

CUMBERLAND COUNTY BOARD OF COMMISSIONERS  
APRIL 18, 2011 – 6:45 PM  
117 DICK STREET, 1<sup>ST</sup> FLOOR, ROOM 118  
REGULAR/REZONING MEETING

PRESENT: Chairman Kenneth Edge  
Commissioner Jeannette Council  
Commissioner Charles Evans  
Commissioner Marshall Faircloth  
Commissioner Jimmy Keefe  
Commissioner Billy King  
Commissioner Ed Melvin  
James Martin, County Manager  
Amy Cannon, Deputy County Manager  
James Lawson, Assistant County Manager  
Rick Moorefield, County Attorney  
Sally Shutt, Communication & Strategic Initiatives Manager  
Tom Lloyd, Director of Planning & Inspections  
Thanena Wilson, Community Development Director  
Kristine Wagner, Transportation Program Director  
Bob Stanger, County Engineer  
Dan Mace, Moseley Architects, Inc.  
Candice White, Deputy Clerk to the Board  
Marie Colgan, Clerk to the Board

INVOCATION - Commissioner Kenneth Edge, Chairman

MINISTER: Reverend "Doc" Wylie, Associate Minister at Highland Presbyterian Church

PLEDGE OF ALLEGIANCE –

Chairman Edge requested Kenny Currie, Emergency Management Service Director, to provide an update on the recent storm and tornado damage and thanked him for what he has done during this time. Mr. Currie stated there has been excellent coordination between the City, County and all the involved agencies responding to the disaster. Three command posts still have a presence – Yadkin Road, Reilly Road and Andrews Road. The emergency stage ceased yesterday and now the recovery stage is in place. All involved city/county agencies are still working in the affected areas and FEMA is out in the field assessing damage. The Red Cross is delivering food and ice. Mr. Currie provided information on road closures and areas that are accessible to the residents or the public. Mr. Currie stated the shelter at Westover Recreation Center is still open. Mr. Currie explained how information was being imparted to residents in the affected areas. Daily updated information is being provided on the city and county websites. In response to questions by the Board, Mr. Currie stated there were still ninety people in the shelter, fifty people were treated on the spot by emergency vehicles and only transported ten to the hospital. There was 1 fatality reported. Mr. Currie praised all city and county agencies that participated in

the response to this disaster and thanked the County Manager and the City Manager for their support of the endeavors of the Emergency Management System. Media releases and interviews on the radio will continue to provide up-to-date information and fliers will be distributed in those areas affected.

Commissioner Keefe thanked the citizens for their involvements, encouraged individuals to support the Red Cross and reminded citizens that law enforcement will be watching for looters. Mr. Currie encouraged citizens to check out contractors who will be doing work for them to ensure they are reputable. Mr. Currie was thanked again for how he handled the response to the disaster.

**PUBLIC COMMENT PERIOD (6:45 PM – 7:00 PM)** – Chairman Edge advised that seven individuals had signed up to speak and since there is only a 15 minute comment period, the Board agreed to allow two minutes to each speaker.

**SPEAKERS:**

Rikki Harrison (local resident) - Ms. Harrison requested the board repeal the amendment to County Code Section 3-12 approved on March 21, 2011 as she feels it was done in a secretive and unfair way and if it had been more open, there would have been more voicing their opposition to the change. Ms. Harrison advised she has seen Ben the bear being kept at Jambass Ranch and has witnessed his mistreatment. She also stated that Mr. Bass, the owner, has been cited three times in the last four months for not providing adequate veterinary care and for not providing adequate shelter for the animals. She stated her belief that Mr. Bass was in violation of the earlier ordinance and she expressed her dismay at the Commissioners for simply changing the ordinance to benefit Mr. Bass' ranch as it is not a zoo, not a zoological park and not accredited.

Colonel (Retired) Hosea M. Ray, US Army (local resident) - Colonel Ray advocated for wild animals located at Jambass Ranch which are in violation of Section 3-12 that was changed to accommodate one individual who has an open case in a court of law for violation of that section. Colonel Ray spoke specifically of a bear, a fox, a raccoon and an alligator being held in despicable and inhuman conditions. Colonel Ray stated he does not believe the Commissioners were aware of all aspects of this issue when they voted earlier to change the section. Colonel Ray asked Commissioners to rescind the last amendment to Section 3-12 and restore it as it was previously written. He also requested they direct law enforcement to seize the animals accordingly.

Cyrus Shamloo – Mr. Shamloo stated he is a resident of Wilson, North Carolina and spoke regarding Ben the bear's poor living conditions that no one is doing anything about. Mr. Shamloo stated a sanctuary in California is prepared to receive Ben and will provide the care he needs and deserves. He asked the Board to repeal Section 3-12.

LeAnne Siart and Loren Hart did not respond when called.

Else Poulsen – Ms. Poulsen stated she is a bear biologist and lives in Canada and works for Behavioral Environment Solutions. Ms. Poulsen provided a book and business cards and

stated she concurs with what has already been said to the Board. She stated she spent eight hours assessing Ben the bear and found him displaying stereotypic behavior of an animal that is suffering and needs to be placed in a more appropriate environment such as in California.

Jim Stolz (local resident) – Mr. Stolz provided his background information stating he feels it is inappropriate to take animals from the wild and keep them in cages while teaching children it is okay to do so.

Presentation by Fayetteville Mayor Tony Chavonne Regarding the North Carolina Veteran's Park

Dale Iman, Fayetteville City Manager, provided Board members with a special coin minted for the upcoming opening of the North Carolina Veteran's Park on July 4, 2011. City Manager Iman stated the park will be a living, breathing park commemorating all branches of service and provided information on the aspects of the park. Mr. Iman encouraged the Board and citizens to attend the dedication.

Special Recognition of Sally Shutt, Communications and Strategic Planning Manager for Awards of Excellence in Communications from the North Carolina City & County Communicators:

2<sup>nd</sup> Place – Electronic Employee Newsletter for the County Connection  
2<sup>nd</sup> Place for TV & Videos Interview/Talk Show for Cumberland Matters

Chairman Edge recognized Sally Shutt for awards recently won for the above categories and congratulated her on these accomplishments which keep the employees and the citizens informed and engaged. Chairman Edge praised Ms. Shutt for the work she has done, and is continuing to do, with regard to coordinating and organizing the many activities in the Emergency Operations Center during the disaster.

County Manager Martin requested the following additions to the agenda:

Consent Agenda

2.J. – Consideration of waiving electrical permit fees in the areas affected by the storm through May 2, 2011 with a review of the waiver being revisited at the full Board meeting on the same date.

2.K. – Consideration of waiving wood debris fees at the Wilkes Road Landfill for areas affected by the storm through May 2, 2011 with a review of the waiver being revisited at the full Board on the same date.

MOTION: Commissioner King moved to add the above requested agenda items.  
SECOND: Commissioner Council  
VOTE: UNANIMOUS

County Manager Martin also requested the following additions to the agenda:

Closed Session Matter(s)

11.A. – Economic Development Matter(s) pursuant to NCGS 143-318.11(a)(4)

11.B. – Attorney Client Matter(s) pursuant to NCGS 143-318.11(a)(3)

MOTION: Commissioner Council moved to add the above requested agenda items.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS

1. Approval of Agenda

MOTION: Commissioner Council moved to approve the agenda with the addition of the above requested agenda items.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS

2. Consent Agenda

A. Approval of minutes for the April 4, 2011 regular meeting.

B. Approval of Correction to March 21, 2011 Minutes.

BACKGROUND: On April 4, 2011, the Board approved the minutes from the earlier Board of Commissioners' regular/rezoning meeting for March 21, 2011. However, under Item 3.A., the minutes did not include the motion for Case No. P11-04. The minutes should read as follows:

Motion for Item 3.A

MOTION: Commissioner Faircloth moved to recommend denial of the R6A Residential district but to approve the RR Rural Residential district.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS

RECOMMENDED/PROPOSED ACTION: Approve the corrections to the March 21, 2011 Board of Commissioners' Regular/Rezoning Minutes.

