SW Supv. – Child Protective Svcs.</b>	<b>Phyllis Smith – Life &amp; Health Resource Program Admin.</b>
<b>Gene Messer– ESC/Job Link</b>	<b>Rachel Popper - Daymark Mental Health Services</b>
<b>Gloria Barrino – Crisis Assistance</b>	<b>Randall Darnell – ESC/Job Link</b>
<b>Gloria Haney – Volunteer Svs. Coordinator</b>	<b>Rev. Osco Gardin – Elizabeth Missionary Baptist Ch</b>
<b>H. Gene Herrell – Piedmont Behavioral Health Board member</b>	<b>Robin Landsman– Family &amp; Consumer Science Ed.</b>
<b>Isabelle Gillespie – Community Development Corp.</b>	<b>Schlynn Brantley – WF Case Worker</b>
<b>Jane Zebkowski– Child Support Enforcement</b>	<b>Shawn Morrison – WF Social Worker</b>
<b>Jenny Kirksey – Union Co. Health Dept.</b>	<b>Steve Ramsey – WF Supervisor</b>
<b>Karen Steeb – Community Representative</b>	<b>Suzanne Gregory – WF Case Worker</b>
<b>Jim Carpenter – Chamber of Commerce</b>	<b>Tabitha Ponds – WF Participant</b>
<b>Joy Mcquire – With Love From Jesus</b>	<b>Tangela McFadden – After Care SW</b>

Joyce Hammond – Community Representative	TBA – Health Dept Board Member
Kirk Medlin – WF Processing Asst. – DSS	Kevin Pressley, Union County Board of Commissioners

**BUDGET AMENDMENT #3 APPROPRIATING CONTINGENCY FUNDS FOR BOARD OF COMMISSIONERS' LEGAL EXPENSES (moved from Consent Agenda at Request of Commissioner Rushing:**

At the request of Commissioner Rushing, Mr. Nelson explained that this action moves \$100,000 from Contingency to provide resources for legal representation in connection with the Wal-Mart appeal.

Commissioner Rushing moved to deny Budget Amendment #3 to the Board of Commissioners' budget increasing Operating Expense by \$100,000 and decreasing Contingency by \$100,000.

Commissioner Rushing stated that the Board had been told earlier by legal counsel representing Union County in this matter that the amount that the Board had approved earlier in the appeals process would cover the legal fees through the appeals process. He said that he could not justify an additional \$100,000 in legal expenses. He further said that he thought the County had a good case and did not see the necessity of paying experts to come and testify before the Planning Board.

Vice Chairman Sexton stated that this matter has been a four-year effort, and the County has been fortunate and has prevailed at every level. He said to turn back and go in the other direction now would be fool hearted. He further said that the County had defended its ordinances, its land use plan, and the honor of Union County along with the B-2 zoning. Vice Chairman Sexton said that he wholeheartedly supported this additional funding.

Commissioner Pressley said that it was his understanding that this funding would be appropriated if the Planning Board does in fact have a quasijudicial hearing. He said that it is not known at this time if these additional funds will be needed, and he stated that he believed that appropriating the funds at this time would be pre-mature.

Chairman Lane said that he understood that the additional funding needed to be available now in order for legal counsel to approach the witnesses to assure that they would be available to testify.

Commissioner Stone said that he thought the whole premise of the comments tonight was correct in that the dollars are being set aside to defend the ordinances, if needed, and if the dollars are not needed, they would remain in the general fund.

Commissioner Rushing stated that he fully believed in defending the County's ordinances. He said that the Board had agreed earlier with legal counsel on a price and

now the Board is being told that price is not sufficient. He further said that he believes the County's case is strong, and, therefore, he does not see the necessity of paying witnesses to come before the Planning Board. Commissioner Rushing stated that in his opinion appropriating the additional dollars is a waste of money.

Vice Chairman Sexton stated that expert witnesses could not be given 24 hours' notice and expected to be available on that short notice. He said that whatever amount is needed should be appropriated so time could be put into the proper notification to have the witnesses ready.

Commissioner Pressley questioned whether the expert witnesses' testimonies could be used as a part of the appeals process.

Jeff Crook, Senior Staff Attorney, responded that currently an appeal is pending before the North Carolina Court of Appeals on the special use permit which is a separate issue from the Planning Board's process. He stated that the Planning Board's decision could be appealed as well.

Commissioner Pressley stated that if expert witnesses were needed, then there should be cost proposals from them. He said if the funds were appropriated, then the dollars would be spent.

Vice Chairman Sexton stated that he wanted to clarify that he had specifically asked legal counsel if the record of the expert witnesses could continue as the appeal moves forward, and the attorney had given an unequivocal "yes." He stated that the testimony of the expert witnesses would become a part of the record and would move with the appeal and be of benefit not only during the Planning Board's procedure but also in the next step as well if that procedure were appealed.