C. Approval of Proposed Additions to the State Secondary Road System :

BACKGROUND: The North Carolina Department of Transportation has received petitions requesting the following streets be placed on the State Secondary Road System for maintenance:

Dalton's Ridge Subdivision: Heartpine Drive

Gallberry Farms Subdivision: Possum Trot Lane, Derby Lane  
Foxwood Drive

DOT has determined that the above streets are eligible for addition to the state system.

RECOMMENDATION/PROPOSED ACTION: NCDOT recommends that the above named streets be added to the State Secondary Road System. County Management concurs. Approve the above listed streets for addition to the State Secondary Road System.

D. Approval of Request from Cumberland County Mental Health Auxiliary, Inc. for Vending Machine Franchise Agreement (Second Reading).

BACKGROUND: Cumberland County Mental Health Auxiliary, Inc., has had a franchise to locate vending machines in the buildings occupied by the Mental Health Authority since before 1990. The Auxiliary provides the machines through a contract with a third-party vendor. The Auxiliary uses the commissions it receives from the contract to support the activities of the Mental Health Authority. The successive franchise agreements have been granted for five-year terms. Current term expired June 30, 2010. The request is approved by the Director of the Mental Health Authority. Because this is a franchise agreement, it will have to be approved at two meetings of the Board. First reading was approved April 4, 2011.

STATE OF NORTH  
CAROLINA  
COUNTY OF  
CUMBERLAND

VENDING MACHINE  
CONTRACT  
FRANCHISE  
AGREEMENT

THIS AGREEMENT, made and entered into this first day of July 2010, by and between the CUMBERLAND COUNTY MENTAL HEALTH AUXILIARY, INC., a North Carolina non-profit corporation, with a place of business located at 109 Bradford Avenue, Fayetteville, North, 28301, (hereinafter referred to as "AUXILIARY") and the COUNTY OF CUMBERLAND, a body politic and corporate of North Carolina, (hereinafter referred to as "COUNTY".) (AUXILIARY AND COUNTY OF CUMBERLAND, collectively "PARTIES").

W I T N E S S E T H :

WHEREAS, the COUNTY desires to grant a franchise for the purpose of providing food and drink vending machines to the clients, employees, and visitors of the Cumberland County Mental Health Center's various premises and facilities throughout the county; and

WHEREAS, the AUXILIARY, a 501 (c ) (3) non-profit corporation whose function is to provide charitable support to the Cumberland County Mental Health Center and its clients, has expressed an interest in providing said vending machine services at the location listed in paragraph 1.and,

WHEREAS, the Board of Commissioners of Cumberland County, North Carolina has granted the AUXILIARY a franchise to use the premises and facilities of the Cumberland County Mental Health Center to provide food and drink vending machines to the clients, employees, and visitors of the Mental Health Center;

AND, WHEREAS, said franchise requires that the terms and conditions of such services be set forth in an agreement;

NOW, THEREFORE, for and in consideration of the promises and agreements hereafter set forth and the mutual benefits to be derived by the Parties therefrom, the AUXILIARY and the COUNTY agree as follows:

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the PARTIES hereby agree as follows:

1. PURPOSE. During the term of this Agreement, the COUNTY agrees that the AULIXIARY shall have exclusive right to provide all food and drink vending machine services at the following Cumberland County Mental Health locations: Adult Services located at 109 Bradford Avenue; Child and Family Services /Administration located at 711 Executive Place and the Roxie Avenue Center located at 1724 Roxie Avenue, Fayetteville, North Carolina.

2. TERM OF AGREEMENT. The term of this Agreement shall be for a period of five (5) years beginning July 1, 2010 and shall terminate on June 30, 2015, unless sooner terminated as hereinafter provided.

3. AGENCY AND AUTHORITY. The COUNTY hereby designates the Area Director of the Cumberland County Mental Health Center as its exclusive agent with respect to this Agreement. The Area Director is authorized, on behalf of the COUNTY, to negotiate directly with the AUXILIARY on all matters pertaining to this Agreement. The AUXILIARY agrees that all of its dealings with COUNTY regarding this Agreement shall be exclusively with the Area Director. Further, the AUXILIARY specially agrees that is shall not modify any of the services subject to this Agreement except as described in the paragraph entitled MODIFICATION.

4. SERVICES.

a. Equipment Provided. The AUXILIARY will provide, by lease or purchase, the food and drink vending equipment described in Appendix A attached hereto during the term of this Agreement at the locations indicated. Equipment may be replaced or substituted as provided herein or may be changed to any type equipment which is acceptable to both the AUXILIARY and the Director of the Cumberland County Mental Health Center as agent for the COUNTY for such purpose.

b. Revenue Collection and Utilization. COUNTY agrees that the AUXILIARY or its designed agent (the lessor in the case of leased equipment) shall collect all revenues directly from the vending units. The AUXILIARY shall keep an account

of such collections and such account shall be available to the COUNTY or the Director of the Cumberland County Mental Health Center for inspection, upon request. The AUXILIARY agrees that all net revenues received from the operation of the vending machines in the Mental Health Center shall be expended as provided in its Articles of Incorporation and By-Laws for charitable purposes in support of the Mental Health Center shall be conducted unless approved by the Director.

c. Supplies. All inventory and other supplies necessary for the operation of the vending machines shall be provided by the AUXILIARY or its designed agent (the lessor in the case of leased equipment) and the COUNTY shall have no responsibility in that regard.

d. Service and Repairs. The AUXILIARY or its designed agent (the lessor in the case of leased equipment), during the time of the Agreement and without charge to the COUNTY, shall keep the vending equipment in good working order, make required inspections, adjustments, and repair and replace machine parts as necessary.

e. Usual Hours of Service. The AUXILIARY shall provide vending machine services at the Mental Health Center twenty-four (24) hours per day.

f. Electrical Requirements. COUNTY shall permit the use of suitable existing electrical outlets for the operation of the vending equipment and shall not be liable to the AUXILIARY or its designated agents (the lessor in the case of leased equipment) or the public for any harm resulting from such use or any cessation of electrical service to the Mental Health Center. The AUXILIARY shall hold the COUNTY harmless from any such liability.

5. NOTIFICATION OF SERVICES NEEDS. The COUNTY, through the Mental Health Center, agrees to notify the AUXILIARY or its designated agent immediately of any equipment malfunction or any repairs needed on any vending equipment to the telephone number and to the individuals as may be designated by the AUXILIARY.

6. INSURANCE AND HOLD HARMLESS PROVISIONS. In the event the AUXILIARY leases vending equipment from commercial vendors, the AUXILIARY shall require the lessor to have or obtain a contract of insurance, and provide for the same in the lease agreement for the equipment, under which the lessor, the AUXILIARY, and the COUNTY shall be indemnified for any liability to the public proximately caused by the malfunction of the leased vending machines and resulting in personal injury or property damage to Mental Health Center employees or visitors, and to otherwise hold the COUNTY harmless for such injury or damage.

7. RENEWAL. This Agreement shall be renewed at the end of said Term for a period of five (5) years unless the COUNTY gives the AUXILIARY written notice of termination at least sixty (60) days, but no more than one hundred eighty (180) days before the end of the term. The AUXILIARY may terminate this Agreement by giving the COUNTY at least sixty (60) days written notice of termination before the expiration of said term. All provisions of the Agreement shall remain in effect for

any renewal periods.

8. NOTICES. All notices, requests, and approvals required or permitted to be given, shall be in writing and shall be deposited in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, and addressed as follows:

AUXILIARY:

Attention: President  
Cumberland County Mental Health Auxiliary, Inc.  
109 Bradford Avenue  
Fayetteville, NC 28301

CUMBERLAND COUNTY MENTAL HEALTH CENTER

Hank Debnam, Area Director  
Cumberland County Mental Health Center  
P. O. Box 3069  
Fayetteville, NC 28302-3069

9. ASSIGNMENT. The AUXILIARY shall not assign all or part of its contract rights under this Agreement; or delegate any performance; or subcontract; without first obtaining the COUNTY'S written approval.

10. TERMINATION. This Agreement may be terminated immediately by the COUNTY or the COUNTY may pursue any other remedy recognized in law or equity upon the violation of any of the terms of this Agreement. Either party may terminate this Agreement upon thirty (30) days notice in writing to the other party. Upon the entering of a judgment of bankruptcy or insolvency by or against the AUXILIARY shall immediately terminate any lease agreement it any have with a lessor for vending machines at the Mental Health Center locations.