Following further discussion, the motion failed by a vote of two to three. Commissioner Rushing and Commissioner Pressley voted in favor of the motion. Chairman Lane, Vice Chairman Sexton, and Commissioner Stone voted against the motion.

Following the vote on the original motion, Commissioner Stone moved to approve Budget Amendment #3 increasing Operating Expense by \$100,000 and decreasing Contingency by \$100,000 to appropriate contingency funds for the Board of Commissioners' legal expenses.

The motion was passed by a vote of three to two. Chairman Lane, Vice Chairman Sexton, and Commissioner Stone voted in favor of the motion. Commissioner Pressley and Commissioner Rushing voted against the motion.

**SCHOOL GENERAL OBLIGATION BOND REFUNDUM:**

***a. Introduction of the Bond Order***

Chairman Lane recognized Kai Nelson to explain this item.

Mr. Nelson stated that this particular action represents the second in a series of three actions that the Board will be asked to take in connection with the November 2006 Bond Referendum. He reported that he, as Finance Director, has submitted an application to the Local Government Commission as directed by the Board at its meeting on July 10, 2006. He stated that the application had been accepted by the Local Government Commission.

Mr. Nelson explained that the first action requested by the Board tonight is to introduce the Bond Order. He said that there would be no vote relative to the introduction of the Bond Order. He stated that the second action by the Board would be the adoption of the Resolution Setting the Public Hearing and Directing the Publication of the Notice and Directing the Finance Director to Provide a Sworn Statement of Debt to the Clerk to the Board of Commissioners.

Roger Lane, Chairman of the Board of Commissioners (the "Board") of the County of Union, North Carolina (the "County"), introduced the following Bond Order, copies of which have been made available to the Board:

BOND ORDER AUTHORIZING THE ISSUANCE OF \$264,500,000  
GENERAL OBLIGATION SCHOOL BONDS  
OF THE COUNTY OF UNION, NORTH CAROLINA

WHEREAS, the County desires to raise \$264,500,000 to provide for the costs incurred in connection with the construction, renovation, improvement, equipping and furnishing of public school facilities within the County, including the acquisition of land or rights-of-way for current or future use, if necessary; and

WHEREAS, an application has been filed with the Secretary of the Local Government Commission of North Carolina requesting Commission approval of the general obligation school bonds hereinafter described as required by the Local Government Bond Act, and the Clerk to the Board of Commissioners has notified the Board that the application has been accepted for submission to the Local Government Commission.

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

Section 1. In order to raise the money required for the school construction described above, in addition to any funds which may be made available for such purpose from any other source, general obligation school bonds of the County are hereby authorized and shall be issued pursuant to the Local Government Finance Act of North Carolina. The maximum aggregate principal amount of such general obligation school bonds authorized by this order shall be \$264,500,000.

Section 2. A tax sufficient to pay the principal of and interest on said general obligation school bonds when due shall be annually levied and collected.

Section 3. A sworn statement of the County's debt has been filed with the Clerk to the Board and is open to public inspection.

Section 4. This bond order shall take effect when approved by the voters of the County at a referendum scheduled for November 7, 2006.

**c. Resolution of the County of Union, North Carolina Regarding a Bond Order Authorizing the Issuance of \$264,500,000 General Obligation School Bonds of the County, Setting a Public Hearing Thereon and Directing Publication of a Notice of Said Public Hearing**

Following the introduction of the Bond Order, Chairman Lane moved to adopt the Resolution of the County of Union, North Carolina Regarding Bond Order Authorizing the Issuance of \$264,500,000 General Obligation School Bonds of the County, Setting a Public Hearing Thereon and Directing Publication of a Notice of Said Public Hearing.

The motion was passed by a vote of three to two. Chairman Lane, Vice Chairman Sexton, and Commissioner Stone voted in favor of the motion. Commissioner Pressley and Commissioner Rushing voted against the motion.

RESOLUTION OF THE COUNTY OF UNION, NORTH CAROLINA REGARDING A BOND ORDER AUTHORIZING THE ISSUANCE OF \$264,500,000 GENERAL OBLIGATION SCHOOL BONDS OF THE COUNTY, SETTING A PUBLIC HEARING THEREON AND DIRECTING PUBLICATION OF A NOTICE OF SAID PUBLIC HEARING

WHEREAS, bond order entitled:

"BOND ORDER AUTHORIZING THE ISSUANCE OF \$264,500,000 GENERAL OBLIGATION SCHOOL BONDS OF THE COUNTY OF UNION, NORTH CAROLINA" and

has been introduced at a meeting of the Board of Commissioners (the "Board") of the County of Union, North Carolina this 24th day of July, 2006; and

WHEREAS, the Board desires to provide for the holding of a public hearing thereon on August 14, 2006 and the submission of a statement of debt in connection therewith as required by The Local Government Bond Act.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF UNION, NORTH CAROLINA that the public hearing on said bond order shall be held on the 14th day of August, 2006 at 7:15 p.m. in the Ninth Floor Board Room, Union County Courthouse, 500 N. Main Street, Monroe, North Carolina.

BE IT FURTHER RESOLVED that the Clerk to the Board is hereby directed to cause a copy of said bond order to be published with a notice of such hearing in the form prescribed by law in *The Enquirer-Journal* on or before the 7th day of August, 2006.

BE IT FURTHER RESOLVED that the Finance Director is hereby directed to file prior to publication of the bond order with the notice of such public hearing, a statement setting forth the

debt incurred or to be incurred, the net debt of the County, the assessed value of property subject to taxation by the County and the percentage that net debt of the County bears to the assessed value of property subject to taxation.

BE IT FURTHER RESOLVED that this Resolution shall become effective on the date of its adoption.

READ, APPROVED AND ADOPTED this the 24th day of July, 2006.

*c. "Resolution of the County of Union, North Carolina, declaring the Intent of the County of Union, North Carolina to Reimburse Itself for Capital Expenditures Incurred in Connection with the Acquisition, Construction, Improvement, Equipping and Furnishing of School Facilities in the County from the Proceeds of Certain Tax-Exempt Obligations to be Issued in Calendar Year 2006 or 2007"*

Chairman Lane moved to adopt the following resolution (the "Resolution"), a copy of which was available with the Board and which was read by title:

**RESOLUTION OF THE COUNTY OF UNION, NORTH CAROLINA DECLARING THE INTENT OF THE COUNTY OF UNION, NORTH CAROLINA TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, EQUIPPING AND FURNISHING OF SCHOOL FACILITIES IN THE COUNTY FROM THE PROCEEDS OF CERTAIN TAX-EXEMPT OBLIGATIONS TO BE ISSUED IN CALENDAR YEAR 2006 OR 2007.**

**WHEREAS**, the Board of Commissioners (the "*Board*") of the County of Union, North Carolina (the "*County*") has determined that it is in the best interests of County to (1) construct, furnish and equip elementary schools "G", "H" and "I" and (2) acquire land on which to construct middle school "C" and high school "C" (collectively, the "*Projects*");

**WHEREAS**, the County presently intends, at one time or from time to time, to finance all or a portion of the costs of the Projects with proceeds of tax-exempt obligations and reasonably expects to issue its tax-exempt obligations (the "*Obligations*") to finance, or to reimburse itself for, all or a portion of the costs of the Projects; and

**WHEREAS**, the County desires to proceed with the Projects and will incur and pay certain expenditures in connection with the Projects prior to the date of issuance of the Obligations (the "*Original Expenditures*"), such Original Expenditures to be paid for originally from a source other than the proceeds of the Obligations, and the County intends, and reasonably expects, to be reimbursed for such Original Expenditures from a portion of the proceeds of the Obligations to be issued at a date occurring after the dates of such Original Expenditures;

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

Section 1. **Official Declaration of Intent.** The County presently intends, and reasonably expects, to reimburse itself for the Original Expenditures incurred and paid by the County on or after the date occurring 60 days prior to the date of adoption of this Resolution from a portion of the proceeds of the Obligations. The County reasonably expects to issue the Obligations to finance all



or a portion of the costs of the Projects and the County reasonably expects to reimburse itself in an amount not to exceed \$80,000,000 from the proceeds of the Obligations.

Section 2. **Compliance with Regulations.** The County adopts this Resolution as a declaration of official intent under Section 1.150-2 of the Treasury Regulations promulgated under Section 103 of the Internal Revenue Code of 1986, as amended, to evidence the County's intent to reimburse itself for the Original Expenditures from proceeds of the Obligations.

Section 3. **Itemization of Capital Expenditures.** The Finance Director of the County, with advice from special counsel, is hereby authorized, directed and designated to act on behalf of the County in determining and itemizing all of the Original Expenditures incurred and paid by the County in connection with the Projects during the period commencing on the date occurring 60 days prior to the date of adoption of this Resolution and ending on the date of issuance of the Obligations.

Section 4. **Effective Date.** This Resolution is effective immediately on the date of its adoption.

Kai Nelson, Finance Director, explained that the Local Government Commission has accepted the County's application in connection with the Bond Referendum. He stated that the County's staff has had telephone conversations with representatives from the Local Government Commission in connection with the Schools' five-year Capital Improvement Program and its financing schedule. He noted that there were two bond referendum programs included in that Capital Improvement Program, one for November 2006 and another one in the amount of approximately \$140,000,000 in November 2008. He stated that there are a number of projects on the Schools' Capital Improvement Program schedule in terms of their timing and sequencing that have been accelerated and would occur before the November 2006 bond referendum.

Mr. Nelson stated that Item 7 on tonight's agenda contains several of those projects, Elementary School G, H, and I and Item 8 for the purchase of land associated with Middle and High Schools "C". He stated that because the Board has taken action in connection with those specific projects, the Local Government Commission wants the Board to finance those projects.