11. MISCELLANEOUS. The Parties hereto, for themselves, their agents, officials, employees, and servants shall not discriminate in any manner on the basis of race, sex, color, creed, handicap, disability, gender, or national origin in the course of fulfilling any obligation, duty, or service that arises under this Agreement. More specifically, the AUXILIARY shall comply with Title VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990 (ADA), as amended; and all requirements imposed by Federal regulations, rules, and guidelines issued pursuant to these Titles for both personnel employed and customers served.

12. MODIFICATION. This Franchise Agreement may be modified only by an instrument duly executed by the Parties or their respective successors.

13. ENTIRE AGREEMENT. This Franchise Agreement may be modified only by an instrument duly executed by the Parties or the respective successors.

IN WITNESS WHEREOF, each Party has caused this Contract to be executed in triple copies, each of which shall be deemed an original, as the act of said Parties. Each individual signing below warrants he/she is duly authorized by the Parties to



sign this Agreement and to bind the Parties to the terms and conditions of this Agreement.

## APPENDIX A

The Cumberland County Mental Health Auxiliary, Inc. leases snack and drink machines from Carolina Quality Snacks, Inc. These snack and drink machines are placed at each location noted in the paragraph entitled "Purpose" on page 1 of the Vending Machine Franchise Agreement between the County of Cumberland and the Cumberland County Mental Health Auxiliary. The machines vend canned drinks and /or wrapped or bagged snacks.

RECOMMENDATION/PROPOSED ACTION: Approve the franchise agreement on second reading to complete grant of franchise.

- E. Approval of a Proclamation Proclaiming the week of April 25 – April 29, 2011 as "Arbor Week" and Friday April 29, 2011 to be "Arbor Day" in Cumberland County.

### OFFICE OF THE BOARD OF COMMISSIONERS PROCLAMATION

WHEREAS, the County of Cumberland recognizes the importance of trees to the economic, aesthetic, and ecological well-being of our community;  
AND

WHEREAS, it is recognized that planting and maintaining healthy trees in our ever-changing society are both desirable and necessary; AND

WHEREAS, Arbor Day is a long-standing American tradition that represents an important element of our national heritage; AND

WHEREAS, the Cumberland County Cooperative Extension is a leader in the encouragement of environmental stewardship and is assisting with the planting of trees in our community by our youth ; AND

WHEREAS, Cumberland County-Cooperative Extension and the Cumberland County Schools are community partners with the Cape Fear Botanical Garden in the effort to restore our trees; AND

WHEREAS, individuals can act in this county to improve the environment by planting trees and ensuring that these trees are protected and receive proper maintenance in the years ahead;

NOW, THEREFORE, I, Kenneth S. Edge, Chairman of the Board of Commissioners, Cumberland County, North Carolina, do hereby proclaim the week of April 25 to April 29, 2011 as Arbor Week and Friday April 29, 2011 to be

## Arbor Day in Cumberland County

AND urge our citizens to take an active part to ensure our community has a better quality of life by providing a clean environment with more trees.

Adopted this 18<sup>th</sup> day of April, 2011

- F. Approval of a Proclamation Proclaiming April 25-30, 2011 as “Community Development Week” in Cumberland County.

**BACKGROUND:** This year marks the 37<sup>th</sup> anniversary of the Community Development Block Grant (CDBG) Program which is celebrated nationally. In order to commemorate the anniversary and the impact that the CDBG Program has had on Cumberland County, a request is being made for the Board to proclaim April 25 – April 30, 2011 as Community Development Week.

## Community Development Week Proclamation

Whereas, the Community Development Block Grant (CDBG) Program has operated since 1974 to provide local governments with the resources required to meet the needs of persons of low and moderate income; and

Whereas, the CDBG Program has had a significant impact on our local economy through job creation and retention, physical redevelopment and improved local tax bases; and

Whereas, CDBG funds are used by thousands of neighborhood-based, non-profit organizations throughout the nation to address pressing neighborhood and human service needs; and

Whereas, Cumberland County, North Carolina and other local governments have clearly demonstrated the capacity to administer and customize the CDBG Program to identify, prioritize and resolve local issues such as the provision of decent, affordable housing; neighborhood and human service needs; job creation and retention; and physical redevelopment.

Now, Therefore I, Mr. Kenneth S. Edge, by virtue of the authority vested in me as Chairman of the Cumberland County Board of Commissioners, do hereby proclaim:

The week of April 25 – April 30, 2011 as  
Community Development Week

in Cumberland County, and urge all citizens to join us in recognizing the Community Development Block Grant Program and the important role it plays in our community.

In Witness Whereof, I have hereunto set my hand and caused the seal of Cumberland County, North Carolina to be affixed this 18<sup>th</sup> day of April, 2011.

RECOMMENDATION/PROPOSED ACTION: The Community Development Department recommends that the Board of County Commissioners proclaims April 25 – April 30, 2011 as Community Development Week in Cumberland County.

- G. Approval of a Proclamation Proclaiming the month of May 2011 as “Air Quality Awareness Month” in Cumberland County.

Proclamation  
Air Quality Awareness Month  
May 2011  
Fayetteville, North Carolina

WHEREAS, clean air is essential to public health, the environment and the economy in Cumberland County; AND

WHEREAS, we need clean air to protect and improve the quality of our forests, streams and lakes for public recreation and wildlife; AND

WHEREAS, we need clean air to sustain tourism, agriculture and other aspects of the economy; AND

WHEREAS, following a requirement of the Clean Air Act, the EPA is considering revising the national air quality standard for ozone from 0.075 to 0.060-0.070 parts per million for improved human health and safety; AND

WHEREAS, continued action to improve air quality is of major concern to the Cumberland County Board of Commissioners and all the Municipal Governments; AND

WHEREAS, businesses and residents of Cumberland County are encouraged to participate in an idle reduction campaign for the month of May, 2011; AND

WHEREAS, the ozone forecast season is from April 1 to October 31, but the first week of May has been historically designated as Air Quality Awareness Week and for 2011 the campaign will be the entire month of May; AND

NOW, THEREFORE, BE IT RESOLVED, that Cumberland County proclaim the month of May, 2011, as “AIR QUALITY AWARENESS MONTH” and encourage all government employees, citizens and businesses in Cumberland County to observe the month with activities that promote clean air, and take part in making our community a cleaner, healthier place to live, work, and play.

Adopted this 18<sup>th</sup> day of April, 2011.

- H. Approval of a Proclamation Proclaiming May 2011 as “Industry Appreciation Month” in Cumberland County.

PROCLAMATION

WHEREAS, the existing industries of Fayetteville and Cumberland County are an essential segment of the area's economy, providing employment for local residents, contributing revenues and greatly enhancing the area's quality of life; and

WHEREAS, the various industries existing in Fayetteville and Cumberland County have an influence either directly or indirectly upon the lives of every one of the county's citizens; and

WHEREAS, the potential for growth comes in part from within through the expansion of existing industries and the establishment of new, homegrown industries; and

WHEREAS, public awareness and understanding of the importance of industry to our local economy and quality of life are vital to the preservation of a favorable industrial climate; and

WHEREAS, a favorable industrial climate is a major factor in the decision made by officials of existing plants to expand their operations and in our area's ability to attract new industry.

NOW, THEREFORE, BE IT RESOLVED that the Board of Commissioners of Cumberland County proclaims the month of May 2011 "INDUSTRY APPRECIATION MONTH" in Cumberland County and urges its citizens to salute the industries located in our area and the employees of those industries for their important role in the growth and prosperity of Cumberland County.

Adopted this 18<sup>th</sup> day of April, 2011

I. Budget Revisions:

(1) Health

Revision in the amount of \$250 to recognize additional Health Quality Improvement Grant funds. (B11-344) Funding Source – Grant

(2) Community Development- Supportive Housing Program

Revision in the amount of \$84,134 to recognize additional grant funds for the Robbins Meadow Transitional Housing Program. (B11-342) Funding Source – Federal

J. Consideration of waiving electrical permit fees in the areas affected by the storm through May 2, 2011 with a review of the waiver being revisited at the full Board meeting that day.