Mr. Nelson said that he should preface his remarks by saying that he does not believe there is any question in the Board's mind about the need to build Elementary Schools G, H, and I now, because it would take a year before they will be opened or to acquire the land in connection with Middle and High Schools "C", because it would take approximately three years to acquire land, design, and open the middle and high schools.

Commissioner Pressley questioned if these monies would be reimbursed when the bonds pass. Mr. Nelson responded that this was correct.

Commissioner Pressley added that he wanted to clarify his vote on the previous item regarding the Schools' General Obligation Bond Referendum. He apologized for voting naye on these items but said that his vote was only because of the amount of the bonds.

Mr. Shalati responded that he understood Commissioner Pressley's position as it relates to the entire bond referendum; however, he urged the Board to vote favorably for this resolution. He said that the projects included in this resolution are needed.

Following discussion, on motion of Chairman Lane, the foregoing resolution entitled **"RESOLUTION OF THE COUNTY OF UNION, NORTH CAROLINA DECLARING THE INTENT OF THE COUNTY OF UNION, NORTH CAROLINA TO REIMBURSE ITSELF FOR CAPITAL EXPENDITURES INCURRED IN CONNECTION WITH THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, EQUIPPING AND FURNISHING OF SCHOOL FACILITIES IN THE COUNTY FROM THE PROCEEDS OF CERTAIN TAX-EXEMPT OBLIGATIONS TO BE ISSUED IN CALENDAR YEAR 2006 OR 2007"** was duly adopted by the following vote:

AYES: CHAIRMAN LANE, VICE CHAIRMAN SEXTON, COMMISSIONER PRESSLEY, COMMISSIONER RUSHING, AND COMMISSIONER STONE

NAYS: NONE

**SCHOOL CAPITAL CONSTRUCTION PROJECTS:**

***a. Capital Project Ordinance #54 for various listed school construction projects which provides funding for construction, technology, furniture and fixtures and AES - (i) Classroom Additions; (ii) Rock Rest Elementary School; (iii) Elementary School "G"; (iv) Elementary School "H"; (v) Elementary School "I"; (vi) Marvin Ridge Middle and High Schools; and (vii) Middle and High Schools "C"***

Commissioner Stone moved adoption of Capital Project Ordinance (CPO) #54 to establish FY 07 school capital project budget with the project budget established by the Board pursuant to N.C.G.S. 115C-429b. The motion was passed unanimously.

**UNION COUNTY PUBLIC SCHOOLS:**

***a. Approve Purchase Price of 211 Acres Located Off Cuthbertson Road for Future School Construction***

Chairman Lane moved approval of the purchase price of 211 acres off Cuthbertson Road for future school construction at the price of \$70,000 per acre, a total of \$14,770,000 and the adoption of Capital Project Ordinance (CPO) #55.

Chairman Lane recognized Dr. Davis to address the Board in regards to this request.

Dr. Davis stated that this site is being considered for middle and high schools "C." He said that this property requires that the Board of Education enter into the condemnation process. Dr. Davis said that he had provided the County Manager with copies of documentation showing the negotiations that have taken place with the land broker and the due diligence that had been performed in this matter. He said that he had also provided

copies of the correspondence that the schools have had with the owner, but they still have not reached the point of having a willing seller in this situation.

Dr. Davis pointed out that the \$14,770,000 purchase price does not include the land broker's fee and stated that he would be coming before the Board at a later time with that information. He said that it is crucial that the school system begin site design work on this project so that middle school and high school "C" could open in the fall of 2009. He stated that the schools anticipate with this amount of acreage that two elementary schools could be placed on the property.

Commissioner Rushing asked if the landowner is still unwilling to sell the property. Dr. Davis responded that this was correct.

Commissioner Rushing asked if there were other properties in the area where the schools could approach the owners to try and find a willing seller. Dr. Davis responded that the schools have looked at other properties but not in that area. He said that this particular property was ideal for the location of the middle school and high school "C" as well as at least one elementary school. He stated that the other properties that have been considered are far removed from this area and present certain challenges that would not make them good locations for a school.

Mr. Shalati stated that it is his understanding that this property would have four or more schools located on it which served as the basis of his recommendation to the Board for approval of the purchase price. He stressed that he would not recommend approval of 211 acres if four schools would not be located thereon.

Dr. Davis responded that it is the schools' intent to construct four schools on the property. **Mr. Shalati stated that he needed a commitment to be included on the record because this property is costing a lot, and he wanted to make sure the Board was approving the purchase price of land for four schools.**

Dr. Davis responded that the school system knows that four schools would fit on the property, and it is the schools' intent to construct four schools on the property. Mr. Shalati reiterated that his recommendation was that there would be four schools located on the property. Dr. Davis stated that acquiring the 211 acres would place the schools in a very good position for the foreseeable future. He said that in terms of the schools' needs, as they relate to the projects in the upcoming bond, he did not believe they would need more than one or two sites to have the property required through 2010.