- K. Consideration of waiving wood debris fees at the Wilkes Road Landfill for areas affected by the storm through May 2, 2011 with a review of the waiver being revisited at the full Board meeting that day.

MOTION: Commissioner Council moved to approve all Consent Items 2.A. through 2.K.

SECOND: Commissioner Melvin

DISCUSSION: Commissioner Evans questioned whether it was the appropriate time to add an item to discuss a timeframe for staff to report back to the Policy Committee on a certain item. He was informed that this discussion can take place during Item 7.

VOTE: UNANIMOUS

### 3. Public Hearings

These are the advertised public hearings set for this date and time.

#### Uncontested Cases

- A. Case P11-06: Rezoning of 10.12+/- acres from R6 Residential to M(P) Planned Industrial or to a more restrictive zoning district; located northwest of SR 2311 (Gillespie Street), southeast of NC HWY 87 (Martin Luther King Jr. Freeway); submitted by Tim Kinlaw on behalf of Cumberland County Board of Education (owner).

The Planning Board recommends approval of M(P) Planned Industrial district.

The Chairman opened the public hearing.

Speakers: The Clerk verified that no speakers had signed up to speak on item 3.A.

The Chairman closed the public hearing.

- B. Case P11-09: Rezoning of .43+/- acres from R6A Residential to C2(P) Planned Service and Retail or to a more restrictive zoning district; located at 4966 and 4976 Cumberland Road; submitted by Glen Jernigan, Jr. and Holden Reaves on behalf of Jernigan Holdings, LLC. and Reaves Holdings, LLC. (owners).

The Planning Board recommends approval of C2(P) Planned Service and Retail district.

The Chairman opened the public hearing.

Speakers: The Clerk verified that no speakers had signed up to speak on item 3.B.

The Chairman closed the public hearing.

MOTION: Commissioner Faircloth moved to approve items 3.A. and 3.B. as recommended by the Planning Board for case #P11-06 and P11-09.  
SECOND: Commissioner King  
VOTE: UNANIMOUS

#### Zoning Ordinance Text Amendment

C. Case P11-10: Revisions, amendments and updates to the Cumberland County Zoning Ordinance for the Cumberland County Joint Planning Board's annual review of the June 20, 2005 ordinance.

BACKGROUND: The Planning Board reviews the zoning and subdivision ordinances annually. One of the proposed amendments to the county's zoning ordinance resulting from the most recent annual review is a clarification of the definition of schools, types of schools, and the districts in which schools are allowed in the Use Matrix. This clarification was needed generally and also was intended to specifically address the application of the term "school" to training facilities such as TigerSwan.

Outside the scope of the annual review, planning staff has been working with a citizens' committee to develop standards for the regulation of outdoor shooting ranges. It is likely that the regulation of outdoor shooting ranges will require any use that includes an outdoor shooting range to be regulated as an outdoor shooting range, regardless of the additional uses. It is anticipated that these regulations will be considered by the Planning Board before the end of the fiscal year.

Because TigerSwan's use does include an outdoor shooting range and the plaintiffs who sued the county over the interpretation of "private school" have appealed the judge's decision upholding the staff interpretation to the Court of Appeals, the county attorney recommends that the amendment regarding the definition and application of the term "school" be considered in conjunction with the proposed amendments for the regulation of outdoor shooting ranges.

#### RECOMMENDATION/PROPOSED ACTION:

- (1) Conduct the advertised public hearing on the proposed amendments to the county's zoning ordinance; and
- (2) Adopt the Planning Board's recommendation for amendments except those related to the definition and application of schools, types of schools, and the districts in which schools are allowed in the Use Matrix; and
- (3) Direct the Planning Board to reconsider the proposed amendments related to the definition and application of schools, types of schools, and the districts in

which schools are allowed in the Use Matrix in conjunction with its consideration of the regulation of outdoor shooting ranges for further recommendation to the Board of Commissioners.

Tom Lloyd, Director of Planning & Inspections, advised this update to the Board is being provided for the Board to approve changes being recommended as a result of the Planning Board's annual review of the zoning and subdivision ordinances. Mr. Lloyd presented additional background information highlighting two major changes. Mr. Lloyd responded to questions from Board members.

The Chairman opened the public hearing.

Speakers:

Richard Wiggins – Mr. Wiggins stated he is speaking on behalf of the public who strongly supports the Planning Board's recommended amendment regarding schools.

Roby Mulier – Mr. Mulier spoke in favor of the Planning Board's recommendations.

Kevin West – Mr. West spoke in favor of the Planning Board's recommendations regarding schools but voiced concerned about the make-up of the sub-committee of the Planning Board regarding the shooting range.

County Attorney Moorefield answered questions regarding how this vote affects TigerSwan.

The Chairman closed the public hearing.

MOTION: Commissioner Keefe moved to adopt the Planning Board's recommendations for the Zoning Ordinance Amendments except for Item 3 which is related to the definition and application of schools, types of schools and districts where the schools are allowed in the Use Matrix and for the Planning Board to further consider and bring back a recommendation which clarifies Item 3.

SECOND: Commissioner Faircloth

DISCUSSION: Discussion ensued regarding the intent of the motion with regard to Item 3 of the proposed amendments.

Commissioner Faircloth called the question.

VOTE: Voting in favor of the motion – Chairman Edge, Commissioners King, Faircloth, Council, Melvin and Keefe. Voting against the motion – Commissioner Evans.

#### Other Public Hearings

D. 2011 Draft Community Development Annual Action Plan.

**BACKGROUND:** The Community Development 2011 Annual Action Plan must be submitted to HUD by May 15, 2011. The draft 2011 Annual Action Plan has been available for a 30-day citizen's review and comment period throughout Cumberland County since April 6, 2011. All comments received regarding the plan will be addressed by the Community Development Director within 15 days of receipt and then forwarded to HUD with the Action Plan.

As part of the citizen participation process, a public hearing must be held during the comment period. The draft plan is also available for review in the office of the Clerk to the Board of Commissioners.

**RECOMMENDATION/PROPOSED ACTION:** Community Development requests that the Board of County Commissioners hold a public hearing on the draft 2011 Annual Action Plan. No other action is necessary.

Thanena Wilson, Director of Community Development presented the above background information on this item stating the numbers presented on the plan budget shows a 5% cut in the program areas proposed. In response to a question posed by Commissioner Keefe, Ms. Wilson stated they do have funding available in their current budget to help eligible individuals with storm damage.

The Chairman opened the Public Hearing.

The Clerk confirmed there were no speakers signed up for this item.

The Chairman closed the Public Hearing.

No action required.

E. Public Hearing for the FY 2012-2014 Federal Transportation Section 5316 Grant Application Regarding the NCDOT Community Transportation Program.

**BACKGROUND:** The NCDOT deadline for the Federal Section 5316 grant application for the Community Transportation Program is April 29, 2011. The required Public Hearing was advertised in the Fayetteville Observer on April 8<sup>th</sup>, for the Board's April 18, 2011 6:45 PM meeting. This grant would provide additional employment trips for the County's rural residents.

Kristine Wagner provided additional background information and answered questions regarding eligibility requirements.

The Chairman opened the Public Hearing.

The Clerk confirmed there were no speakers signed up.



The Chairman closed the Public Hearing.

MOTION: Commissioner Council moved to approve the FY 2012 – FY 2014 application for federal section 5316 funds.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS

The Chairman called for a five-minute recess.

The Chairman called the meeting back to order.

#### Items of Business

#### 4. Presentation of Cumberland County's 2011-2012 Strategic Plan by Sally Shutt.

Sally Shutt advised the county began a Strategic Planning process back in January which involved Commissioners, Administration staff and Department Heads. Ms. Shutt presented a power point presentation covering the following information which came out of the meetings that followed the initial meeting:

- Mission Statement – To provide quality services to our citizens while being fiscally responsible.
- Vision Statement – To grow as a regional destination for employment, economic development, commerce and cultural pursuits.
- Core Values –
  - P for Professionalism
  - R for Respect
  - I for Integrity with accountability
  - D for Diversity
  - E for Excellent Customer Service
- Goals -
  - Ensure a safe and healthy community by providing needed services to our citizens in a timely manner.

Provide adequate infrastructure consistent with orderly growth of a dynamic county.

Promote economic development by creating and retaining jobs, and providing career opportunities, quality education, cultural and recreational services.

Educate, inform and engage employees, citizens, elected and appointed officials through effective and efficient communications.

Employ motivated, professional and well-training personnel who offer excellent customer service with PRIDE.

Ms. Shutt advised that objectives have been established in order to reach the goals and noted all the information is located on the county's website.

MOTION: Commissioner Melvin moved to approve the 2011-2012 Strategic Plan.  
SECOND: Commissioner Keefe  
VOTE: UNANIMOUS

5. Consideration of Cumberland County Facilities Committee Report and Recommendation(s):

A) Report on Lease Agreement between the County and Employment Source, Inc.

BACKGROUND: At its April 7, 2011 meeting, the Facilities Committee considered a request for lease renewal from Employment Source, Inc. Lease is for the sheltered workshop site on the Washington Drive School property. There is no rent charged. The previous lease had been for 10 years. Facilities Committee recommended renewal of the lease with only a one year term.

RECOMMENDATION/PROPOSED ACTION: Approve the recommendation of the Facilities Committee to renew the lease with Employment Source, Inc., for one year to April 30, 2012.

STATE OF NORTH CAROLINA  
LEASE AGREEMENT WITH  
COUNTY OF CUMBERLAND EMPLOYMENT SOURCE, INC.

This Lease Agreement, made and entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between the COUNTY OF CUMBERLAND, North Carolina, referred to herein as LESSOR, and EMPLOYMENT SOURCE, INC., a non-profit North Carolina corporation, referred to herein as LESSEE.

W I T N E S S E T H:

WHEREAS, the County of Cumberland owns certain buildings and tract of land known as the Cumberland Sheltered Workshop Property which has been declared surplus and is not needed for currently budgeted governmental activity; and

WHEREAS, LESSEE, a non-profit corporation, comprised of local citizens, desires to operate a sheltered workshop on said premises for the benefit of all the citizens of Cumberland County; and

WHEREAS, such a sheltered workshop carries out a public purpose and will provide a substantial public benefit to the Cumberland County community; and

WHEREAS, the parties hereto have mutually agreed to the terms of this Lease Agreement as set forth below.

NOW THEREFORE, in consideration of the premises and covenants contained in the terms and conditions hereinafter set forth, the parties agree as follows:

1. LESSOR does hereby rent, lease, and demise to LESSEE for and during the term and under the terms and conditions set forth herein, the premises described below (the "leased premises"), with all rights, privileges, and appurtenances thereto belonging, lying and being in the Cross Creek Township, County of Cumberland, North Carolina, and more particularly described as follows: SEE EXHIBIT 'A' ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

2. LESSEE shall have and hold the leased premises for a term of one (1) year, commencing the 1st day of May, 2011, or as soon thereafter as possession of the leased premises is ceded to LESSEE, and terminating on the 30th day of April, 2012, provided that either party may terminate this lease before the end of the lease term by giving thirty (30) days written notice to the other party.

3. LESSEE shall pay the LESSOR as rental for the leased premises the sum of ONE DOLLAR (\$1.00) annually, the entire sum to be payable in advance of the commencement date of the lease term.

4. LESSEE shall use the leased premises at all times during the term hereof in compliance with all building and fire codes, and with all other rules, regulations, ordinances or laws of any governmental authority, entity, board or department having jurisdiction over the same. LESSEE shall, at its sole expense, obtain all required licenses or permits for the conduct of its business within the leased premises. LESSEE shall use its best efforts in good faith not to permit, allow, cause or suffer any act or deed to be performed upon the leased premises which shall cause or be likely to cause injury to any person on the premises. LESSEE will comply with all federal, state, and local laws regulating the conduct of its activities and use of the leased premises.

5. LESSEE shall acquire, pay for, and at all times during the term of this Lease maintain Fire and Extended Coverage or All Risks Insurance on all buildings and leased premises in the amount of at least \$1,500,000.00, with the County of Cumberland being a named insured thereon. Proof of insurance shall be delivered to the Cumberland County Attorney, Cumberland County Courthouse, 117 Dick Street, 5<sup>th</sup> Floor, Fayetteville, N.C. 28301 upon execution of this Lease. LESSEE shall acquire, pay for, and maintain General Liability Insurance on the leased premises in the amount of at least \$2,000,000.00. Proof of insurance shall be delivered to the Cumberland County Attorney, Cumberland County Courthouse, 117 Dick Street, 5<sup>th</sup> Floor Courthouse, Fayetteville, N.C. 28301 upon execution of this Lease. Failure of the LESSEE to maintain a current policy of any required insurance shall immediately terminate this Lease.

6. LESSEE shall provide its current financial statement, certified as accurate by the LESSEE's treasurer, to LESSOR's County Manager prior to execution of this Lease.

7. LESSEE shall provide LESSOR with an annual audit of provided by an independent auditor of LESSEE'S choosing, and at LESSEE'S expense, within 90 days after the close of LESSEE'S fiscal year, which audit shall accurately and completely reflect LESSEE's financial position and results of operation for the annual period covered.

8. LESSEE shall be responsible for all utility bills and other expenses incurred in the use of the leased premises.

9. LESSEE ACCEPTS THE LEASED PREMISES "AS IS". LESSOR MAKES NO WARRANTIES OF ANY KIND, INCLUDING OF HABITABILITY OR OTHERWISE, CONCERNING ANY BUILDING OR ANY OF THE IMPROVEMENTS LOCATED ON THE LEASED PREMISES. LESSOR shall not be responsible for any maintenance, repairs, renovations or other work of any kind on the leased premises.

10. LESSEE shall pay for any improvements it may make to the leased premises. Any improvements, construction, substantial renovations or similar alterations shall be submitted at least thirty (30) prior to the anticipated commencement of such activity for consideration and prior approval of the County Manager, which he or she shall not unreasonably withhold.
11. At the end of the Lease term or any extension thereof, LESSEE may recover such of its trade fixtures, equipment or any other of its improvements which can be so removed without substantial damage to the leased premises, but LESSEE shall be responsible for and shall reimburse and hold LESSOR harmless for any such damage caused to the leased premises resulting in said removal. Any such fixtures, equipment or improvements not so removed shall become the property of LESSOR, at its discretion. In the alternative, LESSOR may require LESSEE to remove the same.
12. LESSEE shall adequately maintain the premises in a clean, orderly, safe, and attractive manner.
13. The County Inspections Department, Health Department, and Fire Marshal shall have free and open access to the leased premises during all hours of operation for the purpose of implementing or enforcing rules, regulations and laws within their respective authority and jurisdiction.
14. At the end of this Lease term, or upon the termination of this Lease by LESSEE's default, LESSEE shall relinquish possession of the leased premises immediately upon LESSOR's written demand. The leased premises shall be returned to the LESSOR in clean and proper order, undamaged, normal wear and tear excepted. Without limiting the foregoing, all duties and responsibilities imposed by this Lease on LESSEE shall remain in full force and effect during any holdover period that LESSEE remains on the leased premises after the expiration of the Lease term or after termination for default.
15. This Lease may not be assigned or sub-leased in whole or in part without the prior approval of the Cumberland County Board of Commissioners.
16. LESSEE shall at all times hereunder retain its status as a non-profit, tax-exempt corporation. LESSEE shall use the leased premises only for the primary purpose of operating a sheltered workshop providing employment opportunities for persons with mental, developmental or physical disabilities, and those other purposes ancillary and subordinate thereto.
17. LESSEE'S failure to comply with any provision of this Lease shall constitute a material breach hereof and LESSEE shall be in default hereunder. In such event, this Lease shall terminate automatically 10 days after LESSOR shall hand deliver or mail by certified mail, return receipt requested, written "NOTICE OF DEFAULT" to LESSEE and LESSEE shall not have cured such default within such ten (10) day period.
18. LESSEE shall defend, indemnify and hold harmless the LESSOR from and against any actual or threatened claim, loss, expense or damage (including attorney fees) to Cumberland County arising out of any act or neglect of the LESSEE or its servants, employees, agents, or invitees, or any change, alteration, or improvement, including but not limited to demolition made by the LESSEE in the leased premises, excepting only claims arising out of acts caused by the affirmative negligence of the LESSOR or its representatives.
19. LESSEE shall give LESSOR at least thirty (30) days prior notice of its intent to change, alter, restore, improve, renovate, or demolish any structure on the leased premises, and LESSEE shall not commence any such action without the County Manager's prior

written approval, which shall not be unreasonably withheld.