In response to a question by Vice Chairman Sexton and the County Manager, Dr. Davis stated that the schools would be looking at placing two elementary schools, one middle, and one high school on the 211 acres. **He said that it could change but the schools are committed to constructing four schools on the property.**

Discussion ensued regarding why the landowner objected to selling the property. Dr. Davis said that he thought the property had been in the landowner's family for a

number of years. Don Hughes, Director of Facilities, Planning and Construction for the schools, stated that there are no other properties in that area that the schools are aware of that they could seek acquisition of except for property that has been subdivided by developers.

Commissioner Rushing referred to excerpts from the correspondence with the landowner contained in the agenda package, which indicated that the landowner was a forester who harvested trees on the property from time to time and also runs cattle on the property. He stated that the correspondence further indicated that the owner and his mother decided together that they did not want to sell the property. Commissioner Rushing questioned if the landowner had been approached about selling a portion of the property or have the schools talked with him about having use of the land or getting a commitment from him that over the years as the schools need the land, that they could purchase it.

Mr. Hughes responded that the landowner had been approached about selling less acreage, and he had stated that he did not want to sell. He explained that the whole tract is over 700 acres, and the schools were only asking to purchase that part of the tract on Cuthbertson Road. He said they had talked about two different sizes of acreage and at the end of the conversation, the owner still was not interested in selling. Further, he said that there is no evidence of any fencing on the property and the aerial photographs show no grazing land for cattle. Mr. Hughes stated neither do the aerial photographs of the area show evidence of a tree farm. He said that the owner does not live on the property.

Commissioner Pressley stated that he had been involved in these negotiations, and they had worked several days with the owner. He said that they had met most of the wishes of the landowner except for the timeframe. He stated that they had looked at the possibility of a 150-acre land donation by the owner to the schools. Commissioner Pressley said that the last conversation that he remembers with the landowner including the deadline that had been imposed on him, the owner had said "you'll have to condemn it." He said that he hoped before the condemnation process begins, that the landowner will come back to the schools with some type of agreement. Commissioner Pressley said that he had suggested to the school board during a meeting that he was involved in with the schools the possibility of naming rights for the landowner as a means of trying to preserve his family heritage.

Dr. Davis stated that he understood the comments by both Commissioner Rushing and Commissioner Pressley about people being attached to their land. He said that the schools do not enjoy the condemnation process, but there are very few choices for school locations particularly in the area of the County where schools are needed desperately. He assured that if any point in time that the landowner should decide he wanted to become a willing seller and negotiate a donation or partial donation of land, the schools would be more than willing to enter into discussions with him. He noted that this applied in any situation where condemnation was involved for school construction.

Commissioner Pressley said that he wanted the Board to know that the landowner's wishes were that the property not be subdivided, but he wanted it to be used for a park area or a school site where it could be a heritage to his family. He said that it was not a money issue but he wanted the property to be used for a purpose to preserve his family heritage. He stated that it was a time sensitive issue and one where they had not been able to reach an agreement within the timeframe.

Commissioner Stone stated that he appreciated the comments that have been made tonight about this matter. He noted that on August 25, 2006, when the new school year begins, there will be over 6,000 students attending classes in mobile units and that is why it is necessary that schools be constructed.

Dr. Davis commented that he has seen the projections from the Department of Public Instruction (DPI) that indicate that in this coming year Union County will be the sixth largest school district of 115 districts in the entire state. He said that these projections placed Union County behind "the big five" districts which include Wake, Charlotte-Mecklenburg, Guilford, Forsyth, and Cumberland.

Commissioner Rushing asked with this amount of acreage, would there be a potential that some of the property could be used for parkland for possibly a western district park to include ball fields. He said that if this land were used for school construction, then schools could be constructed around the edge of the property and the middle of the property could be used for a large western district park. He asked Dr. Davis if the schools would be open to these discussions.

Dr. Davis responded that he believed that the Board of Education would be open to exploring that possibility. He said that the schools are very interested in partnering with parks and recreation, and he stated that this is an issue that the schools would be looking at very closely to try and develop a comprehensive agreement countywide where facilities can be shared and the community would be able to benefit from the use of the facilities to a greater extent than they currently are able to do.

Mr. Shalati stated that the County staff would explore the possibility of a joint use or shared use with the schools. He noted that there are some floodplain areas that would not be used for construction. He said that he would commit to the Board that the County staff will work with the school staff to explore the possibility of a park, but it would not be a district park because district parks require approximately 150 acres. He further stated that he was not going to spend money for parks when the priority is schools. Mr. Shalati said if there was a parcel of land that could be optimized for parks in partnership with the schools, that would be his recommendation. He stated that the County staff would explore the possibility of a park as extensively as possible with the school staff in order to make the most use of the land.

Mr. Shalati asked for clarification if the motion included that there would be four schools constructed on the property. Chairman Lane responded that was a part of the motion.

Following the discussion, the motion was passed unanimously.

**AMENDED AND RESTATED AGREEMENT WITH UNION COUNTY PUBLIC SCHOOLS IN CONNECTION WITH SALES AND USE TAX REIMBURSEMENT:**

Kai Nelson, Finance Director, stated that a year ago the General Assembly terminated the ability of the local school system to receive sales and use tax. He said that this action immediately had the effect of increasing the local school construction costs by approximately one to two million dollars each and every year. Mr. Nelson said that the staffs for the County and the school have been working over the past year to develop an agreement whereby the title to school property would be vested in the County. He said that in so doing, the County could receive the sales tax thereby saving the County's taxpayers approximately two million dollars per year. He noted that this is a historic agreement between the County and the schools.

Mr. Shalati noted that Exhibit "A" to the Agreement listed the projects to be covered under this agreement as they are known at this time and said this list would be modified in the future as the need arises.

Chairman Lane moved to approve the Amended and Restated Agreement with the Union County Public Schools and to authorize the Manager to make minor modifications, if necessary.

Commissioner Pressley questioned if Mr. Nelson had stated earlier that the Board of Commissioners would be responsible for school construction under the agreement. Mr. Nelson explained that under the terms of the Agreement, the school board would be the County's agent in all respects relative to the design, location of land, entering into construction contracts, and overseeing construction of the schools. He stressed that the agreement in no way confers upon the Board of Commissioners any of those rights.

Vice Chairman Sexton offered an amendment to the motion, that if the modifications to the agreement should become more than minor, that those modifications would be presented to the Board for reconsideration.

Chairman Lane accepted the amendment to his motion and called for a vote on the amended motion. The motion as amended was passed unanimously.

**VETERANS' DAY HOLIDAY:**

Commissioner Stone moved to approve the Veterans Day holiday as a stand-alone holiday for the County offices.

Commissioner Rushing questioned if there was a budget amendment to accompany this motion or if there would be any costs associated with the motion.

Mr. Shalati stated that there had been discussions earlier in the year that this matter would be considered in the budget process. He said that provisions were made in the budget for the Veterans Day holiday.

Commissioner Rushing asked the costs in connection with approving the Veterans Day holiday for the county offices. Kai Nelson, Finance Director, stated that under the County's current policy, E-911, Public Safety, and 24/7 operations observe no holidays. He said that they have a work schedule that they are required to work, whether or not it is a holiday. He explained that if those employees are required to work on a holiday, then they do not receive overtime pay. He said that they do accrue that particular holiday which can be used as their schedule permits. Mr. Nelson stated that the aspect of productivity for regular employees would be difficult at best to quantify. In response to a further question by Commissioner Rushing, Mr. Nelson stated that one day's worth of pay for County employees would be \$123,000.

Mr. Shalati reminded the Board that the Veterans' Day holiday had not been a request by the County staff but was an initiative by the Board.

Commissioner Rushing stated when the County offices' floating holiday was changed to the Martin Luther King Day, veterans were inquiring why they did not have their day. He said that he thought the Veterans Day holiday is needed, but he still remembers when this was discussed from the beginning and trying to save money by taking it to Veterans Day or retaining the floating holiday which allowed for a choice of holidays to be observed. He stated that the floating holiday had actually saved two holidays.

Following the discussion, the motion was passed unanimously.

**DUKE POWER RELICENSING FINAL AGREEMENT:**

Chairman Lane recognized Christie Putnam, Public Works Director, to explain this item.

Ms. Putnam stated that the Board of Commissioners previously approved the Duke Power Relicensing Agreement in Principle on April 3, 2006, and the final agreement is now available and is being presented to the Board for its consideration.

Commissioner Stone moved approval of the final Comprehensive Relicensing Agreement for the Catawba-Wateree Hydro Project, FERC Project No. 2232, and adoption of resolution authorizing the Chairman to execute the final agreement.

Commissioner Stone stressed that this agreement has a zero financial impact on the County.

The motion was passed unanimously.

**RESOLUTION**

**WHEREAS**, the Catawba-Wateree Hydroelectric Project (the "Project") owned by Duke Power Company LLC ("Duke") consists of 13 hydroelectric generation stations located on 11 reservoirs on the Catawba and Wateree rivers in North and South Carolina, and for which, in 1958, the Federal Energy Regulatory Commission ("FERC") issued a 50-year operating license that will expire on August 31, 2008; and

**WHEREAS**, Union County has direct interests in the Project due to its joint ownership with the Lancaster Water and Sewer District ("LCWSD") of the Catawba River Water Treatment Plant; and

**WHEREAS**, Duke undertook a Relicensing Process (the "Relicensing Process") for the Project to obtain a new FERC operating license (the "New License") to rise to modern-day standards for Project-related resource impacts; and

**WHEREAS**, Union County and LCWSD represented by their utilities directors, attorneys, and the Plant Director, participated as a stakeholder in the Relicensing Process during the period from 2003 through 2006; and