20. All notices to the LESSOR shall be delivered personally to the County Manager's Office or mailed to:

Office of the County Manager  
County of Cumberland  
P. O. Drawer 1829  
Fayetteville, N. C. 28302

21. All notices to the LESSEE shall be delivered personally to the LESSEE'S office on the leased premises, or mailed to:

Employment Source, Inc.  
600 Ames Street  
Fayetteville, N. C. 28301

22. This lease shall be governed by the internal laws of the State of North Carolina without reference to the conflict of laws provisions thereof, and any action or proceeding relating hereto shall only be brought in the Superior Court of Cumberland County, North Carolina.

23. This Lease contains the entire agreement of the parties hereto as to its subject matter and may not be altered, amended or modified except by a writing signed by both parties. No waiver of or delay in exercising any right or power under this Lease shall impair any such right or power, or shall be construed as a waiver of any breach or default, or acquiescence thereto. One or more waivers of any covenant, term or condition of this Lease by either party shall not be construed by the other party as a waiver of a continuing or subsequent breach or default of the same covenant, provision or condition. The consent or approval by either party of any act by the other party of a nature requiring consent or approval shall not be deemed to waive or render unnecessary consent or approval of any subsequent similar act. No provision of this Lease shall be deemed to have been waived unless such waiver be in writing and signed by the waiving party. The receipt by LESSOR of rent with knowledge of or during the existence of any breach or default shall not be deemed a waiver of such breach or default.

This the \_\_\_\_ day of \_\_\_\_\_, 2011.

MOTION: Commissioner Keefe moved to accept the lease agreement between the county and Employment Source.

SECOND: Commissioner Council

VOTE: UNANIMOUS

B) Report on Lease Agreement between the County and Coastal Horizons Center, Inc.

BACKGROUND: At its April 7, 2011 meeting, Facilities Committee considered a request for lease renewal from Coastal Horizons Center, Inc. Lease is for approximately 1506 sq. ft. of office space at 412 Russell St. (Day Reporting Center). The current lease has been month-to-month since October 1, 2010, and expires on June 30, 2011. The rent is based on the rental rate the state pays for office space and is \$14.57 per sq. ft. or \$21,942 annually. The rent includes electric, water, sewer, garbage and janitorial services.

Facilities Committee recommended renewal of the lease with a three year term. Since this term is greater than one year, the Board must determine that the property is not needed for government purposes and advertise its intent to grant this lease 10 days in advance of a regular meeting.

RECOMMENDATION/PROPOSED ACTION:

- (1) Declare that the described office space located at 412 Russell Street, Fayetteville, NC, is not needed for government purposes until June 30, 2014; and
- (2) Approve the recommendation of the Facilities Committee to lease the space to Coastal Horizons Center, Inc., on the terms set out in the public notice set out below; and
- (3) Direct the publication of the following notice of intent to grant this lease at the May 2, 2011, regular meeting of the Board:

County Attorney Moorefield advised a publication of notice of intent to grant this lease must take place before action can be taken on this item.

MOTION: Commissioner Keefe moved to follow the recommendation of the County Attorney to declare the space not needed for governmental purposes, advertise the intent to lease, and come back with a lease agreement with Coastal Horizons Center at a later date.

SECOND: Commissioner Melvin

VOTE: UNANIMOUS

- C) Consideration of Revised Conceptual Design for Detention Center Expansion Project.

BACKGROUND: Moseley Architects, presented to the Board of Commissioners at its March 21, 2011 meeting, a conceptual schematic design for a 380 bed expansion to the County Detention Center at an estimated total project cost of \$18.9 Million. The Board rejected this plan as cost prohibitive, established a project budget not to exceed \$15 Million, and instructed Management and staff to work with the project architect to develop alternative expansion plans.

The County Engineer presented to the County Facilities Committee at its April 8, 2011 meeting, two alternative schemes developed by the architects in consultation with the project committee. PowerPoint presentation and minutes were provided of the Facilities Committee meeting. Scheme #1, the original 380 bed design, was shown as a point of comparison. Scheme #2 is a 316 bed expansion consisting of 4-64 bed dormitory units for 256 beds and 1-60 bed maximum security unit. The estimated project cost of Scheme #2 is \$15.02 Million. Scheme #3 is a 252 bed expansion consisting of 2-64 bed dormitory units for 128 beds, 1-60 bed maximum security unit and 1-64 bed medium security unit. The estimated project cost of Scheme #3 is \$14.75 Million. Each of the alternate schemes preserves the ability to expand to 380 beds as indicated in the original conceptual design (Scheme #1).

The recommendation of Management, Sheriff's Office and staff was to move forward with Scheme #2 because it provided the maximum number of beds, maintained the maximum security housing unit and was very close to the budget cap set by the Board. The Facilities Committee endorsed Scheme #2 and recommended forwarding it to the Board for its consideration.

**RECOMMENDATION/PROPOSED ACTION:** The recommendation of the County Facilities Committee, County Engineer, Sheriff's Office and Management is to approve the 318 bed expansion plan, Scheme #2, for the County Detention Facility. In addition, Management recommends that the Board authorize staff to negotiate an amendment to the architectural agreement with Moseley Architects for the balance of the design services and bring it back to Board as soon as possible for its consideration. The proposed action by the Board is to follow the staff recommendation.

Bob Stanger provided the above background information and called on Dan Mace to present a power point presentation on this item highlighting the below points:

- Future Bed Space Recommendations
- 2030 Needs projected at 890 beds minus current capacity of 568 = 322 additional beds
- Need Special Management beds for super security inmates
- Sheriff's Office confident 30% of inmate population is management in dormitory space (less cost per square foot)
- Slides provided detailed information on the various schemes mentioned in the above background information, along with cost estimates.

**MOTION:** Commissioner King moved to support the findings of the Facilities Committee, County Engineer, Sheriff's Office and management and approve the 316 bed expansion plan, Scheme 2, for the County Detention facility; recommends the Board authorize staff to negotiate an amendment to the architectural agreement with Moseley Architects for the balance of the design services and bring back to the board as soon as possible for its consideration; and asked the engineers to look seriously at the notion of designing a 40% minority participation in this project and that building materials and supplies be obtained locally.

**SECOND:** Commissioner Evans

**DISCUSSION:** Discussion ensued regarding how the 316 bed expansion would be compatible to a future expansion. An explanation was provided by Amy Cannon as to how the county will pay for the expansion, stating some of the one-time reserves be used - \$2.3M from June 20, 2010 audit, \$3.8M in fund balance reserved for renovation of the former Public Health facility and in the current year budget, transfer \$1.8M from fund balance, along with a dedicated portion of the property tax totals \$13.1M. Ms. Cannon recommended that the remainder of approximately \$2M could be cash flowed as opposed to financing.

Commissioner Council called the question.

VOTE: UNANIMOUS

6. Consideration of Cumberland County Finance Committee Report and Recommendation(s):

A) Three Year Audit Contract with Cherry, Bekaert & Holland, CPA.

BACKGROUND: The County has had a long standing professional relationship with Cherry, Bekaert & Holland (CBH) and has received excellent service in the past. They have extensive knowledge of the County, its systems, and programs. CB&H has an extensive governmental practice and experience statewide in the GFOA Certificate of Achievement Program. Due to continued changes in governmental auditing standards, Management believes that it is prudent to continue our relationship with CB&H by executing a three-year contract. Implementation of new accounting standards may be more efficiently completed through an audit firm that has experience with the County and comprehensive knowledge of the new standards and related procedures.