**WHEREAS**, the results of three years of negotiations among more than 160 stakeholders (more than 80 organizations), together representing a broad set of interests in the Project, were initially captured in a non-binding Agreement-In-Principle in April 2006 and were then formalized in a contractual Comprehensive Relicensing Agreement ("Final Agreement") that will run for the period of the New License, 40-50 years; and

**WHEREAS**, the Union County Board of Commissioners has reviewed and considered the benefits and commitments of becoming a Party to the Final Agreement and has concluded that it is in Union County's best interest to become a Party to the Final Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, that Roger Lane, Chairman of the Board of Commissioners, is approved to sign the Final Agreement for Union County thereby entering into a contract with Duke and the other Catawba-Wateree Relicensing Project Stakeholders for the certain benefits and commitments as identified in the Catawba-Wateree Relicensing Final Agreement; and

**BE IT FURTHER RESOLVED**, that Roger Lane, Chairman of the Board of Commissioners, is authorized, empowered and directed to do or cause to be done all such further acts and things as he may deem necessary or advisable to effectuate the purpose and intent of the foregoing resolution.

Adopted by the Union County Board of Commissioners this the 24th day of July, 2006.

**STATE OF NORTH CAROLINA LOAN FOR TWELVE-MILE CREEK  
WASTEWATER TREATMENT PLANT EXPANSION:**

- a. Accept State Revolving Loan Offer in the Amount of \$15,000,000***
- b. Resolution by Governing Body of Applicant***



Chairman Lane recognized Kai Nelson, Finance Director, to explain this item.

Mr. Nelson stated that this item has a very favorable financial impact on the County of 2.265 percent for 25 years on \$15,000,000. He said that this rate compared favorably to the County's more conventional revenue bond financing of approximately 4.5 percent. He further said that this transaction would save the County's utility ratepayers approximately \$4.9 million (\$3.3 million in today's dollars). Mr. Nelson stated that the Board has taken action previously on this particular item, and it is in part to finance the Twelve-Mile Creek expansion.

Chairman Lane moved to accept the State revolving loan offer in the amount of \$15,000,000 and to adopt the Resolution by the Governing Body of Applicant.

**RESOLUTION BY GOVERNING BODY OF APPLICANT**

WHEREAS, the North Carolina Clean Water Revolving Loan and Grant Act of 1987 has authorized the making of loans and grants to aid eligible units of government in financing the cost of construction of wastewater treatment works, wastewater collection systems, and water supply systems, water conservation projects, and

WHEREAS, the North Carolina Environmental Management Commission has offered a State Revolving Loan in the amount of \$15,000,000 for the expansion of the Twelve Mile Creek Wastewater Treatment Plant from 2.5 mgd to 6 mgd, and

WHEREAS, Union County, North Carolina intends to construct said project in accordance with the approved plans and specifications,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF UNION COUNTY:

That Union County does hereby accept the State Revolving Loan offer in the amount of \$15,000,000.

That Union County does hereby give assurance to the North Carolina Environmental Management Commission that all items specified in the loan offer, Section II – Assurances will be adhered to.

That Mike Shalati, County Manager, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

That Union County has substantially complied or will substantially comply with all Federal, State and local laws, rules, regulations, and ordinances applicable to the project and to Federal and State grants and loans pertaining thereto.

Adopted, this the 24<sup>th</sup> day of July, 2006 at Monroe, North Carolina.

Commissioner Rushing referred to the budget for the water and sewer fund and stated that it was recommended in the budget that \$21 million be transferred as an interfund transfer in FY 06-07. He asked the Finance Director how these dollars would be used.

Mr. Nelson referred to Page 88 of the Water and Sewer Enterprise System 2007-2011 Capital Improvement Plan (CIP). He stated that it showed the CIP to be approximately \$260 million in capital expenditures in water and sewer projects. He said that the chart on Page 88 showed \$155 million of that amount coming from debt, which contains the \$15 million from the loan proceeds, and approximately \$100 million to come from PayGo, principally in the form of capital facilities.

Commissioner Rushing questioned if there would be an opportunity for the \$15 million from the State loan to be used to pay some of the outstanding debt. Mr. Nelson stated that the staff was expecting the \$15 million loan as a part of the CIP. He said that the \$15 million was included in the Water and Sewer CIP which the Board would be presented later this evening. He further said that the vast majority of the resources in the water and sewer fund in terms of revenues in excess of expenditures relate to capacity fees.

Following further questions by Commissioner Rushing, Chairman Lane asked that the questions be held until the work session was reconvened. He stated that the question at hand was whether or not the Board would accept the loan offer and adopt the resolution.

Commissioner Rushing stated that he was asking the questions because he might consider offering a friendly amendment to the motion to use the money that would be freed up because of the \$15 million loan to pay down some the debt and possibly save even more money.

Following the discussion, the motion was passed by a vote of four to one. Chairman Lane, Vice Chairman Sexton, Commissioner Pressley, and Commissioner Stone voted in favor of the motion. Commissioner Rushing voted against the motion.

**HOUSE BILL 320, SL 2005-345, SECTION 27B:**

Commissioner Stone stated that this item had been sent to the Board via fax and copies were placed on the Board members' desk tonight.

Commissioner Stone moved to authorize the County Attorney to initiate litigation to vindicate the right to a proportionate population in District Court districts in Union County and to that end may join as a plaintiff with plaintiffs who desire to vindicate this right and to employ outside counsel for this purpose if, in the County attorney's discretion, it is reasonable or necessary to do so. The motion further included adoption of Budget Amendment #4, contained in the agenda package, increasing Operating Expense by \$10,000 and decreasing Contingency by \$10,000.

Commissioner Rushing stated that he wholeheartedly supported the motion. He said that everyone needs to understand that Union County is all one county, and to have districts drawn such as these is concerning.

The motion was passed unanimously.

**UPDATE ON ENVIRONMENTAL LEGAL COUNSEL REGARDING THE MONROE BYPASS (Addition to the Agenda at Request of Vice Chairman Sexton):**

Vice Chairman Sexton stated that in April of this year, the Board had authorized staff to pursue environmental counsel for the possibility of looking at a disparity in the way the Monroe Bypass has been handled in comparison to projects in other counties.

Christie Putnam, Public Works Director, updated the Board regarding this matter. She stated that the County has entered into an agreement with Craig Bromby with Hunton and Williams, Attorneys at Law. She said that Mr. Bromby's legal practice focuses on administrative law and environmental compliance, and he has experience in endangered species regulations. Ms. Putnam further said that Mr. Bromby has entered into enforcements against the U.S. Army Corps of Engineers, represented municipalities as well as individuals, and is located in Raleigh with offices in Washington, DC, and Atlanta, Georgia. She stated that part of the proposal of action items listed by Mr. Bromby was to contact the Army Corps of Engineers and the Federal Highway Administration Office to investigate their open items and to review the available information from those offices as well as researching the appropriate judicial alternatives which may include administrative appeals for inaction. Ms. Putnam further said that she had spoken with Mr. Bromby today and she will be meeting with him either later this week or early next week to begin gathering information to determine what action would be of assistance to the County in its endeavors.

Vice Chairman Sexton asked if Mr. Bromby's firm had an expert attorney in Washington, DC, who is one of the premiere experts in the field. Ms. Putnam stated that this was correct, and this information would be at the County's disposal. She said that the expert in Washington, DC, has a great deal of experience in the transportation field. She explained that the Monroe Bypass not only involves environmental issues but also deals with the transportation agencies in which the County staff does not have expertise. Ms. Putnam stated that Mr. Bromby was interested in the County's process and in the Monroe Bypass project. She said that he finds the County's situation to be a challenge and believes there are grounds for concern of inadequacies. She further said that Mr. Bromby's initial comments were based on inaction by some of the agencies and specifically the federal agencies and focusing on trying to get some action taking place.

Following further discussion, Vice Chairman Sexton asked that the staff provide the Board with an update at the Board's August 14<sup>th</sup> meeting regarding the results of the meeting with Mr. Bromby.

Chairman Lane directed that an update by the staff be included on the August 14, 2006, agenda.

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

Chairman Lane announced the following vacancies on Boards and Committees:

*a. Nursing Home Advisory Committee* - One vacancy as of August 2006 and one vacancy for an unexpired term due to a resignation ending August 2007.

*b. Agricultural Advisory Board* - Three vacancies as of June 2006.

**MANAGER'S COMMENTS:**

There were no comments by the Manager.

**COMMISSIONERS' COMMENTS:**

Commissioner Rushing stated that Mr. Kenneth Rushing died recently while visiting Cane Creek Park. He said that Mr. Rushing had appeared before the Board in the past regarding his concern over condemnation on his property for a sewer line. Commissioner Rushing said that this matter had been worked out among Mr. Rushing, the developer, and the staff of the Public Works Department. He said that he was glad that those concerns had been worked out with Mr. Rushing.

Vice Chairman Sexton said that he would be remiss if he did not thank the staff members who have helped to keep some of the most important issues and priorities that the County faces in the public eye as well as the challenges that go along with those issues, including school construction. He expressed appreciation to Senator Goodall for his due diligence in Raleigh in regards to the bill for ETJ for Marshville and Wingate.

Commissioner Pressley stated that he was glad to have Christie Putnam as the new Public Works Director.

Commissioner Stone said that Union County government has a fantastic staff, which it is extremely fortunate to have. He expressed appreciation to the staff members for all the work they have done for the County.

Chairman Lane announced that there would be an upcoming fishing tournament at Cane Creek Park that will be limited to 35 participants. He said that Cane Creek is one of the jewels in the County with its camping facilities having been filled to capacity for the past several months, and it would be full for the next several months.

With there being no further comments or items for discussion, at approximately 8:40 p.m., Chairman Lane moved to adjourn the meeting. The motion was passed unanimously.