CB&H has agreed to reduce the annual audit fee to \$115,000 which is a \$14,000 decrease from the prior year. Additionally, they have agreed to hold this fee for the term of this three-year agreement. We believe this fee is very reasonable in comparison with fees charged to similar sized local governments.

This item was presented to the Finance Committee on April 7, 2011 and the Committee unanimously approved this three-year contract with Cherry Bekaert & Holland.

RECOMMENDATION/PROPOSED ACTION: Based on the approval of the Finance Committee, authorize the County Manager and the Deputy County Manager to execute this agreement.

MOTION: Commissioner Faircloth moved to authorize the County manager and the Deputy County Manager to execute this agreement.

SECOND: Commissioner King

VOTE: UNANIMOUS

B) Resolution Opposing House Bill 642 Regarding Local Confinement of Any Convicted Misdemeanants.

BACKGROUND: At the April 7, 2011 meeting of the Finance Committee, Chairman Edge reported on proposed legislation which would require convicted misdemeanants to be confined in local jails. The Committee members discussed their concerns that this legislation would eliminate any public safety benefit to be



gained from the expansion of the detention center due to the expansion beds being used for convicted inmates which have formerly been the responsibility of the state Department of Correction. The Committee voted to recommend that the Board of Commissioners adopt a resolution in opposition to this proposed legislation.

RECOMMENDATION/PROPOSED ACTION: Consider and adopt the below resolution and direct that it be forwarded to the county's legislative delegation.

RESOLUTION OF  
THE BOARD OF COMMISSIONERS OF CUMBERLAND COUNTY  
OPPOSING PART VII OF PROPOSED HOUSE BILL 642 REQUIRING  
JAIL CONFINEMENT OF ANY CONVICTED MISDEMEANANTS

WHEREAS, the Cumberland County Board of Commissioners recognizes that the county's jail has often been operated at, or in excess of, its maximum capacity for the past year; and

WHEREAS, the Cumberland County Board of Commissioners acknowledges the public's demand for a local jail large enough to confine repeat offenders who continue to commit crimes while bonded out of jail awaiting trial; and

WHEREAS, the Cumberland County Board of Commissioners has heard the concerns of the county's law enforcement agencies, judges and district attorney that the strained capacity of the current jail limits the confinement options available for defendants currently awaiting trial; and

WHEREAS, in response to the public's need for an expanded jail, the Cumberland County Board of Commissioners has employed an architect to design an expansion to accommodate the current jail population and its projected growth; and

WHEREAS, this project is estimated to cost in excess of Fifteen Million Dollars and will take more than two and one-half years to construct and will add in excess of Three Million Dollars in annual operating costs to the county's budget; and

WHEREAS, if the General Assembly adopts Part VII of proposed House Bill 642 requiring convicted misdemeanants to serve sentences of up to six months in the local jail, there will be no public advantage gained to the citizens of Cumberland County for the expansion of the county's jail, as the expansion capacity will likely be used fully for confinement of convicted misdemeanants formerly serving sentences in the N. C. Department of Correction prisons; and

WHEREAS, if multiple counties are immediately forced by legislation into the market for construction or expansion of their jails, construction costs will escalate at a much higher rate than normal for construction activities.

THEREFORE, BE IT RESOLVED that the Cumberland County Board of Commissioners respectfully requests the members of the North Carolina General Assembly to fully reject Section VII of proposed House Bill 624 or any other

proposal to shift the confinement of any convicted misdemeanants from the state Department of Correction prisons to the local jails.

ADOPTED at the regular meeting of the Cumberland County Board of Commissioners held on the 18th day of April, 2011.

MOTION: Commissioner Faircloth moved to adopt the above resolution and direct that it be forwarded to the county's legislative delegation.  
SECOND: Commissioner King  
VOTE: UNANIMOUS

7. Consideration of Cumberland County Policy Committee Report and Recommendation(s):

A) Proposed Revision to Articles I, II and III of the Animal Control Ordinance.

BACKGROUND: Due to the volume of the material and the need for discussion the county attorney presented only the first three articles to the Policy Committee for its April meeting. This is more than half of the ordinance and contains the provisions that need the most discussion. The remainder of the ordinance revision will be presented to the Policy Committee in May. The numbering and organization of the revised ordinance has been maintained consistent with the current ordinance since the officers have been working with those numbered code sections for more than a decade. The county attorney solicited input from the animal control officers as to the issues they needed addressed from their enforcement perspective. Although this revision has not been a collaborative effort between county and city staff, both the Fayetteville City Attorney and John Jackson, who serves as town attorney for several of the smaller municipalities, were provided the proposed revision and invited to make comments or suggestions. The proposed revision has also been provided to Sarah O'Hanlon for FAPS at her request. The significant changes in each article are discussed as follows:

DISCUSSION:

Article I:

The name of the program is returned to "Animal Control" rather than "Animal Services." There is a separate appeal board established to hear the appeals of declarations of potentially dangerous dogs. The structure of the appeal board needs to be established by the board of commissioners. The county attorney recommends that at least one member of the appeal board be appointed by the Animal Control Board. Otherwise, the appeal board is being started from scratch.

Article II:

The definitions will likely be altered upon final adoption of the entire ordinance due to some existing sections being dropped from the ordinance. That is more apparent with the remainder of the ordinance.

The most significant change in Article II is the elimination of a number of different penalty provisions. The officers requested a uniform system of penalties. A single system of penalties, including civil and criminal enforcement, is in Article X of the current ordinance. The county attorney proposes that a uniform system of penalties be established in Article X with enforcement being primarily accomplished through the issuance of criminal summons for any violation as a Class III misdemeanor. The penalty section will require discussion in May.

Section 3-10 on nuisance animals has been significantly revised. The current ordinance states that the Animal Control Officers will abate any nuisance and the owner of a nuisance animal is to bring the animal to the shelter within 48 hours if the nuisance is not abated. This is not a practical way to enforce this provision. No owner has ever brought a nuisance animal to the shelter in compliance with the current provision.

Sections 3-13 and 3-14 are identified as repealed because each of these is a rabies vaccination requirement duplicated in Article IV on rabies control. The rabies vaccination requirements should logically be addressed in Article IV.

Section 3-16 is identified as repealed because it is a duplicative section on dogs running at large which is addressed in Section 3-18.

Section 3-20 is identified as repealed because it required the spaying or neutering of any dog or cat released from the shelter. Animal control officers reported this was simply impractical to accomplish and was never done.

Section 3-21.H. Anti-tethering, is changed by using the word “dog” in H.1 rather than “pet” because the entire subsection only addresses the tethering of dogs. H.5 is added at the request of Animal Control staff because they cannot adequately enforce the tethering provision unless they have the authority to remove a tethered dog at some point and the attempts to enforce this provision due to a large number of complaints continues to be an issue which takes a lot of their time. Dr. Lauby has requested that Animal Control be given the authority to seize and impound a tethered dog if the owner does not comply with a notice of violation within 14 days. That seizure will require an appeal process before the Animal Control Board which will be covered in Article X.

Section 3-21.I is identified as repealed because it is a leash law which prohibits animals from running at large and is covered in Section 3-18.

Section 3-22.C. is identified as repealed because it has been merged into Section 3-22.B.

### Article III:

Article III, Dangerous Dogs, has been significantly changed. The appeal hearing has been structured and the roles of the Director, the appeal board, the appellant and the county attorney have been specified. The scope of the hearing has been made administrative in nature with the decision of the appeal board being final. That means any appeal to Superior Court is only in the nature of an appellate process through a writ of certiorari rather than as a full-blown hearing. The other significant change in the revision is that the dangerous dog process is directed only to the declaration of a “potentially dangerous dog.” The current ordinance’s provisions for declarations of aggressive and vicious dogs are eliminated. Again, this was done at the request of the Animal Control staff. The revision retains the provision for enforcement of the state law under Chapter 67 because that process is really a more effective enforcement mechanism for cases involving severe injury to a person or an animal as a result of a dog attack. The difference between the state law and the ordinance is the ordinance reduces the threshold of the injury required from “severe” to simply requiring “medical care more than first aid.” The state law also provides that any appeal to Superior Court is by a full-blown evidentiary hearing. By using the broadened definition of injury, there is no real need to include additional aggressive and vicious categories. By both the statutory and the ordinance definitions, a “potentially dangerous dog” is also a “dangerous dog.”

Sections 3-28.B and 3-32.A give the Director authority to impound a dog he has declared “potentially dangerous” while the investigation is being conducted and during the pendency of any appeal.

The remaining portions of Articles I, II and III contain some changes in language which do not really change the substance of the provisions.

New Developments since Policy Committee Consideration:

Section 3-12 governing the possession of exotic and wild animals was amended by the Board on March 21, 2011, at the request of James Bass. Mr. Bass has criminal charges pending for violations of Section 3-12 alleged to have occurred before March 21, 2011. The county attorney sent a letter to the District Attorney on April 8, 2011, regarding that amendment which was copied to the Board of Commissioners. Commissioner Evans has told the county attorney that he wants to propose that the Board re-consider Section 3-12 since it seems that Mr. Bass is the only possessor of wild and exotic animals in the county.

The county attorney advises that in his opinion, Section 3-12 has never applied to the bear possessed by Mr. Bass because that bear is a hybrid that cannot “normally be found in the wild state.” If the Board wishes to re-consider Section 3-12, it should be completely re-written to clarify and more broadly define the animals to which it is intended to apply.

**RECOMMENDATION/PROPOSED ACTION:** The county attorney requests the Board’s direction on the following:

- (1) Composition of the Dangerous Dog Appeal Board; and
- (2) Any further changes in Articles I, II, or III; and
- (3) Any matters in Articles I, II, or III which the Board wants to consider further.

Once that direction is received, the county attorney recommends that the Board complete the review of revisions to the remainder of the ordinance in May with the goal of adopting the entire ordinance in May or June.

County Attorney Moorefield provided the above background information in detail stating this is the first step in rewriting the entire ordinance.

With regard to the recommendations proposed, County Attorney Moorefield recommended no more than a three-member Dangerous Dog Appeal Board, with one member appointed by the Animal Control Board and the other two appointed by the Board of Commissioners.

Dr. John Lauby has recommended changing the name back to Animal Control in lieu of Animal Services which more clearly defines the direction of the department under his leadership.

Once the entire ordinance has been rewritten, it will allow this ordinance to be uniformly enforced throughout the county.

MOTION: Commissioner Melvin moved to follow the County Attorney's recommendations.

SECOND: Commissioner Council

DISCUSSION: Commissioner Evans questioned what the recommendations were and County Attorney Moorefield referred him to the information on the first three articles provided in the packet and advised he would submit the balance of the ordinance at a future meeting for approval. Commissioner Evans voiced his concern about Section 3-12 which he feels was rewritten for one particular entity. Discussion ensued regarding the issues around Jambass Ranch and why Section 3-12 was originally rewritten.

SUBSTITUTE MOTION: Commissioner Evans moved a substitute motion to approve all articles with the exception of Section 3-12 and revert back to the original wording of Section 3-12 prior to March 21, 2011.

SECOND: Commissioner King

DISCUSSION: Commissioner Faircloth asked what reverting back to the original wording means and County Attorney Moorefield advised it makes the Jambass Ranch operation non-exempt from the ordinance, so the alligator, the raccoon and the fox would be subject to the ordinance. Commissioner Evans stated he did not want the appearance to be that a section to the ordinance was changed just for one entity.

Chairman Edge called the question

VOTE: Voting for the substitute motion – Commissioners King and Evans. Voting in opposition to the substitute motion – Chairman Edge, Commissioners Faircloth, Council, Melvin and Keefe.

Commissioner Melvin verified that articles IV through X will be brought to the Policy committee to complete this process. Commissioner Evans again voiced his concern about the appearance that an ordinance can be changed for one entity.

Chairman Edge called the question on the original motion.

VOTE ON COMMISSIONER MELVIN'S ORIGINAL MOTION: Voting in favor of the original motion – Chairman Edge, Commissioners King, Faircloth, Council, Melvin and Keefe. Voting in opposition to the original motion – Commissioner Evans.

County Manager Martin reminded Commissioner Evans that he voiced an earlier request to discuss a timeline for the Policy Committee to report back on hiring retirees. Commissioner Evans requested that a timeline be established for staff to return guidelines to the Policy Committee regarding returning retirees working for the County. County Attorney Moorefield advised staff's expectation was to come back to the next Policy Committee meeting with the proposed guidelines.

8. Consideration of Proposed Schedule for Fiscal Year 2012 Budget Work Sessions and Budget Public Hearing.

BACKGROUND: Management anticipates submitting the FY12 Proposed Budget to the Commissioners on Tuesday, May 31, 2011. Several work sessions may be needed.

RECOMMENDATION/PROPOSED ACTION: The following schedule is recommended for consideration with all meetings to be held in the Cumberland County Courthouse, 117 Dick Street, Fayetteville, NC.

Tuesday, May 31, 2011	7:00 PM	Budget Presentation	Room 564
Thursday, June 2, 2011	5:30 PM	Department Head Appeals/ Work Sessions	Room 564
Monday, June 13, 2011	5:30 PM	Budget Work Session	Room 564
Tuesday, June 14, 2011	7:00 PM	Budget Public Hearing	Room 118
Thursday, June 16, 2011	5:30 PM	Budget Work Session	Room 564
Monday, June 20, 2011	6:45 PM	Adopt Budget	Room 118

RECOMMENDATION/PROPOSED ACTION: Adopt a schedule for FY12 budget work sessions and public hearing as recommended or modified.

MOTION: Commissioner Council moved to approve the schedule as provided.  
SECOND: Commissioner King  
VOTE: UNANIMOUS

9. Nominations to Boards and Committees:

A. Adult Care Community Advisory Committee (1 Vacancy)

BACKGROUND: The Adult Care Home Community Advisory Committee has one upcoming vacancy on May 31, 2011. George W. Mitchell is completing his first term and is eligible for reappointment.

Commissioner King moved to nominate George W. Mitchell.

B. Wrecker Review Board (1 Vacancy)

BACKGROUND: Section 9-70 of the Cumberland County ordinance states the Wrecker Review Board shall be composed of a chairman who shall be selected by the County Board of Commissioners, and shall be a disinterested person who is not an Operator, Wrecker Owner or Operator, or a County Employee. It further states all members shall serve for a term of two years, and no member shall serve more than two consecutive terms. The Wrecker Review Board has one vacancy for an unexpired term. Gabriel Grant has resigned. Recommendation is for Jay Barr to fill the unexpired term.

Commissioner Melvin moved to nominated Jay Barr.

10. Appointments to Boards and Committees

A. Equalization & Review Board – Appointment of Officers

BACKGROUND: The Board of Commissioners is responsible for the appointment of the Chairman, First Vice Chairman and Second Vice Chairman for the Equalization and Review Board. In 2010 the Board of Commissioners appointed W. Carroll Bear, Jr., as the Chairman, George Turner as the First Vice Chairman and Kathy Olsen as the Second Vice Chairman. The Equalization and Review Board recommends the following as their officers for 2011-2012:

George Turner	Chairman
Kathy Olsen	First Vice Chairman
Curtis Alexander	Second Vice Chairman

MOTION: Commissioner Faircloth moved to appoint George Turner as the Chairman, Kathy Olsen as the First Vice-Chairman and Curtis Alexander as the Second Vice Chairman.

SECOND: Commissioner Council  
VOTE: UNANIMOUS

11. Closed Session:

(A) Economic Development Matter(s) pursuant to NCGS 143-318.11(a)(4)

(B) Attorney Client Matter(s) pursuant to NCG 143-318.11(a)(3)

MOTION: Commissioner Council moved to go into Closed Session.  
SECOND: Commissioner Faircloth  
VOTE: UNANIMOUS

MOTION: Commissioner Council moved to go into Open Session.  
SECOND: Commissioner King  
VOTE: UNANIMOUS

MOTION: Commissioner Council moved to adjourn.  
SECOND: Commissioner Faircloth  
VOTE: UNANIMOUS

There being no further business, the meeting adjourned at 10:45 p.m.

Approved with/without revision:

Respectfully submitted,

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Marie Colgan  
Clerk to the Board